



**SCHOOL OF GLOBAL STUDIES**

# **Unaccompanied Refugee Children in Greece and Their right to Family Reunification with family members in other EU countries:**

An explorative and explanatory study of the implementation  
of Dublin Regulation in Greek national legislation

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## Abstract

Unaccompanied children/minors (UAC) represents a large proportion of the demography of refugees in Greece, and many of them have families in other EU countries they wish to be reunited with. However, the increasingly closed borders and restricted freedom of movement in Greece have limited the possibility to reach family members in the EU. UAC's are consequently profoundly dependent on Greek authorities to facilitate a family reunification process.

The purpose of this thesis is to explore how UAC's right to family reunification has been implemented in Greek law (*Law 4375/2016*) from EU law (*Dublin Regulation No 604/2013*), and explain what the reasons could be for potential gaps in implementation. This purpose is divided into two research questions: (1) The explorative part, to find how UAC's right to family reunification is expressed in the legal instruments and if there is a difference between them?; (2) The explanatory part, what reasons could there be for any potential gaps in the implementation?

This thesis has found that UAC's right to family reunification is recognised in both legal instruments and that the Greek law technically satisfies the requirements of the Dublin Regulation. However, the Greek law establishes a process that can postpone the initiation of a family reunification procedure without a maximum time limit, and this cannot be in line with the "best interest of the child".

By using the Implementation Theory and its method Casual Mechanisms, this study has found that the lack of State Capacity (resources) is a profound reason for this implementation gap in Greek law.

Keywords: Unaccompanied (refugee) children/minors, Family Reunification, "best interest of the child", Dublin Regulation, Law 4375/2016, Greece, EU, Implementation.
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/ Victor Roman

## Abbreviations

CRC	Convention on the Rights of the Child
EASO	European Asylum Support Office
ECJ	European Court of Justice
ICC	International Criminal Court
ICJ	International Court of Justice
NGO	Non-governmental organisation
P5	The 5 permanent members of the UNSC (China, France, Russia, United Kingdom, and USA)
PoC	Persons of Concern
QTA	Qualitative Textual Analysis
UAC	Unaccompanied Children/Minors
UNHCR	The Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNSC	United Nations Security Council

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# 1. Introduction (and background)

Greece has truly become a significant actor in the contemporary refugee crisis. Many of its islands, due to geographical location, have long been hotspots for refugees arriving in Europe. The Greek island of Lesbos, for example, is only 15-20km away from Turkey between the closest departure and arrival point (Google Maps 2017). It has consequently become a passage into the European Union (EU). In 2015 alone, 500,018 migrants/asylum seekers/refugees arrived on Lesbos by sea (UNHCR 2015a). For the purpose of this thesis, migrants/asylum seekers/refugees will be referred to as 'Persons of Concern' (PoC), a term used by The Office of the United Nations High Commissioner for Refugees (UNHCR). To contextualise the data of arrivals, it can be compared to the total number of arrivals by sea in Greece: 856,723. Further comparison is the number 1,015,078, which is the total number of arrivals by sea in 2015 across the whole Mediterranean region (UNHCR 2015b). This shows that a vast movement of people entered the EU by sea under a short period of time. The data also demonstrates that a vast majority of the arrivals in the Mediterranean occurred in Greece. Whereas its islands, such as Lesbos, have become arrival hotspots due to the close geographic proximity to Turkey.

Children represent a large portion of the demographics in this vast movement of people. In Greece, children currently (24 March 2017) represent 36.7% of PoCs (UNHCR 2017a). Many refugee children arrive in Greece alone. This is not an uncommon phenomenon in migration according to Goldin, Cameron and Balarajan (2011: 106, 118, 142-143) who refer this to the term "chain migration". This means that family members often migrate/fleeing separately at different time periods. There are several reasons for this. One is that fleeing and migrating is a dangerous task with high levels of uncertainty. It is not uncommon that the strongest and most healthy individual in the family will be the first one in the family to travel. This person can gain valuable information, insights and beneficial social networks during his/her journey. The rest of the family will then later on benefit from this acquired knowledge due to it will limit potential danger and uncertainty during their own journey. Thus, a path has already been found from their doorstep to the intended destination. In addition, this individual could then potentially send money to the rest



of the family if s/he has acquired an income at the destination. Such money would be used for the remaining family members' journey. This merges into the other reason of why family members migrate separately, which is the lack of ability. Migrating/fleeing is often a costly venture and there might only be funds for one family member's journey at the time. Families might then decide to send the most vulnerable for his/her protection, or the healthiest and strongest one as previously demonstrated. Consequently, there are a lot of refugee children who arrived alone in Greece. Some of them may be the first in their family who arrived in the EU, whilst other children have family members in Greece and/or in other EU countries.

Children are often considered to be a highly vulnerable group in the realm of human rights. United Nations Children's Fund (UNICEF) (2016) claims that children are the most vulnerable group in situations of crisis including in a refugee context. They are vulnerable to trafficking, abuse and exploitation. Children have therefore been allocated extra attention in protection standards in order to combat this vulnerability, which is partly demonstrated by the creation of an international convention solely focusing on the protection of children (Smith 2014: 79, 376-377). This vulnerability of children makes them profoundly dependent on international protection standards, but, perhaps even more important, they are highly dependent on national authorities to care for their wellbeing. This is due to that states (countries) are the enforcers of international human rights law. This is referred to as 'international anarchy' and will be discussed in detail further on. This reality makes refugee children in Greece highly dependent on Greek authorities to safeguard their rights. As previously demonstrated, many refugee children in Greece find themselves alone as a result of "chain migration". Whereas many of them have a family elsewhere in the EU. These children become profoundly dependent on the Greek state to ensure that they can be reunited with their families in other EU countries.

### ***1.1. The Research Problem***

I, Victor Roman, pursued an accredited internship at Legal Centre Lesbos between August 2016-January 2017. Our mission was to provide legal aid to refugees on the island of Lesbos. My interest for this thesis emerged through this experience. I saw many children on the island in desperate need of help in numerous ways. One of the

issues was that they were alone in Greece but wished to be reunited with their families who already lived in other EU member countries. We did not often assist children in these issues because there were other organisations that were specialised in that field.

Since 20 March 2016, with the establishment of the *EU-Turkey Refugee Deal*, Greece became an increasingly closed country for refugees. Actions were taken, through the EU, to limit the influx of refugees into the EU through Greece. It basically provides a framework to send PoCs from Greece back to Turkey in order for them to have their request for asylum there.<sup>1</sup> The current policy protects unaccompanied children/minors from being transferred back to Turkey (Council of the European Union 2017: 7). The deal resulted in fewer refugee arrivals. In 2016, 173,450 people arrived by sea in Greece. Comparing to 856,723 arrivals by sea to Greece in 2015 (Clayton & Holland 2015; UNHCR 2015b; UNHCR 2016). Greece became not only further difficult to reach but also a country that was increasingly difficult to leave. “Leaving” in this sense does not refer to a refugee’s prospects of returning to his or her country of origin. It refers to the phenomenon that PoCs already within Greece find it increasingly difficult to continue further into other EU countries. The Greek islands were ‘closed’ as well. They went from being transits points to detention centres (Tazzioli 2016; UN News Centre 2016). Thus, you are not allowed to leave. Furthermore, not being able to leave Greece (or its islands) means that a PoC in Greece is limited to the existing services provided by authorities. Not being able to leave Greece consequently limits refugee children’s ability to reunite with their families in other EU countries. Their ability to reunite with their families is limited because authorities would obstruct them crossing the Greek border. Thus, the border has become a fence between the child and its family.

This thesis is concerned with the implementation, in Greek legislation from EU law, of unaccompanied (refugee) children’s (UAC)<sup>2</sup> right to “family reunification” in other EU countries. The EU law of concern is the *Dublin Regulation No 604/2013* (EU

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<sup>1</sup> EU-Turkey Refugee Deal: “All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey.” *Article 1* (Council of the European Union 2016).

<sup>2</sup> Unaccompanied Child/Minor (refugee/asylum seeker): “An unaccompanied child is a person who is under the age of eighteen, unless, under the law applicable to the child, majority is, attained earlier and who is “separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so.” (UNHCR 1997: 1).

2013), which regulates which EU country that is responsible for processing an individual's asylum claim. The Greek legislation subjected to this thesis is *Law 4375/2016* (Ministry of Migration Policy 2016a), which is Greece's response to the requirements of the Dublin Regulation. On an explorative and explanatory basis, this study will investigate how UAC's right to family reunification is secured/incorporated in these two legal instruments of asylum law. The reason why it is interesting to explore these legislations is due to that UAC in Greece currently face long procedures to obtain family reunification. UNICEF (2017) recently reported that the current process usually takes between 10 months and two years. This puts them at great risks considering the inherent vulnerability of UAC. UNICEF (2017) states: "keeping families together is the best way to ensure that children are protected, which is why the family reunification process for refugee and migrant children is so important." According to international law, Greece<sup>3</sup> has a responsibility to ensure children's right to be reunited with their families. *The Convention on the Rights of the Child* (CRC) (UN General Assembly 1989) recognises in its preamble that family is the "fundamental group of society" and that children "should grow up in a family environment." Furthermore, it says that children have the right to be reunited with its family if they have been separated. With the knowledge of these long procedures, it is important to investigate how UAC's right to family reunification is expressed in EU law and in Greek law.

Implementation on a national level is a necessity to ensure international law. There is no global enforcement mechanism to safeguard countries' commitment to the agreed international laws. This is often referred to as 'international anarchy', which means that there is no higher authority than the state in world politics. This provides a potential gap between international norms (such as UAC's right to family reunification) and the realisation of such norms on a domestic level. As previously mentioned, children are one of the most (if not the most) vulnerable in situations of crisis. The international norm of CRC was created to address this vulnerability. However, depending on how CRC is implemented on a national level profoundly affects children's experience in that national context. So if it is not sufficiently implemented, children may be even worse off than others who are not 'as' vulnerable.

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<sup>3</sup> Greece has both signed and ratified the Convention on the Rights of the Child (UN Treaty Collection 2017).

As previously mentioned, UAC's ability to reunite with their families in other EU countries has become limited due to increasingly closed Greek borders. This generates an even greater need for Greek authorities to facilitate this right for UAC. However, something is clearly lacking due to the long procedure for a UAC in Greece to obtain family reunification. UN Special Rapporteur Crépeau said he saw many children living in unacceptable conditions on Lesbos. In addition, he expressed an urgent need to facilitate family reunification (UN News Centre 2016). As mentioned earlier, a family reunification process normally takes between 10 months and two years in Greece. It is said however that the procedure according to the Dublin Regulation should not take more than 11 months (W2eu 2016). There is, therefore, a strong reason to believe that there is potential a gap between agreed international norms on child protection and the realisation of such norms in Greek legislation. There may though be a strong protection for this right in the legislations but lacks the realisation 'on the ground'; e.g. implementation beyond the law. This thesis, however, will only focus on the legislations and explore if the issue resides in the law.

A guiding theme for this paper is the principle the "best interests of the child shall be a primary consideration", which is stated in *Article 3* in CRC (UN General Assembly 1989). This is a favourable guideline for the whole thesis because it maintains the focus on children and their vulnerability. In addition, it is commonly cited theme in legal documents, both international and domestic, in regards to the protection of children; e.g. CRC, EU law, and Greek law etc.

## **1.2. Aim and Research Questions**

This thesis is concerned with the implementation of the global norm: UAC's right to family reunification. A further focus is the EU law, the *Dublin Regulation No 604/2013* (EU 2013), and the implementation of that law into the national Greek asylum law; e.g. *Law 4375/2016* (Ministry of Migration Policy 2016a). The outset is from the legal perspective rather than the child's. This does not mean that the 'child' is not of essence. It simply means that this thesis will focus on the implementation of this principle in legislation. To find the possible differences from EU law, and then applying a method of 'Casual Mechanisms' in order to investigate the possible factors for potential gaps in implementation this principle into Greek law.

The summarised aim for this thesis is:

- To explore how unaccompanied (refugee) minors'/children's right to family reunification has been implemented in Greek law (*Law 4375/2016*) from EU law (*Dublin Regulation No 604/2013*), and explain what the Casual Mechanisms (reasons) could be for potential gaps in implementation.

However, it is a very broad theme to work with. There is a need for more specific questions to guide the research. The aim is therefore divided into two research questions and will bring structure to the thesis:

1. How is UAC's right to family reunification safeguarded in EU law and Greek law? Is there a disparity in the implementation in Greek law from the EU law?
2. What possible causes/reasons could there be for any potential gaps in implementation of UAC's right to family reunification in Greek law (*Law 4375/2016*) from the Dublin Regulation?

The reason why this is interesting to study is already mentioned in the previous section. Hence, due to that there is a potential implementation gap in Greece because it is reported that a family reunification process takes much longer time than the Dublin Regulation requires.

### **1.3. Delimitations and Limitations**

Refugee issues and children's rights are vast areas that exist in numerous contexts on a global scale. As with any study however, there is an inherent need to focus the research in order to produce knowledge. If a study would include all possible areas, then the study would only become overarching and risks of being too generic. Thus, a focus does not mean by any means that other areas are not important. In fact, future studies can make a delimitation on this topic, refer to it, with the intention to expand the discussion on this issue by covering other issues within the same topic. The focus of this study lies with its aim: To explore UAC's right to family reunification in the Dublin Regulation and Law 4375/2016, and explain what the reasons could be for any potential gaps in implementation. So it will explore how this right and process are expressed in the legislations. This study will not investigate how such a right is

realised ‘on the ground’ through various institutions, the focus lies on the laws in this thesis. Hence, enforcement of these laws (through the EU’s or Greece’s judicial system) will not be explored but the issue of implementation will be problematised in the chapter of ‘Theoretical Framework’.

There are many legal instruments that cover children’s right to family reunification. This study’s focus however lies on the Dublin Regulation and the implementation of that regulation in Greek legislation. Because the Dublin Regulation determines which EU country that has the responsibility to process an asylum seeker’s application for international protection, and this study seeks to explore how UAC’s right to family reunification is carried out in this law. Furthermore, to explore how that right is implemented into the Greek law. Hence, the research will neither cover the issue of seeking asylum nor how other children’s rights are expressed in these legislations. It will not explore the debate of whether the Dublin Regulation is a positive tool in managing asylum requests within the EU. A big natural delimitation is the EU when studying the Dublin Regulation due to the geographical/political governance. This regulation has only jurisdiction within the EU and this study will therefore not cover how UAC’s right to family reunification is expressed in regards to non-EU countries. Why not a ‘non-state’ approach? It is true that charity and non-governmental organisations (NGO) provide numerous help and services without the involvement of the state. Family reunification however is a highly state-run operation (due to crossing borders and sovereignty etc.) and consequently makes the study of legislation important because the state must fulfil its obligations in the law. The focus lies on UAC in the context of refugees because the Dublin Regulation’s rights and procedures are allocated towards refugees. There are other legislations concerning migrant workers and students etc. Why only UAC? Because they are a highly vulnerable group and this study seeks to explore how that vulnerability is recognised (in regards to family reunification). In explaining the reasons for any potential gaps in implementation, the method of Casual Mechanisms provides a framework covering: Cultural Context; Legal System; Actor Interests; and State Capacity. There may be other possible reasons that would affect implementation of international laws. A complementary study could surely expand on this but the delimitation for this study lies with these mentioned Casual Mechanisms.

This study is also limited in various ways. An interesting method would be to interview the Greek Migration Minister, President, Prime Minister and other powerful politicians. If there are any implementation gaps into Greek legislation, these interviews would surely add some knowledge to the study. However, I (Victor Roman) have neither the contacts nor the resources to pursue such a study. This study will nonetheless explore if there are any public statements from these politicians in regards to the refugee crisis and UAC's right to family reunification. As demonstrated in this section, there are numerous issues and areas that can be covered in the topic of children's rights and refugee issues. This study however focuses on UAC's right to family reunification in the Dublin Regulation and Law 4375/2016, and what the reasons could be for any possible implementation gaps.

#### ***1.4. Disposition***

This thesis' results and analysis is divided into two parts; e.g. 'Part A' and 'Part B'. Before these parts however, there will be a chapter discussing and problematising the Implementation Theory in regards to the concept of international anarchy. This chapter will also include a section of previous research on the topic. Then there will be a chapter with discussion regarding the methodology of the whole study. This will cover the empirical material (legislations), source criticism, ethical discussion, and the methodologies for collecting and analysing the data.

Part A is the explorative part of the thesis and will discover how UAC's right to family reunification is expressed in the relevant legal instruments. Part B is the explanatory part and will determine if there are any domestic influences in Greece that is the reason (Casual Mechanisms) for any potential gaps in the implementation of the Dublin Regulation into the Greek national Law 4375/2016.

## **2. Theoretical Framework**

The following chapter will contextualise and demonstrate the theoretical perspective of this thesis, the 'Implementation Theory'. This section will be followed by the problematisation of this theory. It is a lengthy section but a necessary one because it will provide the legal and political context of 'international anarchy'. This knowledge will generate an understanding for the need to study implementation of global norms, especially if there is a desire to understand the realisation of such norms on a national level. This chapter also contains a section (State of the Art) covering previous research in this field.

### **2.1. Implementation Theory**

Alexander Betts and Phil Orchard (2014), with contributors, provide a comprehensive discussion of the complex issue with implementing international law. Their book *Implementation & World Politics* provides the theoretical basis for this thesis:

- Signing and ratification of a convention does not automatically mean realisation of such values/norms in a country.

This is profoundly due to the nature of the international political system the countries of the world find themselves in. It is often said that countries exist in a state of international anarchy. It means that there is no authority above a country that can enforce international law. Thus, there is no world government. International law becomes consequently profoundly dependent on countries to implement them. This topic will be explored in the next section where implementation will be problematised.

Having this notion as a starting point allows us to further investigate the realisation of international laws. It will provide room for curiosity to find out if a global norm, or part of it, has become a national norm. However, Betts and Orchard (2014: 1-4, 11-12) argue that this focus has been profoundly left out in International Relations scholarship. That the focus generally lies with how international norms are shaped and established on a global level, and whether states become signatories of such norms or not. Generally, the analysis by International Relations scholarship is often seen as finished when norms are created on a global level and when states have signed



and ratified such norms. Such analysis does not take into account the realisation of such norms on a national level. Betts and Orchard (2014: 1) argue therefore that there is an analytical gap whether there is a difference between the written international convention on a global level, and what the result of that writing is in the domestic sense. Hence, the theory of implementation basically says that signing and ratifying a convention does not automatically mean realisation of such values in a country.

To make this theory applicable, the starting point is to make a distinction between:

- Institutionalisation: Refers to the international process where norms are developed and eventually become international laws and institutions through various organisations. An important and concluding component of this process is when states sign and ratify such laws and commitments.
- Implementation: Refers to the domestic process that is necessary to inaugurate such international norms/laws into the national context. For the purpose of this thesis, implementation is treated in regards to creating laws in the national context (Betts & Orchard 2014: 1-2, 12).

Studying implementation becomes profoundly important if there is a desire to explore how “effective” an international norm has been in ensuring its values “on the ground”. Thus, how it is safeguarded (or not) within the domestic context. Many states submit themselves to various international norms but implement them highly differently. The Implementation Theory is an adequate tool to apply in this thesis since its goal is to explore how the global norm of children’s right to family reunification is realised in Greece. By applying this theory, it allows us to study how effective this global norm has become in Greece (Betts & Orchard 2014: 1-2, 12).

## ***2.2. Problematising ‘Implementation’***

### **2.2.1. International Anarchy and the State**

A core feature of international law, including human rights, is the absence of a global centralised enforcement mechanism. Thus, there is no world police or court system that can enforce such laws (Heywood 2011: 333; Smith 2014: 153-154). A main reason for this lies with the ‘sovereign state system’, which is the contemporary

political structure of the world's landmass (Hague & Harrop 2010: 14). It is often said to have its origins with the Peace of Westphalia in 1648. It was a series of peace treaties that ended several wars in Europe, which are collectively referred to as the Thirty Years War. It was one of the most devastating and bloodiest wars in European history. The peace sought to achieve political stability through the establishment of the two main principles of state sovereignty:

1. 'Internal sovereignty': The recognition of the 'state' as the supreme authority over its own territory. All institutions, religious groups, non-religious groups, and residing population are subjects of the state. Hence, there is no higher authority within that territory than the state.
2. 'External sovereignty': Provides a rule of how states will relate to each other through the recognition of being legally equal. It does not matter the amount of power or influence a state possesses, all states are autonomous actors and no state has rightful authority over another state's domestic affairs. It is the international recognition of that state's supreme authority over its territory.

This political structure became globalised with the successive decolonisation of Africa, Asia, the Caribbean and the Pacific regions (Heywood 2011: 4-5, 27, 112-114). The number of recognised sovereign states in the world successively increased over the years. This is visible in the growth of membership of the UN (2017) with 51 members in year 1945, and 193 members in year 2017. This is an organisation that honours the principle of sovereignty and where only sovereign states are allowed to be members (UN 1945: *UN Charter, Art. 2 and 4*). So the sovereign state-system became globalised and is today a strong norm of political recognition around the world. When state sovereignty is given priority there is consequently no place for an authority above the state. It is a 'Westphalian state-system' and there is no world police that can ensure that states obey international law. Hence, there is no global enforcement mechanism (Heywood 2011: 4-5, 455).

It is often said that the world's states exist in 'international anarchy'. This does not mean that states exist in chaos. It simply relates back to the phenomenon that there is no authority above the sovereign state (Heywood 2011: 8). The explanation of this concept however is by no means agreed upon. Depending on the theoretical outlook, this concept is interpreted profoundly different. 'Realism' is the oldest and most frequently applied/discussed theory in international relations scholarship.

Thomas Hobbes (1651: 78, 85, 120) believed that man (human) is violent by nature and that a man cannot trust any other man. Humans live in a “war of all against all” (Hobbes 1651: 78, 120). Realism adopts these ideas in how states relate to each other in the international system. No one can be trusted because it is impossible to “make covenants with brute beasts.” (Hobbes 1651: 85). Realism consequently does not put much emphasis in international law since only power matters in international relations. Hence, every sovereign state must ensure its own survival in an international system where there is no supranational authority above the state. It is an anarchic political system (Donnelly 2009: 31-34; Heywood 2011: 14). ‘Liberalism’ does not reject the reality of international anarchy (absence of a world government etc.). It however has a more ‘positive’ outlook on human nature and that states can mutually benefit from international cooperation. The European Union (EU) is a great example of such cooperation where its members (states) mutually benefit from political and economic integration. States are able to maintain peace between themselves by fostering democracy, free trade, rule of law and human rights. Liberalism views peace as the normal behaviour of states whilst realism argues it is a “war of all against all”. Both theories accept international anarchy but have different interpretations on how states should behave in that political context (Burchill 2009: 57-63, 68, 84-85; Grieco 1988: 492). The ‘English School’ places itself somewhere in between realism and liberalism by arguing that states live in an ‘anarchical society’. It neither support the realist view that state cooperation is impossible, nor support the view of liberalism that sees a possibility of a world community of peace. The English School argues that states have a mutual interest in creating order. This mutual interest of achieving order establishes an international society of cooperation. It is however still anarchic since there is no power above the state (Linklater 2009: 86-89, 91-94). The theoretical views disagree with each other but they all tend to agree upon that the international system is an anarchic one. Thus, there is no authority above the state and consequently there is no independent global enforcement mechanism for international law.

‘Global governance’ as a concept has come to challenge the idea of unquestioned international anarchy. It is a highly debated concept but it essentially means that there is some kind of authority above states or at least various influential factors that shape states’ behaviour. Non-state actors challenge states’ unquestioned authority.

Transnational Corporations (TNC) wields tremendous economic influence and power. The UN, the International Monetary Fund (IMF), The Group of Twenty (G-20) and the World Trade Organization (WTO) are great examples of such authorities. Many of these institutions regulate how states and non-state actors are allowed to conduct business, trade, diplomacy, aid and development etc. (Heywood 2011: 8-9, 117, 469, 511). It would therefore be irrational to say that such actors have no power in international law and politics. The International Court of Justice (ICJ) is the UN's principal judicial body and its mission is to investigate, give expert legal advice and settle legal disputes between states (ICJ 2017a). Decisions by ICJ (2017b) are legally binding but it has no direct power or mechanisms to enforce such decisions. The UN Security Council (UNSC) is probably the closest realisation of a global enforcement mechanism. Its resolutions are legally binding and it has the ability to enforce such resolutions with both military and non-military measures. This means that the UNSC is able to override the sovereignty principle and enforce international law. Sierra Leone is often mentioned as an effective example where the UNSC sanctioned a military intervention in year 2000 that brought an end to a ten-year-long civil conflict (Heywood 2011: 333, 449).

The UNSC however is not an autonomous body that enforces international law. Its 15 members are sovereign member states of the UN. There are 10 non-permanent members elected on a two-year term, and there are 5 permanent members (P5) (China, France, Russia, United Kingdom, and USA). Each of the P5 members has the power of veto, which means they can individually block any possible resolutions in the UNSC (Heywood 2011: 327, 439). Since only sovereign states are the members and decision makers in these highly influential institutions, the result is that these institutions become profoundly politically influenced. Thus, the national interests of individual states will influence decisions taken in these institutions. Consequently, these political interests will influence how states and non-state actors will be allowed to operate in both domestic and international circumstances. Global governance is a dynamic, interactive and complex process on a global level that surely influences international law and politics. However, it is an exaggeration to say there is a 'world government' ruling the states of the world (Heywood 2011: 338-339, 455). States are the members of these institutions of global governance. The state as a concept may be challenged by various factors but it is still sovereign and there is still no global

enforcement mechanism to ensure that states obey international law. At least not one that is independent from states interference or interests.

There is no independent institution or enforcement mechanism above the state. It is true that states are legally bound by conventions and regulations in various institutions. States are however bound by such frameworks because states have willingly submitted themselves to it. This could of course be problematised even further by investigating how ‘willingly’ a state has submitted to a regulation or if it has been coerced into such behaviour. This is not the purpose of this thesis but it is important to highlight that all states, even if they are considered legally equal in international relations, are not necessarily equally powerful or influential to each other. ‘Great powers’ is a commonly used term for sovereign states that outranks other states in power (Heywood 2011: 7). The P5-members of the UNSC are a great example of this where some states structurally through the organisation have more allocated power. So some states may individually or collectively have more power to influence or coerce other states to submit to various regulations. Having that in mind we can now return to that a state must submit, by its own will or at least being coerced, to a regulation in order to be bound by it. In the end, the actual state must sign the treaty. This can be shown in the example of Turkey’s responsibility towards refugees. It has agreed to be bound by the *Convention relating to the Status of Refugees* (Refugee Convention) (UN General Assembly 1951). However, Turkey has made a geographical reservation resulting it will only need to recognise people fleeing Europe as refugees. Turkey is therefore not legally responsible in international law towards people fleeing other regions of the world (UNHCR 2015c). It could be argued though that Turkey is still bound to provide protection for all refugees since it is a member of the UN. Hence, membership requires respect for human rights as set out in its charter (UN 1945: *UN Charter, preamble, Art. 1*). Such an argument could be made, but Turkey is at least not legally bound to provide international protection to all refugees in regards to its limited commitment to the Refugee Convention. States are simply not governed by international law, they willingly (or are coerced) submit to it. Hence, states are sovereign since there is no independent enforcement mechanism for international law.

The International Criminal Court (ICC) is a great example in theory of an independent supranational court. Its jurisdiction is to investigate and bring responsible individuals to justice in regards to genocide, crimes against humanity, war crimes, and crime of aggression (ICC 2017). In reality however, the sovereignty principle remains strong due to that the mandate of the ICC requires that a state is a member of the court in order for the court to exercise jurisdiction over that state (Heywood 2011: 345-350). In late 2016, Russia announced that it would remove its signature from the court and by doing so removing itself from future possible submission to the ICC. It is important to mention that Russia has never ratified the treaty in the first place and has consequently never been under ICC's jurisdiction (Walker & Bowcott 2016). Ultimately, international law is inherently dependent on states' willingness to consent to it due to the nature of international anarchy.

### **2.2.2. Necessity of Implementation on a National Level**

Implementation on a national level becomes highly important in order for international law to be effective. As the previous sections have demonstrated, the state is sovereign and there is no independent authority above the state that can safeguard international law. The situation and how receptive a state is to an international law may determine if and how effective that law can be implemented within a country.

Consequently, the state is allocated a lot of responsibility in the realisation of international law. The primary enforcement of international law lies with the national judicial system of each state. Thus, it is up to a national court to enforce international law. If for example there has been a violation of human rights in the sovereign state of Japan, then it is up to a Japanese national court to decide and rule whether such a violation has taken place. However, national courts' jurisdictions are limited to the legislated law of that country. It cannot refer and make a decision based on international law that is not incorporated into the national law (Akanke & Shah 2010: 816). There are two main legal distinctions in regards to implementation.

- Monism: International law is immediately effective in a state when that state has submitted itself to an international law. Interpretation and translation of the law into the legal national legal system is not necessary. National courts

are able to refer directly to international laws that the state has submitted itself to.

- Dualism: International laws must be interpreted and translated into the national legislation before national courts can apply such laws. The result is often that some implemented international laws are written in a different way (Peace and Justice Initiative 2017).

National courts do not themselves decide whether it is a monist or dualist legal system they operate in. It is up to each state. So again, it is profoundly up to the state whether international law is honoured or not.

### **2.2.3. EU in regards to Sovereignty and International Anarchy**

The European Union (EU) is an interesting example of a supranational authority on a regional level, which is also of great relevance for this thesis. It has a complex organisational structure with many branches and has the ability to legislate laws that must be incorporated into member states' national legal frameworks. The EU has a judiciary branch as well as enforcement mechanisms to ensure that EU laws are implemented and honoured by the member states. Failure to comply with EU law can lead to fines and political pressure (EU 2017a; Heywood 2011: 502). The existence of EU's authority consequently lies with logic that several states, by becoming members of the organisation, have willingly allocated away some of its sovereignty into a centralised regional institution. Thus, states have for various national interests transferred some of its sovereignty to the EU. This could be compared to the theory of 'social contract'. A theory stating that humans can sacrifice some of their individual freedoms/sovereignty to a 'state' in order to live in a society of order (Heywood 2011: 65, 457). In regards to the EU, its member states have 'sacrificed' some of their sovereignty in order to achieve a more economically and politically stable Europe. However, once again it comes down to states' willingness to submit to international laws. As seen in the example of Russia in regards to the ICC we can also see it in regards to the United Kingdom (UK) who decided to renounce its membership in the EU. A decision that is commonly called BREXIT. Such a process will obviously take time and various organisational efforts (Hunt & Wheeler 2017). Nevertheless, after BREXIT is concluded, the EU will no longer have legal jurisdiction over the UK. This shows the nature of international anarchy and that international law is

profoundly dependent on states' willingness to consent to it. Hence, in the case of BREXIT, the UK has decided to 'reclaim' its sovereignty that was earlier transferred to the EU.

It is undeniable that the EU has been a prominent institution challenging the concept of international anarchy. However, a major paradox for the efficiency of EU law is that the responsibility of implementing its laws profoundly lies with its member states. A study by the European Parliament (2013) concluded that delay or incorrect implementation of EU laws does not only deprive the intended beneficiaries of such laws, it also endangers the EU system as a political and legal entity. It should be mentioned that states' responsibility to implement EU law could also be a constituting factor since states may have more knowledge as well as resources to take the necessary actions to realise such laws within their borders. The European Commission (2017c) (an institution of the EU) may bring a EU member state to the European Court of Justice (ECJ) as a last resort in addressing failure to comply with EU law. This procedure however takes often a very long time and must be used as a last resort. Hence, a case must first exhaust all domestic remedies before a case is brought to the ECJ. On the other hand, the EU's existence proves that there is at least some sort of common interest to maintain economic and political cooperation in Europe. In order to be part of this community, states may therefore be willing to obey laws that are not necessary in their immediate national interest, with the goal to secure its membership within the union.

### **2.3. State of the Art**

I have not found a single academic study solely focusing on the implementation of UAC's right to family reunification in Greek asylum legislation from the Dublin Regulation. However, children's rights and refugee issues (including the contemporary refugee crisis in the EU and Greece with the Dublin Regulation) are explored and well-documented issues in both academia and non-academic research.

Karlberg's (2016: 4-5, 7, 23-29, 31) master's thesis is an extensive study of the contemporary Dublin Regulation with the focus on UAC. She demonstrates the evolution of the Dublin Regulation where the contemporary version (*Dublin*



*Regulation 604/2013*), has further strengthened the right of family unity and that UAC should, in the best interest of the child, be reunited with their families. This gives a valuable historical background to the Dublin Regulation and that Family Reunification is incorporated into the legislation. However, the study does not explore the technicalities and mechanisms of the Dublin Regulation. A gap this study will certainly focus on. Furthermore, the focus of Karlberg's study lies with the implementation in Sweden and she excludes the issue of family reunification. The study briefly mentions Greece but only in the sense that it is a hotspot and inability to safeguard rights of PoC. Karlberg's thesis builds upon a larger research report from FoU-Nordväst (2017), which is a Swedish research and development institution in Stockholm district focusing on social services in regards specific needs of individuals, families and persons with psychological disabilities. This report focuses on UAC and includes the issue of family reunification. However, this is in regards to the context of Sweden and more about the situation of receiving UAC or parents who reunite with their children who already are in Sweden. It does neither cover the Dublin Regulation nor the context of Greece (Backlund et al. 2014).

Galante (2014) wrote an article about unaccompanied minors' situation in Greece with a strong focus on the issue of detention. Anagnostopoulos' (2016) article highlights that refugee children (and especially UAC) face major psychological problems in Greece in spite efforts of the international community and the Greek state. Haile (2015) wrote a critical article about US' attitude and laws in regards to family reunification for refugees. It calls upon the authorities to implement fast-track procedures in identifying and processing UAC so they can be reunited with their families without delay. This article is not about the context of Greece or Dublin Regulation. However, it demonstrates that family reunification and children's rights are global issues and profoundly highlighted in research. In addition, that there is a recognition, and urging for such recognition in law, to see children and especially UAC as highly vulnerable. The article also shows, by urging the US to safeguard family reunification, that international anarchy is prominent. Thus, it is the sovereign state of the US that must implement laws of such character in order to safeguard these human rights.

A lot of focus in the past year has been allocated towards the EU-Turkey Refugee Deal, which was signed on 18 March 2016. As mentioned earlier, the deal provides a framework to send PoCs back to Turkey where they will lodge their request for asylum. Cullberg (2016) in her graduate thesis concludes that the deal itself does not necessarily violate international law but the application of it in regards to sending PoCs to Turkey would be a violation. This is due to that Turkey cannot be recognised as a “safe third country”, at least not for the time being due to situation and treatment of asylum seekers in Turkey (Cullberg 2016: 5). Toygur and Benvenuti (2017) published an article where they evaluate the deal after one year of its existence. They highlight interesting issues and that the deal exists in a complex situation with conflicting issues of national interests (Realpolitik), humanitarian concerns and legal rights of refugees. This issue is not the focus of this thesis but it provides valuable context because Law 4375/2016 is a reaction to this deal. Hence the law establishes an admissibility process in order to determine if a person can be sent back to Turkey. On an even broader scale, a lot of this research demonstrates the nature of international anarchy. Thus, there is a need for implementation in order to safeguard international norms and human rights etc.

Triandafyllidou (2009: 173) published an interesting article in regards to the purpose of this thesis. The author briefly mentions implementation of the right to family reunification in Greek law from EU standards. The article explores and concludes that migration and foreign-born nationals are big parts of Greek society and economy. However, this has not been reflected with positivity in Greek migration policy throughout the 1990s and to a certain extent up to this day (2009). Such policies have been “characterised by the ‘fear’ of migration and an overall negative view of migration as an unwanted evil or burden to Greek society and economy.” (Triandafyllidou 2009: 175). Both major political parties (the Socialists and the Conservatives) have been reluctant to pro-immigration policies. The Socialist party has recently adopted some elements of openness but remains hesitant to shift its political agenda. A major reason for this is due to that migration issues neither wins nor loses votes in Greece. Hence, there is an absence of political will to introduce more favourable policies towards migrants/refugees. Additionally, it mentions that bureaucratic inefficiencies in Greece are also an obstruction in producing and implementing migration policy (2009: 159, 173-177). This article was published in

2009 and consequently predates the current Greek Law 4375/2016 and its predecessor *Law 3907/2011* as well as the current *Dublin Regulation No 604/2013*. Yet, even though the article does not focus on UAC's right to family reunification, it gives valuable insight and knowledge for the analysis. Such history of migration in Greece may provide an understanding of contemporary issues, whether they have shifted or remain unchanged to this day.

A perceived disadvantage of this thesis may be that I have not been able to explore previous research in the Greek language. Hence, there may already be recent studies on the same or similar topics. However, this is not necessarily a disadvantage due to it makes this study and areas of research available in the English language and thusly more accessible on an international platform. This will benefit potential future studies in the same area of research. Furthermore, the researcher is most likely Greek if a similar study exists in the Greek language. Conducting research on issues in your own culture or society brings a risk of unintentional bias. This study, since I (Victor Roman) am not Greek, provides therefore an outsider's perspective on this issue and may therefore provide a more neutral analysis. However, it is important to highlight that any author cannot be completely free from having any unintentional bias. This is important to have in mind and increases the objectiveness of a study.

### **3. Methodology**

This chapter will cover all the necessary details regarding this study's methodology. It will consequently increase the thesis' reliability because it provides a framework to repeat the study if anyone wish to test its validity.

The first section in this chapter will discuss the chosen materials (laws) for this thesis. It will also include a discussion of the validity of these sources. This will be followed by an ethical discussion. Then there will be two sections of the chosen methodologies for collecting and analysing data. Two different methodologies are necessary to satisfy both research questions of this thesis, which are divided into two parts ('Part A' and 'Part B'). The section of methodology will therefore follow the same structure. The first one is descriptive, where the aim is to explore what the current legislation says about UAC's right to family reunification. The methodology of Qualitative Textual Analysis (QTA) with its further focus on 'Idea Analysis' will be applied in pursuit of this aim. The second part is explanatory, where the aim is to find what reasons there are for any potential gaps in the implementation, in Greek law from EU law, of UAC's right to family reunification. The methodology of 'Casual Mechanisms' will be applied and will allow us to explore these potential reasons.

#### ***3.1. Empirical material***

##### **3.1.1. Global level: CRC**

*Convention on the Rights of the Child (CRC)* (UN General Assembly 1989) is a prominent global legal instrument for children's rights. Even though focus lies in this study on Greek and EU law, it is important to highlight that there is a global pressure as well for this norm. Hence, this is not only a regional norm exclusive for the EU.

##### **3.1.2. EU level: Dublin Regulation 604/2013**

On a regional EU level, UAC's right to family reunification is expressed through various legal instruments. A most prominent one (and focus for this thesis) is the *Dublin Regulation No 604/2013* (EU 2013) because, as part of the 'Common European Asylum System' (European Commission 2017a), it regulates which EU

country that is responsible for processing an individual's asylum claim. Hence, this is a most relevant legislation on EU level because it is solely concerned with the context of refugees. The question relevant to this thesis is how and to what degree UAC's right to family reunification is safeguarded through this legal instrument. It should be mentioned that the current legislation is also known as *Dublin III*. Thus, it is the third version as part of a common European asylum policy. Its two predecessors were adopted in 2003 and 1990 (ECRE 2006). For the purpose of this thesis, when referring to the 'Dublin Regulation', it refers to the contemporary version; e.g. *Dublin Regulation No 604/2013* (EU 2013).

There are other types of legislations but they tend to be more overarching in their application. An example of this is the *Directive on the Right to Family Reunification* (Council of the European Union 2003; European Commission 2017b). This directive is established to provide the opportunity for family reunification to legally residing non-EU citizens in the EU, and who wish to be reunited with their family members in another EU country than they find themselves in at the time being. This could range from economic migrants, seasonal workers, international students, and refugees. The context of family reunification is a complex and dynamic issue applicable to a wide range of areas in the directive, whereas the Dublin Regulation is solely focusing on refugees.

Another reason why the Dublin Regulation is a more suitable area of focus for this thesis is due to the fact that it is a 'regulation'. In legal terms, a regulation is the strongest binding legal act within the EU (2017b). All member states must obey by it, including Greece. Furthermore, the regulation allocates a lot of rights to UAC including their right to family reunification in EU countries. This is truly an interesting challenge to international anarchy.

### **3.1.3. National level: Law 4375/2016**

As a member of the EU and the international community, Greece has subjected itself to various legal frameworks acknowledging children's rights. It has implemented such values into its constitution where the "family, being the cornerstone... childhood, shall be under the protection of the State." (Hellenic Parliament 2008: *Constitution of*

*Greece, Art. 21*). Furthermore: the *Greek Civil Code* provides rights and obligations to children; *Law 21101/1992* implemented CRC into Greek national law; Greece has signed and ratified the *European Convention on the Exercise of Children's Rights*; and *Law 3094/2003* established the Department of Children's Rights in Greece (Library of Congress 2015). So there are numerous provisions and legal instruments for the protection of children's rights in Greece.

Law 4375/2016 however, is the response and implementation of the Dublin Regulation in Greece (Ministry of Migration Policy 2016a). Its predecessor, *Law 3907/2011*, established the Greek Asylum Service (Ministry of Migration Policy 2016b). It should be mentioned that there have been various amendments to the current legislation such as:

- *Law 4399/2016*: establishes appeals committees (European Commission 2016a, paragraph. 19),
- *Law 4461/2017*: enables European Asylum Support Office (EASO) to assist the Greek Asylum Service and committees in appeal procedures (FRA 2017).

However, Law 4375/2016 is a 139 pages long document and remains as the current legislation and foundational procedure for the Greek Asylum Service. What is more important in regards to this thesis is that it is the appropriate national Greek legal instrument for UAC's right to family reunification in relation to the Dublin Regulation.

### **3.2. Source Criticism**

A high level of the sources' validity is already established by the fact that they are official legislations. It is not an event or situation that can be discussed if it has occurred or not. The effect and efficiency of such legislation can absolutely be discussed in detail. However, there is no need to doubt that these legislations exist or not. Furthermore, there is no doubt regarding the relevance of these sources to satisfy this thesis' aim due to that the sources themselves are the units of analysis. It becomes further difficult when it comes to the sources of Casual Mechanisms. A higher validity in this part is achieved by using official resources and data, and if possible, using various sources to confirm the same data. The study's purpose has also achieved a high level of validity due to that every chapter has been related back to the

thesis' aim, research questions and theoretical framework. By constantly connecting these factors throughout the study will increase the Content Validity. In practice, this means that every chapter should relate to the issue of UAC's right to family reunification; implementation; international anarchy; and Casual Mechanisms. This approach creates a safeguard to ensure that all chapters are relevant to the intended focus of the study (Bergström & Boréus 2012: 40-41; Esaiasson et al. 2012: 57-65; Mälardalens Högskola 2014a).

The reliability of this study is also high. This is heavily due to that all the units of analysis (legislations) are available for the public. Furthermore, the most relevant parts of the legislations have been provided in this study as appendixes. All sources to provide answers in regards to the Casual Mechanisms are referenced and available for the public as well. There is no data from 'on the ground' experiences collected through interviews, which could be more difficult to repeat. This would be due to possible anonymity of informants but also due to that these individuals may not longer be in the same place. Not collecting such information is not a negative factor because such materials would not be relevant to this thesis' aim. Furthermore, a study can be reduplicated without travelling to Greece because all the data is available on the Internet. This study has also intentionally been seeking to achieve a high level of transparency by explaining how the research has been conducted (Mälardalens Högskola 2014b; Mälardalens Högskola 2014c).

The Result Validity is also high in this study, which means that the study investigates/measures what it intended to measure. This is secured by constantly throughout the research relating back to the purpose of the thesis and research questions etc. The Result Validity is satisfactory for this study due that the Content Validity and Reliability have been adequately addressed and considered, which is the requirement to achieve a satisfactory Result Validity (Esaiasson et al. 2012: 63).

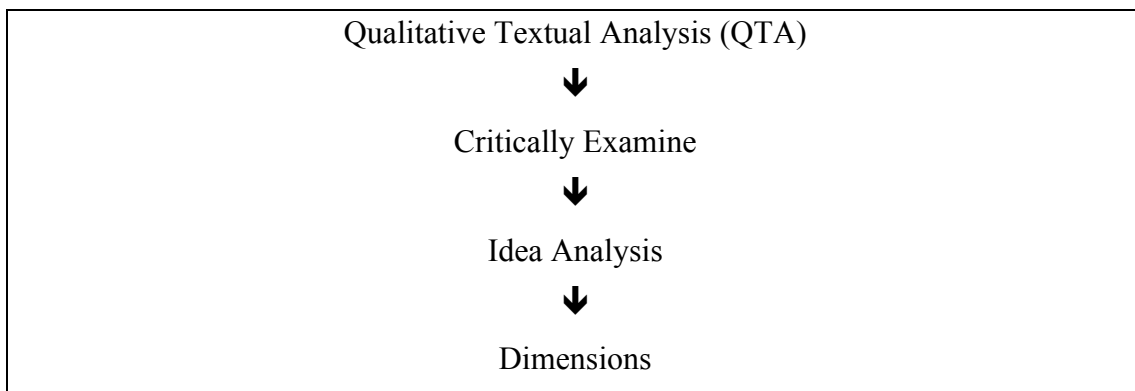
### ***3.3. Ethical Discussion***

This study has a strong ethical character because it does not require any personal interaction with UAC. Interviewing a person in a vulnerable situation is always risky because the consequences of such an interview may bring unintended harm to the

interviewee. One such risk is that the interview itself can cause mental issues by having the interviewee explaining his or her vulnerable situation (Erinosho 2008: 72). Not conducting interviews with UAC does not jeopardise the result of the study due that the focus lies on the legislation. Furthermore, this study is not in need to single out individual experiences and consequently provides a solid ethical methodology for conducting the research.

### **3.4. Exploring legislation – by using QTA (Part A)**

Qualitative Textual Analysis (QTA) is a great choice of methodology for the purpose of exploring what the legislation says about family reunification. The reason is due to that a qualitative method allows us to collect and examine the essential texts, or parts of a text, that is relevant in regards to the thesis' aim; e.g. we can be more selective. This is very different from the quantitative approach where a larger amount of materials (units of analysis) are given equal attention. Using a quantitative methodology would risk that the right we wish to analyse 'disappears' in the midst of all other rights in the same document. QTA becomes therefore more suitable since the aim, for this part of the thesis, is to explore how UAC's right to family reunification is expressed in legal documents. By using QTA, it allows us to focus on the legal documents and sections of those documents that discuss/express the right to family reunification. There is then no need to investigate other rights expressed in the texts, which is suitable because they are not relevant for the purpose of this thesis. There are various ways to use QTA. This thesis will use it to collect the relevant data, in order to critically examine it by using 'Idea Analysis' and 'Dimensions' (Esaiasson et al. 2012: 210-214; Bergström & Boréus 2012: 139-141). The figure below summarises the chosen methodology:



**Figure 1: the applied methodology of Qualitative Textual Analysis**



### **3.4.1. QTA as method for collecting data**

By using QTA, we can simply focus on the materials that are relevant in regards to the thesis' aim. In practice, this means that we must firstly identify which documents that communicate the right to family reunification. These documents have already been discussed in a previous section. Once we have a document, the next step is to read the document several times in order to gain a good understanding of its dimension, purpose and what context the document exists in. It is important to read it several times and also ask questions towards it; e.g. how and where is the right to family reunification expressed in this document? This will provide an understanding to what extent this right is conveyed through the text. In addition, by reading it several times will reveal any hidden or underlying content that is not fully disclosed by the written words. It could also be how certain words are intentionally or unintentionally expressed (Esaiasson et al. 2012: 210). An example of this could be where we use QTA to analyse a political statement about refugees. The author however never mentions the word "refugee" but s/he does use the terminology of "asylum seekers", "economic migrants" and "illegal immigrants". Reading the text several times, whilst asking questions about the choice of terminology and purpose of the statement, will bring various insights that may be missed if we only read the text once.

It is preferable for this thesis' aim to be able to be more selective of what documents to study but also what parts of the documents that are subjected to analysis. In this way, the analysis can solely focus on UAC's right to family reunification. If we used a quantitative methodology, this right may 'disappear' in a myriad of other articles if this right is only expressed in one article of a legal document. This might be the result because quantitative analysis must give equal weight to all units of analysis. It is therefore more productive for this thesis' aim to use a qualitative approach where we can focus on the right to family reunification. To really explore where and how it is communicated through texts. Having key words in mind when reading various texts assists us to know what we are looking for. Key words that are relevant when reading these texts are:

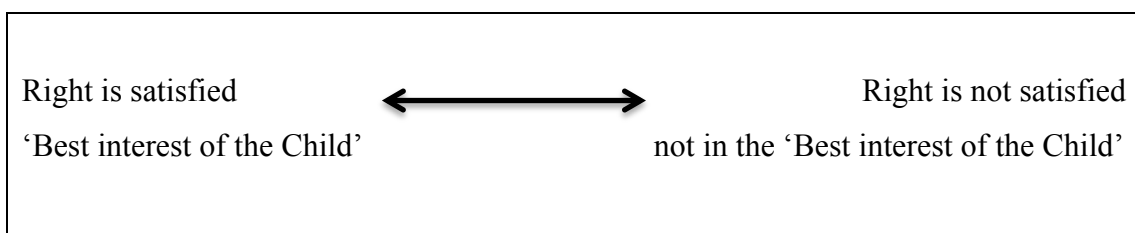
- Unaccompanied (refugee) children/minors, Family Reunification, "best interest of the child", Dublin Regulation, Law 4375/2016, Greece, EU, Implementation, Family reunification, Family, Parents, Siblings, Grandparents.

### 3.4.2. QTA as method for analysing data

The analysis happens in way simultaneously with the collection of data when using QTA and Idea Analysis. The main goal of Idea Analysis in this sense is to explore what ideas that are conveyed through the text. Hence, how is the idea of family reunification for UAC communicated through the text?

There is no set framework or model for Idea Analysis and this gives the author a lot of freedom to customise the structure of the analysis. Idea Analysis provides a vast array of options to pursue a study. An example of this is to categorise ideas by creating a chart of 'Ideal Types', which is essentially different outlooks on reality/phenomenon. Ideas that are carried out through the text can then be matched with these Ideal Types. This thesis is not concerned with analysing entire ideological/theoretical doctrines such as Realism or Liberalism. Nor is this part of the thesis concerned with an explanatory analysis, which means we do not seek to explain origins of ideas etc. This part is merely descriptive. We only wish in this part seek out how the idea of the right to family reunification is communicated through these legal documents.

A broader sense of analysing an idea will be applied by using 'Dimensions' within the Idea Analysis. The Dimension here becomes UAC's right to family reunification. Within this dimension, we have two opposite poles whereas the right is being satisfied or not. Furthermore, these two opposite poles are accompanied by the concept: "best interest of the child". The figure below clarifies this:



**Figure 2: applied Dimension of Idea Analysis**

How is UAC's right to family reunification protected in these legal instruments? Hence, how much pressure and effectiveness to satisfy this right is the text urging and communicating (Bergström & Boréus 2012: 150-151, 156-157).

### **3.5. Finding potential implementation gaps – by using ‘Casual Mechanisms’ (Part B)**

#### **Analysis and Collection of Data**

The Implementation Theory is not only a theory but provides a method for further investigation: a method called ‘Casual Mechanisms’. According to the theory, as previously demonstrated, signing and ratification of a convention does not automatically mean realisation of such values/norms in a country. It made the necessary distinction between institutionalisation (global process) and implementation (national process). This distinction is vital because international law is profoundly dependent on states’ willingness to honour it. This is due to the nature of international anarchy in world politics. Thus, there is no world government that can enforce international law and the law may therefore be differently expressed on a national level comparing to the global level. The study of implementation becomes consequently highly interesting in this study because it seeks to explore how the global norm of family reunification is realised for UAC in Greece.

This part of the thesis is the explanatory part; e.g. finding out the ‘why’. What are the reasons for any potential gaps in implementation of the right to family reunification in Greece from EU law? The method Casual Mechanisms is a suitable tool because it provides four casual factors of implementation. By applying these factors in the analysis, we can make sense of why there is a potential gap in implementation. When talking about ‘implementation’, we refer to the national process. This means we are looking at the “domestic structural influences on norms” (Betts & Orchard 2014: 13). This is where these factors of Casual Mechanisms become applicable in the analysis. Thus, four domestic factors that may have an implication to the implementation of a global norm like family reunification. These factors may individually either be constitutive or constraining implementation. In other words, each of these domestic factors can either be aiding/helping/supporting/enforcing the implementation, or, restricting/limiting/imposing/obstructing the implementation. It all depends on the case and circumstances whether they are constitutive or constraining. This is what the analysis will investigate (Betts & Orchard 2014: 13-18).

There are two broader categories, whereas each category contain two factors; e.g. Casual Mechanisms. The figure below summaries these mechanisms:

Domestic structural influences on norms		Constitutive: <i>aiding the implementation</i>	Constraining: <i>challenging the implementation</i>
<b>IDEATIONAL</b>	Cultural context		
	Legal system		
<b>MATERIAL</b>	Actor interests		
	State capacity (including Bureaucracy)		

(Betts & Orchard 2014: 13).

**Figure 3: Casual Mechanisms**

There can be two scenarios after the legislation has been explored in ‘Part A’ of the thesis: (1) The Dublin Regulation is not fully implemented into Greek law. Then the method of Casual Mechanisms will be applied to find out what has ‘Constrained’ the implementation. (2) The Dublin Regulation has been fully implemented into Greek law. Then the method of Casual Mechanisms will be used to explore what domestic factors ‘Constituted’ this right to be implemented in the law. If this scenario would be the result of ‘Part A’, then it would automatically mean that there is something beyond the Greek legislation that constrains the realisation of UAC’s right to family reunification within the 11-month time limit in the EU as set out in the Dublin Regulation. A possible reason for that is that another country in the EU, which is a possible destination in a family reunification case, has not fully implemented the Dublin Regulation. This study will not explore such issues but could in that case be a foundation for another interesting study. The focus of this thesis will be to find out what either constituted or constrained the implementation of the Dublin Regulation into Greek law.

A delimitation of this method has been made in this thesis. The original method contains one more category called ‘Institutional’, which has a factor of ‘Bureaucratic Identity’. This Casual Mechanism can be summarised (if it would have been applied in this thesis) by: how much has EU’s values/identity been implemented across the organisational and bureaucratic structure in Greece? Diplomats and politicians discuss and shape laws (such as the Dublin Regulation) in international forums and chambers.

However, it is usually civil servants working within the organisational structures that would realise such laws and policies in the different regions in a country. Hence, how well is the 'EU-identity' characterised among such civil servants. This factor aims to explore how well a norm is implemented in society beyond the national legislation (Betts & Orchard 2014: 17-18). This factor is interesting but not relevant for the purpose of this thesis due to the focus lies with the legislation. The Greek politicians that shape EU law are close to the politicians who shape and implement the law in a national context. There is however another factor called 'Bureaucratic Contestation' in this category. This simply looks at the efficiency of the bureaucracy within a state. Thus, the organisational capacity to implement a law. This will be covered in the section of 'State Capacity'.

The previous method (QTA) will explore what potential gaps in legislation there is. The method of Casual Mechanisms will then be applied in order to find out what reasons there are for these potential gaps. Collection of data is conducted by exploring the relevant information to each Casual Mechanism. This is achieved by exploring various sources exploring reports from various organisations/NGOs as well as institutional websites and databases. Google, academic search engines and news agencies are productive tools to use in order to locate this information. You only stop gathering data in this step when you have acquired a satisfactory understanding of the context of the relevant Casual Mechanism (Betts & Orchard 2014: 18-21). By exploring and collecting relevant data in regards to each factor will provide knowledge of possible reasons why there is a gap in the Greek law from EU law. The following example will make things clearer:

Let us say there is an obvious gap in the implementation of "Law X" in the sovereign state of Japan. We then find out reasons why this gap in implementation exists by applying the method of Casual Mechanisms. We start with the mechanism of 'Cultural Context'. The next step is to find relevant data about the history and culture of Japan that can make sense of why this law has not been successfully implemented. The answer might be in this factor, or it might be another factor that constrains the implementation. Perhaps it is a combination of several factors.

So this method is seeking out what the reasons could be for the possible gaps in implementation. Next section will explain in detail what all these four Casual Mechanisms mean.

If everything in the domestic context is in line with the global norm, then the implementation becomes easy or almost automatic. However, if one or several of these factors are not in line with the values of an international norm, then implementation becomes further difficult.

Many of these casual mechanisms may in many cases be interconnected, but the distinction is necessary because it allows us to study these domestic influences in a productive way.

### **3.5.1. Ideational – Domestic structural influences on norms**

#### **Cultural Context**

Is the suggested global norm in line with the already existing culture in a society? For example, a highly debated topic in many countries is whether shark fin dishes should be outlawed (Notaras 2012). Implementation of such a norm would most likely not be met with hesitation or anger from the population in a culture where such food is not consumed. However, such a norm might be more difficult to gain acceptance in a culture where such food is a part of the cultural cuisine (Betts & Orchard 2014: 13-15).

How does the culture in Greece affect the implementation of UAC's right to family reunification? Culture is obviously a highly dynamic and complex phenomenon to determine and analyse. I am not denying that historical culture, art and philosophy would have an impact in Greek society. However, delimitation is necessary due to the Greek culture in its entirety cannot be analysed in this thesis. When speaking of culture in this sense, it will look on the attitudes (amongst Greeks) towards refugees and if such attitudes have influenced legislation.

### **Legal System**

Pre-existing legal frameworks, like culture, may be receptive or restrain implementation of international law. The norm is perhaps already partly or even fully part of the national legislation but expressed in another way. It could also be that the suggested global norm that should be implemented is in direct conflict with already existing national laws and constitutions (Betts & Orchard 2014: 13-15).

Hence, how does the legal system in Greece affect the implementation of UAC's right to family reunification?

### **3.5.2. Material – Domestic structural influences on norms**

#### **Actor Interests**

National actors may also affect how an international law can be implemented. Actors who would benefit from the implementation may use their influence to persuade and constitute such a process. Whilst actors who would be disadvantaged by such a law could use their influence to constrain the suggested implementation in national law. Betts and Orchard (2014: 15-16) argues that national actors include non-state actors such as: business, NGOs, and even norm entrepreneurs that may take form in social movements.

Hence, how do various actors in Greece affect the implementation of UAC's right to family reunification?

#### **State Capacity**

A country could simply lack the necessary resources and knowledge to implement an international law. This is not uncommon in developing and post-conflict countries.

Cambodia, for example, faced horrific events during the Khmer Rouge regime that killed anyone that was perceived as a threat. Killings included political opponents but also non-political groups such as lawyers, teachers, doctors, engineers, and clerks. According to Belgian historian Raoul Jenner, only 40 physicians survived the Khmer Rouge regime and there were "entire professions which disappeared" (Mydans 1999). In a post-Khmer Rouge society, how will the

Cambodian state be able to provide the right to healthcare when there are no doctors? Without lawyers and legally trained clerks, how would Cambodia be able to implement such a norm into national law?

Capacity does not only refer to economic strength. It is also important to take into consideration how well the state's infrastructure works through its national institutions. Is corruption constraining the state's efficiency? How does the organisational structure and bureaucracy of a country affect implementation? Perhaps the state is not in full control of ensuring domestic order in some areas. This is sometimes referred to as 'weak' or even 'failed' states (Betts & Orchard 2014: 15-16; Heywood 2011: 121).

Hence, is Greece's capacity affecting the implementation of UAC's right to family reunification?

### **Final remarks**

All these casual mechanisms often work in complex and dynamic ways. Some of them could be considered to be part of each other. However, it is necessary to make these categorical distinctions in order to guide the research and promote a structured analysis.



## 4. Part A – Legislation

This chapter will both explore and analyse how UAC's family reunification is expressed through the legislations. It will therefore answer 'research question 1' of this thesis; e.g. How is UAC's right to family reunification safeguarded in EU law and Greek law? Is there a disparity in the implementation in Greek law from the EU law?

### 4.1. Results and Analysis

Only the most relevant parts (in regards to UAC's right to family reunification) of the legal instruments will be demonstrated. It will explore the laws in the following order:

- *CRC* on the global level,
- *Dublin Regulation* on the EU level,
- *Law 4375/2016* in national Greek legislation.

This will demonstrate how well (or lack thereof) the values/ideas are implemented down to the national level. Only the relevant articles and sections in regards to UAC's right to family reunification will be discussed.

Please see Appendixes 1, 2 and 3 for the original legislations. All these documents are publically available and make cross-referencing possible.

#### 4.1.1. Global level: CRC

UAC's right to be reunited with their family is expressed and there is great respect for family life through CRC (UN General Assembly 1989). It establishes a definition of a "child" by *Article 1*, which is "every human being below the age of eighteen years". Furthermore, the convention stresses that "the best interest of the child" must be a primary consideration in all cases. *Article 43* establishes a committee of experts to monitor, support and provide recommendations for member states to implement these rights (Smith 2014: 79-80). The committee itself surely aide in the realisation of UAC's right to family reunification. However, the legal instrument itself lacks instructions of necessary detailed practices and measures of how to achieve this goal. This vagueness can be seen as a 'necessary evil' in order to achieve universal acceptance. If it had more specific requirements, states might have been more

reluctant to become a party to the convention. This was surely the case with the creation of *The International Bill of Human Rights*, where it was deemed necessary for political acceptance that two separate legally binding conventions (ICCPR and ICESCR) were created instead of one. In this way, states could at least become signatory to some rights through one convention instead of not signing up at all. This may very well be the case in CRC in order to secure its existence. In that case, it has been highly successful because it is today one of the most supported initiatives in human rights law (Smith 2014: 45, 79). Furthermore, the document clearly appoints the sovereign state as the responsible entity to implement and safeguard this right; e.g. *Article 9(1)*, *Article 10(1)* and *Article 22(1)*. This demonstrates once again the nature of international anarchy.

#### **4.1.2. EU level: Dublin Regulation 604/2013**

##### **Right to Family Reunification**

This legal instrument allocates a lot of focus to safeguard UAC's right to family reunification. There is though a geographical/political limitation to this right: UAC can only, through Dublin Regulation (EU 2013), be reunited with families that are present in other EU countries. This should not be regarded as a contradiction of UAC's rights in this law. Because this legal instrument is not created to solely ensure UAC's rights. The nature of this regulation is to govern which EU country that has the responsibility to process an asylum seeker's application for international protection within the EU. It establishes a hierarchy of criteria to determine this responsibility, which is demonstrated in *Article 1*. However, UAC's right to be reunited with their family members within other EU countries has the highest priority in this hierarchy as set out in *Article 8*, *9* and *10*. These articles ensure that it does not matter whether those family members have successfully claimed asylum yet, family reunification to such family members will occur regardless. This means that UAC do not need to wait for an asylum procedure (their own or their family members') before family reunification can take place. Time to process an asylum application varies but takes sometimes a long time. Human Rights Watch (HRW 2017b) recently published a report stating that many people have been on Greek islands (hotspots) for over a year now and still waiting to complete the asylum procedure. According to the Dublin

Regulation, UAC do not need to pursue this procedure. Family reunification takes priority and UAC's vulnerability is therefore highly recognised in this sense. This is clearly in line with "the best interests of the child", which is expressed in numerous articles throughout the Dublin Regulation (see Appendix 2). Furthermore, it continues with CRC's definition of a child; e.g. person below the age of 18 years. A UAC is a person below the age of 18 years and arrives in a EU country alone, *Article 2(i-j)*.

### **Legal Standing/Implementation**

The Dublin Regulation is law by default in Greece. There are different classifications of legislations and directives through the EU. A regulation however is a "binding legislative act. It must be applied in its entirety across the EU." (EU 2017b). Since it is a regulation, it has become a prominent legal instrument in protecting UAC's right for family reunification in the EU. The reason is because all EU countries (including Greece) are bound by it. Failure to comply with the regulation may lead to fines and political pressure (EU 2017a; Heywood 2011: 502). Hence, there is an enforcement mechanism within the EU to protect UAC's right to family reunification. This should be seen as an extension of the CRC, which emphasises through its *Article 4* that states should take legislative measures to facilitate children's rights. This is such legislative measures but on a regional level. This cooperation between states is further strengthening the CRC. Furthermore, the Dublin Regulation pays homage, through *Section 13* of its *Preamble*, to the CRC (as well as the *Charter of Fundamental Rights of the European Union*). It does not violate or contradict the CRC. The Dublin Regulation further strengthens the CRC and provides a legal framework to facilitate UAC's right to family reunification in the EU.

International anarchy is however still present in regards to the Dublin Regulation. As mentioned earlier, failure to comply with EU law may lead to penalties and political pressure from the EU and/or other countries. States may set aside some immediate national interests (if they are not in line with the Dublin Regulation) in order to pursue its interest in being part of the EU and foster positive relations within it. However, in terms of realising EU laws, they still profoundly rely on member states to implement such laws. *Section 8, Preamble* of the Dublin Regulation assigns the member state as the responsible actor to implement the regulation within its sovereign territory.

## **Mechanisms and Instructions/Procedures**

In contrast to the CRC, the Dublin Regulation provides detailed instructions on how to secure UAC's right to family reunification (within the EU). It provides technical mechanisms of how to facilitate such an action. All asylum seekers entering the EU are requested by local authorities to provide their fingerprints and other information regarding identity and family links etc. *Article 8(5)* and *Section 29* of the *Preamble* authorises the European Commission to compile all such information into a single system called 'Eurodac' (European Commission 2017d). This information is then accessible for all member states when processing each individual asylum case. Family reunification will then take place if a family member is found and if the person of concern is eligible for such a process, which UAC are. In addition, the regulation says in *Article 6(4)* that "the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members..." (EU 2013). This creates a safeguard for UAC. If there is a family member in another EU country, then the state has a responsibility to identify him and/or her and there is a technical tool (Eurodac) to manage this. This prevents ad hoc procedures and every UAC will therefore have access to the procedure. Disclaimer: this is still in regards to the law. This thesis is not examining how well such procedures are installed 'on the ground'.

The Dublin Regulation (EU 2013) sets out the following procedure:

- An asylum seeker arrives in an EU country,
- In order to access the procedure for family reunification, an application for international protection (asylum) must be made,
- The applicant (including UAC) is considered under *Article 20(1-2)* to have lodged its application for international protection when a competent national authority of that country has received such a request through a standardised form/report. The process to determine which country that has the responsibility for the applicant's request for asylum shall start as soon as possible after the applicant has lodged the request for asylum.
- As soon as an application for international protection has been lodged, UAC shall under *Article 4(1, 1c)* be provided with the information of their right (under the Dublin Regulation) to family reunification. A personal interview

with the applicant shall facilitate this as set out in *Article 5*. As mentioned earlier, the state shall as soon as possible under *Article 6(4)* take the appropriate measures to identify an UAC's family members in other EU countries. *Article 6(2)* requires that the state shall also appoint a suitable and qualified representative to assist and guide the UAC through all procedures of the regulation and to ensure that "best interest of the minor" is honoured. When a family member is found in another EU country and the applicant is eligible for family reunification (which UAC are), the asylum process will be suspended until reunification has been completed. The asylum process will then take place in that country the applicant has been transferred to through family reunification. Hence, family reunification for UAC is prioritised over the asylum procedure.

- The next step is that the member state, where the application was lodged in, sends a "take charge request" (*Article 21*) to the other EU country of relevance in regards to the individual request for family reunification. The request should be sent as soon as possible but at the latest within three months after the applicant has lodged its application.
- The receiving state of the request has two months to reply to this request. Failure to respond within the two-month period will by default under *Article 22(1, 7)* equal to accepting the request. Thus, if Greece sends a take charge request to Sweden, but if Sweden does not respond within the two-month limit, then Sweden will be responsible for receiving the applicant under requirements of family reunification.
- When a take charge request has been accepted by an EU country, the transfer of the applicant should occur as soon as possible but must be within 6 months upon the request has been accepted. This means that a family reunification request could take up to 11 months to complete. Considering the vulnerability of UAC, it is highly questionable if this would satisfy the requirement of being in the "best interest of the child".

In addition, the applicant has the right at any time to request information regarding their data concerning his or her case, *Article 34*. This provides the opportunity for the applicant (and UAC representatives) to follow up on the situation, provide comfort to the UAC, establish dialogue and inform the family how the process is progressing.

In regards to UAC's right to family reunification, the only possible negative is the maximum time frame to complete a process of family reunification, which can take up to 11 months. Apart from that, this regulation provides with a great emphasis on the "best interest of the child" and a detailed framework to facilitate family reunification. It does however allocate the responsibility towards the state to uphold these procedures. *Article 40*, for example, emphasises the importance of states taking the responsibility to establish rules and legislations with penalties to address potential misuse of applicant's personal data etc. The regulation however does not specify what the penalties should be or what constitutes a violation. Member states are subjected to the regulation and that may be seen as a direct opposite to international anarchy. However, the realisation of these procedures is profoundly dependent on states willingness to honour these legislations. These legal instruments exist therefore in a complex mix of international anarchy and global (or regional) governance. Thus, a supranational authority.

#### **4.1.3. National level: Law 4375/2016**

##### **Implementation of the Dublin Regulation**

Law 4375/2016 is the response and implementation of the Dublin Regulation in Greece. It is not only a law but also the detailed working procedure of the Greek Asylum Service, which is the established institution whereas "its mission is to apply the legislation on asylum and other forms of international protection for aliens and stateless persons, as well as to contribute to the development and the formulation of the national asylum policy." (Ministry of Migration Policy 2016a: *Article 1.1*). Hence, this is the deemed competent authority that an asylum seeker will lodge its application to, in line with the requirement of the Dublin Regulation. *Article 1(4d)* establishes the 'Dublin Unit' in Greece, which shall ensure the "implementation of Regulation 604/2013". So this law is clearly expressing that it is the response to the Dublin Regulation. The previously discussed laws (CRC and Dublin Regulation) exist in a debate of the presence international anarchy. This law however is established by the Greek parliament and is by that fact automatically applicable in the Greek judiciary system and courts. Enforcement becomes more 'natural' to domestic laws in an anarchic international political system. Safeguarding international norms such as

human rights in a domestic context are profoundly dependent on the recognition of such rights in laws like this.

### **UAC's right to Family Reunification**

Luckily for the protection of UAC's right to family reunification, Law 4375/2016 (Ministry of Migration Policy 2016a) recognises this right in detail. *Article 1(2f)* says that the Greek Asylum Service must be highly competent in processing applications for family reunification. In line with the Dublin Regulation, it says that there needs to be a focus on family unity and that UAC must be considered as vulnerable as well as given the extra attention they need. Such assistance includes the provision of rights and legal advice as well as appointing a representative to assist UAC competent with such vulnerability (*Article 14(5,7-8)* and *Article 17*). The definition of an UAC continues in the same spirit as the Dublin Regulation; e.g. "unaccompanied minor" is a person below the age of 18, who arrives in Greece unaccompanied by an adult who exercises parental care on him/her..." (*Article 34(k)*). *Article 27(2c.aa)* establishes the 'Department for the protection of unaccompanied minors' and shall "provide guarantees of their adequate representation... as well as family unity and the possibility of family reunification..." *Article 45* is solely for the protection and proper care for UAC. Hence, there is a lot of recognition and protection for UAC and their right to family reunification in this law. The law uses the terminology of "the best interest of the child" in several places as well. See Appendix 3.

### **The Process**

The quality of the "best interest of the child" however becomes more elusive when examining the process of lodging an application as set out in Law 4375/2016. It does not mention in detail how the Dublin procedure for family reunification will occur. As demonstrated earlier however, *Article 1(4d)* establishes the Dublin Unit within the Greek Asylum Service and has the responsibility of implementing and processing family reunification requests along the Dublin Regulation. Hence, the law pay tribute to the regulation and once an application for international protection has taken place in Greece, the Dublin Unit will take over (if there is a case for family reunification) and proceed along the rules of the Dublin Regulation to initiate and complete such a process. This in itself is not contradictory to safeguard UAC's right to family reunification. It could potentially have just incorporated the articles from the Dublin

Regulation into the national law, but the law is still clear that the Dublin Unit will operate in line with the regulation. The process, as set out in the law, is however risking the quality of satisfying “best interest of the child”. To explain this, let us say that:

- An UAC arrives on a Greek island (which most do),
- Since the establishment of the EU-Turkey Refugee Deal, Greece became an increasingly closed country for refugees. The UAC will not be able to leave the island. So s/he must lodge an application for international protection and within that process request family reunification since s/he has family in Sweden.
- This is not an issue in itself because the Dublin procedure is facilitated through the Dublin Unit of the Greek Asylum Service. The only requirement in the Dublin Regulation (as demonstrated earlier) in order to gain access to the procedure is that an application for asylum must be lodged. Furthermore, the application is deemed as lodged once the competent authority of that country has received such an application. Hence, in this case, an application must be lodged with the Greek Asylum Service, which is deemed as the assigned competent authority to deal with these issues according to Law 4375/2016.
- *Article 36(a-c)* sets out a worrying framework of how a newly arrived asylum seeker will get access to the procedure. It says that everyone has the right to apply for asylum and that the application is deemed to be lodged when a “Full Registration” has been made to the Greek Asylum Service. There is a list of technicalities of what it includes, so this is a standardised form. So Full Registration is a technical term and once concluded, the application for international protection has been lodged. However, it also says that when “for any reason” it is deemed necessary, the receiving authorities can make a decision to postpone the Full Registration. Instead of a Full Registration, a ‘Simple Registration’ will be made within 3 days upon arrival. To then as soon as possible proceed and pursue a Full Registration. “As soon as possible” is a problematic term due to that it has no maximum time limit. Consequently, an applicant has no access to the procedure of family reunification until a Full Registration has been made. Hence, the requirement is that an application



for international protection must have been lodged in order to initiate the family reunification procedure, and only the Full Registration can do that.

Postponing the Full Registration can technically be deemed to be in line with the Dublin Regulation, but not in line with the “best interest of the child”. The Dublin regulation considers the “lodging” of an application as the initiating part of family reunification. Lodging the application simply means registering your request for asylum with the competent authorities. Law 4375/2016 does not violate this. It simply establishes a process (Simple Registration) prior to the Full Registration. In this way, lodging an application can be postponed for a very long time since “as soon as possible” is a highly subjective terminology. If there is a great need in Greece to postpone the lodgement of applications, then this is a very cunning and technical way to do so but still satisfy the Dublin Regulation. UAC are under Law 4375/2016 not separated from this procedure. Their right to family reunification cannot be initiated until they completed their Full Registration. *Article 45(7)* states that “applications for international protection of unaccompanied minors shall always be examined under the regular procedure.” As demonstrated earlier, it can take 11 months to complete the family reunification procedure under the Dublin Regulation. However, it can take a lot longer than that because this does not take into account the time an UAC awaits its Full Registration in Greece. This is the answer to why a family reunification procedure can take between 10 months and two years (UNICEF 2017). This put all applicants (including UAC) in an uncertain time frame of their applications. This is worrying due that the UN Special Rapporteur Crépeau said he saw many children living in unacceptable conditions (UN News Centre 2016). Considering UAC’s profound vulnerability, this cannot be considered to satisfy the “best interest of the child”.

## **4.2. Conclusion of Part A**

UAC’s right to family reunification and the “best interest of the child” is certainly recognised in these legal instruments. Especially within the Dublin Regulation and Law 4375/2016 that recognises such vulnerability in great length whilst CRC cover this issue on a more generic scale. The Dublin Regulation sets out a detailed framework of technicalities and mechanisms of how to facilitate the procedure for

UAC's family reunification. Law 4375/2016 honours this, references the Dublin Regulation and establishes the Dublin Unit in Greece to facilitate family reunification.

However, Law 4375/2016 has also established two types of registrations for PoCs in Greece. A PoC has successfully lodged a request for international protection when s/he has completed the 'Full Registration'. Only then can the process for family reunification commence. The Greek Asylum Service however can, through Law 4375/2016, postpone the Full Registration and pursue a 'Simple Registration' instead. A PoC must then await the Full Registration in order to continue to the process for asylum (or initiate a request for family reunification). There is no maximum time limit when a Full Registration must be completed after a Simple Registration has been done. This is the reality for UAC as well and consequently means that it can take a long time until the process for family reunification can even start. Once such a process has started, it can take up to 11 months in total to complete the procedure under the Dublin Regulation. Considering that UAC are not exempt from this regular process, it cannot be deemed to be in the "best interest of the child" due to their inherent vulnerability.

There is clearly an implementation gap in Greek law of safeguarding the "best interest of the child" and UAC's right to family reunification. Law 4375/2016 does not violate the Dublin Regulation in technical terms of registration but is not serving the "best interest of the child", which is a far more elusive term. The Dublin Regulation talks only about registration in terms of lodging the application to the authorities. The gap lies with the establishment of two registrations in Greece and that you cannot request family reunification until you completed both. This gap is intentionally established because the law is clearly expressing this procedure and what it means.

This also demonstrates the nature of international anarchy. That a sovereign state is able to implement international laws in the way it sees necessary. Even in this case when the issue regards a EU-regulation, which has the highest legal standing in the EU and must be applied in its entirety across all member states. Despite this jurisdiction, a member state like Greece is able to implement such laws differently. This demonstrates that international laws are dependent on states to implement them.

The question is: why has Greece decided to alter the implementation of UAC's right to family reunification by establishing Simple and Full Registration? The result is that UAC are upheld a longer time in Greece before they can be reunited with families in other EU countries. The next chapter will explore what the possible explanation could be for this implementation gap.

## **5. Part B – Casual Mechanisms**

Since ‘Part A’ found that there is an implementation gap, this part of the thesis will use the method of Casual Mechanisms in order to explore what constrained the implementation. Hence, are there any domestic influences/reasons of why UAC’s right to family reunification has been implemented differently (by establishing two registrations) in Greek law? This means that the method will now only look at the ‘Constraints’, not the ‘Constitutive’ reasons because that is no longer plausible.

This chapter is the explanatory part and will answer ‘research question 2’ of this thesis; e.g. What possible causes/reasons could there be for any potential gaps in the implementation of UAC’s right to family reunification in Greek law (Law 4375/2016) from the Dublin Regulation?

### **5.1. Results and Analysis**

#### **5.1.1. Ideational – Domestic structural influences on norms**

Is there anything in the ‘Cultural Context’ or ‘Legal System’ in Greece that constrains the full implementation of UAC’s right to family reunification?

##### **Cultural Context**

It would be very difficult to argue that there is anything within the Greek culture that is opposing the idea (and impact legislation) that children should be with their families, let alone UAC to be reunited with their families in the EU. Children were in general across the world seen as inferior to adults prior to 20<sup>th</sup> century. This attitude and culture truly changed the following century and children are today heavily recognised as a cherished part of life, society and family. The development of international norms strengthened by law (such as CRC) enhanced the development of this culture (Narayan 2005: viii). Greece has truly followed this path as well. For example, pederasty (sexual activity involving a man and a boy) was a legal culturally accepted custom in Ancient Greece (Athens Info Guide 2009). Today however, this would be considered immoral as well as a crime in Greece. The contemporary *Greek Criminal Code* prohibits for example: seduction of minors; sale and trafficking of children; and child pornography. There is a range of other legal

protections and rules to safeguard the wellbeing (including family unity) of children in Greece today (Library of Congress 2015). There is a range of organisations, institutions and initiatives aiding and promoting children's wellbeing in Greece (Protection of Minors 2017). It is safe to say that the protection of children is part of Greek culture.

There may though be an issue of that refugees are often seen as a homogenous group, and if refugees are seen as a homogenous group, then UAC would be included in that group. The diverse needs of refugees cannot be met if this view characterises policy, law and attitudes towards refugees. International organisations and academia have long investigated and sought to combat this issue but remains a profound challenge (Edward 2007: 2-3; WHO 2015). Failure to acknowledge this diversity risks that UAC are not seen as more vulnerable and that they are 'just' refugees. This generates another risk for UAC due to that the negative attitudes towards refugees are increasing. It should be mentioned that there are many individuals and initiatives advocating for refugee rights as well as providing aid. One such initiative is the Refugees Welcome (2017) movement. However, the UN Committee on the Elimination of Racial Discrimination reported an increase of unfavourable attitudes towards refugees. That a majority of Greeks have to some degree unfavourable views of the Roma population and anti-Muslim sentiments. Maria Gavouneli, Greek National Commission for Human Rights, expressed concern of rising racist tendencies and hate speech. There has also been a new type of organised racist crimes where refugees are targeted in camps and hotspots (UN OHCHR 2016). Such crimes are conducted by a minority by there is an overall increasing culture of anti-refugee/migrant sentiments among Greeks. Golden Dawn, a Greek nationalist political party (with a profound anti-refugee/migrant view), was voted into parliament the first time in 2012 and has held parliamentary seats ever since. It is the third largest party represented in parliament but is still a minority with only 18 seats, whilst SYRIZA has 145 seats and New Democracy has 75 seats (Golden Dawn 2014; Hellenic Parliament 2015). These attitudes can partly be explained by Greece's contemporary economic crisis. Greece had in January 2017 an unemployment rate of 23.5% overall, and 48% for young people (under 25 years). Rising poverty and large cuts in healthcare and social services are damaging the people of Greece (BBC 2015; Eurostat 2017). It is well known that there are strong links between economic

recession and xenophobia (Goldin, Cameron & Balarajan 2011: 202). This does not mean that Greeks have hatred for refugees (except for a minority) but it is reasonable to argue that there is a culture of thought among Greeks that the state cannot spend more resources on aiding refugees. An attitude that could affect UAC if refugees are seen as a homogenous group.

However, Greek culture is to not a constraining Casual Mechanism (reason) for the implementation gap of UAC's right to family reunification under Law 4375/2016. Remember, the implementation gap is the uncertainty of time to lodge an application through the establishment of two registrations. Can pro-child protection cultural attitudes be this constraining mechanism? No, because it does not serve the "best interest of the child". Can an anti-refugee cultural attitude be this constraining mechanism? No, because even if refugees would be seen as one homogenous group (which would include UAC), then it would be in the interest of such attitudes to facilitate family reunification immediately. A fast procedure means that a transfer will occur shortly. Consequently, a refugee would leave the country and no more resources would be spent on that refugee. Those who think that caring for refugees cost too much money would surely approve this. Triandafyllidou's (2009) article, which is covered in chapter 'State of the Art' provided some interesting insights. It highlighted that immigration law in Greece has always been characterised with negative attitudes by both major political parties. A major reason for this is due to that migration issues neither wins nor loses votes in Greece. Hence, there is an absence of political will to introduce more favourable policies towards migrants/refugees. This can in itself be seen as a culture, at least culture within the politics. However, the negative/restrictive attitude may very well be towards refugees in general but the law recognises UAC as more vulnerable and allocates a lot of rights and provisions to them. Hence, refugees are not seen as a homogenous group in the law. So in this case, it has been more favourable in regards to UAC. So culture cannot be deemed as a constraining Casual Mechanism for the implementation gap in addressing UAC's right to family reunification in line with the "best interest of the child".

### **Legal System**

There is nothing in the Greek legal system that could be considered as a constraint in the full implementation of UAC's right to family reunification. As demonstrated

earlier, family unity and the “best interest of the child” are already part of Greek law (Library of Congress 2015). Hence, the norm does not contradict Greek law. Furthermore, by being a member of the EU it is already legally ingrained in the legal framework of the EU.

### **5.1.2. Material – Domestic structural influences on norms**

Is there anything in the concept of ‘Actor Interests’ or ‘State Capacity’ in Greece that constrains the full implementation of UAC’s right to family reunification?

#### **Actor Interests**

Non-state actors may very well have various individual interests in regards to the refugee situation in Greece. However, they cannot be claimed responsible for this specific implementation gap. Let us hypothetically say that a non-state actor benefits a lot from a longer presence of UAC in Greece (as a result of a longer family reunification process). For example, international organisations such as UNHCR rent numerous apartment buildings and hotels to accommodate vulnerable refugees (Karas 2016). Hotels and surrounding shops/services surely make a lot of money from this, especially in tourist ‘off-season’ since these refugees would need accommodation all year round. If there is an interest of a longer presence of UAC in Greece, then there would logically be an interest of having a larger refugee population in general in the country. Thus, more refugees generate a need for more sheltering and assistance etc. However, Triandafyllidou’s (2009) article demonstrated that Greek immigration laws and policy has always been framed by restrictiveness and negative attitudes towards immigrants and refugees. So these actors (even if the interest is there) have clearly not been able to influence this kind of legislation. Furthermore, the most prominent organisations and initiatives working with issues regarding UAC are non-profit organisations (Volunteer4Greece 2017), which profoundly remove the possible scale of powerful actors’ with the desire to influence the legislation in this way. Let us hypothetically, in a cynical way, say that these NGOs would have an interest in a longer presence of UAC in the country. Instead of money, the interest could be prestige. Thus, being a profound NGO in this field. If that were the interest, then they would also have a greater interest of a larger refugee population in Greece. Even if that interest is there, they have not been able to influence legislations by the

fact that immigration legislations have always been characterised by restrictiveness as Triandafyllidou (2009) demonstrated.

Does the Greek state have an interest in the longer presence of UAC in the country? In fact, refugee aid from international organisations and the EU has provided an economic boost for Greece. The Greek Asylum Service (2014) is funded by the Greek state to 50%, and the European Commission and the European Economic Area fund the rest. UNHCR has also contributed in funding various projects within the Greek Asylum Service. This surely provides a lot of jobs for many Greeks to a reduced cost, which is a welcome prospect in a country with such high unemployment rate. Between April-December 2016 alone, the European Commission (2016b) provided Greece with €186 million in humanitarian support through various initiatives. International organisations, such as UNHCR (2017b) and MercyCorps (2017), have provided cash programmes (where money instead of goods is given to refugees) and such money is spent across Greece by refugees on the various goods and services they need. International organisations and NGOs provide millions in aid through various initiatives and by doing so they are also purchasing goods through Greek retailers and entrepreneurs etc. Thousands of international volunteers travel to Greece with the intention to help refugees (European Commission 2009; Safdar 2016). These volunteers bring and spend their money in the Greek economy as well. All these factors stimulate the Greek economy, which Greece is in great need of. Goldin, Cameron and Balarajan (2011: 163, 165, 176-177, 210, 219, 274-275), among many other scholars, argue that migration has proven in the long run to boost and build stable economies. There is though a big cost and potential drain on the national economy to integrate migrants into the society. Hence, there is a great need in the short-term to provide language training, quality education and recognition of foreign qualification (or access to upgrading) in order to achieve the long-term benefits. However, all the initiatives from the EU and international community profoundly aide Greece with these short-run costs. Thus, the long-term benefits without the short-term costs. So there could absolutely be an economic incentive for Greece to maintain the situation of refugees in the country.

However, Greece has always characterised its immigration policies by restrictiveness, as Triandafyllidou (2009) portrayed. If Greece had this economic incentive as a plan



to recover its economy, it would have a more open attitude towards refugees and migrants in general. It therefore makes no sense that this implementation gap (longer presence of UAC in the country) is the result because of Greece's economic interest. Because if Greece had more open policies, it would not need to 'hold on' to a few UAC to satisfy this interest. There would be much more refugees who would like to come to Greece (and the EU). There are almost three million PoCs in Turkey at the moment (27 April 2017) according to UNHCR (2017c). This is obviously a huge humanitarian challenge for Turkey to meet and refugees in Turkey live in dire conditions (Aljazeera 2016; HRW 2017c). Furthermore, Turkey is not fully committed to the Refugee Convention. Turkish law does not recognise refugees from 'non-European' countries and this generates a big threat to other refugees' possibility to claim asylum (Asylum Information Database 2017). If Greece wanted more refugees in the country, there would not be a problem to satisfy this aim through relocation from countries like Turkey. Greek law and policy however have not shown such attitudes. In fact, the Greek migration minister Mouzalas recently said that Greece has reached its limits and cannot welcome more refugees (Chrisitdes 2017). This statement is completely in line with the restrictiveness of immigration law Triandafyllidou (2009) demonstrated. It is therefore not reasonable to argue that this implementation gap exists due to that Greece would have an economic interest of having UAC for a longer time in the country.

### **State Capacity**

So if Greece has no interest in having UAC in the country for a longer time, could this implementation gap be there to prevent more UAC from arriving in Greece? It is widely discussed whether Greece (and the EU) uses a strategy of deterrence towards refugees, with the goal to reduce the influx of refugees into the EU. As mentioned earlier, the EU-Turkey Refugee Deal resulted in fewer refugee arrivals. In 2016, 173,450 people arrived by sea in Greece. Comparing to 856,723 arrivals by sea to Greece in 2015 (Clayton & Holland 2015; UNHCR 2015b; UNHCR 2016). If the goal is to deter refugees from arriving in Greece, then it has truly been successful as a set-out goal. However, the deterrence with this deal lies with the risk of being sent back to Turkey (Council of the European Union 2016: Article 1), but UAC are excluded from this from this risk and are consequently not subjected to this deterrence (Council of the European Union 2017: 7). The conditions for PoCs in

Greece are dreadful. The camps are unsafe, unsanitary and are characterised by mismanagement and lack of information to the PoCs. Furthermore, UN Special Rapporteur Crépeau said he saw many children living in unacceptable conditions (HRW 2016a; Norwegian Refugee Council 2016; UN News Centre 2016). Let us hypothetically say that these poor conditions are intentional and part of a deterrence strategy. Thus, making conditions so bad that refugees will not go to Greece. UAC's inability to directly request family reunification, due to the two registrations, can very well be seen as part of the deterrence as well. Because it creates a situation where UAC (and PoCs) must live in these poor conditions for a long time before they can start their family reunification (or asylum). Deterrence however is not a reason; it is a strategy to achieve a goal. The question is then: why does Greece want to limit the influx of UAC into Greece? Previous sections have demonstrated that there is nothing in the Greek culture, Legal system, or Actors Interests that despises children. Xenophobia may be on the rise and UAC may be included into that by the issue of seeing refugees as a homogenous group. However, this has been disproven due to that UAC have a lot of extra protection through Law 4375/2016. Various actors have not been able to influence this law by shaping this implementation gap due to there is no gain of doing so. The answer lies with the statement made by the Greek migration minister Mouzalas: that Greece has reached its limits and cannot welcome more refugees (Chrisitdes 2017). This is a question of capacity.

It is hereby clear that this implementation gap exists due to Greece's inability to provide the proper response to facilitate UAC's right to family reunification. As mentioned earlier, Greece lives in an economic crisis with a tremendous unemployment rate. Loans have been provided to Greece but that has also been accompanied by various demands from the International Monetary Fund, EU and European Central Bank. Such demands have included suspension of recruitment in the public sector and local government. The Gross Domestic Product has declined each year in spite these loans and there are severe insufficiencies in basic social services such as health, education, justice and public security. For example, it was reported in 2015 that Greece had only 3.6 nurses per 1,000 capita, compared with the EU average of 8 nurses per 1,000. On total, the number of public servants in Greece was reduced by 18% between 2009 and 2015 (Eurofound 2016). This staff shortage is

clearly visible in the Greek Asylum Service as well as its Dublin Unit, which has the responsibility to manage family reunification requests under the Dublin Regulation. The asylum service in Athens announced in 2015 that it would reduce processing the number of applications each day due to the lack of personnel (HRW 2016b; Ministry of Migration Policy 2015). This lack of capacity results in lack of proper training to the staff, which consequently leads to errors in procedures such as identifying vulnerability. An example of this is when the Norwegian Refugee Council reported that staff members failed to identify vulnerability of PoCs who were not sitting in a wheelchair (HRW 2017d). Another example is that I have myself, Victor Roman, as an experiment called the Greek Asylum Service on Lesbos several times during the period of writing this thesis,<sup>4</sup> but without any success of someone answering. The lack of resources makes it very difficult for Greece to care for all UAC in a proper way. However, this implementation gap (two registrations) enables Greece to only process the amount of applications they are able to. Greece can postpone their obligation under the Dublin Regulation to facilitate family reunification by postponing the Full Registration.

Capacity is not only in terms of resources, but also the quality of the state apparatus. The bureaucracy in Greece is profoundly inefficient (Alderman 2015). A Greek economic journalist said, “the government is the prisoner of the bureaucracy. We have 4,021 associations and 6,200 codes. You simply cannot change things. There are 600,000 tax elements. No one really knows who pays what.” (Mauldin 2013). Corruption is immense and widespread on all levels of society in Greece, which reduces the potential to run any public sector efficiently (GAN 2015). Greek asylum service’s staff went on strike in February 2017 after their payments had been postponed indefinitely. There was another strike in April 2017. Lack of experienced personnel, no training and no clear instructions how to safeguard the provisions set out in Law 4375/2016 makes these operations of the Greek Asylum Service highly inefficient (Howden & Fotiadis 2017; Ministry of Migration Policy 2017). All these issues limit Greece’s capacity to meet any deadlines. Let us hypothetically say that Greece conducted the Full Registrations immediately when UAC arrived. Greece would then have three months to send the take-charge request under the Dublin

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<sup>4</sup> The current number (+30 22510 32323) is displayed on Greece Asylum Service’s website (Ministry of Migration Policy 2014).

Regulation. Due to the lack of capacity, Greece could then risk of not being able to meet this deadline. However, by postponing the Full Registration, Greece can process these applications in the time it deems to need. Greece is able to create this implementation gap due to international anarchy and international laws' dependency on states' willingness to submit to international law. Greece politicians are fully aware of the lack of resources as well as the inherent inefficacy of the Greek bureaucracy. By introducing this implementation gap, they allowed the Greek Asylum Service to operate without risk of violating the time limits as set out in the Dublin Regulation. However, having UAC wait for family reunification without a certain time limit is clearly not in line with the "best interest of the child".

## 5.2. Conclusion of Part B

After examining the various Casual Mechanisms of the Implementation Theory, it is clear that it is State Capacity that is the reason (Casual Mechanism) for the existence of the implementation gap (two registrations).

Greece economic crisis has resulted in large cuts to the public sector including the Greek Asylum Service. It is clear that Greece has an interest in being able to postpone a family reunification process in order to not violate the time frames of the Dublin Regulation. It is not only the lack of staff that is the matter here. It is also the profound inefficient bureaucracy and unorganised state apparatus that is the reason for this lack of capacity. Hence, it is due to the lack of 'State Capacity' this implementation gap exists and does consequently not satisfy the "best interest of the child". The figure below is an updated version of the Casual Mechanisms including the result of this study:

Domestic structural influences on norms		Constraining: <i>challenging the implementation</i>
<b>IDEATIONAL</b>	Cultural context	
	Legal system	
<b>MATERIAL</b>	Actor interests	
	State capacity (including Bureaucracy)	<b>X</b>

(Betts & Orchard 2014: 13).

**Figure 4: Casual Mechanisms - conclusion**

Furthermore, this demonstrates the nature of international anarchy. That domestic influences in a country can (and in this case has) affect the implementation of international laws. International law is not a top-down process. The international system makes international law inherently dependent on states' willingness to implement such laws.

It is important to mention that there could other potential mechanisms affecting implementation. If that is so, let this serve as a foundation and has covered four broader factors as set out by the Implementation Theory and its method of Casual Mechanisms.

## 6. Conclusions and Ending Discussion

This thesis has found by using Qualitative Textual Analysis that unaccompanied (refugee) children/minors (UAC) right to family reunification is not only present but also prioritised over the asylum process in EU law (Dublin Regulation). The Greek legislation recognises the rules of the Dublin Regulation and implements it nationally by establishing Law 4375/2016. This law however created two registrations (Simple and Full Registration) and allows Greece to postpone the process for family reunification without technically violating the Dublin Regulation. However, due to UAC's inherent vulnerability, this cannot be seen as satisfying the "best interest of the child". A value both legislations mentions several times and argues must be a primary consideration. Hence, there is a gap in the implementation of the Dublin Regulation into Greek law.

The reason for Greece's interest in delaying the family reunification process lies with Greece's lack of resources/capability. By using Implementation Theory's method of Casual Mechanisms, this thesis has explored the areas: Cultural Context; Legal System; Actor Interests; and State Capacity. Each area has been considered as a possible reason (Casual Mechanism) for the implementation gap (delaying family reunification process by establishing two registrations). Each area has been given the question if it could be a constraint and therefore a reason for this implementation gap. After considering each area, it was obvious it is 'State Capacity' that is the underlying Casual Mechanism. This study has found that Greece's economic crisis with the accompanied cuts in the public sector consequently results in an understaffed asylum service. Furthermore, Greece lacks the proper organisation and its state apparatus is characterised by a profoundly inefficient bureaucracy. Hence, Greece is not capable of responding to the time frames for the family reunification process as set out by the Dublin Regulation. By establishing two registrations, Greece is able to postpone such a process without violating these time frames.

In conclusion, UAC's right to family reunification is present and given priority over the asylum process in both the Dublin Regulation and Law 4375/2016. Greece ability to postpone the family reunification process however cannot be seen as satisfying the value of the "best interest of the child". There may be other possible reasons that

would affect implementation of international laws. A complementary study could surely expand on this but the delimitation for this study lies with these mentioned Casual Mechanisms. This knowledge could also serve as a foundation for a study concerned with UAC's living situation in Greece as a result of this delayed process. Furthermore, in spite EU's jurisdiction, its laws are still profoundly dependent on its sovereign member states to implement such laws. This legal implementation gap demonstrates that the nature of international anarchy is still present in the contemporary international system, which is based on sovereign states.

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## **8. Appendixes**

These appendixes provide a more detailed demonstration on the expressed ideas/values of UAC's right to family reunification in the various legislations. Only the relevant parts in regards to this value have been included in the appendixes. Furthermore, some articles have been excluded due to repetitiveness.

## **8.1. Appendix 1 – Global level: CRC**

### Preamble:

- "... family, as the fundamental group of society... Recognizing that the child... should grow up in a family environment..."

### Article 1:

- "... a child means every human being below the age of eighteen years..."

### Article 3(1):

- "In all actions concerning children... the best interests of the child shall be a primary consideration."

### Article 4:

- "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention..."

### Article 9(1):

- "States Parties shall ensure that a child shall not be separated from his or her parents against their will..."

### Article 10(1):

- "... family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner..."

### Article 22(1):

- "States Parties shall take appropriate measures to ensure that a child who is seeking refugee status... whether unaccompanied..."

### Article 22(2):

- "... States Parties shall provide... protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family."

## **8.2. Appendix 2 – EU level: Dublin Regulation 604/2013**

### Whereas (Preamble)

8. "... Member States responsible for implementing this Regulation..."
  
13. "In accordance with the 1989 United Nations Convention on the Rights of the Child and with the Charter of Fundamental Rights of the European Union, the best interests of the child should be a primary consideration of Member States when applying this Regulation. In assessing the best interests of the child, Member States should, in particular, take due account of the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity, including his or her background. In addition, specific procedural guarantees for unaccompanied minors should be laid down on account of their particular vulnerability."
  
29. "Continuity between the system for determining the Member State responsible established by Regulation (EC) No 343/2003 and the system established by this Regulation should be ensured. Similarly, consistency should be ensured between this Regulation and Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013..."

### Article 1: subject matter

- "This Regulation lays down 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..."

### Article 2: definitions

For the purposes of this Regulation:

- g. "'family members' means, insofar as the family already existed in the country of origin..."
  
- i. "'minor' means a third-country national or a stateless person below the age of 18 years;"
  
- j. "'unaccompanied minor' means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her..."

Article 4: right to information

1. “As soon as an application for international protection is lodged within the meaning of Article 20 in a Member State, its competent authorities shall inform the applicant of the application of this Regulation, and in particular of:”
  - c. “... possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member States...”

Article 5: personal interview

1. “In order to facilitate the process of determining the Member State responsible, the determining Member State shall conduct a personal interview with the applicant. The interview shall also allow the proper understanding of the information supplied to the applicant in accordance with Article 4.”

Article 6: guarantees for minors

1. “The best interests of the child shall be a primary consideration for Member States with respect to all procedures provided for in this Regulation.”
2. “Member States shall ensure that a representative represents and/or assists an unaccompanied minor with respect to all procedures provided for in this Regulation. The representative shall have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this Regulation. Such representative shall have access to the content of the relevant documents in the applicant’s file including the specific leaflet for unaccompanied minors...”
3. “In assessing the best interests of the child, Member States shall closely cooperate with each other and shall, in particular, take due account of the following factors:”
  - a. “family reunification possibilities,”
  - d. “the views of the minor...”
4. “For the purpose of applying Article 8, the Member State where the unaccompanied minor lodged an application for international protection shall, as soon as possible, take appropriate action to identify the family members, siblings or relatives of the unaccompanied minor on the territory of Member States, whilst protecting the best interests of the child.

To that end, that Member State may call for the assistance of international or other relevant organisations, and may facilitate the minor’s access to the

tracing services of such organisations.

The staff of the competent authorities referred to in Article 35 who deal with requests concerning unaccompanied minors shall have received, and shall continue to receive, appropriate training concerning the specific needs of minors.”

5. “With a view to facilitating the appropriate action to identify the family members, siblings or relatives of the unaccompanied minor living in the territory of another Member State pursuant to paragraph 4 of this Article, the Commission shall adopt implementing acts including a standard form for the exchange of relevant information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).”

Article 7: hierarchy of criteria

1. “The criteria for determining the Member State responsible shall be applied in the order in which they are set out in this Chapter.”

Article 8: minors

1. “Where the applicant is an unaccompanied minor, the Member State responsible shall be that where a family member or a sibling of the unaccompanied minor is legally present, provided that it is in the best interests of the minor. Where the applicant is a married minor whose spouse is not legally present on the territory of the Member States, the Member State responsible shall be the Member State where the father, mother or other adult responsible for the minor, whether by law or by the practice of that Member State, or sibling is legally present.”
2. “Where the applicant is an unaccompanied minor who has a relative who is legally present in another Member State and where it is established, based on an individual examination, that the relative can take care of him or her, that Member State shall unite the minor with his or her relative and shall be the Member State responsible, provided that it is in the best interests of the minor.”
3. “Where family members, siblings or relatives as referred to in paragraphs 1 and 2, stay in more than one Member State, the Member State responsible shall be decided on the basis of what is in the best interests of the unaccompanied minor.”

4. “In the absence of a family member, a sibling or a relative as referred to in paragraphs 1 and 2, the Member State responsible shall be that where the unaccompanied minor has lodged his or her application for international protection, provided that it is in the best interests of the minor.”
5. “The Commission shall be empowered to adopt delegated acts in accordance with Article 45 concerning the identification of family members, siblings or relatives of the unaccompanied minor; the criteria for establishing the existence of proven family links; the criteria for assessing the capacity of a relative to take care of the unaccompanied minor, including where family members, siblings or relatives of the unaccompanied minor stay in more than one Member State. In exercising its powers to adopt delegated acts, the Commission shall not exceed the scope of the best interests of the child as provided for under Article 6(3).”
6. “The Commission shall, by means of implementing acts, establish uniform conditions for the consultation and the exchange of information between Member States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 44(2).”

*Article 9: family members who are beneficiaries of international protection*

- “Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection...”

*Article 10: family members who are applicants for international protection*

- “If the applicant has a family member in a Member State whose application for international protection in that Member State has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for international protection...”

*Article 20: start the procedure*

1. “The process of determining the Member State responsible shall start as soon as an application for international protection is first lodged with a Member State.”
2. “An application for international protection shall be deemed to have been lodged once a form submitted by the applicant or a report prepared by the authorities has reached the competent authorities of the Member State concerned.”

Article 21: submitting a take charge request

1. “Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged within the meaning of Article 20(2), request that other Member State to take charge of the applicant...”

“... Where the request to take charge of an applicant is not made within the periods laid down in the first and second subparagraphs, responsibility for examining the application for international protection shall lie with the Member State in which the application was lodged.”

Article 22: replying to a take charge request

1. “The requested Member State... shall give a decision on the request to take charge of an applicant within two months of receipt of the request,”
7. “Failure to act within the two-month period mentioned in paragraph 1... shall be tantamount to accepting the request, and entail the obligation to take charge of the person, including the obligation to provide for proper arrangements for arrival.”

Article 29: modalities and time limits (transfers)

1. “The transfer of the applicant... as soon as practically possible, and at the latest within six months of acceptance of the request by another Member State to take charge...”

Article 34: information sharing

1. “Each Member State shall communicate to any Member State that so requests such personal data concerning the applicant as is appropriate...”
9. “The applicant shall have the right to be informed, on request, of any data that is processed concerning him or her. If the applicant finds that the data have been processed in breach of this Regulation or of Directive 95/46/EC, in particular because they are incomplete or inaccurate, he or she shall be entitled to have them corrected or erased... The applicant shall have the right to bring an action or a complaint before the competent authorities or courts or tribunals of the Member State which refused the right of access to or the right of correction or erasure of data relating to him or her.”



Article 40: penalties

- “Member States shall take the necessary measures to ensure that any misuse of data processed in accordance with this Regulation is punishable by penalties...”

### **8.3. Appendix 3 – National level: Law 4375/2016**

#### Article 1: setting up – mission – composition

1. "... operates an autonomous Service, entitled "Asylum Service... its mission is to apply the legislation on asylum and other forms of international protection for aliens and stateless persons, as well as to contribute to the development and the formulation of the national asylum policy."
2. "The Asylum Service, in the context of its mission shall be, in particular, competent to:"
  - f. "Process the applications for family reunification of refugees,"
4. "The Central Asylum Service shall have the following internal structure:"
  - d. "Department of the Dublin National Unit: it shall ensure the implementation of Regulation 604/2013..."

#### Article 14: status of residence and procedures in the Reception and Identification Centres and in Mobile Units

5. "In any event, throughout the reception and identification procedures, the Manager and the staff of the Centre shall, in accordance with the procedure laid down on each case, ensure that..."
  - b. "maintain their family unity,"
  - d. "receive, if they belong to vulnerable groups, the appropriate treatment for each case,"
  - e. "are adequately informed of their rights and obligations,"
  - f. "have access to guidance and legal advice and assistance on their situation,"
  - h. "have the right to contact their family and close persons."
7. "... shall inform third country nationals or stateless persons of their rights and obligations as well as of the procedures to receive international protection status..."
8. "... shall refer persons belonging to vulnerable groups to the competent social support and protection institution... As vulnerable groups shall be considered for the purposes of this law:"
  - a. "Unaccompanied minors..."

#### Article 17: enabling provisions

11. "... appointing a guardian or representative of unaccompanied minors, as that term is defined in the applicable provisions, the duties, competences,

responsibilities and monitoring of guardians, the conditions and the accreditation process and any other relevant matter...”

Article 23: maintaining family unity

1. “The competent authorities shall ensure that all necessary measures allowing for maintaining family unity are taken.”

Article 27: establishment and staffing of the Directorate for Reception

1. “... aim to study, design and implement the policy for receiving applicants for international protection and unaccompanied minors.”
2. “The Directorate for Reception shall consist of the following departments:”
  - c. “Department for the protection of unaccompanied minors, which shall be competent:”
    - aa). “To study, design and monitor the implementation of policy for the reception and social protection of unaccompanied minors, providing the required guarantees... their legal representation and the development of additional protection on the basis of the recorded needs on the ground. These shall include, inter alia, institutional guarantees of their adequate representation... as well as family unity and the possibility of family reunification...”
  - d. “The Department for the Implementation of Reception Programs, which shall be competent:”
    - aa). “To plan, design, monitor the material aspects and/or implement the material aspects of programs to receive unaccompanied minors,”

Article 34: definitions

- c. “ ‘Family members’ of the applicant for international protection, provided that the family already existed before the entry in the country, are considered:”
  - ii. “the minor, unmarried and dependent children, regardless of whether they were born in or out of wedlock or they are adopted,”
- k. “ ‘Unaccompanied minor’ is a person below the age of 18, who arrives in Greece unaccompanied by an adult who exercises parental care on him/her...”

Article 36: access to the procedure

- a. “Any alien or stateless person has the right to apply for international protection. The application is submitted before the competent receiving

authorities, which shall immediately proceed to register it fully. Full registration shall include...”

- b. “When, for any reason, it is not possible to proceed to the full registration as per point (a) above, the Receiving Authorities may, following a decision by the Director of the Asylum Service, proceed, no later than three (3) working days after the application is made, to a simple registration of the minimum necessary elements and proceed to the full registration, as per point (a) above, as soon as this is rendered possible and by priority.”
- c. “The application for international protection shall be deemed lodged as of the date of its full registration as per point (a) above...”

Article 42: obligations of the applicants

1. “Applicants are obliged to cooperate with the competent authorities... in order to process their application, including the ascertainment of their identity data. In particular and in all cases applicants shall:
  - b. “hand over... and any other document in their possession related to the examination of the application and to data that certify theirs and their family members’ identity, their country of provenance and place of origin, as well as their family status...”

Article 45: Applications for unaccompanied minors

1. “When an unaccompanied minor lodges an application, the competent authorities shall take... to appoint a guardian for the minor. The minor is immediately informed about the identity of the guardian. The guardian represents the minor, ensures that his/her rights are safeguarded during the asylum procedure and that he/she receives adequate legal assistance and representation before the competent authorities. The guardian or the person exercising a particular guardianship act shall ensure that the unaccompanied minor is duly informed in a timely and adequate manner especially of the meaning and possible consequences of the personal interview, as well as how to be prepared for it. The guardian or the person exercising a particular guardianship act is invited and may attend the minor's interview and may submit questions or make observations to facilitate the procedure...”
2. “The case-handlers who conduct interviews with unaccompanied minors and take relevant decisions shall have the necessary knowledge regarding the special needs of the minors and must conduct the interview in such a way as to make it fully understandable by the applicant...”

7. “Applications for international protection of unaccompanied minors shall always be examined under the regular procedure.”
8. “Ensuring the child’s best interest shall be a primary obligation when implementing the provisions of this article.”