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The Immigrant's Legal Status in International Law

International Legislation Specific to the Minor Immigrant

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Abstract: Inside the vast array characterizing the phenomenon of migration, in this paper we chose to focus our analysis on a unique and extremely delicate category: the minor immigrants. The main objective is to highlight the heterogeneity of juvenile migratory phenomenon, achieving a prospective of analyses which focuses not only on international law aimed at protecting minors but also on the flaws of European systems which ignore too often the importance of the superior interests of the child. Mainly *the Convention on the Rights of the Child*, signed in New York in 1959, provides a generalized protection of minor figure and it represents the legal basis for all rules directed towards children and thus to minor immigrants.

Keywords: minor; migration; international; legislation

1 Introduction

“*Infanzia*” is a Latin term that catalogues a precise period of human life. Another term “*infans*” means the “one who still does not speak” as translated from Latin; thus such terms have negative connotation as they are indicators of incapacity, inability to express themselves or to make themselves understood.

The principles established in the **Universal Declaration of Human Rights** concern all human beings, regardless of their gender, race, origin, religious beliefs, age. And therefore children, being human beings “have such rights as any other person”.² The child, however, is a human being and as a consequence holder of all rights established in multiple international and regional tools, but he is connoted of incapacity and particular vulnerability, features that are reflected in special needs: being an “*adulte en devenir*” he needs protection in useful time which should translate into strengthening the traditional human rights and especially in the declaration of specific rights for his status of “*infans*”.

The legal treatment of the foreign minor from the substantial point of view means in fact an extremely delicate territory, being on the border of two opposite legislations, one in favor, the one relating to minors, written with principles of protection and support, and one against, the one relating to

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² Recommendation no. 1065 adopted on October 6, 1987 of Council of Europe Parliamentary Assembly, 39th ordinary session.

foreigners, born as legislation for public safety and written, at least partially, with principles of control and defense.

The minor immigrants are holders of rights recognized internationally through conventions and declarations that establish the parameters of fundamental protection. Only since the late 19th century we are witnessing an awareness of the need to give the child special protection and the necessity of no longer considering him as subject of education, but rather subject with rights.

The issues relating to children's rights were addressed by the international law since the industrialization period, being closely connected with the theme of children exploitation in the world of labor, whereas before it was a privilege, exclusive to the internal order of each state. And it was precisely the **International Labor Organization** the one that has "internationalized" the theme of minors in 1919, opening for ratification **Convention no. 5**, which introduced the minimum age for admission of children into the workforce.¹

For a generalized protection of the child it should be expected the **Society of Nations**, which first, turned its attention to the rights of children as follows: September 26, 1924 **The Fifth Nations General Assembly**, inspired by the **Charter of Child Rights**, written by Eglantyne Jebb², approves the **Declaration on the Rights of the Child**, normally known as the **Geneva Declaration**, which, although not having binding feature, it sets out five fundamental principles: the child has the right to physical and mental development, to food, care, to return to a normal life if he was demoralized, cared and helped if he is orphan.

The system, therefore, tended to affirm the material and emotional needs of minors, even if it was not designed as a tool to value the child as holder, but only as a passive recipient of rights.

Despite its limitations, the **Declaration of Geneva** is anyway a fundamental document that recognizes the special status of children to be protected and promoted.

After World War II, the **United Nations Organization** replaces the **Society of Nations**. In face of the serious and repeated human rights violations that have characterized the last world conflict, the states feel the need to anticipate, internationally, forms of adequate protection either through general acts, regarding all individuals or through specific tools dedicated to childhood.

December 10, 1948 in New York it was approved the **Universal Declaration of Human Rights**. The text is an important step in recognizing the rights of all people, but it is not directly addressed to child's condition. The declaration affirms: "*Each individual is entitled to all the rights and freedoms set forth in this Declaration, without distinction on grounds of race, color, gender, language, religion, political opinion or otherwise, national or social origin, wealth, birth or another condition.*"³

The recipients of the principles contained therein are indeed all human beings, and consequently minors, who, according to the Declaration they must entitled to a special social protection, whether

¹ The age which was set at 14 years old, later it was raised to 15, with the Convention no. 59 of 1937. There have been numerous the successive interventions of the International Labor Organization, which has prepared the texts of several agreements on protection of minors subsequently submitted for ratification or accession by other states. Among the most significant we can mention: Convention no. 6 of 1919 on the prohibition of night work in industries for minors of 18 years old; Convention no. 60 of 1937 concerning the minimum age in non-industrial employment; Convention no. 123 of 1965 on child labor in mines.

² The founder of the *Save the Children Fund* was heavily impressed by the situation of refugee children in the Balkans and Russia after the First World War and the League of Nations proposed a Charter of rights that involve the states in protecting children.

³ Article 2, Universal Declaration of Human Rights, 1048.

born in or out of wedlock.¹ Although it is acknowledged of being within the family the natural and fundamental core of the society, this statement is not addressed solely to the child. Moreover, the principles contained therein have not a binding feature and they are equipped only with the programmatic nature of all declarations of rights. However they always have a high moral value and some of these rules have acquired over time, the value of “*jus cogens*”, due to the conscience of the affiliates of the international community, aware of the importance of these provisions proclaiming the fundamental rights.

2. The Need to Give the Child Special Protection

In 1959 the United Nations Organization returns to the theme of childhood rights with the proclamation, from General Assembly, of the **Declaration of Children's Rights**² which, extending what had already been established in the **Declaration of Geneva** establishes the rights that must be recognized to the child by the society, “with the aim that every child has a happy childhood and be able to benefit, in its interest and that of the society, the rights and freedoms set forth.”

The principle that determined the United Nations states to achieve a document designed specifically for the child was the increased ascertaining of the need to give the child special protection. The declaration itself stipulates that: “*the child, due to his physical and intellectual immaturity, needs special protection and special care, including appropriate legal protection, before and after birth.*”³

For the first time in history, the child is recognized as a holder of rights and not as a mere recipient of the decisions of others.

The Declaration of the Rights of the Child, reiterating the principle of equality already established in the **Universal Declaration of Human Rights** states, organically *ten fundamental principles* that must be recognized and guaranteed to all children: the right to a normal and healthy development at physical, intellectual, moral, spiritual and social level, the right to a name and a nationality, the right to social security, the right to special care in case of physical, moral or social minority, the right to family unit, the right to education and play, preference for saving in any circumstance, protection against any kind of exploitation and education for tolerance and peace.

The most important novelty brought by the **Declaration of the Rights of the Child** is present into *two principles*:

1. “*in the adoption of laws, the determining consideration should be the superior interests of the child.*”⁴
2. “*the superior interest of the child must be the guide for those who are responsible for his education and orientation.*”⁵

For the first time it is expressed the principle “*best interests of the child*”. This notion, however, does not have its origin in international law, but was borrowed from internal systems of some states.¹

¹ Article 25, Universal Declaration of Human Rights, O.N.U., December 10, 1948.

² Resolution no. 1386 November 20, 1959.

³ Declaration of the Rights of the Child, 1959, the United Nations General Assembly, Preamble.

⁴ Principle II, Declaration of the Rights of the Child, 1959, “*In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.*”

⁵ Principle IV, Declaration of the Rights of the Child, 1959, “*The best interests of the child shall be the guiding principle of those responsible for his education and guidance.*”

As the **Declaration of Geneva**, also the **1959 Declaration** has no binding feature. The presented principles represent a reference point for the legislators of singular nations, but they are not specific and precise constraints for states.

Being approved by the humanity and without any abstention it boasts with an extreme moral authority and there are those who argue that its fundamental principles represent nowadays rules of international law.

3. Sources of Law and the Principles on Rights of the Child – the New York Convention

In order to reach in terms of children's rights, at a source of binding international law for the states, it is necessary to wait until 20 November 1989, upon the approval by the United Nations General Assembly, in New York, of the **Convention on the Rights of the Child**,² which is even today the most significant source of for the protection of minors.³

This Convention highlighted the aspect of recognition of being the holder of child's rights. And although some of the rights introduced in the Convention have already been foreseen in the preexisting international tools, choosing to give a real “status of child rights” not only led to the recognition of new rights and rewriting “suitable for children” already existing rights, but it has also offered specificity to the child, holder of the mentioned rights, requiring national authorities, including judicial bodies, to guarantee respect taking into account the interests of the child.

In order to examine the progress achieved by the participating states in implementing the obligations contracted by the **Convention of New York**, it has been established Committee with the task of monitoring compliance with the Convention.⁴ This body has no right to issue rulings or to perform call reports submitted by the contracting states or by individuals for alleged violation of the Convention. The Committee is limited to receive and assess reports that the contracting states are obliged to send on respect of the Convention in their national legislation, and it formulates general comments. Although states reports assessments and general comments are not legally binding, the Committee manages anyway to fulfill an interpretative function of the Convention.

The Principle of the Best Interests of the Child

One of the cardinal principles of the Convention refers to the concept of *best interests of the child*. This principle is drawn as a general principle in art. 3 of the **Convention in New York**: “*In all the decisions concerning children coming from social care institutions, private or public, courts,*

¹ In particularly in *common law* countries, excluding the United Kingdom, where they used the term “welfare”, the juvenile *welfare*. But also the ordinances of *Civil law* were common equivalent institutions: appellate court in Italy to protect the child was intended to deviate from the principle of custody of the innocent father or parent, in case of separation of parents.

² So far ratified by 194 countries.

³ There are successive international conventions regarding specific topics, which have repeated the concept of *best interests of the child*, particularly The Hague Conventions of 1980 on civil aspects of international kidnapping of a minor, of 1993 on the protection and cooperation in international adoption and of 1996 concerning parental authority and protection of minors. Although they are international conventions in the field are mentioned *Guidelines on Determining the Best Interests of the Child* modified by U.N.C.H.R. in 2008, which provides “*The term best interests broadly describes the well-being of a child. Such well-being is determined by a variety of individual circumstances, such as the age, the level of maturity of the child, the presence or absence of parents, the child's environment and experiences.*”

⁴ Article 43, Convention on the Child Rights, New York, 1989.

administrative authorities or legislative bodies, the best interests of the child shall be primary grounds."¹

The best interests of the child must be considered, above all, as a procedural rule: every time it is needed to make a decision which has as interest a child or group of children, the judge is obliged to consider the possible impact that the decision, whether positive or negative, can have on a child or group of children concerned. It must be regarded as a procedural rule even in the perspective that is inserted as a rule to be followed in decision-making phase, without, however, imposing a solution. The interest of a child cannot be universally identified, but the judge will have to assess from case to case, applying each time this procedural rule.

Secondly, the best interest of the child constitutes the basis for substantive law: the guarantee that this principle will be applied in all cases where a decision must be taken concerning a child or group of children. States Parties have the duty to implement all mechanisms necessary to do so, to be considered *the best interest*, primarily the obligation to introduce legislation requiring judges to assess the interest of the child.

Finally, this principle is a principle of interpretation of law, developed to limit the continuous power of adults upon children. (Zermatten, 2010, p. 26) There are various the difficulties that meet the definition of the concept *best interests of the child*: in this regard it may be helpful to mention a case on corporal punishment in private schools decided by the **Constitutional Court of South Africa** in 2000.²

The Court was informed by an association of 196 independent evangelical Christian schools, founded in the United States to promote an evangelical and functional Christian education in South Africa since 1983. The association whose purpose was to "*maintain an active Christian ethos and provide to their learners an environment that is in keeping with their Christian faith*", consists in the constitutionality of a law³ which prohibited corporal punishment in any school, public or private. According to the Association, corporal punishment in schools, found unequivocal support in several Bible passages and, since this is a "*vital aspect of Christian religion*", the law violates their rights to religious and cultural freedom. South African Minister of Education said it was more the challenge of corporal punishment, and not banning them, which violates the constitutional right, namely the right to respect the dignity of the child.

The problem is thus to determine whether it was in the child's interest to follow the Bible, and to withstand punishment correction, or follow the Constitution and not to be subject to corporal punishment. The Court raised the issue in terms of "*multiplicity of intersecting constitutional values and interests involved in the present matter, some overlapping, some competing*", given that, on the one hand "*the broad community has an interest in reducing violence wherever possible and protecting children from harm*" and on the other hand "*the dignity of the parents may be negatively affected when the state tells them how to bring up and discipline their children and limits the manner in which they may express their religious beliefs*": the child itself "*who has grown up in the particular faith may regard the punishment, although hurtful, as designed to strengthen his character*".

Facing a problem where "*the competing interests to be balanced belong to completely different conceptual and existential orders*", The Court, relying also on diverse international tools such as the Convention of New York, made prevail that "*the state has an interest in protecting pupils from*

¹ Article 3, paragraph 1, Convention on the Child Rights, New York, 1989.

² Christian Education South Africa vs. Minister of Education, May 4 2000.

³ South African Schools Act, 1996.

degradation and indignity”, recognizing that “*for believers, including the children involved, the indignity and degradation lay not in the punishment, but in the defiance of the scripture represented by leaving the misdeeds unpunished*”.

Another issue on that principle is established by the fact that no one can know exactly what is in the best interest of the child or group of children. In this regard the Committee has drawn a distinction between the best interests of one child and the one of a group of children.¹

In the first case all decisions concerning child care, his health, his education, must take into account the *best interests*, including the decisions of parents, guardians or other responsible adults for the child. States parties should, however, include stipulations so minor can be represented by a subject acting exclusively, to protect the interests of the child and provisions that provide hearing the child in all cases where he is able to express his opinions and preferences.

In the second case, all the legislative provisions and social policies and all procedures must take into account the *best interests*, including both actions addressed directly to children and those who interest only indirectly minors.

In another important Comment², the Committee has stated that the best interests of the child cannot be used to justify a certain behavior, such as corporal punishment or other degrading forms of punishment.

The interpretation of best interests of children must also be consistent with the whole Convention, which enshrines the obligation to protect the child from all forms of violence³ and the obligation to grant due importance to children's opinions.⁴ Even more, in contradiction it would be the achievement of corporal punishments or other forms of cruelty and degrading treatment that violates the right to physical integrity and human dignity of the best interests of children.

Analyzing *the best interests' principle of the child* from a functional point of view, we can identify **two traditional functions**: a first controlling role, and a second role where the best interest is used to facilitate the decisions regarding minors.

In the first role, the child's best interest principle is applied to guarantee that he is able to exercise, in full, his rights. In addition, all actions carried out in decisions on family law matter, child's protection, juvenile migration are necessary to determine whether it was taken into consideration the best interests of the child.

In the second role, the best interest of the child assumes a function of guideline that helps the judge to provide the correct decision. Every time a judge must solve a problem involving a child or group of children will have to seek a solution, systematically, that has the most positive impact on children. In providing such a decision, the judge will have to analyze the situation *hic et nunc*, but he also has to consider the child as an aspiring adult. Taking into account that the child is growing steadily, judges will have to perform a careful analysis of not only the current interests of the child, but also the future ones.

¹ General Comment no. 7 (2006), *Implementing child rights in early childhood*.

² General Comment no. 8 (2006), *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*.

³ Article 37, Convention on the Child Rights, 1989.

⁴ Article 12, Convention on the Child Rights, 1989.

The Right to be Heard

The contact points are numerous which may be found between article 3, concerning the best interest of the child and article 12 which provides that:

*“The States parties guarantee to the child capable of discernment the right to express freely his opinion on any type of problem that interests him, the child's views will be properly considered, taking into account the age and maturity of the child.”*¹

The structure of the articles is really the same: both acknowledge, on the one hand, the subjective right of the child to express their his own opinion on a decision concerning him and to be assured respect for his own best interests, and on the other hand require judges to evaluate personal conditions of the child own case by case, avoiding generalized and systematic decisions.

The link between these two articles is obvious: it is inconceivable for a judge making a decision determining the child's best interests, without hearing his opinion on any type of problem that interests him. The minor's right mentioned in Article 12 should be respected and applied whenever the decision is addressed seeking *the best interests* of the Child, enabling the latter to be able to express his own opinion which will be considered based on age and maturity of the child.

The best interests of the child is used, primarily as a criterion to determine the best interests in cases involving only a child, yet would not be fair not considered best interests also in the case involving a group of children. **Children's Rights Committee** stated that: *“The Member states are obliged to consider not only the individual situation of each child when the best interests should be determined, but also when it comes to the interests of children as a group. Extending the obligation also to legislative bodies indicates clearly that each law or regulation concerning children should take into account the best interest of the child principle. There is no doubt regarding the fact that the best interests of children as a group is established in the same way that is defined the one of one child. Therefore it must be given the opportunity to listen to the children in these groups when you want to take actions that directly or indirectly concern these children.”*²

It is not observed, so no contrast between articles 3 and 12, or more precisely between the first protective approach and the participatory of the second. But we can say that these two articles are complementary.

If article 3 is a type of “ideal” to achieve, article 12 provides a method for determining what a child's best interest is, by allowing the latter to express his own opinion on this “ideal”.

This trend was confirmed by the **European Court of Human Rights** in the case *Hokkanen v. Finland* in which it was established that: *“in particular when considering the best interests of the child, the Court places great weight on the exercise of the child's right to freedom of expression and the wishes of the child.”*³

The Principle of Non-discrimination

Always children were subject to discrimination: children with disabilities are not treated the same as those without disabilities, children living in rural areas do not have the same rights as those who live

¹ Article 12, paragraph 1, Convention on the Child Rights, New York, 1989.

² General Comment no. 12, *The right of the child to be heard*.

³ *Hokkanen v. Finland*, European Court of Human Rights, Strasbourg, September 23, 1994.

in big cities, children of immigrants do not enjoy the same rights as those children who are citizens' children.

For various reasons, children are still more vulnerable than adults to discrimination based on sex, religion, race. For a long time, however, this does not seem to interest any legislator. It is necessary to wait for the **New York Convention on the Rights of the Child** to be protected in general children's rights and particularly to protect children from discrimination.

But the importance of non-discrimination was recognized from the 50s by most of tools of international law and protect of human rights. The 3 major tools of international law and human rights protection, **Universal Declaration of Human Rights**¹, **the International Covenant on Civil and Political Rights**² and **International Covenant on Economic, Social and Cultural Rights**³ enshrines and protects, primarily, the principle of non-discrimination.

The importance of this principle that has been recognized by the United Nations and by the international community in general, it can be confirmed either by the frequency with which this principle is included in the instruments of international law or the reason for which the principle is reserved for any instrument. (Besson, 2005, p. 15)

Basically, children are included and protected from the general anti-discrimination clauses contained in international tools and are thus protected as adults. (Marks & Clapham, 2005, pp. 24-25) However, children often need special protection measures that take account of their particular vulnerability, both on the state and on their families and other individuals. Children, indeed, can be victims of discrimination not only directed against them, but intermediately through their parents.

It can be seen that the principle of non-discrimination was “the principle guide” that led to the recognition of children as rights holders. For a long time, children were not recognized as holder of rights, but in a slow and inexorable manner, these rights have been gradually recognized up to eliminating discrimination between adults and children. The interests of children are now considered as fundamental as those of adults; moreover, it is recognized as children's rights need more protection. A first step towards eliminating discrimination against children has been achieved thus recognizing these topics tenure rights as adults, but a further step was made when they adopted the general clause of non-discrimination contained in Article 2 of the **Convention in New York**.

The fact that this article presents a structure and language similar to other non-discrimination clauses present in various rules of international law reveals the intention of the legislator to align with what has already been set by other normative projections directed to counteract discrimination.

The text of Article 2 shows a very complex structure and needs to be analyzed from several points of view. If in Paragraph 1 child is protected against discrimination based on one of the reasons already

¹ Article 2, paragraph 1, Universal Declaration of Human Rights, New York, 1989.

“Every individual has all rights and freedoms set forth in this Declaration, without any distinction based on race, color, gender, language, religion, political opinion or any kind, national or social origin, wealth, birth or other condition.”

² Article 2, paragraph 1, International Covenant on Civil and Political Rights, 1966.

“Each state party in the present Covenant undertakes to respect and ensure to all individuals within its territory and which are subject to their jurisdiction, the rights recognized in the present Covenant, without any distinction, be it based on race, color, gender, language, religion, political or any other opinion, national or social origin, economic condition, birth or any other condition.”

³ Article 2, paragraph 2, International Covenant on Economic, Social and Cultural Rights, 1966.

“States parties of the present Covenant undertake to guarantee that the rights enunciated in it will be exercised without discrimination, whether based on race, color, gender, language, religion, political or any other opinion, national or social origin, economic condition birth or any other condition.”

mentioned in paragraph 2, the protection is limited to the person or status of parents, guardians, family members of the child.

Similarly, the rights listed in the first paragraph are only those enshrined in the Convention itself, in paragraph 2, the child is protected, in a hazy manner of “any form of discrimination”.

Finally, if paragraph 1 requires both the obligation to respect rights and guarantee protection against discrimination, paragraph 2 foresees exclusively the obligation to ensure non-discrimination.

Even though it presents different points of contact with the preceding clause of non-discrimination, Article 2 of the **Convention in New York** defines a range of innovative character. First, the rule provides protection against discrimination directed straight to child, but also to those based on the duties of parents, guardians, family members. The provision recognizes thus, contemporary, both protections granted to minors, the *specific* one related to its particular vulnerability and the *generic* one recognized for adults.

Secondly, the rule introduces an own and real subjective right addressed to minor children, and it should not be considered as just a pragmatic rule, so it can be invoked by a minor, victim of discrimination. Moving on to the analysis of the scope of Article 2 of the Convention, it is necessary to confirm that, given what is established by paragraph 2 of that article, it extends the scope *ratione materiae* of all rights that may be struck by discrimination and not only those recognized by the Convention.

Scope of *ratione personae* is limited however only to children. By the definition of “child” is necessary to refer to Article 1 of the **Convention of New York**, under which: “*it is understood by child, every human being below the age of 18, except that, under the laws of own state, did not become an adult sooner.*”

This provision has been subject to many criticisms because it chooses one end of discrimination between children of different countries. However, all children can invoke Article 2 against the State which ratified the Convention, whether they are citizens of that State or not. Foreign children can then invoke the same way as the citizens, violation of Article 2.

According to paragraph 1 of this Article, indeed, the Convention applies to all children who are under state jurisdiction whether they are foreigners or citizens or have entered the state legally or illegally.

Article 2 but does not define what should be understood by the term “discrimination”. **Committee on the Rights of the Child** has not provided in any comment in this definition, however, in its first comment in 2001 determined that:

*“Discrimination exercised openly or not in any of the fields listed in Article 2 of the Convention, offends the human dignity of the child, compromises and even cancels its ability to benefit from the opportunity to education.”*¹

The principle of non-discrimination, often identified with the principle of equality, prohibits treating similar situations in a different way, without an objective justification.

And in the case of children's rights, the principle of non-discrimination can be interpreted as such, prohibiting that similar situations are treated differently and vice versa, different situations to be treated equally.

¹ General Comment no. 11 (2011), Objectives of Education.

However, not always in situations of disparity of treatment, especially when it comes to children, there may be a breach of the principle of non-discrimination. This criterion cannot be used as generalized justification in all cases of discrimination. Sometimes, indeed, it is a discriminatory measure the one that contributes to promoting the best interests of children through strengthening and protection of his rights.

Besides the general criterion of non-discrimination enshrined in Article 2 there are also, within the Convention, rules to ensure special protection for specific groups of children considered, particularly vulnerable to discrimination.

In addition to the protection granted by Article 2, which, as we have seen, applies to all children under jurisdiction of a state, even if they are foreigners, refugee children are protected, specifically, against discrimination in Article 22 of the Convention. In this case it does not produce discriminatory consequences, providing asymmetric protection measures; on the contrary it is necessary to guarantee substantial equality of minors.

Article 23, paragraph 2 and article 30 established the assurance of particular protective and action measures in favor of these two categories of children. The intention is thus the same in all the articles analyzed as a result of ensuring the equality for all children. However a present risk is the possibility for these children to be isolated and stigmatized, risk that should be dammed by social policy provisions directed towards integration.

Along with the Convention on the Rights of the Child, we can also enumerate other similar sources, such as: the Hague Convention on Jurisdiction and the Law on protection of children, the European Convention on the repatriation of children, the European Charter of Children's Rights and the European Convention on Child Rights.

4. Conclusions

Conflicts and political instability are the main causes of a social and economic discomfort that creates a desire to distance itself or to remove their children, still minors, from their native country. Minors take the path to countries that are perceived, at the level of collective image, as being places of wealth and easy gains, image that is destroyed in front of a reality that presents itself as being tougher than expected and in most cases not according to their wishes.

A phenomenon which is usually hidden, that of minor immigrants, becomes “visible” as a result of the exploitation of these children in activities such as: drug trafficking, prostitution, illegal labor and delinquency. But there are not only these situations where minors can be involved, being bigger the picture of possible ways and personal and relational characteristics specific to children who face the travel without parents’ company.

The Convention on the Rights of the Child provides the legal basis for all rules directed to children and thus towards minor immigrants. Children get to be in the end, recognized as holders of rights and not just as recipients, as human beings, of protection of provisions of fundamental rights.

The Convention identifies the best interest of the child, framework principle in children's right, principle that must always be placed at the base of decisions involving minors. Foreign minors without guardian, however, live a situation of vulnerability, compounded by the position of being “minor without guardian” and thus bearers of universal rights and with the need for protection, but also

“foreigners”, therefore recipients of policies and legislations inspired by principles of control and defense.

It is recognized to children the opportunity to seek asylum and obtain a residence permit, there are numerous violations of the rights of these children who are often detained in centers dedicated to receiving adult immigrants, and as often, victims of the unacceptable practice of rejections.

For these reasons the European Court of Human Rights condemned different European states, identifying patterns of reception and protection often absolutely incapable of protecting immigrants in general, especially unaccompanied foreign minors.

In particular, in placement and detention, where necessary, there should be conducted in appropriate and dignified manner in which it is possible for minors to carry out recreational activities and keep in touch with the outside world; immediately it should be informed in a language he understands, of the opportunity to submit an application for asylum. All these guarantees should find application in terms of minor immigrants regardless of the reasons for entry into the state, be they related to economic or risks of suffering treatments offensive to human dignity in the home country.

Thus it appears in the analysis of migratory phenomena of unaccompanied foreign minors, the need to recognize the full centrality of these children: not “foreigners” to regulate or punish the presence, but minors to be protected by the causes of immigration, such as violence and abuse to which they would be exposed if they are abandoned by the society which sought protection.

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