

## The Rights of Children in the EU\*

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### Abstract

The European Communities (later EU) were primary an economic integration and the EEC Treaty (1957) had no specific provisions neither on the rights of children nor on human rights in general. The rights of children were neglected for a long time. The rights of child in the EU were for recognized the first time in the field of free movement rules. Later, the children's rights emerged in the area of freedom, security and justice (FSJ) in terms of protection of children from trafficking and sexual exploitation of violence. The legal protection of children was based on the concept of the child as a vulnerable and passive person – an object. The aim of this paper is to give an overview of the evolution of the rights of children in the EU. The paper shall first examine the evolution of the rights of children in the context of the freedom of movement. Secondly, it shall present legal protection of child in the area of freedom, security and justice. Thirdly, it shall consider the child in the context of EU Citizenship under which they were perceived as citizens *in statu nascendi*. Fourthly, it shall consider the child in the context of human rights protection with special reference to the Charter of Fundamental Rights of the EU. Fifthly, it shall discuss whether the Lisbon Treaty could be the basis for the adoption and development of the ‘EU children policy’ which should ensure that the best interest of the child be taken into account in all policies of the EU. Finally, we will deal with the rights the children of migrants. In the last chapter we will briefly mention the rights of children of immigrants and children as (or of) asylum seekers. This is a ‘burning’ issue in the EU.

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**Keywords:** European Union, Children, Charter of Fundamental Rights of the EU, EU citizenship, migrants, Asylum

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## **Introduction**

The European Communities (later EU) were primarily an economic integration and the EEC Treaty (1957) had no specific provisions neither on the rights of children nor on human rights in general. The rights of children were neglected for a long time.

The rights of child in the EU were recognized for the first time in the field of free movement rules. Later, the children's rights emerged in the Area of Freedom, Security and Justice (FSJ) in terms of protection of children from trafficking and sexual exploitation of violence. The legal protection of children was based on the concept of the child as a vulnerable and passive person – an object.

The aim of this paper is to give an overview of the evolution of the rights of children in the EU. Initially, that protection was based on the perception of the child as a mere object and instrument for achieving freedom of movement; the notion of children as passive subjects of protection from violence and trafficking and finally the today's recognition of their independent rights. For that purpose, the paper shall first examine the evolution of the rights of children in the context of the freedom of movement. Secondly, it shall present legal protection of the child in the Area of Freedom, Security and Justice. Thirdly, it shall consider the child in the context of EU Citizenship under which they were perceived as citizens *in statu nascendi*. Fourthly, it shall consider the child in the context of human rights protection with special reference to the Charter of Fundamental Rights of the EU. Fifthly, it shall discuss whether the Lisbon Treaty could be the basis for the adoption and development of the "EU children policy" which should ensure that the best interest of the child be taken into account in all policies of the EU. The last chapter deals with the rights of children of immigrants and children as (or of) asylum seekers, after which a conclusion shall be reached.

## **I The child in the context of free movement rules**

The freedom of movement of workers is one of the four basic freedoms that aim at establishing a common market.<sup>4</sup> The concept of the freedom of movement originated from the idea that the workers circulate freely where there is a shortage of respective work force. Thus, the aim is the optimal allocation of resources. Seeing as how children are not workers, they were not in the focus of interest of the Community (Ackers/Stalford, 2004, p.

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<sup>4</sup> Art. 26(1) TFEU (ex. Art. 14(2)): "The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties".

6). What is more, the emphasis on economic aspects in the Founding Treaties<sup>5</sup> disregarded interests and rights of children.<sup>6</sup>

The freedom of movement for workers failed to meet the expectations in practice. This was the case in part due to language and cultural barriers, but a very important reason that affected the decision on mobility was the (in)ability of the workers to bring their families with them (Ackers/Stalford, 2004, p. 3). The "Treaty founders" disregarded one important fact – the worker is not merely a resource for production, but rather a social being above all. It was therefore necessary that workers and their families be conferred certain rights in order to encourage them to mobility (Goldner Lang, 2005, p. 163-164). Interventions in this regard were made into secondary EU legislation. Even though rights were conferred upon children for the first time in the field of freedom of movement, they were conferred with the aim of encouraging greater mobility of workers. Children in this context were merely an instrument for the achieving of freedom of movement, i.e. a means for ensuring success of the common market project (McGlynn, 2006, p. 46). Children were mentioned in the context of certain social rights and the right to family reunification, whereas the rights of children were only incidental in the evolution of the right of their parents-workers (Ackers/Stalford, 2004, p. 5). Two important instruments that regulate the rights of workers and their family members are Regulation 1612/68<sup>7</sup> on freedom of movement for workers and their family members that was partially amended by Directive 2004/38<sup>8</sup> and Regulation 1408/71<sup>9</sup> on the coordination of the social security system.

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<sup>5</sup> The Treaty establishing the European Coal and Steel Community (1951), the Treaty establishing the European Economic Community (1957) and the Treaty establishing the European Atomic Energy Community (1957).

<sup>6</sup> One possible justification of the omitting of the rights of children in EU legal regulation lies in the lack of competence based on the founding treaties, the issue of the sovereignty of Member States in this field and respecting the principle of subsidiarity. See: Ackers/Stalford, 2004, p. 6.

<sup>7</sup> Regulation (EEC) No 1612/68 OF THE COUNCIL of 15 October 1968 on freedom of movement for workers within the Community, OJ L 257, 19.10.1968

<sup>8</sup> European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives

<sup>9</sup> Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, OJ L 323, 13.12.1996. Consolidated version available at: <http://eur-lex.europa.eu/LexUriServ/site/en/consleg/1971/R/01971R1408-20060428-en.pdf>. New (revised) regulation has been adopted - Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

Below, the child will be defined as a term in the context of provisions on the freedom of movement, followed by a short overview of rights that were conferred upon children and other workers' family members in this context.

### **The definition of the "child" in the EU Law**

While Article 10 of Regulation 1612/68 defines children as descendants under the age of 21 years or dependents, in defining the family as a term Regulation 1408/71 calls to national legislation that regulates the subject matter (Ackers/Stalford, 2004, p. 72). Aside from the different definitions, the traditional understanding of the family was also an issue. Thus the definition of the child under Art. 10 to Regulation 1612/68 included only the children of both spouses.<sup>10</sup> In the case of *Baumbast*<sup>11</sup>, the Court of Justice of the EU (hereinafter: the CJEU) broadened the definition by including stepchildren<sup>12</sup>. The new Council Directive 2004/38 formally confirmed this view of the CJEU.<sup>13</sup> However, the provision on direct descendants is not completely clear, causing doubt in terms of adopted children and children born via artificial insemination (McGlynn, 2006, p. 47).<sup>14</sup> The traditional notion of family and children in the legislation precluded the option of children to use their independency and autonomy (McGlynn, 2006, p. 46). The CJEU broadened the scope and the concept of the rights of the child to a maximum even though it itself is limited in its own competence.<sup>15</sup>

### **The rights of the child in the context of free movement rules**

As regards the material rights of the child, the worker was awarded **certain social and tax advantages**, i.e. benefits under Article 7(2) to

<sup>10</sup> Thus, for example, children born in cohabitation (i.e. civil union) had lesser rights because – as the CJEU stated in the case *Netherlands v. Reed*, 59/85, ECLI:EU:C:1986:157 ECR: "the term spouse refers to a marital relationship only". However, see Art. 2 to Directive 2004/38.

<sup>11</sup> See case: *Baumbast and R v. Secretary of State for the Home Department*, C-413/99, ECLI:EU:C:2002:493.

<sup>12</sup> Under the term *family*, Directive 2004/38 implies a spouse, but also a registered partner, but only if the national legislation treats registered partnerships as equivalent to marriage. Aside from direct descendants of marital spouses, the new directive includes children of both spouses with a registered partner and/or the child of a spouse or registered partner, i.e. the stepchild, but with the condition of dependency. See Art. 2 of the European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

<sup>13</sup> *Ibid.*

<sup>14</sup> Therefore, even though the child as a term is broad enough in the new directive, due to the still-present traditional understanding of the family as a term it will have limited scope.

<sup>15</sup> See Art. 5 TEU (ex. Art. 5 TEC).

Regulation 1612/68.<sup>16</sup> The conferring of new rights is a consequence of the shift in the orientation of the Union from a purely economic to a social community.<sup>17</sup> Still, the movement, i.e. the cross-border element remained a requisite<sup>18</sup> and the rights of the children continued to be parasitic in relation to workers. The ultimate goal of the conferring certain rights on children retained its economic grounds although the autonomy of the rights of the child became more and more recognized, primarily through the practice and interpretation of the CJEU.

In practice, it was precisely child education-related issues that frequently affected the workers' decision to move to a different state. On the other hand, education is the key dimension in the development of the European immigration policy. School may be viewed as a unit of the new heterogeneous European society (Ackers/Stalford, 2004, pp. 200-260).<sup>19</sup> The child must adapt to a new environment and different cultural, social and language differences. Therefore, its experience with the educational system of the host is very important. Even though the then-TEC did not mention education as a part of the social policy of the Union, it guaranteed the right of the child to *vocational training*.<sup>20</sup> The first explicit reference of Community law to education is that in Art. 12 to Regulation 1612/68 prescribing that child shall have the right of access to the educational system "*under the same conditions as the nationals of that State*,"<sup>21</sup> whereby it covers all types and levels of education. Together with a more broad interpretation of Art. 7(2) to Regulation 1612/68, Article 12 contributes to progression so that the right of the child to education is almost an independent right.<sup>22</sup> In terms of further strengthening of the rights of the

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<sup>16</sup> For instance, in the case: Anita Cristini v Société nationale des chemins de fer français, C-32/75, ECLI:EU:C:1975:120, the CJEU broadened this term and made it applicable even to railway ticket price benefits. In certain cases, the CJEU put childbirth and unemployment benefits under the scope of Art. 7(2).

<sup>17</sup> In 1986, the so-called Agreement on Social Policy was signed, but with the opt-out of Great Britain. The 1997 Amsterdam Treaty incorporated the Agreement into the primary law of the Community.

<sup>18</sup> The Regulation is not only applicable to purely internal situations or third-country nationals, which results in children who are not nationals of an EU Member State are in a different position with substantial disadvantage.

<sup>19</sup> The existence of the so-called international schools (for foreign nationals) indicates the denial of the possibility of child integration in the educational system of the host state.

<sup>20</sup> See Art. 35 TEC (consolidated version).

<sup>21</sup> In the case *Brown*, the CJEU however refused to recognize the student's independent right to education (pursuant to Art. 12 to the Regulation), who was a French national, but whose parents had never lived in Great Britain where he wanted to study. See case: *Steven Malcolm Brown v The Secretary of State for Scotland*, C-197/86, ECLI:EU:C:1988:323.

<sup>22</sup> Relevant in terms of education is also the Directive 77/486/EEC on the education of the children of migrant workers. However, it is not the subject of interest of this paper.

child for which the CJEU is meritorious, certain cases are extremely important and include *Echternach and Moritz*<sup>23</sup>, *Lubor-Gaal*<sup>24</sup> and aforementioned *Baumbast*.<sup>25</sup> Readers should refer to these cases.

Without the right to **family reunification** there would be no interest in migration whatsoever. This right serves the complete integration of workers in the new working and living environment. In accordance with Article 10 to Regulation 1612/68, irrespective of nationality, the right to install oneself with the worker is of the spouse and their descendants who are under the age of 21 and other dependent relatives in the ascending line of the worker and his spouse. The condition is that the worker has adequate housing, but they do not have to be living under the same roof. The new Directive extended this right to registered partners as well.<sup>26</sup> The case law of the CJEU evolved in the direction of recognizing the right to family reunification as a fundamental right of all EU citizens. The adopting of the so-called "*Family Reunification Directive*",<sup>27</sup> the right to move and reside freely within EU territory was extended to third-country nationals as well (McGlynn, 2006, p. 54; Petrašević, 2009, p. 281).

Despite the existence of certain positive developments and efforts of the CJEU to confer certain rights on children – children's rights *per se*, it appears that the child remains a mere figurehead in the game of market competition and a dependent member of the family (McGlynn, 2006, p. 47). Children continue to be passive beneficiaries whose status is derived from the status of their parents: marital status, employment and similar (McGlynn, 2006, p. 49).

## II The child in the area of freedom, security and justice

The term Area of Freedom, Security and Justice (hereinafter: FSJ) appeared for the first time in the Treaty of Amsterdam. Listed as one of the goals of the Union is its evolution from the former area without internal borders into the FSJ,<sup>28</sup> which also marks a new step in the development of the Union by its transition from a predominantly economic and monetary

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<sup>23</sup> See case: *G. B. C. Echternach and A. Moritz v Minister van Onderwijs en Wetenschappen*, Joined cases 389/87 and 390/87, CLI:EU:C:1989:130.

<sup>24</sup> See case: *Landesamt für Ausbildungsförderung Nordrhein-Westfalen v Lubor Gaal*, C-7/94, ECLI:EU:C:1995:118.

<sup>25</sup> See case: *Baumbast*, op. cit. n. 8. See comment on the case in: Ackers/Stalford, 2004, p. 94.

<sup>26</sup> European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

<sup>27</sup> Council Directive 2003/86/EC of 22 September 2003, OJ 2003 L 251/12.

<sup>28</sup> See: Art. 2(4) TEU (Amsterdam)

union to a common legal and political order.<sup>29</sup> Today FSJ is Title V to the TFEU. The Treaty of Amsterdam mentions children explicitly for the first time in the EU's primary law in Art. 13 to the TEC that relates to combating discrimination and Art. 29 TEU on intergovernmental measures for combating crime against children. The said articles were the basis for the adoption of measures for the protection of children from trafficking, sexual exploitation and violence. This protection was based on the notion of **children as vulnerable and passive persons** needing protection.

Also important are provisions of Articles 61 and 65 to the TEC that provided the legal basis for the expanding of jurisdiction to the field of family law as well, which had direct consequences on children's rights. It was on the basis of these provisions that 2000 Regulation Brussels II<sup>30</sup> and then Regulation Brussels II bis<sup>31</sup> were adopted.

The urgent preliminary procedure (*the so called PPU – procédure préliminaire d'urgence*)<sup>32</sup> is also of great significance in terms of the protection of rights in the area of FSJ. It could be concluded that the FSJ area is a very productive area within the framework of which a range of child protection measures has been adopted.<sup>33</sup>

### III The child in the context of EU Citizenship

The Maastricht Treaty introduced the concept of EU citizenship in 1992. Any person who is a national of a Member State of the EU is

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<sup>29</sup> It could be said that the Union is starting to take on a human form and no longer the purely economic. See: Đurđević, Zlata, Pravda, sloboda i sigurnost, Pravo azila, No. 1/2006.

<sup>30</sup> Regulation Brussels II on jurisdiction, recognition and enforcement in matrimonial and matters of parental care for children of both spouses. Regulation Brussels II was preceded by the 1998 European Convention on jurisdiction and the recognition and enforcement of judgments in family matters. However, pursuant to the Treaty of Amsterdam, the 2000 Convention was transformed into a binding instrument of the Union – a regulation. See: Rešetar, 2008, pp. 224-258.

<sup>31</sup> Regulation Brussels II bis on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. The harshest criticism said that it related only to children of both spouses so that children from other unions did not enjoy the same level of protection. Criticized in this sense was also the insufficient protection of the child's welfare in procedures for termination of marriage, which was a consequence of a traditional way of viewing marriage and divorce as an adult-related matter that is only of marginal significance to children. See: Rešetar, 2008, pp. 224-258.

<sup>32</sup> See: Council Decision of 20 December 2007 amending the Protocol on the Statute of the Court of Justice, 2008/79/EC, Euratom, OJ L-24/42. More in: Petrašević T., 2012, pp. 793-807.

<sup>33</sup> A more detailed, but not complete list of measures can be found at: [http://ec.europa.eu/justice\\_home/fsj/children/docs/table\\_rights\\_vs\\_policies.xls](http://ec.europa.eu/justice_home/fsj/children/docs/table_rights_vs_policies.xls) (accessed on 5.4.2016).

considered a citizen of the EU.<sup>34</sup> In practice this means that the protection of children who are not “full” EU citizens is very limited (Ruxton, Report, 2005, p. 16).<sup>35</sup> Furthermore, a review of the list of rights enjoyed by EU citizens shows that they are in fact rights of adults and not rights of children. Children cannot vote or be candidates in elections nor petition the European Parliament or apply to the European Ombudsman.<sup>36</sup> Even though they are allowed to move freely, they are dependent on their parents or other adults. The rights of children are thus placed in the framework of their parents' or families' rights and children are regarded as citizens in *statu nascendi*. (Ackers/Stalford, 2004, p. 5).

The interests of children are still superseded by the economic and working conditions of adult workers and subsumed under the general term of the European family policy (Ackers/Stalford, 2004, p. 6).

Despite children having been recognized as citizens of the EU in theory, in reality their rights remain limited. A positive shift in the development of the rights of children in the context of EU citizenship is seen in the decision of the CJEU in the case *Chen and Zhu*.<sup>37</sup> This judgment went in the direction of recognizing children as fully-fledged EU citizens.

#### **IV The child in the context of human rights protection in the EU**

Even though the Union protected human rights as general principles of law even before the adoption of the Charter of Fundamental Rights of the EU (hereinafter: the Charter),<sup>38</sup> it did not take human rights seriously *per se*, but rather as a means to achieving certain economic goals (McGlynn, 2006, p. 9). It was not until the Charter was adopted that the obligation to protect human rights in the EU was established. The Charter represents a new direction in the development of EU law and represents a shift in the preoccupation of the Union with economic goals and regulating the common market in that it recognizes for the first time the impact of the Union policies to family and children (McGlynn, 2006, p. 18). The Charter refers explicitly to children and their rights in several places. To exemplify, they include: the right to education (Art. 14(3)), the prohibition of discrimination based on age

<sup>34</sup> See Art. 20 to TFEU (ex Art. 17 TEC).

<sup>35</sup> There is thus a different level of protection of children within the EU depending above all on whether they are nationals of an EU Member State or a third country. An entirely different problem is minorities, such as Romani children.

<sup>36</sup> For rights arising from EU nationality see Article 20-25 TFEU.

<sup>37</sup> See case: *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department*, C-200/02, ECLI:EU:C:2004:639.

<sup>38</sup> For more on general principles see: Petrašević Tunjica, Primjena općih načela prava u praksi Europskog suda pravde, Zbornik radova "Načela i vrijednosti pravnog sistema – norma i praksa, Univerzitet u Istočnom Sarajevu, Pravni fakultet Pale, Pale, 2012.



(Art. 21(1)), the right to express their own view (Art. 24(1)), the best interest of the child (Art. 24(2)), the right to live with both parents (Art. 24(3)), the prohibition of child labor (Art. 32). Article 24 represents a sort of mix of the rights of children. Thus Art. 24(1) proclaims the right of children to express their own view and that it shall be taken into consideration on matters that concern them in accordance with their age and maturity. Article 24(3) guarantees the right to maintain on a regular basis a personal relationship and direct contact with both his and her parents, unless that is contrary to his or her interests. In practice, this right is balanced out with the right to respect for private and family life prescribed by Article 7 to the Charter. This right is important not only for contact in case of the parents' divorce, but also for providing the basis from which the right to freedom of movement and family reunification can be drawn. The rights guaranteed under the Charter recognize the child as an independent subject of EU law with individual interests and needs (McGlynn, 2006, pp. 67-70).

The including of children's rights in the Charter is further confirmation of success in terms of the protection of children's rights on the European (international) level. The child is no longer invisible in EU law. Family and children are no longer purely consumers or an appurtenant of the worker (the father). However, the clear listing of rights is just the first step in the protection and promotion of children's rights. The responsibility to ensure that the rights declared by the Charter are put in practice lies with the national courts as well as the CJEU.

### **V Prospects of development of children's rights in the EU in the context of the Lisbon Treaty**

As already pointed out the introduction, the ability of the Union to regulate the rights of children was limited by the lack of a legal basis in the founding treaties. The Lisbon Treaty introduced (proclaimed) the protection of children's rights as one of the objectives of the internal but also the external policy of the Union.<sup>39</sup> Art. 3(5) of the TEU states: "*In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child [...].*" This provision represents a significant turn of the EU policy toward children and the basis for the adoption of effective measures that will ensure that children's rights with a view to *the best interest of the child* are taken

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<sup>39</sup> See Art. 3 TEU. The consolidated version of the Lisbon Treaty is available at: [http://europa.eu/lisbon\\_treaty/full\\_text/index\\_en.htm](http://europa.eu/lisbon_treaty/full_text/index_en.htm)

into account in all policies of the Union when these policies might have an impact on children. The Lisbon Treaty finally recognized the impact of certain policies of the Union on the rights of children.<sup>40</sup> In doing so, the Lisbon Treaty did not create new powers for the EU, but rather provided that in the areas where the EU already has competence certain measures be taken to protect the rights of children.

The conclusion may be that the Lisbon Treaty represents a significant step forward in the protection and promotion of children's rights as well as a potential basis for the creation of the so-called *children policy*, which of course requires sufficient political will.

## **VI The rights of children of immigrants and asylum seekers**

Children who are not nationals of an EU Member State have a different and significantly less favorable position. The decision of the CJEU in the case *Chen and Zhu*<sup>41</sup> has already been pointed out as a step forward in the development of children's rights. In the case, the Court decided that Catherine Chen as an EU national has the right to move freely throughout the EU and that denying a residence permit to her parents and especially to her mother would be contrary to the law of the Union itself seeing as how Catherine was not able to take care of herself. However, the child concerned is an EU citizen and has Irish citizenship.

This begs the question of children of third-country nationals who are residing in EU territory with their parents, the children of asylum seekers and children without parental care who are within EU territory.

The EU has developed a Common immigration policy<sup>42</sup> and established the so-called Common European Asylum System,<sup>43</sup> which applies to children of immigrants and asylum seekers as well. However, the system was designed to function under normal circumstances, i.e. circumstances of a relatively moderate inflow of immigrants and asylum seekers. The (still) current refugee crisis has shown that the entire system does not work and that the Member States do not have a unified position on the issue of refugees. The refugee crisis has had a particularly negative effect on children. It is estimated that at least 10,000 refugee children without guardians disappeared when they arrived in Europe in recent months. It is

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<sup>40</sup> See more at: [http://www.nspcc.org.uk/Inform/policyandpublicaffairs/Europe/Briefings/eu\\_reformtreaty\\_briefing\\_wdf54388.pdf](http://www.nspcc.org.uk/Inform/policyandpublicaffairs/Europe/Briefings/eu_reformtreaty_briefing_wdf54388.pdf)

<sup>41</sup> Op.cit. n. 34.

<sup>42</sup> See more at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/index_en.htm) (access on 7 Apr 2016)

<sup>43</sup> See more at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm) (accessed on 7 Apr 2016)

suspected that they have become victims of human trafficking. According to available information, the largest number of children of asylum seekers are in Sweden and a large percentage thereof arrived unaccompanied by parents or guardians.<sup>44</sup> The discussion on the rights of children of immigrants and asylum seekers can be a separate topic for research. The issue has been merely brought up in this paper to attract the attention of the scientific community.

## Conclusion

The paper has given an overview of the evolution of the rights of the child from a mere object and instrument for the achieving of freedom of movement whereby the rights of children were viewed as parasitic and derived from the status of their parents-workers, to passive subjects of protection from violence and trafficking toward independent rights.

The ability of the Union to regulate the rights of children has long been limited by the lack of a legal basis in the founding treaties. Primary emphasis of the founding treaties on the economic aspects left the interests and rights of children neglected for a long time. Positive pressure came from the European (international) children's rights movements, who have pointed out the insufficient protection of children's rights in the Union policy and the lack of effective measures to actively promote and protect children's rights (Ackers/Stalford, 2004, p. 7).

The European Commission adopted in 2006 the "*EU Strategy on the Rights of the Child*"<sup>45</sup> and it is the first ever strategy of the Union for the promotion and protection of children's rights. However, it was not until the Lisbon Treaty that a significant turn of EU policy toward children was brought about. The Lisbon Treaty could serve as a basis for the adoption of the "children policy" and the adoption of effective measures to ensure that children's rights, i.e. the best interests of the child are taken into account in all policies of the Union.<sup>46</sup>

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<sup>44</sup> See mora at:

<http://balkans.aljazeera.net/vijesti/djeca-bez-staratelj-taze-azil-u-svedskoj> (accessed on 7 Apr 2016)

<sup>45</sup> See: Towards an EU Strategy on the Rights of the Child, EN, COM (2006), 367 final, 4 Jul 2006. The basis for the adoption of the strategy was the then Art. 6 TEU. The strategy is based on six goals, whereby each of them supported by a series of actions.

<sup>46</sup> The list of all relevant EU documents relating directly or indirectly to the rights of children may be found in: FRA/CoE, *Handbook on European Law relating to the rights of the children*, 2015, pp. 250-254.

A positive development is also the EU Agenda for the Rights of the Child (2011)<sup>47</sup> that aims to reinforce the full commitment of the EU – as enshrined in the Treaty of Lisbon and the Charter – to promote, protect and fulfill the rights of the child in all relevant EU policies and actions.<sup>48</sup>

To conclude, the position of the child in the EU has improved greatly and today the child is recognized as a subject of EU law. However, this is true for children who are nationals of an EU Member State. In terms of children of third-country nationals (immigrants and asylum seekers), they are in a significantly less favorable position and do not enjoy sufficient protection. There is a serious threat that the many refugee children become victims of violence, sexual exploitation and trafficking.

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<sup>47</sup> See: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An EU Agenda for the Rights of the Child, COM/2011/0060 final

<sup>48</sup> See more at:

[http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/rights-child/eu-agenda/index_en.htm)  
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