

Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.V.  
Federal Association for Unaccompanied Refugee Minors

# **Supplementary Report**

**on the third and fourth periodic reports  
of Germany  
to the United Nations  
pursuant to Art. 44 of the**

# **UN Convention of the Rights of the Child**



Bundesfachverband  
Unbegleitete Minderjährige  
Flüchtlinge e.V.

## **Imprint**

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## Summary

In Germany, refugee minors cannot fully enjoy their human rights. The Federal Association for Unaccompanied Refugee Minors describes the many obstacles refugee minors face in this supplementary report to the UN Committee on the Rights of the Child. Many rights are regularly and systematically disregarded or violated. Refugee minors are discriminated against in almost all areas of life.

The problems refugee minors face hardly get any attention. The third and fourth state report of the Federal Republic of Germany touches only marginally on the living conditions of young refugees. By not disclosing sufficient information and data on this group, the Federal Government did not meet a substantial part of its obligations to report to the UN Committee on the Rights of the Child.

The present report discusses several problems and deficiencies in the implementation of children's rights of refugee minors. The report also takes a critical look at the measures taken by the Federal Government to improve the situation of unaccompanied minors. Positive were the abolition of mandatory reporting for schools (*Meldepflicht*), a right to stay for a very small group of people (*Bleiberecht*) and the loosening of the residence requirement (*Residenzpflicht*) at the federal state level. But the main problems remained untouched.

The measures taken were inadequate (for example the National Action Plan 2005-2010) or inconsequential (amendment of § 42 Book VIII of the Social Code (*SGB VIII*) or the withdrawal of the reservation to the CRC) so that the desired effects did not occur. The majority of the recommendations made in 2004 by the UN Committee of the Rights of the Child were not implemented. The problem remains that 16- and 17-year-old refugees are not perceived as children as stipulated by the Convention of the Rights of the Child and the Youth Welfare Act (*Jugendhilfegesetz*). Many of these young people are treated as adults and do not receive the support they need. Furthermore, the general principle of non-discrimination is not applied in many areas of life. Because of their uncertain residence status refugee minors receive only rudimentary health care and inadequate access to education. They are excluded from social life due to the residence requirement (*Residenzpflicht*) and are much less likely to receive youth welfare services than German children. The situations in the federal states differ significantly, which may result in discrimination. Where minors arrive and luck in the distribution determine where asylum seekers have to live and what services they can have access to.

One of the main principles of the Convention on the Rights of the Child is the best interests of the child as a primary concern. The term "best interests of the child" has so far been translated as "child welfare" (*Kindeswohl*). This translation does not do justice to Article 3 of the Convention: the traditional use of the term "child welfare" marks the intervention threshold of the state in parental rights. For priority consideration of the best interests of the child in asylum and residence law matters no mechanisms exist.

The example of the age assessment procedure illustrates the lack of respect for the right to identity in Germany. Besides the fact that some forms of age determination violate the dignity of the persons concerned, constitutional standards are often not applied.

The Convention on the Rights of the Child also protects the relationship between parents and their children, but appropriate support for parents of young refugees is lacking. They are often left in critical conditions without any form of support and educational counseling. Accommodation of asylum seeking children and children with tolerated stay is often not appropriate for children and not checked by the authorities for suitability. Neither is the German guardianship system laid out to support young refugees - especially with regard to the numerous difficulties arising from the application of the asylum law.

In the area of health care and access to education, many fundamental problems occur. For example, services are denied based on foreigners law provisions. Both the health system and the education system do not adequately consider the specific needs of young refugees, which results in a lack of supply, even if legal claims arise. A fundamental socio-political consideration of refugee minors is needed.

The capacity to act (*Handlungsfähigkeit*) at age 16 cannot be reconciled with the special protection measures for refugee children stipulated in article 22 of the Convention on the Rights of the Child. In practice the consequences include the following: Minors are often rejected at the border. Minors have to undergo the airport procedure, and are sometimes detained over several months. Children are forcibly returned or separated from their parents by forced return. Child-specific grounds for flight are rarely recognized in the asylum procedure. Young people often receive no advice in questions concerning foreigners law and are left alone in the asylum procedure. The protection for former child soldiers and other emotionally hurt young people is poor.

These and many other examples mentioned in this report show that the Federal Republic of Germany is currently not in a position to consistently implement children's rights for all children living in Germany and to guarantee the respect for these rights. This is a question of the legislation, the application of law, the jurisprudence and the political climate.

**The main recommendations of the Federal Association for Unaccompanied Refugee Minors are:**

- \* Refugee minors should be considered as a relevant target group in all actions regarding the implementation of the Convention on the Rights of the Child. It must regularly be checked whether minors can be reached by the measures and whether the measures taken can contribute to the improvement of the minors living conditions.
- \* All state agencies must be instructed to consider the priority of the best interests of the child. Transparent and legally binding procedures must be established which ensure that in all actions concerning minors the best interests of the child are given priority. This applies especially to all foreigners law decisions.
- \* The taking into care of unaccompanied minors by youth welfare services must follow mandatory standards and must consider the needs and interest of the children. The significant differences between the federal states must not have a discriminatory effect.
- \* The Federal Government must ensure that foreign children can have full access to the health and education systems regardless of their residence status. This access should be facilitated by targeted measures.
- \* A comprehensive study about all aspects of life and the well-being of refugee children in Germany is indispensable.

## Introduction

1. This report presents the position of the Federal Association for Unaccompanied Refugee Minors (*Bundesfachverband Unbegleitete Minderjährige Flüchtlinge*) concerning the third and fourth periodic reports of the Federal Republic of Germany regarding the implementation of the Convention of the Rights of the Child (CRC) in Germany.<sup>1</sup> This supplementary report considers the situation of children and young people who have left their homes due to an emergency to seek refuge in Germany. It includes asylum seeking and refugee children, as well as children with tolerated stay (*Duldung*) and minors without legal residence status. The term refugee is therefore not to be understood in a strict legal sense. Both the situation of minors who arrive without parents, so-called unaccompanied minors, as well as the situation of minors who enter the country with their parents will be examined.
2. Since its foundation in 1998, the non-governmental organization Federal Association for Unaccompanied Refugee Minors represents young refugees and advocates for their rights. The association has 170 members that are organisations and individuals working with young refugees all over Germany. This wide membership provides the Federal Association for Unaccompanied Refugee Minors with an overview over the living conditions of young foreigners. The examples mentioned in this report represent several aspects of the every-day-work of our members and stand for many similar cases. The Federal Association for Unaccompanied Refugee Minors, in partnership with UNHCR, regularly evaluates the reception conditions for unaccompanied minors in federal states.<sup>2</sup> It also cooperates with UNICEF Germany and is part of the National Coalition for the Implementation of the CRC in Germany.
3. This supplementary report refers to the norms of the Convention on the Rights of the Child (CRC), the third and fourth periodic reports of the Federal Republic of Germany, the Concluding Observations of the UN Committee on the Rights of the Child for the second German state report and its General Comment No. 6. Already available are the supplementary reports of the National Coalition for the Implementation of the CRC in Germany and the report of the German Alliance against Child Soldiers.<sup>3</sup>
4. The Federal Association estimates the number of asylum seeking children, recognised refugee children and children with tolerated stay living in Germany around 100,000 persons. Of these, about 48,000 receive reduced benefits under the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*).<sup>4</sup>
5. In recent years, the number of unaccompanied minors has increased in Germany as everywhere in Europe. In 2011, youth welfare offices registered at least 3,787 unaccompanied minors (see tab. 1), whereas the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge, BAMF*) registered 2,126 first asylum applications of unaccompanied minors (see tab. 2). The number of asylum applications from unaccompanied minors was similarly high in 2012 because the situation in many countries of origin remained hostile. Currently, the Federal Association for Unaccompanied Refugee Minors estimates that between 8,000 and 9,000 unaccompanied minors are living in Germany. Official social data from government authorities is not available on this group.
6. Very diverse young persons from different regions come to Germany. The main countries of origin are currently Serbia, Macedonia, Afghanistan, Iraq, Somalia, and Syria. Some minors come from other Arab countries, the West African region or the former Soviet republics. Their con-

1 Third and fourth periodic reports of Germany (CRC/C/DEU/3-4), October 2010, [http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-DEU-3\\_4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-DEU-3_4.pdf).

2 Federal Association for Unaccompanied Refugee Minors, Evaluations of the federal states (*Bundesländer*), <http://b-umf.de/index.php?/Projekte/evaluation-bundeslaender.html>.

3 National Coalition for the Implementation of the UN-Convention on the Rights of the Child in Germany, Supplementary Report of the National Coalition to the third and fourth Report of Germany, Berlin 2010, [http://www.national-coalition.de/pdf/26-01-2010/Ergaenzender\\_BerichtNC\\_final\\_eng.pdf](http://www.national-coalition.de/pdf/26-01-2010/Ergaenzender_BerichtNC_final_eng.pdf); Deutsches Bündnis Kindersoldaten, Schattenbericht Kindersoldaten 2013, January 2013, [http://www.kindersoldaten.info/kindersoldaten\\_mm/downloads/Lobbyarbeit/Schattenbericht+Kindersoldaten+2013-p-130.pdf](http://www.kindersoldaten.info/kindersoldaten_mm/downloads/Lobbyarbeit/Schattenbericht+Kindersoldaten+2013-p-130.pdf).

4 According to the Central Foreigners Registry (*Ausländerzentralregister*), January 2013.

cerns and motivations to leave their country are very diverse as well. They flee political persecution or displacement, because of abuse they have suffered or threats to their families. They are looking for a brighter future, the prospect of education and a life without existential threats.

7. The Federal Association for Unaccompanied Refugee Minors strongly challenges the description by the Federal Government of Germany of the reception conditions for unaccompanied minors. While it is true that in contrast to the situation of accompanied minors, the reception conditions for unaccompanied minors have improved in some federal states, there are still significant deficits.
8. In the state report, the Federal Government has failed to systematically comment on initial objectives, follow-up and remaining room for improvement during the reporting period. The situation of refugee minors is mentioned only occasionally. It is striking that the special educational needs and obstacles that refugee minors face, especially in the areas of access to education, health, social participation and family unity are mentioned only rarely in the state report. For long stretches, the situation of refugee minors is not considered at all.
9. In Germany, the implementation of basic children's rights is still a matter of origin. Children seeking refuge in Germany are at a disadvantage due to their immigration and social status. This report identifies significant gaps in dealing with these minors and offers recommendations to the government for a comprehensive implementation of children's rights for all children in Germany.

Berlin, 13 March 2013

Federal Association for Unaccompanied Refugee Minors

## **I. General Measures of Implementation**

### ***A. On the Implementation of the Rights of the Child (Arts. 4 and 41)***

10. In its concluding observations on the second periodic report of Germany, the UN Committee on the Rights of the Child suggested several key measures to the Federal Government to promote the implementation of children's rights. The Committee recommended, for example, to design a National Action Plan, which considered all aspects of the Convention on the Rights of the Child (CRC), to withdraw the reservation to the CRC and to establish an independent coordinating and monitoring system, both for the implementation of the CRC and the National Action Plan.<sup>5</sup>

#### ***a) The National Action Plan for a Child-Friendly Germany 2005-2010***

11. The National Action Plan for a Child-Friendly Germany 2005-2010 (NAP) included the following priorities: equal opportunities through education, health promotion as a fundamental right, the participation of children and young people and ensuring a fair standard of living for all children.<sup>6</sup> Although these objectives are of considerable importance for refugee minors, they were not considered as target group in the implementation of these objectives.
12. As to refugee minors, the NAP aimed to provide: age-appropriate accommodation, clearing procedures for consultations on asylum and foreigners law matters, timely appointment of guardians, appropriate protection and humanitarian assistance. Unaccompanied minors should be supported in carrying out their claims for youth welfare services and access to education. In addition, the Federal Government wanted to examine whether "a study on the number and life situation of child refugees will be commissioned in 2005 which covers aspects like accommodation, youth welfare assistance and access to education and training".<sup>7</sup>
13. From the outset the NAP did not have effective implementation mechanisms, in particular, it lacked financial support. The NAP did not pursue sustainable concepts, and no successor projects were put in place in order to continue working towards the set objectives. Moreover, the targets had no binding character and were not supported by the federal states and municipalities.
14. None of the announced targets were met. The study on the situation of refugee children in Germany was never started, the Federal Government has not taken measures to improve the housing situation of unaccompanied minors, access to education has not improved and health care for minors does still not meet medical standards.<sup>8</sup> The NAP has not brought any noticeable improvement for young refugees and children with uncertain residence status. Only the requirement for youth welfare offices to take unaccompanied minors into care, which was achieved by the revision of § 42 Book VIII of the Social Code (*SGB VIII*), was a legal improvement.
15. The federal states are free to continue their current practice, according to which 16- and 17-year-old unaccompanied minors are accommodated as adults. Until today, 16- and 17-year-old unaccompanied minors are often not taken into care for example in Eisenhuettenstadt, Chemnitz and Munich. The Federal Government is aware of the issue, but a working group specifically created to address this problem was disbanded in 2009, without result. In some federal states, the reception facilities for unaccompanied minors were improved at the instigation of the responsible state government and were made equal to accommodation of German youth, e.g. in North

5 UN Committee on the Rights of the Child, Concluding Observations: Germany, CRC/C/15/Add.226, 01/30/2004, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/405/24/PDF/G0440524.pdf?OpenElement>, p. 4.

6 Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, National Action Plan for a child-friendly Germany 2005-2010, Berlin 2006, [www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationen,did=95352.html](http://www.bmfsfj.de/BMFSFJ/Service/Publikationen/publikationen,did=95352.html).

7 Ibid. p. 96.

8 For information on access to education see chapter VII and UNHCR, Storost, Ulrike, Access to Quality Education for Asylum seeking and Refugee Children in Europe: Germany Country Report, Geneva January 2009; on health care see chapter VI.

Rhine-Westphalia, Baden-Wuerttemberg, Rhineland-Palatinate, Saarland and Hesse.

### *Example 1: Bayernkaserne Munich*

The recasting of § 42 Book VIII of the Social Code (*SGB VIII*) on 1 October 2005 clearly establishes that every youth welfare office is obliged to take into care all unaccompanied minors immediately after they arrive in Germany, to provide protection and support, to accommodate him or her temporarily in a child-friendly manner and to clarify any youth welfare needs.

In Munich, in the federal state of Bavaria, 16- and 17-year old minors are placed in an initial reception center (*Erstaufnahmeeinrichtung*), due to their legal capacity to act in asylum matters.

In January 2013, 190 unaccompanied minors were accommodated in the initial reception center “Bayernkaserne”, a former military barrack, even though it is laid out for only 90 persons. This means that up to six persons have to share one room. There are only very few cooking facilities (one kitchen for 80 minors who have to cook on their own) available and the bathrooms are in a very bad condition. The center does not include a recreational room and only few leisure activities are offered. A very low number of staff is not able to support the minors effectively. The minors do not get adequate support specially in the evening and during the night when only private security staff is present. Often minors have to stay 12 months and longer in this reception center.

In January 2012, 60 minors organised a hunger strike to protest against the described situation. Of those, 20 had to hospitalised.<sup>9</sup>

In February 2013 the situation escalated again and the regional press reported several times about the bad conditions and the violent conflicts between the minors and the security staff. In spite of all the protests, the government of Bavaria still does not include the 16- and 17-old minors in the regular youth welfare system and move them out of the overcrowded initial reception center (*Erstaufnahmeeinrichtung*).<sup>10</sup>

### *b) Withdrawal of the reservation on the CRC*

16. The Federal Government has withdrawn the reservation (*Vorbehaltserklärung*) to the Convention on the Rights of the Child (CRC) on 15 July 2010. The reservation included among others that the CRC did not have to be applied in a national context and that foreign children could be treated differently than German children. While the withdrawal of the reservation is to be welcomed, the requirements of the CRC are not automatically satisfied without any legal changes, as the Federal Government wrongly stated.<sup>11</sup>
17. Regardless of its legality, the reservation had far-reaching implications for the treatment of foreign minors. Several institutions, including the German National Institute for Human Rights and the German Lawyers Association, have elaborated on the legal consequences that the withdrawal of the reservation should have on national law.<sup>12</sup>

<sup>9</sup> Documents concerning the situation in the *Bayernkaserne* and all the protest were collected by the initiative Youth Without Borders (*Jugendliche ohne Grenzen*): <http://bayern.jogspace.net/tag/hungerstreik/>.

<sup>10</sup> See Loerzer, Sven, Refugee Minors Left Alone (*Original: Minderjährige Flüchtlinge im Stich gelassen*), *Süddeutsche Zeitung*, 3.3.2013, <http://www.sueddeutsche.de/muenchen/minderjaehrige-fluechtlinge-im-stich-gelassen-1.1614531>.

<sup>11</sup> On the opinion of the Federal Government see Reply to the question asked concerning the withdrawal of the reservation to the CRC by Josef Winkler, 31.01.2011, p. 40 ff., [http://www.josef-winkler.de/fileadmin/user\\_upload/pdfs\\_antraege/2007\\_antraege/1604205\\_GA\\_UN\\_Kinderrechtskonvention.pdf](http://www.josef-winkler.de/fileadmin/user_upload/pdfs_antraege/2007_antraege/1604205_GA_UN_Kinderrechtskonvention.pdf); and Plenary protocol of the 39th sitting of the Federal Parliament, 05/05/2010, <http://dip21.bundestag.de/dip21/btp/17/17039.pdf>.

<sup>12</sup> German Institute for Human Rights, Cremer, Hendrik, The UN-Convention on the Rights of the child: Application after the withdrawn of the reservation (*Original: Die UN Kinderrechtskonvention: Geltung und Anwendbarkeit nach Rücknahme der Vorbehalte*), January 2012, [http://www.institut-fuer-menschenrechte.de/no\\_cache/de/publikationen.html](http://www.institut-fuer-menschenrechte.de/no_cache/de/publikationen.html); German Lawyers Association, Statement concerning the withdrawal of the German reservation to the CRC, <http://www.anwaltverein.de/downloads/stellungnahmen/SN-10/SN57-10.pdf>.

*c) Coordination and Monitoring System for the Implementation of the CRC*

18. The coordination of the implementation of children's rights concerns a number of bodies. However, there is no mechanism implemented that would allow to collect violations of children's rights in one institution and based on that systematically identify need for action for the Federal Government. Individual complaints are not recorded. Minors who live with their family in communal residences (*Gemeinschaftsunterkünfte*) are often not able to report their concerns and problems to a person or institution that could contribute to an improvement. The collection and analysis of information is missing not only in relation to violations of children's rights, but also on the situation of young refugees in Germany in general.

***B. Dissemination of Information on the CRC (Art. 42)***

19. For young refugees arriving in Germany, there is no adequate information material on the implementation of children's rights in Germany. This prevents the young refugees from effectively exercising their rights.
20. Because of the lack of such material, the Federal Association for Unaccompanied Refugee Minors created an information booklet in child-friendly language for unaccompanied minors, which contains information about the most important rights.<sup>13</sup> This booklet is not available to all unaccompanied minors, especially government agencies do not use it effectively. Information for accompanied minors does not exist at all.
21. The experience of the members of the Federal Association for Unaccompanied Refugee Minors shows that employees of private and public institutions, particularly of youth welfare services, foreigners offices and courts are not adequately informed about the content and legal significance of the CRC.

*The Federal Association for Unaccompanied Refugee Minors recommends:*

- \* *In all measures for the implementation of the CRC refugee children should be considered as a relevant target group. Whether measures reach minors and contribute to the improvement of the living conditions has to be monitored.*
- \* *The National Action Plan 2005-2010 did not eliminate the structural deficiencies in the protection of minors. A new action plan with binding targets and adequate financial allocations is needed.*
- \* *All unaccompanied minors must be fully integrated into the national youth welfare system. The existing legal provision has to be enforced. Young people must be accommodated in appropriate facilities of youth welfare agencies.*
- \* *A comprehensive independent survey in all areas of life and well-being of refugee minors in Germany is indispensable.*
- \* *The Federal Government needs to adapt national law to the withdrawal of the reservation to the CRC, in particular on the issues of the best interests of the child and non-discrimination and especially in asylum and residence law.*
- \* *A central and independent institution should be established to coordinate and monitor the implementation of children's rights. Such a body must be able to coordinate, advise and intervene, if necessary.*
- \* *Youth welfare offices must pay more attention to the situation of refugee children living with their families and monitor compliance with their rights.*

<sup>13</sup> Federal Association for Unaccompanied Refugee Minors, Welcome to Germany: A Guide for Unaccompanied Minors, 2010, <http://www.b-umf.de/index.php?/Datenbanken-und-Material/paper-des-b-umf.html#Willkommen>. To date the brochure is available in German, English, French, Vietnamese, Somali, Dari and Arabic.

- \* *Information material on their rights must be made available to all refugee minors upon arrival to Germany.*
- \* *Persons who are in professional contact with refugee minors have to be knowledgeable about the content, importance and practical relevance of the CRC.*

## II. Definition of the Child

22. The Federal Government stated in its report that “the special situation of unaccompanied minor foreigners who have reached the age of 16 has been unmistakably brought to the attention of political decision makers and of society”.<sup>14</sup> Yet some of these young people continue to be treated as adults: In all questions pertaining to matters of asylum and residence status they have legal capacity to act (*Handlungsfähigkeit*) according to § 80 Residence Act (*Aufenthaltsgesetz*) and § 12 Asylum Procedure Law (*Asylverfahrensgesetz*). Consequently many minors apply for asylum, without legal advice or support. Having legal capacity to act before reaching maturity, as practised in Germany, is not compatible with article 1 of the Convention of the Rights of the Child (CRC).<sup>15</sup>
23. In some federal states unaccompanied minors are accommodated in reception centers with adult asylum seekers and do not receive any child-specific services and protection.<sup>16</sup> As a consequence of their legal capacity to act as 16-year-olds, these minors do not get a free legal counsel.<sup>17</sup>
24. The Federal Government did not change asylum and residence regulations after the withdrawal of the reservations to the CRC, in order for all minors to receive the same protection and the ability to exercise the same rights. The Federal Government does not regard 16- and 17-year-old minors as minors, as it sets out in April 2012 in a response to the parliament (*Bundestag*). When asked how many children were taken into custody by the federal police (*Bundespolizei*) it replied that “the concept of minor is interpreted pursuant to § 80 of the Residence Act and § 12 Asylum Procedure Law”.<sup>18</sup> This means that only minors younger than 16 are considered as minors.
25. Moreover, minors who have to be age assessed often receive a birth date which makes them adults, due to faulty and questionable age determination.<sup>19</sup> As a result, these young people are deprived of key rights. The minimum standards for age determinations, as stipulated in General Comment No. 6 of the UN Committee on the Rights of the Child, are often ignored.

### *The Federal Association for Unaccompanied Refugee Minors recommends:*

- \* *Only persons who have reached the age of 18 should have full legal capacity to act on matters of asylum or foreigners law. At the same time, all rights for minors to participate in procedures concerning them and respect for their views have to be implemented, including for the application for asylum.*
- \* *No minor shall be deprived of his or her rights by erroneous age determination.*

<sup>14</sup> Third and fourth periodic state reports Germany, para. 60.

<sup>15</sup> See Schmahl/Schmahl, Comment on the CRC, 2012, Art. 1, no. 12, [http://beck-online.beck.de/Default.aspx?vpath=bibdata/komm/SchmKoKRK\\_1/KindRechteUeb/cont/SchmKoKRK.KindRechteUeb.a1.gIVI.htm](http://beck-online.beck.de/Default.aspx?vpath=bibdata/komm/SchmKoKRK_1/KindRechteUeb/cont/SchmKoKRK.KindRechteUeb.a1.gIVI.htm).

<sup>16</sup> Among others Bavaria, Saxony, Brandenburg and Schleswig-Holstein.

<sup>17</sup> Higher Regional Court Karlsruhe (*Oberlandesgericht Karlsruhe*), Case 2 UF 172/10, 12/2/2010, <http://openjur.de/u/335548.html>.

<sup>18</sup> Federal Government, Reply to a question (*Kleine Anfrage*) by the members of parliament Ulla Jelpke, Jan Korte, Agnes Alpers, other members of Parliament and the fraction DIE LINKE. Additional information on the asylum statistics for the first quarter of 2012, Drucksache 17/9465, 27.4.2012, <http://dip21.bundestag.de/dip21/btd/17/122/1712234.pdf>, p. 16, translation by the authors.

<sup>19</sup> On age determination see chapter VI. Civil Rights and Freedoms.

### III. General Principles

#### **A. Non-Discrimination (Art. 2)**

26. After the last examination of Germany, the UN Committee on the Rights of the Child was “concerned at the de facto discrimination against foreign children” in Germany.<sup>20</sup> The differences within the country in the way of dealing with children and different range of services available to them could amount to discrimination. The Committee recommended to “carefully and regularly evaluate existing disparities in the enjoyment by children of their rights” and that Germany “strengthen its administrative and judicial measures to prevent and eliminate de facto discrimination against foreign children or children belonging to minorities”.<sup>21</sup> Every form of discrimination, whether overt or covert, is an attack on the human dignity of the child and can limit or destroy the ability of the child to benefit from all educational and developmental opportunities, so the UN Committee on the Rights of the Child.<sup>22</sup>
27. Careful and regular review of the exercise of children’s rights, as the Committee called for, has so far not been undertaken in relation to refugee children and the Federal Government does not mention such a plan in its state report. There is hardly any data available about what social, health and educational services young refugees receive or do not receive. Many young refugees suffer from living in a remote facility (*Gemeinschaftsunterkunft*) in poverty and without cash, without access to education and no participation in social life.
28. The Federal Government has made no effort to harmonise the widely differing living conditions for unaccompanied refugee minors in the federal states. On the contrary, the differences have grown due to the different implementation of the revised legislation on the obligation of youth welfare services to take all minors into care according to § 42 Book VIII of the Social Code (*SGB VIII*). If and how minors are integrated in the German national youth welfare system depends very much on in which federal state they live.<sup>23</sup>
29. There are federal regulations that discriminate against refugee minors compared to German minors. Germany is the only European country that still enacts the residence requirement (*Residenzpflicht*), which obliges asylum seekers to stay in the commune they are distributed to. This requirement also applies to minors and forbids them to move freely in Germany. Many foreigners offices prohibit minors to visit relatives in other federal states or communes or to participate in school trips. Most states have relaxed the residence requirement, which ensures freedom of movement within the borders of the federal state, but not beyond.
30. With regard to access to social benefits, minors in the asylum procedure and with uncertain residency status are clearly at a disadvantage compared to German youth. In 2009, 48.000 minors receive benefits under the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*).<sup>24</sup> The benefits have been increased following a judgment of the Federal Constitutional Court (*Bundesverfassungsgericht*) of 18 July 2012 because they violated the “fundamental right to a decent minimum income”.<sup>25</sup> But still, the law foresees lower benefits for foreign children than for German children and a very limited access to health services. The benefits may also be issued in kind, which are often substandard, or in vouchers, which restricts the self-determination and well-being of minors. In 2009, 16.146 minors received benefits in kind or vouchers (see tab. 6). Low benefits, vouchers and in kind benefits are used to deter asylum seekers. The German

20 UN Committee on the Rights of the Child, Concluding observations: Germany, CRC/C/15/Add.226, 01/30/2004, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/405/24/PDF/G0440524.pdf?OpenElement>, Para. 23.

21 *Ibid.*, para. 24.

22 CRC, General Comment No. 1, CRC/GC/2001/1, <http://www.unhcr.org/refworld/type,GENERAL,,,4538834d2,0.html>, para. 10.

23 On access to education see chapter VII and on special protection measures see chapter VIII.

24 Federal Statistical Office, Special Series 13, Series 7, 2009, [https://www.destatis.de/DE/Publikationen/Thematisch/Soziales/Asylbewerberleistungen/Asylbewerber2130700097004.pdf?\\_\\_blob=publicationFile](https://www.destatis.de/DE/Publikationen/Thematisch/Soziales/Asylbewerberleistungen/Asylbewerber2130700097004.pdf?__blob=publicationFile), p. 11.

25 Federal Constitutional Court, 1 BvL 10/10, 7/18/2012, para. 1 - 140, [http://www.bverfg.de/entscheidungen/ls20120718\\_1bvl001010.html](http://www.bverfg.de/entscheidungen/ls20120718_1bvl001010.html). Translation by the authors.

Minister of the Interior Hans-Peter Friedrich called on the federal states on 12 October 2012 to make more use of this practice.<sup>26</sup>

31. The legal claim for foreign minors for youth welfare services is limited.<sup>27</sup> Minors and their families do have the right to assistance and advice from youth welfare services, but this claim is rarely fulfilled in particular for accompanied minors. Many refugee families and families with uncertain residence status receive no support from the youth welfare office or other social institutions.
32. If young foreigners who have just turned 18 continue to receive youth benefits, they run the risk of forced return. Even though young adults can legally receive youth welfare benefits up until the age of 21, the receipt of such services by adults gives cause for discretionary expulsion.<sup>28</sup>

### *Example 2: Residence Requirement (Residenzpflicht)*

A youth group from a home for short- and middle-term accommodation in Hesse, in which both German and foreign teenagers live together, planned a summer camp in northern Germany. The foreign minors needed the permission of the foreigners office Wetzlar for this trip. The permission was refused by the foreigners office without considering the CRC or the interests of the child.

In consultation with guardians and lawyers, the young people filed applications for interim measures according to § 123 Administrative Procedure Law (*Verwaltungsgerichtsordnung*) with the Administrative Court (*Amtsgericht*) Giessen to allow participation in the journey. The court ruled against the minors, again without considering the CRC or the interests of the child. The planned summer camp in Schleswig-Holstein did not take place. The court stated that in the future, “the composition of the group must be aligned with legal requirements, which possess a well defined system of residence rights.”<sup>29</sup>

*Interview by the Federal Association for Unaccompanied Refugee Minors with the group leaders of the youth group on 5 July 2010.*

## **B. Best Interests of the Child (Art. 3)**

33. In German, “the best interests of the child” is commonly translated as “*Kindeswohl*”. “*Kindeswohl*”, however, would re-translate as “welfare of the child” and has a long legal tradition in Germany, especially in connection with the withdrawal of parental care. Therefore that usage is ambivalent.<sup>30</sup> Particularly in the context of the discussion on children right’s in the Constitution (*Grundgesetz*), the Federal Government shows that it interprets the best interests of the child from the perspective of the parents and not the child.
34. The Federal Government describes *Kindeswohl* as a “guiding principle of German law”.<sup>31</sup> But the Federal Government has not taken measures to ensure that the best interests of the child are a primary concern in all procedures relating to children. The restrictive interpretation of foreigners and asylum law usually does not respect the best interests of the child. This concerns many different areas, such as age assessment practices, the obligation to live at reception centers, the residence requirement (*Residenzpflicht*), airport asylum procedures, issuance of work permits, access to health care, compulsory registration (*Meldepflicht*), redistribution of refugees within

26 Schäfer, Jan and Solms-Laubach, Franz, Minister of Internal Affairs Friedrich: What are you doing against asylum abuse?, [www.bild.de](http://www.bild.de), 10/13/2012, <http://www.bild.de/politik/inland/hans-peter-friedrich/innenminister-klagt-ueber-fluechtlings-ansturm-auf-deutschland-26683892.bild.html>.

27 See § 6 para. 2 and para. 4 Book VIII of the Social Code (*SGB VIII*).

28 According to § 55 para. 2 para. 7 of the Residence Act (*Aufenthaltsgesetz*). Theoretically, one can receive benefits until the age of 26, but this occurs only rarely in practice.

29 Translation by the authors.

30 See Liebel, Manfred, Kindeswohl or Best interests of the Child – A mere fight about words? (Original: *Kindeswohl oder Kindesinteresse – ein bloßer Streit um Worte?*), in: SOZIALEXTRA, October 2005, p. 42.

31 Third and fourth periodic reports of Germany, para. 76.

the whole state and within each federal state, refusal of entry at the border, and custody pending forced return.<sup>32</sup>

### ***C. Taking Account of the Opinions of the Child (Art. 12)***

35. The Federal Government describes the participation of children as “a guiding principle of the German legal order”.<sup>33</sup> Thus, the participation of children and young persons was established for example for youth welfare service measures and in court proceedings.<sup>34</sup>
36. In practice, however, the instruments introduced by law to strengthen the participation of children and young people are not consistently implemented. For example, the hearing of the child, which should take place before the guardian is appointed by a family court, is not held in many municipalities. Respect for the views of the child in the care planning process is complicated by the fact that in many cases the range of available services is limited. Thus, theoretically promising approaches remain without effect in practice.
37. Further, participation is impossible if the necessary information is not passed on to the recipient. The measures of the youth welfare services and the asylum and foreigner law are extremely complex and difficult to understand for the layman. In addition, unaccompanied minors find themselves - especially in the first months after their arrival - in a cultural context they are not familiar with. It is therefore necessary, as a first step, to provide the young people with the information they need for their active involvement.
38. In immigration matters, the opinion of the child is not considered at all. The distributions of children to the federal state and within the federal state do not take into account the views of the child and are made following a distribution formula.<sup>35</sup> Children are often distributed to remote facilities in areas they do not want to go to, without access to education and limited infrastructure. Moreover, it is questionable how well young refugees can be reached by the existing instruments for participation. There are no empirical findings to substantiate any statements.

#### *The Federal Association for Unaccompanied Refugee Minors recommends:*

- \* *Article 3 of the CRC has to be included in national law truly reflecting “best interests of the child”, and not “welfare of the child”. The primacy of the interests of the child shall be included in the Residence Act (Aufenthaltsgesetz) and the Asylum Procedure Law (Asylverfahrensgesetz). In addition, all internal regulations (Ausführungsbestimmungen) must be amended accordingly.*
- \* *The diverging application of the CRC and national law in the federal states must be harmonised. The differences between the federal states must not lead to discriminatory inequality.*
- \* *Data must be collected to assess the extent to which discrimination of refugee minors hinders their access to education, social and health services. In this survey, the perspective and views of children should be considered.*
- \* *The residence requirement (Residenzpflicht) must be repealed in order to allow minors to visit relatives and receive visitors.*
- \* *The youth welfare offices, as the competent authorities, must respond to information about discrimination against refugee minors with appropriate support for young people and their families.*
- \* *Consideration of the best interests of the child must be included in all trainings of employees of*

<sup>32</sup> See chapter VIII Special Protection Measures.

<sup>33</sup> Third and fourth periodic reports of Germany, paras. 82 f.

<sup>34</sup> Ibid., paras. 90 and 91.

<sup>35</sup> Asylum seekers and undocumented migrants are distributed according to § 50 Asylum Procedure Law (Asylverfahrensgesetz) or § 15 a Residence Act (Aufenthaltsgesetz).

*state agencies. Employees should thereafter be able to identify scope for discretion and shall in consequence be able to make decisions within this scope.*

- \* All proceedings concerning children and young people in the field of child and youth welfare services, as well as in the area of foreigners and asylum law, have to be explained in a child-friendly manner. It is also important that the information accessible to young people be in a language they can understand.*
- \* Empirical research is needed to obtain a deeper understanding of how children and young people currently participate in all matters relevant to them.*

## IV. Civil Rights and Freedoms

### **A. Maintenance of Identity (Art. 8)**

39. According to the Convention on the Rights of the Child (CRC), States Parties have to respect the right of the child to maintain his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. The age of the child must be considered as part of his or her identity. The Federal Association for Unaccompanied Refugee Minors notes that the clear minimum standards regarding the process of determining identity set out by the Committee on the Rights of the Child are not guaranteed in Germany. According to these standards identification measures “should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.”<sup>36</sup>
40. In Germany most age assessments are conducted by employees of the youth welfare offices or the federal police. Based on § 42 Book VIII of the Social Code (*SGB VIII*) in collaboration with §§ 20 and 21 Book X of the Social Code X (*SGB X*) respectively § 49 para. 6 Residence Act (*Aufenthaltsgesetz*) both institutions may estimate the age of a person who declares to be a minor. There are no common standards how to proceed in such cases. Often the physical appearance is considered, the minor is interviewed on his or her personal background to find out whether the age given seems realistic. How the federal police handles age assessments varies widely, but no data or standards from the federal police are available.
41. The medical age assessments conducted in some federal states on the orders of courts and authorities violate minimum standards. For medical age assessments only physical characteristics are considered, not the mental maturity of the child, as the Committee on the Rights of the Child underlined in its minimum standards. The aim of a medical age determination is to determine the biological age. Several bones can be x-rayed or visualized by computer tomography (CT) or magnetic resonance tomography (*MRT*). Bone age may differ greatly from chronological age.<sup>37</sup> This difference leads to situations in which persons are assessed as adults based on bone age. In addition, other biological characteristics are retained, such as the appearance of the genitals and the pubic hair.<sup>38</sup>
42. While the Committee on the Rights of the Child emphasizes that age assessments have to be carried out in a scientifically sound and safe manner, the methods used are still in the initial phase of research.<sup>39</sup> For example, in Berlin, the ossification of the collarbone is examined using *MRT*.<sup>40</sup> This method has only been tested with a few pilot studies with small sample sizes.<sup>41</sup> Other methods, such as the x-ray of the wrist bones are also very disputed in the scientific discourse.<sup>42</sup>
43. The procedures used for medical age determination are in many cases not child-sensitive. The medical procedures are often performed by different forensic scientists. These medical experts
- 36 Committee on the Rights of the Child, General Comment No. 6, On the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, para. 31, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/438/05/PDF/G0543805.pdf?OpenElement>.
- 37 On age assessment see Aynsley-Green et al., Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control, *British Medical Bulletin*, 2012, pp. 1–26. The medical age assessments of the Charité University Hospital in Berlin give a so-called „probable“ age and a so-called „minimum“ age. The „probable age“ is always higher than the „minimum age“.
- 38 On the right to privacy regarding the description of genitals and pubic hair, see below.
- 39 Committee on the Rights of the Child, General Comment No. 6, para. 31.
- 40 Decision Family Court (*Familiengericht*) Schöneberg, case 85F102/12, 12/11/2012.
- 41 Vieth et al., Assessment of ossification stage of medial epiphyses joint of the clavicle (*Original: Beurteilung des Ossifikationsstadiums der medialen Klavikulaepiphysenfuge*), in: *Rechtsmedizin*, 2010, pp. 483-488.
- 42 See Aynsley-Green et al., Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control, *British Medical Bulletin*, 2012, pp. 1–26.

- are not trained to work with children or in an intercultural setting, or have other experience working with traumatised children. Further, there are not always interpreters present during the age assessment, so that the young refugees do not have the possibility to familiarize themselves with the procedures used during the interview or the examination, ask questions and be heard on their views.<sup>43</sup>
44. In contradiction to General Comment No. 6, current medical procedures do not appropriately consider the gender of the child. In Berlin, the university clinic conducting age assessments does not ensure that girls are examined by female doctors.<sup>44</sup> Further, forensic scientists are not familiar with child-specific forms of persecution, such as genital mutilation and sexual violence, consequently re-traumatisation may be the result of physical examination.
45. Medical age assessments in Germany are not always conducted in a fair manner as the Committee requires. In a fair procedure, young refugees have to be free to decide whether to attend the medical examination or not. In Germany, however, the refugee minors are often forced to undergo medical age assessment on the grounds that a refusal could be considered a violation of the obligation to cooperate (*Mitwirkungspflicht*) which would result in an assessment as an adult, and thus result in the termination of child benefits.<sup>45</sup> A refusal to undergo an exam can have strong implications on the credibility of the young refugee, because the stated minority is partly seen as a lie.
46. Contrary to the recommendations of the Committee on the Rights of the Child, the medical procedures used for age assessment affect the physical and psychological integrity of the child. Exposure to x-ray and triggering of anxiety by MRI are to be mentioned. In February 2013, a young refugee undertook a suicide attempt in connection with an age assessment.<sup>46</sup>
47. Also contrary to the recommendations of the Committee of the Rights of the Child, benefit of the doubt is not applied. For the same person, various scientific methods can have very different results. This leads to situations in which administrative courts refuse to integrate a young person in the national youth welfare system with reference to the older age, but family courts may order to appoint a guardian based on the minimum age.<sup>47</sup>
48. According to a decision of the Federal Administrative Court of 31 July 1984, the date of 31 December of the year determined has to be registered as birth date. However, other dates or 1 January are used, making a minor almost a full year older.<sup>48</sup>

## **B. Protection of Privacy (Art. 16)**

49. According to Article 16 CRC, States Parties are required to respect the confidentiality of information received in connection with an unaccompanied minor or a child separated from his or her family. This obligation is applicable in all circumstances, including in relation to health and social care. It is important to ensure that information collected for a specific purpose, and lawfully issued, is not used in an inappropriate way for another purpose.

43 Age Assessment of Government of Oberbayern, 10.5.2011, made anonymous, on file with Federal Association for Unaccompanied Refugee Minors; Expert Opinion of the Forensic Institute of University Munich, 21.5.2012.

44 Information given to Federal Association for Unaccompanied Refugee Minors by MD Guddat, on 1/31/2013. The Federal Association is not aware of female doctors conducting physical examinations in other federal states.

45 Upper Administrative Court (*Oberverwaltungsgericht*) Hamburg, 9.2.2011, case 4 Bs 9/11, <http://openjur.de/u/593141.html>.

46 Jörn Hasselmann, Escalation in the Charité: Refugee protests against age assessment (*Original: Eskalation in der Charité: Flüchtling wehrt sich gegen Altersfeststellung*), Tagesspiegel, 1.2.2013, <http://www.tagesspiegel.de/berlin/versuchter-suizid-eskalation-in-der-charite-fluechtling-wehrt-sich-gegen-altersfeststellung/7723904.html> (consulted on 5.2.2013).

47 For example, in the case of two different results of an age assessment, a „probable“ and „minimum age“, the Administrative Court (*Verwaltungsgericht*) applied the higher age, not applying benefit of the doubt for the minor.

48 See District Court (*Landgericht*) Berlin, 4.3.2010, 83 T 565/09 (guardian appointed) und in the same case, Upper Administrative Court (*Oberverwaltungsgericht*) Berlin, 3/10/2010, case 6 S5/10, (taking into care refused). This problem is mentioned in a decision of the Local Court (*Amtsgericht*), Decision 28.1.2012, case 89F418/11 (not final).

50. Some elements of the age assessment procedures constitute a breach of these obligations. The medical reports of the age assessment procedure always include a reference to the appearance of the genitals, the length of pubic hair and whether it is shaved or not. The inclusion of such details without medical value violates the principle that only such private data should be collected that is legally relevant.

*The Federal Association for Unaccompanied Refugee Minors recommends:*

- \* *Age assessment should only be applied, if there are strong doubts on the minority of a person.*
- \* *Standards for age assessment must be implemented that focus on the needs of a person and include physical, emotional and mental maturity. The chosen procedures and their results must be documented to be understood by all individuals involved in the process.*
- \* *Medical examinations that are scientifically controversial must not form a basis for age assessment.*
- \* *To ensure a fair procedure, qualified interpreters and a trusted person have to be present during the age assessment.*
- \* *The young refugees should be allowed to decide whether they want to be examined by a male or female professional. Doctors that perform the age assessment must be pediatricians and have received training in dealing with children and be trained in intercultural sensibility.*
- \* *An age assessment should be voluntary. In case of a refusal, this should not automatically lead to the negation of the declared age. The reason for the refusal should be recorded.*
- \* *Social data must be handled sensitively, especially the result of the age assessment cannot be used in the asylum procedure to determine credibility.*
- \* *A refugee must give written consent to the medical procedures used for age assessment after having been informed about all consequences in an understandable way.*
- \* *The final decision on the determined age has to be issued to the refugee in writing in order to allow for appeal.*

## **V. Family Structure and Alternative Care**

### ***A. Parental Guidance (Art. 5), Parental Responsibility (Art. 18, Paras. 1-2), Separation from Parents (Art. 9)***

51. The Convention of the Rights of the Child (CRC) stipulates in article 18 that “parents or legal guardians have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.” To that end “States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.”
52. The guardianship reform that entered into force on 1 July 2011 enhanced the situation of children by the introduction of a maximum number of 50 children per guardian and guidelines regarding the frequency of contact between guardian and child. However, these binding requirements are not yet implemented everywhere. For guardians, unaccompanied minors are different from other wards by their residential situation, their upbringing in a different cultural context and war- or flight-related trauma. This is often not considered by the appointment of the guardian.
53. The overburdening of guardians has a particularly negative impact on the asylum procedure, because guardians often do not have the necessary knowledge in foreigners law. Thus, many feel not able to prepare their wards for the hearing or to accompany them.
54. Guardians are not appointed for all minors who come to Germany alone. In Saxony and Berlin the courts did not deem necessary to appoint in every case a guardian for 16- and 17-year-olds when they said that their parents were still living in their home country. The court justified the decision by saying that the parents were in the position to exercise parental care by phone, skype or e-mail.<sup>49</sup>
55. Parents of refugee minors are not supported in the exercise of their parental care. Counseling and support services for parents of refugee minors by youth welfare offices are not available. The accommodation in communal residences (*Gemeinschaftsunterkunft*) does not contribute to help parents create good conditions for their children’s upbringing.

### ***B. Family Reunification (Art. 10)***

56. The Convention of the Rights of the Child (CRC) stipulates in article 10 that applications for family reunification “shall be dealt with by state parties in a positive, humane and expeditious manner”. In this complex topic three aspects should be highlighted:
57. The German Constitution (*Grundgesetz*), like the CRC, attributes great value to the family. But Family reunification from outside Europe is only possible for children who received refugee status in Germany.<sup>50</sup> This is only the case for a few hundred minors (see tab. 3 and 4). Most minors receive, at best, subsidiary protection, which does not include the right to family reunification. Family reunification only includes parents, not the siblings, and parents who wish to join one of their children in Germany as part of a family reunification have to leave the siblings of the child behind in the home country.
58. Family reunification is also hindered by the residence requirement (*Residenzpflicht*) that restricts

<sup>49</sup> Federal Association for Unaccompanied Refugee Minors, Evaluation of the Situation of Unaccompanied Minors in Saxony, 2009, <http://b-umf.de/images/stories/dokumente/evaluationsbericht-sachsen-2009.pdf>, p. 5; Appellate Court (*Kammergericht*) Berlin, 27.6.2012, case 16WF92/12; Local Court (*Amtsgericht*) Chemnitz, 23.3.2011, case 4F 190 11 e A.

<sup>50</sup> § 36 Residence Act (*Aufenthaltsgesetz*).

freedom of movement for asylum seekers within Germany. Even though family members may live in Germany, reunification takes long and is complicated.

59. Forced returns also separate children from their parents. After forced return, parents can receive a ban of up to 12 years for re-entry and children cannot exercise their right of access to their parents. The forced return of Gazale Salame from Hildesheim, Lower-Saxony, in 2005 and the following eight years of separation of the mother and her children is a well-known example.<sup>51</sup>

### *Example 3: Family Unity*

A 15-year-old unaccompanied refugee was taken into custody by the Federal Police about 30 kilometers behind the border with Austria in September 2009. He was forcibly returned back to Austria, without consideration of his interests and without involving the youth welfare office. Upon return to Austria, the boy applied for asylum in Austria, without knowing about the consequences. A few weeks later the boy arrived again to Germany.

At this time, both his uncle and his younger brother were living in Germany. The boy's younger brother was traumatized by the experience of war in Afghanistan and depended on the emotional support of his elder brother. In the meantime, the uncle was appointed guardian of the elder brother.

Nevertheless, the Federal Office for Migration and Refugees ordered the forced return of the boy to Austria in April 2010, because of his asylum application there after his first forced return, and because it was deemed uncertain that the uncle had sufficient financial means to support his nephew.

*Oral report of a member of Worker's Welfare Organisation (AWO – Arbeiterwohlfahrt) on 15 May 2010.*

## **C. Periodic Review of Placement (Art. 25)**

60. The Federal Government stated that each facility, in which minors were cared for, needed a permission (*Betriebserlaubnis*) of the competent national authority.<sup>52</sup> If minors are accommodated in reception facilities for asylum seekers (*Erstaufnahmeeinrichtung*) or communal residences (*Gemeinschaftsunterkunft*), these facilities are explicitly not required to have a child-specific permission to function.<sup>53</sup> Therefore, there are no permits or standards for all housing facilities in which young refugees are accommodated. The examples below highlight a few problems in such housings.

### *Example 4: Communal Residences Karl Schmitt Street and Max Pröbstl Street in Munich*

"There is violence and vandalism in both institutions on a daily basis. The police intervenes several times a day with a high contingent, often because of mass brawls. [...] The young people are seriously threatened and live in very great fear. [...] After there was a rape, and the female supervisors have repeatedly been threatened, Caritas suspended the care of the unaccompanied minors effective January 2013 in order to clarify the situation. [...]"

The residents of the accommodation, but especially the young people who must necessarily reside in the group, are intimidated and suffer greatly from the situation, they feel abandoned and are very afraid."

The two communal residences for unaccompanied minors in Munich with an occupancy capacity of 12 to 14 minors are cared for by the Caritas Munich, each with a half-time position. Public statement by Caritas Munich on 18 January 2013, on file with Federal Association for Unaccompanied Refugee Minors.

<sup>51</sup> See the documentation of the case by the Refugee Council Lower Saxony, <http://www.nds-fluerat.org/10520/aktuelles/gazale-salame-ist-wieder-zu-hause/>.

<sup>52</sup> Third and fourth periodic reports of Germany, para. 152.

<sup>53</sup> § 44 Abs. 3 Asylum Procedure Law (*Asylverfahrensgesetz*): „§ 45 Book VIII of the Social Code (*SOB VIII*) is not applicable for reception facilities.“

**Example 5: Communal Residence Breitenworbis**

“We live in an isolated house, two kilometres away from the village Breitenworbis. 120 people - families and individuals - must share a few toilets, showers and kitchens. To shop, go to the doctor, to school or kindergarten, we have to walk several kilometers on an unlit road. There is only a bus stop in the village.

On each floor there is only one kitchen for 40 people, but only one kitchen in the house has functioning stoves. This means that all people from the camp cook there. The sanitary conditions in the kitchen and the showers are so bad that there are bugs and mice. In winter, the heaters do not always work well, so the rooms are too cold.”

*Open letter by a group of women from the refugee camp Breitenworbis to the District Office (Landratsamt) Eichsfeld, the foreigners office Eichsfeld, the social welfare services Eichsfeld and other public institutions on 3 February 2013.*

**D. Maltreatment and Neglect (Art. 19), Physical and Psychological Recovery and Social Reintegration (Art. 39)**

61. The Federal Republic of Germany has to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.<sup>54</sup> But especially minors who are suffering from psychological strain due to their experience before or during their escape, have physical and psychological complaints, which are often further complicated by an uncertain residence status. It is not systematically recorded and diagnosed what kind of support the children and youth would need for recovery. There are too few places for therapy available. Further, accommodation in communal residences (*Gemeinschaftsunterkünfte*) does not offer sufficient protection from sexual violence.

**Example 6: Procedures to Establish Identity in Berlin**

In Berlin, all unaccompanied minors are placed in a clearing facility (*Clearinghaus*) for minors. A few days after their arrival, the young refugees have to register with the foreigners office. For that purpose, the foreigners office uses procedures to establish identity (*Erkennungsdienstliche Behandlung*). Unless the young person has not yet lodged an asylum application (in 2010 this affected 336 of 377 unaccompanied minors),<sup>55</sup> the foreigners office reports the minors for unlawful entry.

If the minors are older than 14, they are detained by the police in the foreigners office and brought to a detention center. Often they are handcuffed, even though the young people have a permanent residence in the clearing facility and many of them are traumatized. The minors are then transferred to the detention center. They are alone, because no other person is allowed to ride with them in the police van. Upon arrival in the detention center, they have to undress to be searched.

Several young people reported independently that they had to wait several hours in their underwear in a narrow waiting room. The minors have to await the outcome of another identification procedure by the police in custody. Since this can take up to ten hours, minors are often released in the middle of the night from the detention center.

The young people are not informed of the reason for the arrest or the destination they are transferred to. On the way, the young refugees suffer the terror to be forcibly returned immediately, which is sometimes suggested to them. According to their reports, the young refugees are detained by the police in a small and unheated cells without knowing why and for how long and without food or drinks.

*These reports by refugee minors were made available on 16 June 2010 to the Federal Association for Unaccompanied Refugee Minors. The institution taking care of the young refugees has interviewed all minors in the course of the year 2011 and documented their experience.*

<sup>54</sup> Convention on the Rights of the Child, Art. 39.

<sup>55</sup> See tab. 1 and tab. 2.

*The Federal Association for Unaccompanied Refugee Minors recommends:*

- \* *Guardians for unaccompanied minors must be familiar with this target group before taking on a guardianship. Guardians should participate in trainings during their engagement with the child.*
- \* *Legal counsel should be awarded without a cost to the minor in all matters relating to asylum and foreigners law.*
- \* *Family court judges should be aware of the particular situation of unaccompanied minors and should only appoint suitable guardians.*
- \* *Youth welfare services must also consider the need for youth support services for families. Parents of refugee minors should receive adequate support.*
- \* *Young refugees who were victims of abuse, neglect or exploitation must obtain sufficient and appropriate offers to recovery. A systematic survey of the mental and physical condition of refugee minors is necessary.*
- \* *The Federal Government must ensure through the adjustment of federal law that rules of immigration law do not hinder family reunification, which is in the interests of the child. Other relatives apart from the parents should also be considered, if this is in the best interests of the child.*
- \* *The Federal Government should facilitate family reunification of third country nationals within Europe.*
- \* *Families should not be torn apart by forced return or due to compliance with the residence requirement.*
- \* *All facilities where minors are accommodated shall be reviewed regularly, shall operated by standards adequate for young refugees and must have a permission according to § 45 Book VIII of the Social Code.*

## VI. Basic Health and Welfare

### **A. Health and Welfare (Art. 24)**

62. The state report mentions the objectives of prevention, health promotion and equity in health, but does not target refugee children.<sup>56</sup> Around 48,000 minors receive health benefits under the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*), which excludes a large part of health care. According to this law, minors are only entitled to medical treatment if they suffer from acute diseases or pain. Treatment for chronic diseases, psychotherapy and preventive health care measures are rarely granted. The latter may have far-reaching consequences for children in the growth phase, for example, if measures to correct posture problems, glasses or braces are not paid for. In Bavaria, several cases have been reported in which the teeth of minors were pulled instead of being treated.<sup>57</sup>
63. Young people who receive benefits under the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*) often need a health voucher (*Krankenschein*) if they want to consult a doctor. They usually receive the voucher at the social welfare office, where they have to appear in person. The case workers at the social welfare office must decide whether a treatment should be given, even though they do not have any medical qualification. This practice leads to significant delays in the treatment of acute pain and necessary treatments are postponed or are not administered at all.<sup>58</sup>

#### *Example 7: Medical Care in the Communal Residence Breitenworbis*

“There is only one doctor available and he treats everything with the same drugs - paracetamol, stomach pills and sedatives. We can not properly communicate with him. Moreover, we are not properly informed about what kind of help (for example from specialists or physiotherapists) we could receive. Even though we have a right to free choice of doctor, we are denied that by the social welfare office. They claim that they have a contract with the doctor and that’s why everyone should go there and the voucher is issued for this doctor. If we get a referral to a specialist, it is a long journey and we have to pay the travel costs ourselves.”

From an open letter dated 3 February 2013 from a group of women from the communal residence Breitenworbis in Thuringia where they live with their children.

#### *The Federal Association for Unaccompanied Refugee Minors recommends:*

- \* *In order to effectively implement the health care objectives of the Federal Government, measures specifically targeting refugee minors are needed.*
- \* *The Federal Government must ensure that refugee children get full access to health care regardless of their immigration status. These minors must receive benefits under Book VIII or XII of the Social Code (SGB VIII).*
- \* *Bureaucratic barriers that impede the access to health care must be reduced. Refugee minors must always have the opportunity to receive medical advice easily and immediately.*

56 Third and fourth periodic reports of Germany, [http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-DEU-3\\_4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-DEU-3_4.pdf), para. 191.

57 Missionsärztliche Klinik Würzburg, Positionpaper regarding the health situation and medical treatment of refugees in Bavaria (*Original: Stellungnahme über die gesundheitliche Situation und die medizinische Versorgung von Flüchtlingen in Bayern*), 2009, [http://www.fluechtlingsrat-bayern.de/tl\\_files/Landtagsanhoerung/09-04-23%20Stellungnahme%20Missionsaerztliche%20Klinik%20Wuerzburg.pdf](http://www.fluechtlingsrat-bayern.de/tl_files/Landtagsanhoerung/09-04-23%20Stellungnahme%20Missionsaerztliche%20Klinik%20Wuerzburg.pdf).

58 See Classen, Georg, The Asylum Seekers Benefit Act and the Basic Right to Minimum Living Standards (*Original: Das Asylbewerberleistungsgesetz und das Grundrecht auf eine menschenwürdige Existenz*). Opinion on the Consultation on 2/7/2011 in the Committee on Labour and Social Affairs of the German Bundestag, Februar 2011, [http://www.fluechtlingsinfo-berlin.de/fr/asylblg/Classen\\_AsylbLG\\_Verfassung.pdf](http://www.fluechtlingsinfo-berlin.de/fr/asylblg/Classen_AsylbLG_Verfassung.pdf).

## VII. Education, Leisure and Cultural Activities

### A. Education

64. According to the Convention on the Rights of the Child, equal opportunities are key in the fulfillment of the right to education. This does not only include compulsory and free primary education, but also financial assistance in case of need, educational and vocational guidance and access to higher education.<sup>59</sup>
65. Expenditures for kindergartens, schools, universities and vocational training in Germany are very low compared to OECD countries: 5.3 percent of the German gross domestic product (6.2 percent are average in the OECD).<sup>60</sup> Another fundamental problem is the lack of equal opportunities.<sup>61</sup> In addition, foreigners and asylum law requirements complicate access to education. These three factors - low spending on education, no equal opportunities and discrimination due to immigration law requirements - provide foreign minors with very difficult starting conditions.
66. Minors are denied access to education due to uncertain or lack of residence permits, lack of space in schools and resources.
67. If young refugees can go to school, they are significantly influenced and restricted by cross-class segregation of pupils, language bans, and low expectations of teachers. In addition to the criticism of many civil society organizations regarding discrimination in the German educational system, national and international bodies have also pointed out the selectivity of the German school system and the associated discrimination against children and young people "of color", particularly against young refugees and children with uncertain residence status.<sup>62</sup>
68. In many federal states, compulsory education starts only three months after the arrival from abroad. But even after three months not all minors have access to language and literacy courses or to regular schools. In addition, sometimes language courses are not free or paid for by the social welfare office or other institutions. Problems also arise from the fact that compulsory education in some federal states ends at age 16. Regular schools are not responsible for 16-year-old and 17-year-old school beginners and vocational schools do not target that group. Therefore, it is hardly possible to obtain a degree at that age.<sup>63</sup>
69. In reception centers there is usually no room where children who attend school could study. Also, these housing facilities are sometimes so remote that visiting a school becomes difficult or impossible.
70. Experience shows that foreign children can get a degree within two to three years, thanks to

59 Convention on the Rights of the Child, arts. 28 and 29.

60 OECD, Education at a Glance 2012: OECD Indicators, <http://www.oecd.org/education/country%20note%20Germany%20%28DE%29.pdf>.

61 Ministry for Education and Research, Education in Germany 2010 (*Original: Bildung in Deutschland 2010*), [http://www.bildungsbericht.de/daten2010/bb\\_2010.pdf](http://www.bildungsbericht.de/daten2010/bb_2010.pdf), S. 10.

62 See Migration Council Berlin-Brandenburg, Reviews Practises Perspectives (*Original: Rückblicke Praxen Perspektiven*), 10 Years of ReachOut, 2011, [http://www.migrationsrat.de/dokumente/positionen/reachout\\_broschuere\\_2012.pdf](http://www.migrationsrat.de/dokumente/positionen/reachout_broschuere_2012.pdf); Migrationsrat Berlin-Brandenburg, Institutional racism (*Original: Institutioneller Rassismus*), 2012, [http://www.migrationsrat.de/dokumente/positionen/reachout\\_broschuere\\_2012.pdf](http://www.migrationsrat.de/dokumente/positionen/reachout_broschuere_2012.pdf); Anti-discrimination Network of the Turkish Confederation Berlin-Brandenburg, Anti-discrimination report 2006-2008 (*Original: Antidiskriminierungsreport*), [http://www.tbb-berlin.de/downloads\\_adnb/ADNB-Antidiskriminierungsreport\\_2006-2008.pdf](http://www.tbb-berlin.de/downloads_adnb/ADNB-Antidiskriminierungsreport_2006-2008.pdf); Youth without Borders, Catalogue of Demands for the Education Campaign 2011, <http://www.b-umf.de/images/bildungskampagne%20forderungskatalog.pdf>; Network Racism at Schools, Positions and Demands, <http://www.neras.de/index.html>; Report of the UN-Special Rapporteur on the right to education, Mission to Germany, 2007, [http://www.netzwerk-bildungsfreiheit.de/pdf/Munoz\\_Mission\\_on\\_Germany.pdf](http://www.netzwerk-bildungsfreiheit.de/pdf/Munoz_Mission_on_Germany.pdf); UN-Committee on the Rights of the Child, Concluding Remarks, Geneva, 2004, [http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/405/24\\_PDF/G0440524.pdf?OpenElement](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G04/405/24_PDF/G0440524.pdf?OpenElement); UNHCR, Storost, Ulrike, Access to Quality Education for Asylum seeking and Refugee Children in Europe, Germany Country Report, Geneva, January 2009.

63 Studnitz, Stefanie, Exclusion Instead of Education (*Original: Ausgrenzung statt Ausbildung*), Migration und Soziale Arbeit, 2/2011.

the help of specially trained teachers and targeted support courses.<sup>64</sup> However, these courses only exist in a few places and are not sustainably financed. Moreover, efforts to integrate young refugees in regular schools are scarce. Voluntary organisations play a big role in that regard and are working on closing this gap. Especially in urban areas, projects have been launched to target unaccompanied minors to obtain basic education and degrees, and provide support during the transition from school to vocational training. On a positive note, the obligation to report undocumented immigrants (*Meldepflicht*) was abolished for schools and kindergartens in July 2011.

71. Young refugees often cancel their educational careers prematurely and take unskilled jobs in order to be entitled to a more permanent residence status. In order to receive a permanent status they are not allowed to use any assistance and benefits from the public sector. In practice this means that there is no access to higher education for many young refugees.
72. Many communities issue a tolerated stay (*Duldung*) for a very short period. The permanent threat of forced return puts young people under intense pressure and hinders educational success. A positive example from the city of Bonn shows how local governments could support the right to education for young refugees<sup>65</sup>

### *Example 8: Residence Permits during Education and Vocational training in Bonn*

The City Council of Bonn issued a statement in 2010 that grants access to education for young refugees, so that they are not constantly threatened with forced return. Until they obtain their degree, they are allowed to stay.

The Council Decision states that “young refugees should be allowed to complete school, university, vocational training, continuing education or other training that they have started. After completion of such training a residence permit may be granted if the person could start working. In this regard the legal discretion of the administration concerning tolerated stay is to be exhausted.”<sup>66</sup>

*Resolution of the City Council of 10 August 2010*

### *The Federal Association for Unaccompanied Refugee Minors recommends:*

- \* *Access to education for a minor has to be a priority. Young refugees must be granted access to education from their arrival in Germany, including during the time spend at the initial reception center.*
- \* *Legal and administrative barriers that hinder access to education and training have to be lowered. Equal opportunities have to be created by special support measures to better integrate young refugees in the regular school system, including higher education.*
- \* *School-age children and their parents must be excluded from the residence requirement in the reception centers (Wohnpflicht) in order to live in facilities with a positive learning environment.*
- \* *All refugee minors should have access to educational and vocational guidance. Counseling services have to be created in the living environment of young people.*
- \* *The entitlement to financial aid programmes (BAföG and Berufsausbildungsbeihilfe) must not be subject to a certain residence permit.*

<sup>64</sup> On experiences in the classroom with unaccompanied minors see Boketta, Ruth and Sachser, Sabine, Education for Unaccompanied Minors, in: Sozial Extra 9/10, 2012, pp. 6-11.

<sup>65</sup> City Council (*Stadtrat*) Bonn, Council Resolution on the Situation of Refugees Living Here for Many Years), (*Original: Resolution des Rates zur Situation langjährig hier lebender Flüchtlinge*), 10.8.2010, <http://www.b-umf.de/images/stadtrat-bonn-2010.pdf>. The Federal Association for Unaccompanied Refugee Minors is not aware of similar decisions from other municipalities or federal states.

<sup>66</sup> *Ibid.*, translation by the authors.

- \* *Teachers and social workers at schools should be knowledgeable of the specific needs of refugee minors.*
- \* *Minors must have the right to education and should not be hindered by fear of forced return. The duration of the residence permit issued should respect the duration of their education or training.*

## VIII. Special Protection Measures

### **A. Refugee Children and Asylum Seeking Minors (Art. 22)**

73. The Convention on the Rights of the Child (CRC) binds the parties to provide asylum seeking and recognized refugee children with appropriate protection and humanitarian assistance. Asylum seeking and refugee minors who are separated from their parents or guardians should be granted the same protection as other children who are deprived of their family environment. In Germany, a child-friendly treatment by state agencies, as mentioned in the state report, is not always guaranteed.<sup>67</sup> The best interests of the child is neither implemented in the Residence Act (*Aufenthaltsgesetz*) nor the Asylum Procedure Law (*Asylverfahrensgesetz*). The best interest of the child is not only not given priority, but not even considered in decisions pertaining to foreigners and asylum law (*Ausländer- und Asylrecht*).<sup>68</sup>

#### *a) Identification of Minors Travelling Alone*

74. The government points out that it is of major importance to identify unaccompanied minors at their entry by border authorities, so they can be transferred to the competent youth welfare office, if there are no relatives living in Germany and no grounds for refusal of entry or forced return.<sup>69</sup> Nevertheless, the 16- and 17-year-old unaccompanied minors entering Germany are not treated by the federal police as minors and are not registered.<sup>70</sup> In 2010, the federal police apprehended 282 unaccompanied minors under the age of 16, of which only 197 were referred to a youth welfare office.<sup>71</sup>

75. According to the federal police department in Bad Bentheim in Lower Saxony, it is not routinely checked at the border whether family members live in Germany before the decision is taken to return the child to the neighbouring country. Unaccompanied minors are routinely pushed back in Lower Saxony, if they do not express their wish to apply for asylum, without having been informed about the legal consequences of applying or not applying for asylum.<sup>72</sup>

#### *b) Asylum Procedure*

76. The number of unaccompanied minor asylum seekers has increased from 1,304 in 2009 to 2,126 in 2011. In 2012, 2,096 unaccompanied minors applied for asylum. Only 945 asylum procedures of unaccompanied minors could be completed in 2012 and 124 unaccompanied minors were granted refugee status, another 265 received subsidiary protection.<sup>73</sup> There is no data available on the outcome of the asylum procedures of minors who turn 18 before a decision in the asylum procedure is taken.

77. Since 2011, the length of asylum procedures for unaccompanied minors increased on average and approximately half of underage applicants turn 18 during the administrative procedure of their asylum procedure. In practice this means that these minors do not have any support of their guardian when appealing a negative decision and they are released from the youth welfare services with an uncertain future.

<sup>67</sup> Third and fourth periodic reports of Germany, para. 271.

<sup>68</sup> On the consideration of the best interests of the child see chapter III.

<sup>69</sup> Third and fourth periodic reports of Germany, para. 287.

<sup>70</sup> On the definition of the child see chapter II.

<sup>71</sup> Ministry of the Interior, Response of the Federal Government to the Brief Enquiry of Ulla Jelpke and others: Treatment of Unaccompanied Minors apprehended by the Federal Police (*Original: Kleine Anfrage der Abgeordneten Ulla Jelpke u.a. und der Fraktion die Linke: Umgang mit unbegleiteten Minderjährigen bei Zugriff durch die Bundespolizei*), 10/18/2011, [http://www.b-umf.de/images/bt\\_umf\\_bupo\\_2011.pdf](http://www.b-umf.de/images/bt_umf_bupo_2011.pdf).

<sup>72</sup> See UNHCR/Federal Association for Unaccompanied Refugee Minors (2012), Evaluation of the Situation of Unaccompanied Minors in Lower Saxony, p. 18, <http://b-umf.de/images/evaluation-nds-2012.pdf>.

<sup>73</sup> See tabs. 2,3 and 4.

78. In many federal states and municipalities, 16- and 17-year-olds apply for asylum immediately after arrival due to their legal capacity to act (*Handlungsfähigkeit*). Entry into Germany could be denied more easily by the border authorities without the application. The clearing procedure (*Clearingverfahren*) addressed in the state report serves to take informed decisions concerning the further steps of the minor (family reunification in a third country, voluntary return, application for a residence permit on humanitarian grounds, application for asylum), but is severely hampered by an early asylum application which is limiting the choices.<sup>74</sup>
79. Regarding the low number of refugee status given to minors it is particularly striking that the number of any form of protection given to minors from Afghanistan has plummeted. In 2009, 75 percent of the Afghani children seeking protection was provided a status, in 2012 the number decreased to 39 percent. A similar fate befell Iraqi asylum seeking unaccompanied minors, the protection rate fell from 65 percent in 2009 to 21 percent in 2012.<sup>75</sup>
80. Roma children from Kosovo who mostly fled with their families to Germany have no chance to receive protection, although they fled living conditions that massively violate a whole range of children's rights. Even Roma minors who have been living in Germany for over ten years or were born in Germany are forcibly returned.<sup>76</sup>
81. The child-specific forms of persecution and grounds for flight are not considered sufficiently in the asylum procedure. Contrary to the statement of the Federal Government in the state report the grounds for flight are not recorded.<sup>77</sup> The Federal Office did not establish an instrument for quality management, which would allow the monitoring of the decision practice with regard to unaccompanied minors. Many lawyers and guardians who attend the hearings deem the credibility test in the procedure as not adequate for minors.<sup>78</sup>

### *c) Integration in the National Youth Welfare System*

82. The procedure for taking unaccompanied minors into care is not enforced throughout Germany. According to estimates of the Federal Association for Unaccompanied Refugee Minors, about 25 percent of all unaccompanied minors are not taken into care and do not regularly receive benefits and services from the youth welfare office. The legislature has recognized the vulnerability of unaccompanied minor foreigners by amending § 42 Book VIII of the Social Code (*SGB VIII*), but due to contradicting provisions in the Asylum Procedure Law these amendments have not been fully enforced. As a result, the procedures of taking into care are different in almost every federal state and although the awareness for the vulnerability of unaccompanied minors grew within the last years, the common youth welfare standards are not consequently implemented. Depending on where minors get into contact with the authorities they are or are not taken into care.

### *d) Role of the Guardian and Asylum Hearing*

83. The Asylum Procedure Law (*Asylverfahrensgesetz*) stipulates in § 12 that minors above the age of 16 have legal capacity to act (*Handlungsfähigkeit*) and can apply for asylum. Therefore, there is no legal requirement for the appointment of a guardian. The Federal Government considers § 12 Asylum Procedure Law as a right of the young person. In practice, this provision is not in the interest of the child as he or she is not entitled to the support by a guardian in the asylum procedure. Although § 42 of Book VIII of the Social Code (*SGB VIII*) ensures that all unaccompanied minors receive a guardian, the role of the guardian in the asylum procedure remains unclear. In

<sup>74</sup> Third and fourth periodic reports of Germany, para. 278.

<sup>75</sup> see tab. 4. Data according to Federal Office for Migration and Refugees (*BAMF*).

<sup>76</sup> On the situation of returning Roma children see the report by UNICEF, Knaus, Verena, Widmann, Peter, Forcibly returned and forgotten: The Situation of Children of Roma, Ashkali and Egyptian Families after their Return to Kosovo, Cologne, 2011, [http://www.unicef.de/fileadmin/content\\_media/presse/110826-roma-studie/Roma-Studie-2011-Deutsch.pdf](http://www.unicef.de/fileadmin/content_media/presse/110826-roma-studie/Roma-Studie-2011-Deutsch.pdf).

<sup>77</sup> Third and fourth periodic reports of Germany, para. 286.

<sup>78</sup> See Marx, Reinhard, Problems in the Communication and Description of Practical Realities of Refugees in the Asylum Procedure (*Original: Probleme der Kommunikation und Darstellung der Lebenswirklichkeit von Flüchtlingen im Asylverfahren*), in: Zeitschrift für Ausländerrecht und Asylpolitik ZAR, pp. 417-426, Frankfurt am Main, 2012.

spring 2010, the Federal Office for Migration and Refugees (*BAMF*) issued an internal regulation to invite guardians to the asylum hearings even if the minors were over 16. However, attendance is not mandatory for guardians. There are guardians who do not support the minor in the asylum procedure.

84. Only in the federal state of Hesse established a practice supported by jurisprudence according to which guardians can ask the court for a legal representative if the guardians are not sufficiently competent to represent their wards in the asylum procedure. This also applies to minors above the age of 16. In other federal states this practice was rejected by the courts.<sup>79</sup>
85. The asylum hearings are usually carried out by special commissioners for unaccompanied minors (*Sonderbeauftragte UM*), also for minors above the age of 16. However, not all special commissioners are regularly and fully trained on the special needs of unaccompanied asylum seekers. Training sessions are held every year on a voluntary basis. Regular participation in these sessions is not mandatory to serve as special commissioner, there is no specified curriculum or supervision of the hearings.

#### *e) Airport Asylum Procedure*

86. The state report mentions that 321 unaccompanied minors arrived at the airport in Frankfurt between 2004 and 2008 and that 147 were allowed to enter the country. Frankfurt is the biggest of Germany's five international airports and the only one that has an airport asylum procedure for unaccompanied minors.
87. Contrary to the statement of the Federal Government in the state report, the government of the federal state of Hesse states that unaccompanied minors spent up to 142 days at the closed asylum facility of the airport Frankfurt (airport procedure and subsequent stay to prepare the return).<sup>80</sup>
88. In the airport procedure, the appointment of a guardian is only initiated by the Federal Police for children younger than 16. The authorities and the airport social service established a mechanism together according to which the social service informs the youth welfare office in Frankfurt and the guardianship court. Thanks to this information mechanism, all minors have a guardian during the airport procedure. However, a clear legal provision for the establishment of such mechanisms is still missing.

#### *f) Dublin Procedure*

89. Unfortunately there is no data available on unaccompanied minors who were forcibly returned to member states of the Dublin Regulation. Germany interprets article 6 para. 2 of the Dublin Regulation that in case of several asylum applications in different Dublin member states, the state of the first asylum application is responsible for the examination of the asylum application. This interpretation leads to returns of minors to other member states of the Dublin Regulation against the will of the minor. The reasons why children leave the country where they applied for asylum first differ widely. German authorities are very reluctant to accept these reasons and do not refrain from returning minors against their will to other member states. The best interests of the child are not taken into consideration in the decisions on returns under the Dublin Regulation.

<sup>79</sup> Higher Regional Court Karlsruhe (*Oberlandesgericht Karlsruhe*), Case 2 UF 172/10, 2.12.2010, <http://openjur.de/u/335548.html>.

<sup>80</sup> The Federal Government states that asylum procedures have to be conducted within 19 days. If this would take longer, the foreigner is allowed to enter the country in order to conduct his or her asylum procedure. Third and fourth periodic reports of Germany, para 282. Government of federal state of Hesse, Reply to question of Mürvet Öztürk, file number 18/722, 31 July 2009.

### *g) Housing Facilities*

90. While the Federal Government lists the reception center for asylum seekers (AfA) in Trier and the Café International Imgenbroich as successful examples of the accommodation of asylum seeking children, these examples only illustrate some of the deficits of housing for unaccompanied minors in the view of the Federal Association for Unaccompanied Refugee Minors.<sup>81</sup>
91. The placement of unaccompanied minors in the reception center in Trier in the federal state of Rhineland-Palatinate ended in 2011 after numerous protests from charities, guardians, researchers and also by the Federal Association for Unaccompanied Refugee Minors. The facility was completely unsuitable for young people and was not staffed with qualified personnel. The Café International Imgenbroich, which opens only a few hours per week for refugees, does only occasionally get in contact with minors. The cafe is run on a purely voluntary basis, without any public financial support.

### ***B. Children Involved in Armed Conflict (Art. 38), their Physical and Emotional Recovery and Social Reintegration (Art. 39)***

92. Grounds for flight of asylum seeking minors are not statistically recorded. In the state report, four cases were mentioned in which having been a child soldier or escaping from recruitment were mentioned in the period between 2005 and 2007.<sup>82</sup> This list is not exhaustive and only represents a few random cases known to the Nuremberg-branch of UNHCR and Federal Association for Unaccompanied Refugee Minor.
93. According to UNHCR a considerable number of unaccompanied minors from Afghanistan, but also from Somalia, Sri Lanka, Eritrea and Sierra Leone, reported to have been conscripted or fled their country due to fear of being forcibly recruited. However, in many cases their statement is assessed as not credible and the asylum application is rejected. The Hamburg branch of the Federal Office for Migration and Refugees, where many Afghans are interviewed, said that those grounds were only credible in exceptional cases.<sup>83</sup>
94. In 2010, 1.359 unaccompanied minors applied for asylum in Germany who came from countries in which according to the Federal Government child soldiers were used. But, also according to the government, in 2009 only eleven unaccompanied minors stated to have served as child soldiers, including one young man from Afghanistan.<sup>84</sup> In 2010, the evaluation of applications for asylum in respect to the accounts of having served as a child soldier, which was conducted in the years 2008 and 2009, was discontinued.
95. According to the observations of the Federal Association for Unaccompanied Refugee Minors, the main reasons for the rejection of asylum applications of minors who were child soldiers or fled from conscription is that they were not able to bring forward all arguments immediately and without psychosocial support in a credible manner. Due to negative experiences with the outcome of asylum applications guardians are reluctant to lodge an asylum application for highly traumatised former child soldiers as they do not want to expose them to the procedure. The actual number of former child soldiers is therefore probably much higher than the government states.

81 Third and fourth periodic reports of Germany, para. 280.

82 Third and fourth periodic reports of Germany, para. 286.

83 See UNHCR/Federal Association for Unaccompanied Refugee Minors, Evaluation Report on Hamburg, 2010, [http://b-umf.de/images/evaluation\\_hamburg\\_2010.pdf](http://b-umf.de/images/evaluation_hamburg_2010.pdf), p.11.

84 Federal Government, Response to the parliamentary request of Ulla Jelpke MP: Dealing with Child Soldiers seeking Protection in the Federal Republic of Germany, Drucksache 17/8404, <http://www.b-umf.de/images/stories/dokumente/bundestag-kl-anfrage-kindersoldaten-2012.pdf>.

*The Federal Association for Unaccompanied Refugee Minors recommends:*

- \* *The capacity to act in all matters of asylum and foreigners law (Asyl- und Ausländerrecht) should be raised from age 16 to 18.*
- \* *All minors must receive free legal aid in all matters of asylum and foreigners law, even before the application for asylum. Minors must be accompanied by a guardian or legal counsel to the asylum interview and during further steps of the process.*
- \* *A clearing procedure (Clearingverfahren), as practiced in some federal states already, should become mandatory in all federal states. The possibility of family reunification has to be discussed during the clearing procedure.*
- \* *The credibility tests with regard to minor asylum seekers must meet transparent standards and must take into account age specific characteristics. The asylum hearing must better take into account the specific needs of minors.*
- \* *The decision practice with regard to asylum applications of minors should be monitored on a regular basis by an independent institution and it should be examined if child-specific forms of persecution are recognised.*
- \* *All accommodations for unaccompanied minors must be fully integrated into the regular youth welfare system. The major differences between the federal states must be harmonized, taking into account the child's best interests, particularly regarding the quality of the accommodation and support services.*
- \* *The federal police must treat all unaccompanied minors as such and refer them to the youth welfare office immediately.*
- \* *Asylum seeking children must not be returned against their will under the Dublin Regulation.*
- \* *Unaccompanied minors must not be forcibly returned.*
- \* *The commissioners for unaccompanied minors (Sonderbeauftragte UM) at the Federal Office for Migration and Refugees must be trained regularly in concrete work situations.*

## Annex

table 1

<b>Provisional Protection Measures for Unaccompanied Minors</b>			
<i>Federal State</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>
Baden-Wuerttemberg	125	176	179
Bavaria	387	778	541
Berlin	383	377	275
Brandenburg	160	130	70
Bremen	33	35	47
Hamburg	192	353	414
Hesse	435	571	631
Lower Saxony	111	250	98
Mecklenburg-Western Pomerania	5	7	13
North Rhine-Westphalia	579	875	543
Rhineland-Palatinate	77	106	168
Saarland	22	77	216
Saxony	68	100	94
Saxony-Anhalt	10	30	24
Schleswig-Holstein	387	321	453
Thuringia	14	30	16
<b>total</b>	<b>2,988</b>	<b>4,216</b>	<b>3,782</b>

Source: Federal Association for Unaccompanied Refugee Minors. Data is published under <http://www.b-umf.de/images/inobhutnahmen-2011-b-umf.pdf>.

table 2

<b>First Asylum Applications by Unaccompanied Minors</b>				
<i>Federal State</i>	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>
Baden-Wuerttemberg	90	131	163	126
Bavaria	253	438	357	428
Berlin	24	41	95	110
Brandenburg	70	69	58	22
Bremen	33	35	46	23
Hamburg	206	270	399	330
Hesse	215	335	369	376
Lower Saxony	40	96	126	130
Mecklenburg-Western Pomerania	5	7	7	7
North Rhine-Westphalia	227	324	240	341
Rhineland-Palatinate	36	39	64	52
Saarland	5	26	92	77
Saxony	49	53	44	25
Saxony-Anhalt	4	9	10	4
Schleswig-Holstein	38	58	48	41
Thuringia	9	17	7	4
Unknown	0	0	1	0
<b>Total</b>	<b>1,304</b>	<b>1,948</b>	<b>2,126</b>	<b>2,096</b>

Source: Data for 2009-2011 Federal Office for Migration and Refugees; Data for 2012 Deutscher Bundestag: Supplementary Information on the Asylum Statistics 2012 (Original: *Ergänzende Informationen zur Asylstatistik für das Jahr 2012*), Drucksache 17/12234, Berlin 1/31/2013.

table 3

<b>Results Asylum Applications by Unaccompanied Minors 2012</b>					
<i>country of origin</i>	<i>asylum applications</i>	<i>decisions</i>	<i>refugee status</i>	<i>subsidiary protection</i>	<i>refusal/ withdrawal</i>
Afghanistan	1,003	627	47	194	386
Egypt	32	20	0	1	19
Ethiopia	43	31	0	0	31
Guinea	58	23	4	2	17
Iraq	152	88	13	4	71
Iran	38	22	8	1	13
Pakistan	111	16	2	0	14
Somalia	127	49	9	29	11
Syria	133	94	28	65	1
<b>total</b>	<b>2,096</b>	<b>1,169</b>	<b>146</b>	<b>341</b>	<b>682</b>

Source: Deutscher Bundestag, Supplementary Information on the Asylum Statistics 2012 (Original: *Ergänzende Informationen zur Asylstatistik für das Jahr 2012*), Drucksache 17/12234, 31.1.2013.

table 4

<b>Results Asylum Applications by Unaccompanied Minors 2011</b>					
<i>countries of origin</i>	<i>asylum applications</i>	<i>decisions</i>	<i>refugee status</i>	<i>subsidiary protection</i>	<i>refusal/ withdrawal</i>
Afghanistan	1,092	610	38	260	312
Ethiopia	57	20	2	2	16
Eritrea	28	12	8	3	1
Guinea	56	25	6	0	19
Iraq	199	120	29	9	82
Iran	44	15	6	0	9
Nigeria	21	18	0	1	17
Pakistan	54	15	4	0	11
Russian Federation	23	12	0	0	12
Somalia	112	88	33	38	17
Syria	84	18	2	0	16
<b>total</b>	<b>2,126</b>	<b>1,154</b>	<b>134</b>	<b>328</b>	<b>692</b>

Source: Federal Office for Migration and Refugees

table 5

**Minors Receiving Benefits according to Asylum Seekers Benefits Act  
(31.12.2009)**

<i>age</i>	<i>in initial reception centers</i>	<i>in communal residences</i>	<i>in decentral accomodation</i>	<i>Total</i>
under 3	745	1.794	3.319	5.858
3-7	976	2.169	5.404	8.549
7-11	919	1.946	5.879	8.744
11-15	936	1.773	6.220	8.929
15-18	936	1.511	4.853	7.300
<b>total</b>	<b>4.512</b>	<b>9.193</b>	<b>25.675</b>	<b>39.380</b>

Source: Statistisches Bundesamt (2011): Benefits for Asylum Seekers 2009 (*Original: Leistungen an Asylbewerber*), p. 7f.

table 6

**Nature of Benefits Minors received according to Asylum Seekers Benefits Act (31.12.2009)**

<i>age</i>	<i>benefits in kind</i>	<i>vouchers</i>	<i>money</i>
under 3	2.267	1.011	3.881
3-7	2.692	1.244	4.393
7-11	2.173	1.016	3.683
11-15	2.045	955	3.566
15-18	1.902	841	3.083
<b>total</b>	<b>11.079</b>	<b>5.067</b>	<b>18.606</b>

Source: Statistisches Bundesamt (2011): Benefits for Asylum Seekers 2009 (*Original: Leistungen an Asylbewerber*), p. 7f.

table 7

**First Asylum Applications of Minors**

<i>year</i>	<i>total</i>	<i>% of total applications</i>
2010	15,456	37.4
2011	16,631	36.4
2012	24,388	37.8

Source: Deutscher Bundestag, Supplementary Information on the Asylum Statistics 2012 (*Original: Ergänzende Informationen zur Asylstatistik für das Jahr 2012*), Drucksache 17/12234, 1/31/2013; Deutscher Bundestag, Supplementary Information on the Asylum Statistics 2011 (*Original: Ergänzende Informationen zur Asylstatistik für das Jahr 2011*), Drucksache 17/8577, 2/10/2012.





