

Unaccompanied Minors in Germany: Focus-Study by the German National Contact Point for the European Migration Network (EMN)

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Federal Office
for Migration
and Refugees



Unaccompanied Minors in Germany

Focus-Study by the German National Contact Point
for the European Migration Network (EMN)

Working Paper 60

Andreas Müller



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Unaccompanied Minors in Germany

Focus-Study by the German National Contact Point
for the European Migration Network (EMN)

Andreas Müller

Federal Office for Migration and Refugees 2014

Summary

Unaccompanied minors from third countries entering Germany and residing here without their parents represent a particularly vulnerable group, irrespective of whether or not they file an application for asylum. They usually enter Germany unlawfully and are taken into care by the Youth Welfare Office after being detected by the authorities unless they are refused entry at the border.

They have the prospect of remaining in Germany if they file an application for asylum. The Federal Office for Migration and Refugees (BAMF) has specially-trained officers for unaccompanied minors who are responsible for ensuring that the age and child-specific needs of unaccompanied minors are taken into account when interviews are conducted in the asylum procedure and when the decision on the application for asylum is taken. The foreigners authorities generally grant exceptional permission to stay (so-called "Duldung") – provided the relevant conditions are fulfilled – which can lead to a longer stay if the unaccom-

panied minors manage, for instance, to integrate well into the German way of life and manage to complete school education or vocational training. This is where the Youth Welfare Service can offer a wide range of assistance and support. In terms of practical implementation, this however results in a tenuous relation between the Youth Welfare Act and the Residence Act.

However, the services provided by the Youth Welfare Service are not just limited to unaccompanied minors who do not file an application for asylum. In cases in which the Youth Welfare Service provides support, it frequently happens that even though an application for asylum has been rejected, the unaccompanied minors have the prospect of remaining in Germany beyond the age of eighteen.

If unaccompanied minors are nevertheless obliged to leave the federal territory, they enjoy special protection in relation to detention and deportation.

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1 Introduction

Children and young people under the age of eighteen account for a considerable proportion of the growing number of asylum seekers seeking protection in Germany since 2008. The majority of them either leaves their country of origin unaccompanied by their parents or is separated from their parents while fleeing. Unaccompanied minors are particularly vulnerable as they are more than others threatened to become victims of conflicts, exploitation and to be exposed to violence. Owing to this particular vulnerability and experience of fleeing their country of origin, unaccompanied minors need to be treated with great sensitivity in the asylum and residence procedure.

Like any other minors, they depend on support to help them grow into responsible and independent adults. However, as they will be without their parents' support in their formative years, they are to receive assistance from the Youth Welfare Office.

In view of the extraordinary situation they are in – being unaccompanied, underage and foreigners – striking the right balance between the Youth Welfare Act and the residence law as well as the practical implementation thereof are of paramount importance for their living situation in Germany. Whereas residence law regulates migration and lawfulness of the residence of third-country nationals, the Youth Welfare Act regulates the tasks incumbent upon the state that are geared to help children and young people grow into independent adults.

This study will outline the basics governing the way in which the state deals with unaccompanied minors in Germany. First of all, it will address the circumstances under which unaccompanied minors come to Germany. This will comprise the motives prompting them to travel to Germany – insofar as they are known – and the circumstances under which they flee which impact equally on the reasons why children and young people from third countries travel to Germany without their parents or are left behind unaccompanied.

The next chapter will focus on aspects involving the Border Police and the residence law. It will outline the entry requirements, how unaccompanied minors are dealt with at the border and their residence status. Special focus will be placed on the asylum procedure and on the other options available to those who do not file an application for asylum.

The next chapter will describe the accommodation, care facilities and situation of unaccompanied minors in relation to school education and vocational training.

The chapter after that will outline the transitional phase until unaccompanied minors reach the age of majority (eighteen) as well as the consequences for their residence status.

Last but by no means least, the return measures in relation to unaccompanied minors will be outlined, covering both voluntary and forced returns as well as the promotion of return through reintegration programmes.¹ The final chapter will sum up the key results of the study.

Given that the administrative practises of the foreigners authorities and of the Youth Welfare Office are characterised by a federal structure and are shaped by the municipalities in which a particular unaccompanied minor is detected, this study is merely intended to provide a general overview. The specifics of the individual Federal Länder and local authorities will only be referred to in exemplary case scenarios.

This study is based first and foremost on evaluations of already existing reports on a selection of aspects relating to the subject and analyses of relevant statutory provisions. The Länder-specific evaluations conducted by the Federal Association for Unaccompanied Minor

¹ The chapter on return measures is based on the findings of Grote (2014).

Refugees (Bundesfachverband Unbegleitete Minderjährige Flüchtlinge – B-UMF) deserve special mention since they are a valuable source of information for the situation prevailing in the individual Federal Länder. The United Nations High Commissioner for Refugees (UNHCR) in Germany also provided additional information.² An older study conducted by the German National Contact Point for the EMN on this subject has also been used (Parusel 2009).

This study represents Germany's contribution to the EMN Study „Policies, practices and data on unaccompanied minors in 2014“. The study is being conducted in all EU Member States and Norway based on common parameters. The results of the national studies will be incorporated into a joint “Synthesis Report” which is intended to provide a pan-European overview of the administrative and policy practises in relation to the admission of unaccompanied minors. The results of the study will be made available to decision-makers in politics and administration both at the European and the national level.

2 The author wishes to extend its sincere thanks to Uta Rieger from the UNHCR for her valuable input and comments.

2 Motivations and circumstances of unaccompanied minors for entering Germany

There are a number of factors that explain why children and young people from third countries come to Germany in search of protection. In addition to the reasons that prompt adult asylum seekers to leave their country of origin, there are very specific reasons for unaccompanied minors to flee their country. Besides the reasons why they flee their country of origin, there are reasons why they select a certain country of destination.

2.1 Motivations and reasons to flee

While political persecution, ethnic persecution, civil wars and a lack of prospects both for adults and unaccompanied minors can be among the reasons why people flee their country of origin, there are a large number of threatening situations that specifically affect children and young people. They include, for instance, the recruitment of child soldiers, genital mutilation of girls, forced prostitution, forced marriages, domestic violence but also the search for family members (Deutscher Caritasverband 2014a: 23). Yet, the available data does not allow a more detailed analysis of the reasons why and circumstances under which unaccompanied minors residing in Germany have fled their country of origin.

It is not just specific threat situations that prompt unaccompanied minors to seek a better life in Germany. Many children and young people who file an application for asylum in Germany are fleeing because their parents too are fleeing or may have already fled, but become separated from their parents during their flight and carry on without them until they arrive in Germany. There are also cases of minors intentionally being sent to Europe by their parents (Deutscher Caritasverband 2014a: 23-24; Parusel 2009: 19-20).

2.2 Reasons for choosing the country of destination

No specific analyses have been carried out on the reasons why unaccompanied minors choose a particular country of destination. In this regard, it is only possible to provide general information on the reasons why asylum seekers seek refuge in a particular country.

It has been established that many asylum seekers choose Germany as their country of destination because they are hoping for a „better“ life than the life they had in their country of origin. „These expectations relate overall to a higher level of security encompassing not just political-legal and religious aspects that are potentially relevant for asylum but also economic and medical aspects“ (Scholz 2013: 126).

Whereas political and legal security expectations involve first and foremost protection from political persecution and high-handed acts of officialdom, it is clear that economic motives are not focused primarily on welfare benefits provided for in the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz) geared for asylum seekers (e.g. food, medical care and pocket money to cover their everyday expenses), but the expectation that they will be able to make a living for themselves in Germany. The general and comprehensive security expectations that are associated with Germany also include the quality of the asylum procedure which people automatically assume will be transparent and non-arbitrary (Scholz 2013: 130-131).

Another important factor which generally prompts people to choose a specific destination country is family ties or existing relationships with the diaspora already living in this country (Scholz 2013: 102-104).

According to Scholz (2013), coincidence is another aspect that plays a role in addition to the above-mentioned motives. On the one hand, there are cases in which foreigners choose Europe as an area of destination while the dynamics of the flight process determine in which Member State they actually end up filing an application for asylum. If an irregular migrant, for instance, is detected by the authorities of a country that is only intended to be a transit country, this country may unintentionally become the destination country (Scholz 2013: 84-85). Unaccompanied minors are, for instance, often detected by the Federal Police in Lower Saxony while travelling from the Netherlands to Sweden. These young people remain in Germany unless they are removed back to the Netherlands (Espenhorst et al. 2012: 7). Last but not least, the type of smuggling involved has a major impact on the destination country in which smuggled persons end up staying after fleeing their native country. This can be attributed above all to the heavy controls along EU external borders and to the mandatory, strict checks airlines perform on travel documents (Müller 2014). In general, persons seeking protection do not have the resources themselves to cross the border across the Mediterranean secretly or to procure forged travel documents to travel by air but are reliant on the support of professional smugglers (Scholz 2013: 116-123). This is more likely to apply in particular to unaccompanied minors; it is assumed that almost 100 % of them have been smuggled (Scholz 2013: 116). There are two ways in which smuggling can impact on which destination country unaccompanied minors fleeing their country of origin can end up in: migrant smugglers adapt to

ever-changing conditions at short notice when smuggling persons from the country of origin all the way to the destination country and make random decisions, for instance, to divert to another destination country if there are any changes in border control strategies. When a chain of smugglers is involved, in which migrants travel only a short part of a route with the help of a particular smuggler, it may transpire suddenly and unexpectedly that smuggling to the desired destination country is not possible or that they do not have sufficient funds available, meaning they end up in a different destination country than the one they had originally chosen (Scholz 2013: 122-123).

2.3 Cooperation with countries of origin to combat causes of flight of unaccompanied minors

A number of projects for the protection of children are being supported with financial and human resources in the countries of origin within the framework of development cooperation. They include, for instance, measures for the prevention of the recruitment of child soldiers, the reintegration of former child soldiers, child trafficking and forced marriages, the prevention of forced prostitution and temple prostitution and the establishment of protection centres. These projects are funded by a number of different organisations such as „terre des hommes“, the children's aid organisation „Kindernothilfe“ and the German Association for International Cooperation (Gesellschaft für internationale Zusammenarbeit – GiZ).

3 Entry

3.1 Entry-conditions for unaccompanied minors

Pursuant to Sections 3 and 4 of the Residence Act, foreigners may only enter or stay in the federal territory if they are in possession of a valid passport or passport substitute and have a residence title. These conditions apply regardless of the foreigner's age meaning that unaccompanied minors must also fulfil these conditions. The residence title, which is usually a visa, must be applied for at the competent German diplomatic mission.

The requirements on the granting of visas differ depending on how long the person is planning on staying. Short-stay visas (Schengen visas type C) are issued in accordance with the provisions set forth in the Visa Code (Regulation (EC) No. 810/2009)³; long-stay visas (national visas or D Visas) are issued in accordance with the provisions set forth in the Residence Act. As unaccompanied minors are striving to obtain a permanent residence, they normally cannot be granted a Schengen visa since therefor they need to submit proof that they will leave the Schengen area before the visa expires (Article 14 para. 1 of Regulation (EC) No 810/2009).

The granting of a long-stay visa is based on the provisions governing the granting of a residence permit, a settlement permit, an EU Blue Card and an EU long-term residence permit. Unaccompanied minors cannot be granted a settlement permit, an EU long-term residence permit or an EU Blue Card. In order to be eligible for a long-term visa allowing foreigners to apply for a residence permit they must meet the conditions for the granting of a residence permit which is issued for the purposes of training, higher education, gainful employment and family reunification or in accordance with international law or on humanitarian

or political grounds. Usually, minors do not fulfil the preconditions for the issuing of a residence permit for the purposes of training or work. The granting of a residence permit in accordance with international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany requires a decision to be taken by the supreme authorities of the Federal Länder, the Federal Ministry of the Interior or the European Council in the cases outlined in Sections 22, 23 and 24 of the Residence Act; in all other cases outlined in Part 5 of the Residence Act, a residence permit can only be granted to foreigners already residing in Germany. This means lawful entry facilitated by the granting of a residence permit on humanitarian or political grounds or in accordance with international law is only possible if a relevant decision has been taken by the supreme authorities of the Federal Länder, the Federal Government or the European Council.

As the issuing of exceptional visa and passport substitute documents by the competent authorities at the border pursuant to Art. 35 of the Visa Code resp. Section 14 subsection 2 of the Residence Act is subject to the same requirements as regular visas, unlawful entry tends to be the only option available to unaccompanied minors. Only unaccompanied minors from countries that are exempt from the visa requirements for short-term stays pursuant to Regulation (EC) No. 531/2001 can enter the federal territory lawfully provided they are in possession of a valid passport or passport substitute.

3.2 Unaccompanied minors at the border

When they enter Germany via an external border of the Schengen area, unaccompanied minors are subject to the same checks as adults.

Border authorities are particularly aware of the risk of child abduction. If there are any doubts about whether an unaccompanied minor is being brought across a border lawfully (suspicion of child abduction), unac-

³ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

companied minors can be taken into custody (Section 39 subsection 2 of the Federal Police Act) so that the minor can be handed over either to a person having parental authority or to the Youth Welfare Office.

If it can be deduced from unaccompanied minors' statements that they intend to lodge an application for asylum, the border authorities are obliged to notify the Youth Welfare Office immediately. It is inadmissible to hand over minors to the initial reception centre without consulting the Youth Welfare Office first.

If the border authorities impose any custodial measures against an unaccompanied minor, they are obliged to ensure they are detained in separate quarters suitable for their age. If necessary, they must be looked after and cared for by suitable staff. As such, minors may be taken into detention pending removal only in exceptional cases „and only for as long as is reasonable taking into account the well-being of the child“ (Section 62 subsection 1 sentence 3 of the Residence Act). In the case of minors in detention pending removal, “the needs of persons of their age shall be taken into account” (Section 62a subsection 3 of the Residence Act).

3.3 Refusal of entry

A foreigner will be refused entry into the federal territory if he or she does not possess a required passport or passport substitute or does not possess the residence title required (Sections 14 subsection 1 and 15 subsection 2 No. 3 and 57 of the Residence Act). The same rules apply to unaccompanied minors. Pursuant to Section 80 subsection 2 sentence 1 of the Residence Act, a minor's lack of legal capacity shall not preclude him or her from being refused entry⁴ or being removed.

Since stationary checks are no longer carried out at German borders, this case scenario only occurs when foreigners enter Germany via an international airport. At the airports in Frankfurt am Main, Hamburg, Mu-

nich, Düsseldorf, Berlin-Schönefeld and in future the new Berlin-Brandenburg airport (Deutscher Caritasverband 2014b: 4), persons who do not meet the entry conditions are able to file an application for asylum pursuant to Section 18a of the Asylum Procedure Act. If there are facilities available in the transit zone of the airport to accommodate children and young people, the asylum procedure can be conducted for minors from these facilities before they enter the federal territory. However, unaccompanied asylum seekers entering the Federal Republic at Frankfurt Airport are often permitted to enter the federal territory after just a few days, as the Federal Office for Migration and Refugees is not always in a position to take a decision on the application for asylum within the statutory period of two days (German Bundestag 2014a, 2014b). If there is no possibility of carrying out the asylum procedure at the entry airport, for instance, because there are no accommodation facilities for unaccompanied minors available or the BAMF does not have a branch office at the relevant airport, the foreigner declaring his or her intention to file an application for asylum and who has not entered Germany via an EU Member State is permitted to enter the federal territory so that the asylum procedure can be carried out.

In principle, unaccompanied minors can only be removed to their country of origin or the country where they are habitually residing. As such, special importance is attached to examining whether a prohibition of deportation exists pursuant to Section 15 subsection 4 or Section 60 subsection 1-3, 5 and 7 of the Residence Act.

If unaccompanied minors are detected without the requisite travel documents within a 30 kilometre radius of the national border, they are deemed to have entered the country unlawfully. Under certain conditions, an unaccompanied minor may then be removed to a neighbouring EU member state pursuant to Section 57 subsection 2 of the Residence Act.⁵ Removals usually take place when the unaccompanied minor has already filed an application for asylum in another EU Member State or if the person has been registered in

4 Refusal of entry pursuant to Section 15 of the Residence Act means that a foreigner wishing to enter the federal territory unlawfully shall be refused entry at the border. By contrast, removal pursuant to Section 57 of the Residence Act applies to foreigners who have already entered the federal territory unlawfully.

5 Likewise, pursuant to Section 57 subsection 1 of the Residence Act, a foreigner who is intercepted in conjunction with unlawful entry into the federal territory across a border may be removed and readmitted to a third country beyond the EU external border.

another EU Member State as having attained majority. An unaccompanied minor may be removed if it is established that he or she entered the federal territory and if he or she is not filing an application for asylum in Germany (Espenhorst et al. 2012: 19).

In 2013, a total of 443 (2012: 403) unaccompanied minors under the age of sixteen were intercepted at Germany's external borders. 394 of these unaccompanied minors under the age of sixteen (2012: 348) were placed in the care of the competent Youth Welfare Office; 29 (2012: 42) were removed; four (2012: 1) unaccompanied minors under the age of 16 were refused entry (cf. German Bundestag 2013: 21; 2014c: 21).

3.4 Detection by the authorities

If unaccompanied minors are detected by the police in a location not close to the border in the federal territory and if it is not possible to remove them, the Federal Police refers the unaccompanied minor to the Youth Welfare Office or to the foreigners authorities who then notify the Youth Welfare Office. In some cases, the Federal Police take the young people directly to a clearing office or care facility which in turn notifies the Youth Welfare Office and the foreigners authorities (Deutscher Caritasverband 2014a: 43). The police forces of the Federal Länder take a similar course of action. Unaccompanied minors who are detected by the police in Hesse are transferred to the clearing house of the Youth Welfare Office or to another youth welfare facility that specialises in the care of unaccompanied minors (Espenhorst/Berthold 2010). In Lower Saxony too, unaccompanied minors who are detected by the police are transferred to the Youth Welfare Office (Espenhorst et al. 2012). There is no systematic information available about the procedures in place in other Federal Länder although Police Service Instruction (Polizeiliche Dienstvorschrift – PDV) 382 issued in 1995 which applies nationwide stipulates that police officers are obliged to take minors in critical situations into the care of the Youth Welfare Office if they are unable to contact any person having parental authority who is available to look after them (Police Service Instruction 382, No. 2.3.1). It is also specified that when minors in critical situations are apprehended, „the Youth Welfare Office shall be notified of cases that seem to require the implementation of measures by the Youth Welfare Office for the protection of the minors (Sections 42 und 43 of the Children and Youth

Services Act – Kinder- und Jugendhilfegesetz -KJHG-)“ (PDV 382, No. 2.3.3). Likewise, the Youth Welfare Office needs to be notified „if it becomes apparent during police investigations that services of the Youth Welfare Service might be indicated“ (PDV 382, No. 3.2.7).

Since 1 October 2005, the Youth Welfare Office has been obliged, pursuant to Section 42 subsection 1 sentence 1 (3) 3 of the Social Code Book VIII to take unaccompanied minors into care if there is neither a person with parental authority of the minor nor a legal guardian resident in Germany. Section 20 subsection 1 of the Social Code Book X stipulates that the Youth Welfare Office is obliged to take action as soon as it learns that an unaccompanied minor is in its area of competency. This fulfils the conditions for the competent Youth Welfare Office also to initiate the procedure for taking unaccompanied minors into care as soon as they learn that an unaccompanied minor has been detected by the Police Force of the Federal Länder or by the local foreigners authorities (for information about taking unaccompanied minors into care, please refer to Chapter 4.1).

3.5 Unaccompanied minors within the asylum procedure

In respect of the reception of unaccompanied minors and their status, a distinction must be made between children and young persons who apply for asylum and those who do not. Whereas earlier, filing an application for asylum was considered the only way to obtain a provisional right of residence in Germany (for the duration of the asylum procedure), these days social services and non-governmental organisations who concern themselves with unaccompanied minors sometimes advise against an application for asylum because minors often have difficulty asserting reasons for asylum and explaining them in a comprehensible manner (Deutscher Caritasverband 2014a, Espenhorst/Berthold 2010b). Likewise, bearing in mind the best interests of the child, the BAMF too proceeds on the assumption that it can make sense in many cases to spare minors the stressful situation of an asylum procedure that may possibly be unsuccessful (Parusel 2009: 37). Even if they have not filed an application for asylum, minors may invoke the ban on deportation pursuant to Section 60 subsections 5 and 7 of the Residence Act enabling them to continue residing in Germany – at least temporarily. In this case, it is

not the BAMF but the foreigners authorities who are responsible (Section 79 subsection 1 sentence 2 of the Residence Act).

The asylum procedure for unaccompanied minors will be outlined in this Chapter. The provisions governing the residence of unaccompanied minors set forth in the Residence Act once the asylum procedure has been completed and for minors who have not filed an application for asylum are outlined in Chapter 3.6.

Asylum procedure in general

It is checked within the framework of the asylum procedure whether the conditions for granting international protection (refugee protection and subsidiary protection) are met and whether political persecution and prohibitions of deportation exist. To this end, the BAMF establishes the facts and gathers the necessary evidence.

It examines whether an applicant fulfils the conditions for qualifying as a refugee pursuant to Section 3 subsection 1 of the Asylum Procedure Act on the basis of Sections 3a to 3e of the Asylum Procedure Act. This provision represents the national transposition of the Geneva Convention relating to the status of refugees; the interpretation thereof is based on the Qualification Directive (2011/95/EU).

Pursuant to 16a para. 1 of the Basic Law, persons persecuted on political grounds shall have the right of asylum. The implementation and interpretation of this fundamental right is subject solely to the laws and case law of the Federal Republic of Germany; the provisions set forth in the Qualification Directive do not apply in this respect.

If it is not possible to recognise refugee status or that a person has the right of asylum, it is examined whether this person may face serious harm in their country of origin. This includes

- a danger of imposition or enforcement of the death penalty,
- torture or inhumane or humiliating treatment or punishment

- serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

Protection against these dangers is referred to as subsidiary protection. The relevant conditions are regulated in German law in Section 4 subsection 1 of the Asylum Procedure Act and in Section 60 subsection 2 of the Residence Act. Section 13 subsection 2 of the Asylum Procedure Act stipulates that every application for asylum requires the examination of the conditions for international protection (refugee protection and subsidiary protection) as well as for granting asylum. In case of the denial of asylum and refugee status, it shall be determined whether there are reasons prohibiting deportation pursuant to Section 60 subsection 5 to 7 of the Residence Act. This may be dispensed with if the foreigner is recognized as being entitled to asylum or granted refugee status (Section 31 subsection 3 of the Asylum Procedure Act).

Applications for asylum filed by unaccompanied minors

How an unaccompanied minor can file an application for asylum with the Federal Office depends on his or her age on the one hand and on whether they are being accommodated at a youth welfare facility on the other.

Unaccompanied minors who are below the age of 16 cannot file an effective application for asylum themselves; any such application can only be filed on their behalf by a legal guardian appointed by a court (cf. Chapter 4.1). Pursuant to Section 12 of the Asylum Procedure Act, a foreigner who is at least 16 years of age shall be capable of performing procedural acts and can therefore file an application for asylum themselves.

In general, asylum applications are filed at a branch office of the BAMF in person. If an unaccompanied minor is, however, accommodated in a care facility, the asylum application has to be filed in writing (Section 14 subsection 2 of the Asylum Procedure Act). This is the case irrespective of whether the asylum application is filed by the applicant or by a legal guardian.

„Dublin procedure“ in respect of unaccompanied minors

The BAMF will then start by checking, in the context of the “Dublin Procedure”, whether Germany or another Member State is responsible for examining the application for asylum.

The “Dublin Procedure” is a procedure that has been integrated into the national asylum procedure for the purpose of determining the country that is responsible for examining an application for asylum. It is also performed in the case of underage asylum seekers. The basis for this is Council Regulation (EC) No. 604/2013 of 26 June 2013 (the “Dublin III Regulation”).⁶

The Regulation is intended to guarantee that an asylum procedure will be carried out for each asylum-seeker in one of the Member States, while simultaneously avoiding the implementation of more than one asylum procedure within the territories covered by the Dublin III Regulation. Before the substance of an application for asylum lodged in Germany – and this also includes repeat applications – is examined, clarification in accordance with the Dublin III Regulation is needed as to whether or not any criteria are present for the responsibility of another Member State. These criteria are described in Articles 8 to 15 of the Regulation and have to be applied in a specific order (Article 7 para. 1):

First of all, the Member States have to examine whether the applicant is an unaccompanied minor. An unaccompanied minor as defined in the Dublin III Regulation is an unmarried person aged under 18 who either enters a Member State without being accompanied by a responsible adult, or is left without such accompaniment following his or her entry. As regards the examination of applications for asylum lodged by unaccompanied minors, responsibility rests with the Member State in which a member of the family (father, mother) or sibling is lawfully residing, provided this would be in the minor’s best interests. If no such immediate family members or siblings can be found but the minor has other relatives in another Member State, this Member State becomes responsible, provi-

ded this would be in the minor’s best interests. If an unaccompanied minor has relatives, family members or siblings in more than one Member State, the best interests of the unaccompanied minor are authoritative in deciding which Member State is responsible for examining the application for asylum. If no relative is present within the territories covered by the Dublin III Regulation, then responsibility rests with the Member State in which the application for asylum was lodged provided this would be in the best interests of the minor. If applications for asylum are filed in several Member States, following a ruling of the European Court of Justice (C648/11, ruling of 6 June 2013), the Member State is responsible in which the unaccompanied minor is currently residing provided he or she files an application there as well. In practical terms, this means Germany is responsible for implementing the asylum procedure if an unaccompanied minor has filed an application for asylum in Germany and has no relatives in any other Member State or if a transfer of the unaccompanied minor to this relative would not be in the child’s best interests. This highlights the crucial difference vis-à-vis the Dublin procedure in respect of asylum seekers who have reached the age of eighteen. Any previous applications for asylum filed by unaccompanied minors in another Member State are irrelevant since the country in which the child or young person is currently residing is always responsible for examining the application for asylum if it has also been filed in this country and it is in the child’s best interests. By contrast, asylum seekers who are over the age of eighteen are transferred to the Member State responsible for them on the basis of the criteria set forth in the Dublin Regulation. This is frequently the country in which they were first apprehended or in which they filed their first application for asylum.

In practise, the intention is to take the unaccompanied minors’ best interests into account by ensuring that both their legal guardian and the competent Youth Welfare Office and social services are involved in the decision to transfer them from Germany to other Member States. By the same token, the Youth Welfare Office and social services of the destination country to which the unaccompanied minors are to be transferred are also involved in order to establish whether the relative into whose care the unaccompanied minor is to be placed is actually capable of looking after them.

In principle, the Federal Office does not transfer unaccompanied minors to another Member State until a le-

⁶ It entered into force on 19 July 2013 and is directly enforceable within the Member States; it has replaced Council Regulation (EC) No. 343/2003 of 18.02.2003 („Dublin II Regulation“).

gal guardian has been appointed in order to ensure the latter can provide information on matters pertaining to the unaccompanied minor and their best interests.

The inverse is also true: Germany can be under an obligation to take on an unaccompanied minor from another Member State if the unaccompanied minor has filed an application for asylum in another Member State and Germany meets one of the above-mentioned criteria.

Relief organisations criticize in connection with unaccompanied minors in the Dublin procedure that „transfer into the age of majority“ can occur if an unaccompanied minor is classified as a minor in one country although the country responsible for conducting the asylum procedure classifies him or her as having reached the age of majority because they have different ways of establishing a person’s age. In the view of non-governmental organisations, this could lead to the transfer effectively eliminating procedural guarantees for unaccompanied minors and their special rights. This could mean a procedure that takes the needs of unaccompanied minors into account can no longer be guaranteed once they have been transferred (Deutscher Caritasverband 2014a: 95-96). This could mean, for instance, that no legal guardian is appointed for unaccompanied minors and that they do not receive the youth benefits to which they are entitled. However, given that no unaccompanied minors have been transferred on the grounds that they filed an application for asylum in another Member State, since the European Court of Justice issued its ruling of 6 June 2013 (C648/11), it can be safely assumed that this course of action has meanwhile been abandoned.⁷

The asylum procedure in respect of unaccompanied minors

If, following the Dublin examination, it is confirmed that responsibility rests with Germany, the BAMF will,

within the framework of the asylum procedure, arrange an interview of the applicant at a relevant branch office of the Federal Office. In each of the Federal Länder, the BAMF has at least one branch office where applications for asylum are examined. These branch offices specialise in specific countries of origin. In each branch office, “specially-commissioned decision-makers” have been appointed, each with special training in dealing with unaccompanied underage applicants for asylum. This puts Germany in compliance with Article 17 (4) (a) of the Asylum Procedures Directive,⁸ which requires the Member States to ensure that the personal interview of an unaccompanied underage applicant for asylum is conducted by a person who has the necessary knowledge of the special needs of minors.

The main task of the “specially-commissioned decision-makers” is to process the applications for asylum filed by unaccompanied minors either in their own or in commissioned responsibility. This includes interviewing unaccompanied underage applicants for asylum and taking the decision on their applications. The „specially-commissioned decision-makers“ also provide information to their colleagues and superiors in the respective branch office, advising other “specially-commissioned decision-makers” and asylum case-officers in difficult individual cases.

The training for case officers whose special function is dealing with unaccompanied minors includes, among others, the following elements:

- Specific legal aspects, e.g. regarding the admission and asylum procedure of unaccompanied minors;
- Structuring the interview in a manner suitable for children and/or youths;
- Child-specific knowledge in relation to the country of origin;
- Raising awareness on how to deal with traumatised minors during the interview;

⁷ In so-called apprehension procedures, transfers of unaccompanied minors continue to be possible as long as they have not filed an application for asylum. However, this is probably of no importance in practical terms as they usually file an application for asylum when they are apprehended. The Federal Police check whether a third-country national residing unlawfully in the federal territory is already registered in another Member State.

⁸ The above mentioned Regulation refers to the Directive issued in 2005; these provisions are contained with slightly different wording in Article 25 para. 4 (a) in the new version to be transposed until 2015 (Directive 2013/32/EU).

- Taking into account the child-specific reasons why they fled their country of origin in the asylum procedure;

Interviews with underage applicants for asylum are conducted in a less formal manner than those involving adult asylum-seekers, and the responsible officials are obliged to be particularly sensitive and responsive to the specific needs of minors. Although unaccompanied minors aged sixteen and seventeen have the legal capacity to act under the Asylum Procedures Act, the BAMF prefers to have the legal guardian of the minor present at the interview, and hence complies with the guarantees for minors contained in the Asylum Procedures Directive.⁹ In addition the care giver from the care facility is given the opportunity to be present at the interview. Likewise, the decisions taken by the BAMF are delivered to the legal guardians (if the minor is below the age of sixteen) or to the minors themselves (if they have reached the age of sixteen or seventeen), with the legal guardian usually being provided with a copy of the decision.

If there are any doubts concerning the age of an unaccompanied applicant for asylum, the asylum officials with special responsibilities clarify the case with the competent public authorities, e.g. Youth Welfare Office or foreigner's authorities.

In relation to examining refugee status (Section 3 of the Asylum Procedure Act), the reasons for asylum (Article 16 a of the Basic Law), subsidiary protection (Section 4 of the Asylum Procedure Act) and the prohibitions of deportation (Section 60 subsection 5 and 7 of the Residence Act), the criteria and requirements that apply to unaccompanied minors are the same as those that apply to adult applicants. In addition

⁹ In accordance with Section 42 of the Social Code Book VIII, a legal guardian is also appointed for 16 to 17-year-olds (for details of taking into care and appointment of a legal guardian please refer to Chapter 4.1). Pursuant to Section 12 subsection 1 of the Asylum Procedure Act and Section 80 subsection 1 of the Residence Act they are considered to have the capacity to perform procedural acts in matters pertaining to asylum and residence and can therefore both file an application for asylum at their own initiative and appear in person at the foreigners authorities. UAMs under the age of 16 can only apply for an application for asylum through the legal guardian who has been appointed by a court. The age limit for the capacity to act in matters pertaining to residence and asylum will in all likelihood be raised to 18 during this legislative term (CDU/CSU/SPD 2013: 77).

to international protection (refugee protection and subsidiary protection), the prohibition of deportation pursuant to Section 60 subsection 5 of the Residence Act is of special importance in relation to underage refugees if their deportation is inadmissible under the terms of the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms because they may face extreme danger in the country of destination.

Table 1: Number of applications for asylum filed by unaccompanied minors in 2013

The 12 principal countries of origin	First time applications
Afghanistan	691
Somalia	354
Syria	287
Eritrea	138
Egypt	119
Pakistan	88
Iraq	86
Guinea	73
Ethiopia	53
Russian Federation	47
Serbia	46
Iran	41
Total (including all other countries of origin)	2,486

Source: BAMF

Table 1 contains information about the twelve main countries of origin of unaccompanied minors filing an application for asylum in 2013. The vast majority of unaccompanied minors filing an application for asylum in 2013 came from Afghanistan (691), followed by Somalia (354), Syria (287) and Eritrea (138). A total of 2,486 unaccompanied minors filed an application for asylum in Germany, 638 of whom were under the age of sixteen and 1,848 of whom were sixteen or seventeen.

Table 2: Number of applications for asylum filed by unaccompanied minors since 2008

	2008	2009	2010	2011	2012	2013	
All first-time applications	22,085	27,649	41,332	45,741	64,539	109,580	
Unaccompanied minors	< 16	324	405	535	714	598	638
	≥ 16	439	899	1,413	1,412	1,498	1,848
Total number of unaccompanied minors	763	1,304	1,948	2,126	2,096	2,486	

Source: BAMF

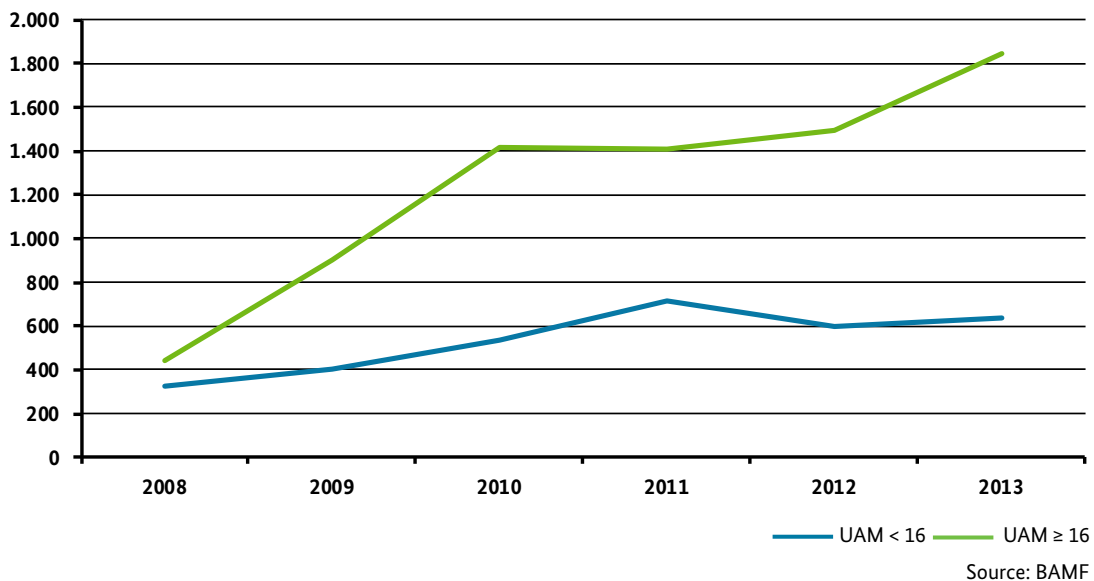
Figure 1: Number of applications for asylum filed by unaccompanied minors between 2008 and 2013

Table 2 and Figure 1 provide an overview of the number of applications for asylum filed by unaccompanied minors since 2008. From 2008 onwards, statistics were kept for the first time on all unaccompanied minors filing an application for asylum, including 16 and 17-year-olds. In this respect, the changes in the numbers of applications for asylum from unaccom-

panied minors correspond to the general tendency in the numbers of applications for asylum in Germany. Following an almost continuous decline between 1993 and 2007, there has been a rise both in the total number of applications for asylum filed and in the number of applications for asylum filed by unaccompanied minors.

Table 3: Number of applications for asylum filed by unaccompanied minors between 2008 and 2013 broken down by most important countries of origin, gender and age¹⁰

Number of applications for asylum filed by unaccompanied minors in 2013							
	Total	Male			Female		
		Below the age of 14	14 to 15	16 to 17	Below the age of 14	14 to 15	16 to 17
Afghanistan	690	30	165	435	15	10	30
Somalia	355	5	60	240	0	15	35
Syria	285	35	35	120	40	15	40
Eritrea	140	5	20	85	0	5	20
Egypt	120	5	10	105	0	0	0
Pakistan	90	0	5	75	0	0	5
Iraq	85	10	10	40	5	0	20
Guinea	75	0	10	45	0	5	15
Ethiopia	55	5	5	15	5	10	20
Serbia	45	0	0	15	0	5	25
Russian Federation	45	5	0	25	0	0	15
Iran	40	5	5	20	0	5	10
Total (all countries of origin)	2,485	110	370	1,535	75	80	310

Number of applications for asylum filed by unaccompanied minors in 2012							
	Total	Male			Female		
		Below the age of 14	14 to 15	16 to 17	Below the age of 14	14 to 15	16 to 17
Afghanistan	1,005	45	200	610	40	35	75
Iraq	150	20	25	60	10	5	30
Syria	135	15	15	60	10	10	20
Somalia	125	5	10	90	5	5	20
Pakistan	110	5	10	85	5	5	5
Guinea	60	0	5	35	0	0	15
Ethiopia	45	0	5	5	5	15	20
Iran	40	5	0	20	0	5	5
Egypt	30	0	5	25	0	0	0
Eritrea	30	0	0	10	5	5	10
India	30	0	5	25	0	0	0
Gambia	25	0	0	15	0	0	5
Total (all countries of origin)	2,095	100	315	1,240	80	100	260

¹⁰ The reason why the total number exceeds the total of the respective age groups is that these figures include the group of unaccompanied minors of unknown age. The statistics provided by Eurostat are rounded up in intervals of five which explains the difference vis-à-vis national statistics.

Number of applications for asylum filed by unaccompanied minors in 2011							
	Total	Male			Female		
		Below the age of 14	14 to 15	16 to 17	Below the age of 14	14 to 15	16 to 17
Afghanistan	1,090	55	265	635	30	35	70
Iraq	200	25	30	80	10	10	45
Somalia	110	0	20	65	0	5	15
Syria	85	5	15	35	0	5	25
Ethiopia	55	0	5	10	5	15	20
Guinea	55	0	10	25	0	10	10
Pakistan	55	5	10	25	5	5	5
Iran	45	0	5	30	0	5	0
Eritrea	30	0	5	10	0	0	10
Russian Federation	25	0	0	10	0	0	10
Nigeria	20	0	5	10	0	0	5
India	20	0	5	15	0	0	0
Total (all countries of origin)	2,125	110	415	1,145	70	115	265

Number of applications for asylum filed by unaccompanied minors in 2010							
	Total	Male			Female		
		Below the age of 14	14 to 15	16 to 17	Below the age of 14	14 to 15	16 to 17
Afghanistan	800	35	180	520	15	10	45
Somalia	255	10	30	180	0	5	25
Iraq	200	15	20	105	5	10	45
Syria	55	0	5	30	5	10	10
Ethiopia	45	0	0	5	5	20	10
Eritrea	40	5	10	10	5	5	10
Guinea	40	0	10	20	0	0	5
Nigeria	35	0	5	20	0	5	5
Iran	30	0	5	15	5	0	0
Vietnam	30	0	0	20	0	0	5
Algeria	25	0	5	20	0	0	0
Serbia	20	0	0	10	0	0	10
Total (all countries of origin)	1,950	75	315	1,165	50	95	245

Number of applications for asylum filed by unaccompanied minors in 2009							
	Total	Male			Female		
		Below the age of 14	14 to 15	16 to 17	Below the age of 14	14 to 15	16 to 17
Afghanistan	455	40	120	225	15	15	40
Iraq	225	10	25	165	0	5	20
Vietnam	60	0	5	45	0	0	15
Guinea	50	5	10	25	0	0	5
Ethiopia	45	0	5	5	5	20	15
Nigeria	40	0	5	25	0	5	5
Somalia	35	0	5	20	0	0	5
Algeria	30	0	5	30	0	0	0
Eritrea	25	0	0	5	5	10	5
Iran	25	0	5	15	0	0	0
Kenya	20	0	0	5	0	5	5
India	20	0	5	20	0	0	0
Total (all countries of origin)	1,305	65	230	740	35	75	155

Source: Eurostat, accessed on 10 July 2014

Table 3 shows how the number of applications for asylum filed by unaccompanied minors has developed during the years 2009 to 2013, itemised according to the twelve most important countries of origin for each year, the gender of the applicants and age groups (up to 13, 14 to 15-year-olds, 16 to 17-year-olds). It is discernible here that for almost every country of origin, the number of male unaccompanied minors is significantly higher than the number of female unaccompanied minors. Ethiopia, however, constitutes a striking exception: significantly more unaccompanied girls from Ethiopia lodged applications for asylum than boys. Girls coming from this country to Germany frequently claim they have been under threat of, or have already suffered, gender-specific forms of persecution such as female genital mutilation (Parusel 2009). For the past few years, the UNHCR says it has observed an increase in the number of girls from Ethiopia claiming they have been exploited as house maids in the Gulf States or have been the victims of sexual abuse which prompted them to flee to Europe. It is also striking that the majority of unaccompanied minors are between the age of sixteen and seventeen, the age group of 14 and 15-year-olds is significantly less strongly represented and that children under the age of fourteen only account for a very small share of unaccompanied minors filing an application for asylum. This can probably be attributed to the hardship

associated with unlawful entry which older children probably cope with better than younger children. Case scenarios in which unaccompanied minors were forced by their parents to flee are supposedly also more frequent in older children.

Decisions taken by the BAMF

From the statistics relating to the decisions taken by the BAMF (cf. Table 4 and Figure 2), it emerges that unaccompanied minors are only recognised as being entitled to asylum in accordance with Article 16 a, para. 1 of the Basic Law in very few individual cases; they rarely fulfil the criteria that constitute political persecution within the meaning of Article 16a para. 1 of the Basic Law. And if they do, but have entered the country via a safe third country, their entitlement to asylum fails on account of the so-called third country provision (Article 16 a para. 2 sentence 1 of the Basic Law, Section 26 a of the Asylum Procedure Act). What is, therefore, more frequent is the granting of protection as a refugee in accordance with Section 3 of the Asylum Procedure Act. Subsidiary protection pursuant to Section 4 of the Asylum Procedure Act and prohibition of deportation pursuant to Section 60 subsections 5 and 7 of the Residence Act is frequently granted.

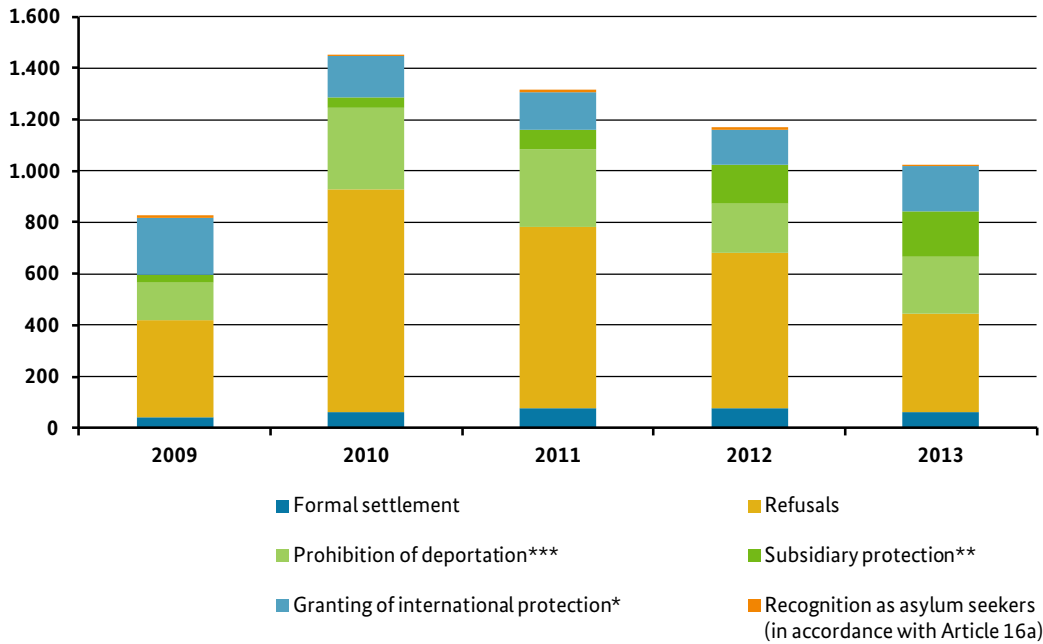
Table 4: Decisions on applications for asylum filed by unaccompanied minors broken down by gender between 2009 and 2013

DECISIONS on first time applications								
Broken down by gender	Total	Recognition as asylum seekers (in accordance with Article 16a and family asylum)	Granting of refugee status*	Subsidiary protection**	Prohibition of deportation***	Applications for asylum refused (refused as unfounded/ refused as manifestly unfounded)	Formal closure of procedures (e.g. withdrawal)	Protection quota
1 January to 31 December 2009								
Male	674	10	164	25	114	325	36	46.4%
Female	154	2	56	5	32	54	5	61.7%
Total	828	12	220	30	146	379	41	49.3%
1 January to 31 December 2010								
Male	1,155	4	98	32	274	693	54	35.3%
Female	299	3	65	7	45	171	8	40.1%
Total	1,454	7	163	39	319	864	62	36.3%
1 January to 31 December 2011								
Male	1,072	5	94	66	266	574	67	40.2%
Female	242	4	52	8	39	128	11	42.6%
Total	1,314	9	146	74	305	702	78	40.6%
1 January to 31 December 2012								
Male	914	5	90	99	160	498	62	38.7%
Female	255	3	48	49	33	105	17	52.2%
Total	1,169	8	138	148	193	603	79	41.7%
1 January to 31 December 2013								
Male	766	3	110	116	184	305	48	53.9%
Female	258	2	66	63	36	75	16	64.7%
Total	1,024	5	176	179	220	380	64	56.6%

Source: BAMF

- * Statutory basis until 30 November 2013 Section 60 subsection 1 of the Residence Act, from 1 December 2013: Section 3 of the Asylum Procedure Act
- ** Statutory basis until 30 November 2013 Section 60 subsections 2, 3, 7 sentence 2 of the Residence Act, from 1 December 2013: Section 4 subsection 1 of the Asylum Procedure Act
- *** Statutory basis until 30 November 2013 Section 60 subsections 4, 5, 7 sentence 1 of the Residence Act, from 1 December 2013: Section 60 subsections 5 and 7 of the Residence Act

Figure 2: Decisions concerning applications for asylum filed by unaccompanied minors between 2009 and 2013



Source: BAMF

* Statutory basis until 30 November 2013 Section 60 subsection 1 of the Residence Act, from 1 December 2013: Section 3 of the Asylum Procedure Act

** Statutory basis until 30 November 2013 Section 60 subsections 2, 3, 7 sentence 2 of the Residence Act, from 1 December 2013: Section 4 subsection 1 of the Asylum Procedure Act

*** Statutory basis until 30 November 2013 Section 60 subsections 4, 5, 7 sentence 1 of the Residence Act, from 1 December 2013: Section 60 subsections 5 and 7 of the Residence Act

Although the number of rejected applications for asylum consistently outweighed the number of decisions taken to grant protection to refugees and subsidiary protection until 2008, the protection rate in respect of unaccompanied minors applying for asylum has risen sharply in recent times. Whereas in 2002, only 3.5 % of all unaccompanied applicants for asylum under the age of 16 were recognised as being entitled to asylum or were accorded protection from deportation or prohibition of deportation, the overall rate rose to 13.3 % in 2006, to 49.3 % in 2009 and even climbed as high as 56.6 % in 2013. This rise in the protection rate might be attributed to a changing composition of the main countries of origin as well as to a rising protection rate also among adult asylum seekers from these countries. It should, however, be borne in mind that even a rejection by the BAMF does not inevitably lead to the actual termination of the residence in Germany of an unaccompanied minor. The foreigners authorities may establish obstacles to deportation within the

federal territory and grant exceptional leave to stay (see Section 3.6).

Table 5 illustrates the decisions taken by the Federal Office on applications for asylum filed by unaccompanied minors broken down by the main countries of origin. Countries of origin represented frequently in the years shown in the table were Afghanistan, Ethiopia, Eritrea, Somalia and Syria. By contrast, there was a sharp decline in the number of decisions taken on applications for asylum filed by unaccompanied minors from Vietnam. In 2003, a decision was taken on over 168 applications for asylum filed by unaccompanied minors from Vietnam, in 2011 this country no longer ranked among the twelve main countries of origin. In 2013 the protection rate in respect of unaccompanied minors from Syria reached its peak at 98.3 %. The countries of origin showing above-average protection rates were Eritrea (80 %), Somalia (65.8 %) and Afghanistan (64.9 %).

Table 5: Decisions on applications for asylum filed by unaccompanied minors broken down by countries of origin 2009 and 2013

Countries of origin	Applications for asylum filed by unaccompanied minors in 2013							
	DECISIONS on first-time applications filed by unaccompanied minors							
	Total	Recognised (Article 16a of the Basic Law and family asylum)	Refugee protection pursuant to Section 3 of the Asylum Procedure Act	Subsidiary protection in accordance with Section 4 I of the Asylum Procedure Act	Prohibition of deportation pursuant to Section § 60 V und VII of the Residence Act	Refusals	Formal settlements	Protection rate
Afghanistan	422	1	67	33	173	132	16	64.9%
Somalia	38	0	12	10	3	12	1	65.8%
Syria	176	1	50	122	0	0	3	98.3%
Eritrea	15	0	7	2	3	2	1	80.0%
Egypt	24	0	0	0	0	20	4	0.0%
Pakistan	32	2	12	0	1	15	2	46.9%
Iraq	63	0	8	1	9	43	2	28.6%
Guinea	24	0	4	1	5	14	0	41.7%
Ethiopia	21	0	3	1	4	13	0	38.1%
Russian Federation	14	0	1	0	0	6	7	7.1%
Serbia	26	0	0	0	1	23	2	3.8%
Iran	12	0	4	1	1	6	0	50.0%
Total (including all other countries of origin)	1,024	5	176	179	220	380	64	56.6%

Countries of origin	Applications for asylum filed by unaccompanied minors in 2012							
	DECISIONS concerning first-time applications filed by unaccompanied minors							
	Total	Recognised (Article 16a of the Basic Law and family asylum)	Refugee protection pursuant to Section 60 I of the Residence Act	Prohibition of deportation		Refusals	Formal settlements	Protection rate
			under European law Section 60 II, III, VII subsection 2. of the Residence Act	national Section 60 V, VII S. 1 of the Residence Act				
Afghanistan	627	1	46	29	165	347	39	38.4%
Iraq	88	0	13	1	3	64	7	19.3%
Syria	94	3	25	65	0	0	1	98.9%
Somalia	49	0	9	29	0	2	9	77.6%
Pakistan	16	0	2	0	0	12	2	12.5%
Guinea	23	0	4	1	1	14	3	26.1%
Ethiopia	31	0	0	0	0	30	1	0.0%
Iran	22	3	8	1	0	10	0	54.5%
Egypt	20	0	0	0	1	19	0	5.0%
India	6	0	0	0	0	5	1	0.0%
Eritrea	12	1	4	0	1	3	3	50.0%
Gambia	8	0	3	0	0	5	0	37.5%
Total (including all other countries of origin)	1,169	8	138	148	193	603	79	41.7%

Applications for asylum filed by unaccompanied minors in 2011								
Countries of origin	DECISIONS concerning first-time applications filed by unaccompanied minors							
	Total	Recognised (Article 16a of the Basic Law and family asylum)	Refugee protection pursuant to Section 60 I of the Residence Act	Prohibition of deportation		Refusals	Formal settlements	Protection rate
				under European Law Section 60 II, III, VII subsection 2. of the Residence Act	national Section 60 V, VII S. 1 of the Residence Act			
Afghanistan	692	2	41	25	272	324	28	49.1%
Iraq	127	0	30	0	9	86	2	30.7%
Somalia	106	1	39	43	1	1	21	79.2%
Syria	20	0	2	0	0	18	0	10.0%
Ethiopia	28	0	2	0	3	22	1	17.9%
Guinea	29	1	6	0	1	19	2	27.6%
Pakistan	17	0	4	0	0	13	0	23.5%
Iran	18	1	7	0	0	7	3	44.4%
Eritrea	15	2	9	0	3	1	0	93.3%
Russian Federation	14	0	0	1	0	12	1	7.1%
Nigeria	23	0	0	1	0	20	2	4.3%
Lebanon	7	0	0	0	0	6	1	0.0%
Total (including all other countries of origin)	1,314	9	146	74	305	702	78	40.6%

Applications for asylum filed by unaccompanied minors in 2010								
Countries of origin	DECISIONS concerning first-time applications filed by unaccompanied minors							
	Total	Recognised (Article 16a of the Basic Law and family asylum)	Refugee protection pursuant to Section 60 I of the Residence Act	Prohibition of deportation		Refusals	Formal settlements	Protection rate
				under European law Section 60 II, III, VII subsection 2. of the Residence Act	national Section 60 V, VII S. 1 of the Residence Act			
Afghanistan	602	0	27	27	282	253	13	55.8%
Somalia	55	0	29	7	2	2	15	69.1%
Iraq	187	0	40	0	4	135	8	23.5%
Syria	28	0	2	0	0	26	0	7.1%
Ethiopia	69	0	2	0	5	62	0	10.1%
Eritrea	27	3	22	1	1	0	0	100%
Guinea	45	0	5	0	4	31	5	20.0%
Nigeria	44	0	1	2	2	36	3	11.4%
Vietnam	37	0	1	0	0	36	0	2.7%
Iran	27	1	11	1	0	10	4	48.1%
Algeria	34	0	0	0	1	31	2	2.9%
Pakistan	14	0	2	0	2	10	0	28.6%
Total (including all other countries of origin)	1,454	7	163	39	319	864	62	36.3%

Applications for asylum filed by unaccompanied minors in 2009								
Countries of origin	DECISIONS concerning first-time applications filed by unaccompanied minors							
	Total	Recognised (Article 16a of the Basic Law and family asylum)	Refugee protection pursuant to Section 60 I of the Residence Act	Prohibition of deportation		Rejections	Formal settlements	Protection rate
				under European law Section 60 II, III, VII subsection 2 of the Residence Act	national Section 60 V, VII S. 1 of the Residence Act			
Afghanistan	190	0	18	12	116	41	3	76.8%
Iraq	228	0	144	0	2	75	7	64.0%
Vietnam	60	0	0	1	1	58	0	3.3%
Guinea	37	0	2	0	1	32	2	8.1%
Ethiopia	17	0	3	0	4	10	0	41.2%
Nigeria	19	0	2	1	0	14	2	15.8%
Somalia	29	0	19	5	1	2	2	86.2%
Algeria	21	0	0	0	0	18	3	0.0%
Eritrea	33	1	16	6	9	1	0	97.0%
Iran	11	3	0	0	0	7	1	27.3%
India	15	0	0	0	0	13	2	0.0%
Sri Lanka	18	8	6	3	0	1	0	94.4%
Total (including all other countries of origin)	828	12	220	30	146	379	41	49.3%

Source: BAMF

3.6 Residence titles for unaccompanied migrants and residence procedure

If a comparison is drawn between the number of unaccompanied minors taken into care (cf. Section 4.1) and the number of applications for asylum filed by them, it becomes evident that a significant proportion of these children and young people do not actually file an application for asylum. They – or their legal representative – attempt to achieve residence by other means (cf. Table 6 and Figure 3). Although 6,584 unaccompanied minors were taken into care in 2013, only 2,486 of them actually filed an application for asylum. This means around 4,000 children and young persons did not go through the asylum procedure. There is reason to assume that a proportion of these minors disappear after being detected by public authorities and taken into care in order to migrate on to another Member State or are released from care because the Youth Welfare Office having tried to establish their age assumes they have reached the age of majority and re-

leases them from care. By the same token, it cannot be ruled out that the same persons have been included in multiple counts. As Section 42 subsection 1 sentence 1 No. 3 of the Social Code Book VIII stipulates that all foreign children entering Germany without a parent or legal guardian must be taken into care regardless of their nationality, these statistics also include nationals of other EU Member States.¹¹ Notwithstanding this, it can be assumed that an unquantifiable yet significant proportion of unaccompanied minors remain outside the asylum procedure. The procedure involving the right of residence of unaccompanied minors and the potential outcome will be outlined in the following.

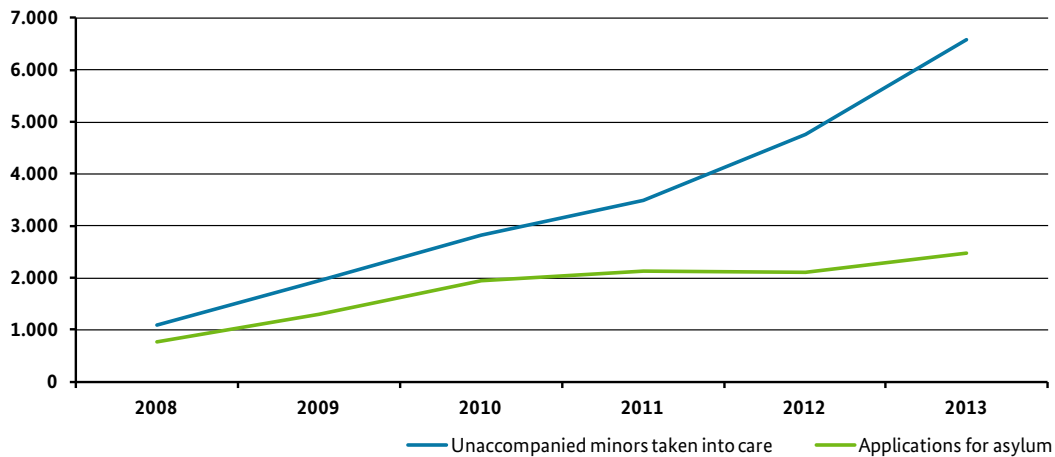
¹¹ However, it must be borne in mind that this procedure is different for them and that they are not the focus of this study.

Table 6: Number of applications for asylum filed by unaccompanied minors and unaccompanied minors taken into care between 2008 and 2013

	2008	2009	2010	2011	2012	2013
Unaccompanied minors taken into care	1,099	1,949	2,822	3,482	4,767	6,584
Change year-on-year	--	77.3%	44.8%	23.4%	36.9%	38.1%
Applications for asylum	763	1,304	1,948	2,126	2,096	2,486
Change year-on-year	--	70.9%	49.4%	9.1%	-1.4%	18.6%

Source: BAMF and the Federal Statistical Office

Figure 3: Number of applications for asylum filed by unaccompanied minors and unaccompanied minors taken into care between 2008 and 2013



Source: BAMF and the Federal Statistical Office

As a rule, the foreigners authorities grant unaccompanied minors who have recently entered Germany exceptional leave to remain. Yet this procedure varies between the Federal Länder. Unaccompanied minors in Frankfurt am Main, for instance, do not need to appear in person at the foreigners authorities. Instead, the Youth Welfare Office provides the foreigners authorities with the necessary data who then grant them exceptional leave to stay (Espenhorst/Berthold 2010a). A similar course of action is reported in Lower Saxony, for instance in Braunschweig. The aim is to grant children and young persons a period of respite after the hardship they have endured in entering the country. At the same time, the aim is to ensure that no hasty residence-related decisions are taken but that decisions are initiated within the framework of the clearing procedure only (regarding the clearing procedure, please refer to section 4.1). Contrary to this practise, the foreigners authorities in Hamburg do not make any distinction between (unaccompanied) minors and young people who have reached the age

of eighteen. Rather, they ask these young people to present in person to them and interview them during this initial contact on the reasons prompting them to enter the federal territory (Federal Association for Unaccompanied Minor Refugees/UNHCR 2010) and urge them to file an application for asylum as soon as possible (Deutscher Caritasverband 2014a: 197).

Status relating to the right of residence during and after the asylum procedure

If an unaccompanied minor decides to apply for asylum within the framework of the clearing process and an application for protection is filed, an unaccompanied minor who is seeking asylum will, for the purpose of carrying out the asylum procedure, receive permission to reside in the federal territory in accordance with Section 55 subsection 1 of the Asylum Procedure Act until the asylum procedure has been completed. In the case of an incontrovertible recognition as a

person entitled to asylum, the foreign national must be issued with a residence permit in accordance with Section 25 subsection 1 of the Residence Act. In the case of an incontrovertible recognition of refugee status pursuant to Section 3 subsection 1 of the Asylum Procedure Act or as a person entitled to subsidiary protection pursuant to Section 4 subsection 1 of the Asylum Procedure Act, the foreign national must be issued with a residence permit in accordance with Section 25 subsection 2 of the Residence Act. If a prohibition on deportation prevails in accordance with Section 60 subsections 5 or 7 of the Residence Act, the foreign national shall be issued with a residence permit pursuant to Section 25 subsection 3 of the Residence Act. If an application for asylum filed by an unaccompanied minor who has not yet reached the age of eighteen is rejected, Section 58 subsection 1a of the Residence Act provides an effective protection against deportation for unaccompanied minors who can neither be handed over to a person having parental authority nor to an appropriate reception centre in the country of destination of the deportation. In these cases, a legal obstacle to deportation exists and the foreigners authorities issue an exceptional leave to remain (the so-called "Duldung") pursuant to Section 60a subsection 2 of the Residence Act. This protection from deportation applies at least until the unaccompanied minor has reached the age of majority unless the care situation has improved in his or her country of origin.

Unaccompanied minors who do not file an application for asylum and whose application for asylum has been rejected

Unaccompanied minors who do not lodge an application for asylum basically have two options available to them in terms of the right of residence: the „isolated“ application for checking whether the requirements have been met for a prohibition of deportation and the granting of exceptional leave to remain with the possibility of regularising their stay on a case-by-case basis. In principle, the last option is also available to unaccompanied minors whose application for asylum has been rejected.

In the case of unaccompanied minors who do not lodge an application for asylum, they can file an application with the relevant foreigners authorities to

check whether the requirements have been met for a prohibition of deportation in accordance with Section 60, subsections 5 or 7 of the Residence Act and thus apply for a residence permit pursuant to Section 25 Subsection 3 of the Residence Act. However, pursuant to Section 72 subsection 2 of the Residence Act such a decision of the foreigners authorities may only be taken after the prior involvement of the BAMF. This ensures that the particular expert knowledge of the Federal Office in respect of the circumstances in the respective countries of origin is integrated into the decision. If during this process, the Federal Office comes to know of grounds that may lead to protection being granted (e.g. refugee protection, subsidiary protection) within the asylum procedure, the person in question is asked to file an application for asylum. The opinion of the Federal Office, as forwarded to the foreigners authorities, is an internal administrative matter and cannot be challenged on its own. According to information provided by the Federal Association for Unaccompanied Minor Refugees, this course of action is only adopted in a very small number of cases, for instance, in the event of illness or if the unaccompanied minor is at risk owing to lack of subsistence or may face poor humanitarian conditions in the country of origin. A prerequisite for this procedure is that all grounds are submitted in writing. In the opinion of the UNHCR, trying to decide whether the grounds presented by the unaccompanied minor can lead to the recognition of refugee status or subsidiary protection or merely to the prohibition of deportation for which an application can also be submitted to the foreigners authorities, is often difficult and overwhelms legal guardians who do not have the necessary training and experience. According to the observations of the Federal Association for Unaccompanied Minor Refugees, the services of specialist lawyers are therefore frequently enlisted although it needs to be ensured that their fees can be paid.

The second option is to regularise the residence of unaccompanied minors whose deportation has been suspended. As outlined in the previous section, an unaccompanied minor can rely on an effective protection against deportation if he or she can neither be handed over to a person having parental authority or to an appropriate reception centre in the country of destination of the deportation (Section 58 subsection 1a of the Residence Act). As this constitutes a legal obstacle to deportation, the foreigners authorities issue exceptional leave to remain and suspend the deportation.

A foreign national who is subject to an enforceable obligation to leave the country can be issued with a residence permit if his or her departure is impossible for reasons in law or in fact and it cannot be expected that the obstacles to his or her departure will cease to apply within the foreseeable future (Section 25 subsection 5 sentence 1 of the Residence Act); a residence permit is issued once the termination of residence has been suspended for eighteen months (Section 25 subsection 5 sentence 2 of the Residence Act). In this context, the concept of “departure” includes both enforced and voluntary returns. The term obstacles to departure in law entails domestic obstacles to departure within Germany to the extent that these have not already been covered by subsection 3, such as serious illness or pregnancy (Articles 1 and 2 of the Basic Law). If the conditions for deportation of unaccompanied minors set forth in Section 58 subsection 1a of the Residence Act do not exist, this constitutes a legal obstacle to departure. Reasons in fact would include being incapable of travelling, not being in possession of a passport or interrupted travel connections. If the removal has been suspended for 18 months, the foreigners authorities should issue a residence permit. This is, however, only allowed if the foreign national is prevented from departing through no fault of his or her own. The foreign national will be deemed to be at fault if, for example, he or she makes false statements concerning his or her identity or nationality, or does not make a reasonable effort to eliminate the obstacles to deportation (Section 25 subsection 5 sentences 2, 3 and 4 of the Residence Act).

In addition, well-integrated young people and adolescents have the possibility of being granted a residence permit pursuant to Section 25a subsection 1 of the Residence Act. However, this presupposes the young person entered the federal territory before the age of fourteen, he or she has been resident in the federal territory for six years without interruption, either lawfully or by virtue of his or her deportation having been suspended or by holding permission to stay in the federal territory (pending asylum procedures), has successfully attended a school in the federal territory for six years or has acquired a recognised vocational or school-leaving qualification. Furthermore, it must be possible to assume the foreign national will integrate well into the German way of life and will not prevent deportation by making false statements concerning his or her identity or nationality. Furthermore, the

application for the residence permit must be filed after the unaccompanied minor has reached the age of 15 and before he or she turns 21. If these prerequisites are measured against the age structure of unaccompanied minors, it becomes apparent that only few well-integrated unaccompanied minors are granted a residence permit in accordance with Section 25a of the Residence Act as very few of them arrive in the Federal Republic before the age of fourteen (cf. Table 3). However, the government coalition comprising the CDU, CSU and SPD intends to simplify the requirements for granting a residence permit pursuant to Section 25a of the Residence Act during this legislative term (CDU/CSU/SPD 2013: 76).

Another case scenario in which a foreigner whose deportation has been suspended may be granted a residence permit is outlined in Section 18a of the Residence Act. However, as a residence permit can only be granted to foreigners who have completed vocational training or third level education, it will only become relevant for unaccompanied minors during the transitional phase after they have turned eighteen (cf. Chapter 5).

In addition, Section 25, subsection 4 of the Residence Act can also offer unaccompanied minors the possibility of being granted a residence permit for a temporary stay. On this legal basis, „a foreign national who is subject to an obligation to leave the country that is not enforceable may, for the purposes of a temporary stay, be issued with a residence permit, so long as pressing humanitarian or personal reasons or substantial public interests demand that he or she remain further within the Federal Territory on a provisional basis. A residence permit can, notwithstanding Section 8 subsections 1 and 2 of the Residence Act, be extended if, by reason of particular circumstances in the individual case, leaving the Federal Territory would constitute an exceptional hardship for the foreign national.“

Factors that may be considered pressing personal reasons include the performance of an operation that is not guaranteed in the subject’s country of origin, the temporary care of a severely ill member of the family or the completion of school education or vocational training. For unaccompanied minors, this provision can be of especial relevance in the case of the completion of schooling or of vocational training, which is typical of the very age group into which unaccompanied minors fall.

With Section 25 subsection 4 sentence 2 of the Residence Act, the law is offering the possibility of an extension in cases in which a legitimate residence is already in progress and leaving the federal territory would constitute an exceptional hardship for the foreign national. This is a self-contained possibility of extension; it is independent of the conditions set forth in Section 25 subsection 4 sentence 1 of the Residence Act.

The above-mentioned possibilities of regularising the residence of foreigners granted exceptional leave to remain are also available to unaccompanied minors whose applications for asylum have been rejected. However, this presupposes that the application for asylum was not rejected as being manifestly unfounded.

In addition, the supreme Land authority may, on petition from a Hardship Commission to be established by the Land government, order a residence permit to be issued to a foreigner who is enforceably required to leave the federal territory (hardship petition) (Section 23a of the Residence Act). Although the reports published by the Hardship Commissions do not make any explicit reference to unaccompanied minors, former unaccompanied minors certainly represent an important target group according to information provided by the UNHCR.

4 Reception conditions

In addition to the provisions governing matters pertaining to residence which were outlined in the previous Chapter, the situation of unaccompanied minors in Germany is characterised very much by measures implemented by the Youth Welfare Office. They determine the support and to a large extent the living situation of unaccompanied minors and are – together with the Asylum Seekers Benefits Act – also crucial for providing material support to them.

4.1 Reception, age assessment, taking into care and guardianship

Legal framework

Section 42 subsection 1 sentence 1 No. 3 of the Social Code Book VIII says that „the Youth Welfare Office is both entitled and obliged to take a child or a young person into its care if (...) a foreign child or a foreign young person shall come to Germany unaccompanied and there shall be neither persons entitled to care for the said child or young person nor legal guardians resident within the country“. Unlike the provision of assistance in the process of upbringing pursuant to Section 27 of the Social Code Book VIII, the taking into care is a temporary measure that is intended to respond to an acute crisis or emergency.¹²

After this, “the appointment of a legal guardian or carer shall be arranged without delay” (Section 42 subsection 3 sentence 4 of the Social Code Book VIII). However, the legal guardian is not appointed by the Youth Welfare Office but by the competent Family Court. In an initial step, the parental custody of a parent is suspended if the Family Court establishes that he or she cannot in fact exercise the parental custody for a long period of time (Section 1674 of the German Civil Code). Pursuant to Section 1773 of

the German Civil Code, once the parental custody has been suspended by the Family Court, the court appoints a legal guardian who acts as the unaccompanied minor’s legal representative. In this context, 16 to 17-year-olds represent an exception to the rule. Pursuant to Section 80 subsection 1 of the Residence Act and Section 12 subsection 1 of the Asylum Procedure Act, they are deemed capable of dealing with matters involving residence and asylum.¹³ Notwithstanding this, a legal guardian is appointed for 16 and 17-year-olds although he or she does not represent them in residence-related or asylum-related matters; rather the unaccompanied minors need to act independently when dealing with the above-mentioned issues. It is likely that these provisions set forth in the Residence Act and in the Asylum Procedure Act will be amended during the current legislative term to the effect that persons will become capable of performing procedural acts once they reach the age of 18 (CDU/CSU/SPD 2013: 77).

There are three different types of guardianship available: legal guardianship for minors can be assigned to one person, to civil society associations or to the Youth Welfare Office. As such, preference is given to a voluntary sole guardian over an association or Youth Welfare Office (Sections 1791a subsection 1 and 1791b subsection 1 of the German Civil Code).¹⁴

Sole guardianship pursuant to Section 1779 subsection 2 of the German Civil Code can be exercised by persons who have reached the age of majority, whose suitability has been confirmed by the Youth Welfare Office and the Family Court. They are mostly indivi-

12 Cf. <http://www.caritas.de/glossare/inobhutnahme> (06.08.2014) and <http://www.blja.bayern.de/themen/waechteramt/inobhutnahme/index.html> (06.08.2014).

13 „A foreigner who is at least 16 years of age shall be capable of performing procedural acts in accordance with this Act, unless he has no legal capacity according to the terms of the Civil Code or unless he would have to be offered assistance or be subject to a reservation of consent in this matter if he had reached the age of full legal accountability“ (Section 12 subsection 1 of the Asylum Procedure Act).

14 In practise, however, there is a much more sophisticated system in place so that different types of guardianships have emerged than those defined within the framework of the law. For an overview, please refer to Noske (2010).

duals acting in a voluntary capacity – often relatives or persons who know the unaccompanied minor. They receive assistance in caring for unaccompanied minors from specialist associations (Deutscher Caritasverband 2014a: 70-71).

With regard to legal guardianship by civil society associations pursuant to Section 1791a of the German Civil Code, it is not a person but „an association having legal personality who may be appointed guardian [...], in conducting the guardianship, the association avails itself of individual members or employees of the association“ (Deutscher Caritasverband 2014a: 71).

Guardianship by the Youth Welfare Office is the most frequent type of guardianship pursuant to Section 1791b of the German Civil Code. The Family Court appoints the Youth Welfare Office guardian, in practical terms the guardianship is carried out by an employee of the Youth Welfare Office. (Deutscher Caritasverband 2014a: 71). However, with this type of guardianship, a large number of young persons are represented by a sole guardian meaning that additional persons are needed to ensure they are taken care of properly.

In addition to initiating the guardianship procedure at the competent Family Court, the taking into care obliges the Youth Welfare Office to initiate a care plan procedure (Section 42 subsection 3 sentence 5 of the Social Code Book VIII).

The obligation to establish the unaccompanied minor's individual needs for assistance and to develop an assistance plan applies to all cases in which a young person is taken into care regardless of their nationality. This is known as the „clearing procedure“ in respect of unaccompanied minors; the difference vis-à-vis other young persons taken into care does not ensue from a different legal position but from the actions implemented by the Youth Welfare Office. Whereas the majority of young persons in question will have been in contact with the Youth Welfare Office for many years because of ongoing problematic situations and the Youth Welfare Office will be familiar with their situation and can generally arrange to have them taken into care only for a few days, the procedure tends to be much more time-consuming in relation to unaccompanied minors. This is due to the fact that a full report needs to be carried out on their need for support and assistance and their individual situation. It also needs

to be borne in mind that the Youth Welfare Office usually has no previous knowledge of their individual situation. In addition, the situation of unaccompanied minors calls for long-term measures since generally speaking the need to take them into care is not a response to a crisis that has arisen suddenly as tends to be the case with other young persons but usually involves a distressful situation that will be going on for some time.

The legal task when drawing up an assistance plan is to discuss what assistance has to be granted for the upbringing and education of an unaccompanied minor in accordance with Part 4 of the Social Code Book VIII. It is not the young persons themselves who are entitled to avail themselves of this assistance but the persons with parental authority, namely the guardians in respect of unaccompanied minors (Section 27 of the Social Code Book VIII). Social Code Book VIII makes provision for a wide range of assistance and support for upbringing and education including advice for upbringing (Section 28 of the Social Code Book VIII), social group work (Section 29 of the Social Code Book VIII), the appointment of a care assistant (Section 30 of the Social Code Book VIII), socio-educational family support (Section 31 of the Social Code Book VIII), upbringing within a professional day-care team (Section 32 of the Social Code Book VIII), full-time care (Section 33 of the Social Code Book VIII), residential care and other types of supervised residential care facilities, (Section 34 of the Social Code Book VIII) as well as intensive socio-educational individual care (Section 35 Social Code Book VIII).

Section 1 subsection 1 of the Social Code Book VIII provides the basis for this package of measures. It says: „All young persons have a right to assistance in their development and upbringing to become independent, socially competent adults“. The task of the Youth Welfare Office is to assist them in reaching this goal (Section 1 subsection 3 of the Social Code Book VIII). In order to be able to enjoy these rights, it needs to be proven that the young person is actually underage. If there are any doubts about the age of a young person, he or she shall be obliged to provide evidence of their age in accordance with Section 82 subsection 1 of the Residence Act. Medical examinations may be carried out to establish a young person's age in accordance with Section 42 subsections 3 and 6 of the Residence Act to dispel relevant doubts. A similar obligation to cooperate is enshrined in Sections 60 and 62 of the

Social Code Book I; they state that anyone applying for social benefits must provide the relevant documents and, if necessary, undergo medical examinations. In practical terms – at least in Hesse and Lower Saxony – employees of the Youth Welfare Office try to establish a young person's age by interviewing them and by carrying out a visual inspection. Requests for medical examinations are only made if there continue to be doubts about the age of a minor even after a visual inspection has been carried out (Espenhorst/Berthold 2010a: 49; Espenhorst et al. 2012: 7-8).¹⁵

Notwithstanding this, the provisions set forth in the Youth Welfare Act – particularly those pertaining to assistance in child-rearing set forth in the Social Code Book VIII – may conflict with the Residence Act as, for instance, Section 55 subsection 2 No. 7 of the Residence Act says that a foreigner may be expelled if he „receives assistance in child rearing for persons outside of his or her own family or assistance for young adults in accordance with Book Eight of the Social Code; this shall not apply to a minor whose parents or parent possessing the sole right of care and custody is lawfully resident in the federal territory“. However, it is doubtful that this possibility is actually being leveraged as the application of this provision might be inconsistent with Article 31 of the Qualification Directive (Directive 2011/95/EC) (Bauer 2013: margin reference 57).

Clearing procedure

The task of the clearing procedure is to get to the bottom of the situation of young persons after they arrive in Germany and to discuss what measures need to be taken to help them to grow into independent and socially competent adults who are able to cope with life. Within the framework of the clearing procedure, it is examined whether family reunification or return to a person with parental authority is possible and indeed whether this is in the best interests of the child. If this is not the case, an assistance plan needs to be drawn up within the framework of the clearing procedure. The core of this process is to determine the need for child-rearing assistance and to specify exactly

what assistance is needed in each individual case. This also determines what type of accommodation needs to be arranged once the clearing procedure has been completed.

It is also discussed within the framework of the clearing procedure whether and, if so, how school attendance is possible and meaningful and what measures need to be implemented to enable the young person to continue with his or her education. Owing to the very heterogeneous experience of unaccompanied minors who have fled their country of origin, it needs to be established during the clearing procedure whether they may also need psychological care.

The clearing procedure also includes clarifying their residence status. It is discussed whether an application for asylum should be filed and whether, assuming they have the prospect of remaining in Germany, an alternative approach may perhaps offer better prospects of their being granted a residence permit as outlined in Chapter 3.6.

In addition to coordinating what further action needs to be taken once the unaccompanied minors have been taken into care, the clearing procedure also helps to create a phase of stabilisation and respite after all the hardship these young persons have experienced in fleeing their country of origin. If filing an application for asylum is considered to be the best option, it should not be filed until the stabilisation phase has come to an end.

According to information provided by Deutscher Caritasverband, the clearing procedure can take three to six months (Deutscher Caritasverband 2014a: 62). If it is possible to establish the whereabouts of their parents or a person having parental authority, the clearing procedure is usually much shorter as it is easier to overcome the situation requiring the unaccompanied minor to be taken into care in the first place.

Competent authorities and organisations involved

The Youth Welfare Office of the municipality in which unaccompanied minors are detected is responsible for taking them into care and for carrying out the clearing procedure. As a rule, the services are actually provided by independent youth welfare associations the majority of which operate at local level. The organisa-

¹⁵ The reliability of the various methods used to establish the age of an unaccompanied minor is discussed controversially in scientific literature. A critical discussion of the procedures currently in place can be found in Berthold et al. (2011).

tions of supraregional importance include the German Workers' Welfare Association (Arbeiterwohlfahrt) and Caritas. Some local communities have guardianship associations acting voluntarily in the area of guardianship for unaccompanied minors who train and support voluntary guardians.

Long-term prospects for unaccompanied minors

From the perspective of the Youth Welfare Office there are, in principle, two development prospects; they are discussed within the framework of the clearing procedure depending on the individual case at hand. Family reunification presents one prospect if this appears to be in the best interests of the child, to which the Youth Welfare Office is bound to. For this reason, it needs to be clarified as a part of the clearing procedure whether and where there are any persons having parental authority, whether they are suitable to care for the minor as well as the latter's wishes.

If there is no prospect of family reunification, the aim of the Youth Welfare Office is to help the unaccompanied minors to grow into independent, socially competent adults. This implies that the aim is for them to remain in the federal territory.

4.2 Accommodation and material provisions

Whereas the Youth Welfare Office is regulated nationwide by the Social Code Book VIII, there are no firm procedures in place at local level which means that there are considerable differences not just between but also within the Federal Länder. This explains why the information provided in the following can merely provide a general and exemplary overview.¹⁶

Initial reception

After they are taken into care, the unaccompanied minors are accommodated in so-called clearing hou-

ses for the duration of the clearing procedure. They specialise in the initial reception of unaccompanied minors and are in a position to ensure they receive intensive socio-pedagogical support. They are able to provide the necessary peace for the stabilisation phase; this is also where the clearing procedure is carried out. If it is not possible to provide accommodation in any such clearing house, for instance, because there is no such facility available in the local community, because no cooperation agreements have been concluded with other clearing houses or local authorities or because there are no places available in the existing clearing houses, the unaccompanied minors are placed in temporary accommodation arranged by the competent Youth Welfare Office. Unaccompanied minors in Hanover, for instance, share accommodation with other young people at the regular clearing house of the Youth Welfare Office while they are in care until a decision is taken on follow-up accommodation and the granting of support and assistance (Espenhorst et al. 2012: 12). By contrast, unaccompanied minors in Göttingen are placed with suitable host families during this phase (Espenhorst et al. 2012: 10).

Occasionally, they may be placed in initial reception centres for asylum seekers within the meaning of Section 44 of the Asylum Procedure Act. In accordance with a procedural recommendation issued by Brandenburg Ministry of Social Affairs on how to deal with unaccompanied minors over the age of 16, the Youth Welfare Office should check whether accommodation at a youth welfare establishment is indispensable. If this is not the case, unaccompanied minors are accommodated at the initial reception centre in Eisenhüttenstadt. Experts consider this to be problematic on the one hand because initial reception centres do not provide sufficient socio-pedagogical support. This can also lead to unaccompanied minors, who are capable of performing procedural acts, filing an application for asylum without expert advice which may rule out certain residence-related options (cf. Section 3.5 and Chapter 5).

Follow-up accommodation

The type of follow-up accommodation arranged after the care phase has come to an end depends on what educational support and assistance is available. If educational support and assistance is granted, unaccompanied minors are placed with a foster family (Sec-

¹⁶ To obtain an overview of the situation in the Federal Länder, please refer to the documentation published by the Federal Association for Unaccompanied Minor Refugees at <http://www.b-umf.de/> (04.08.2014) and Deutscher Caritasverband (2014: 171-240).

tion 33 of the Social Code Book VIII), in a residential home (Section 34 of the Social Code Book VIII) or in a facility that provides intensive socio-educational individual care (Section 35 of the Social Code Book VIII) (Deutscher Caritasverband 2014a: 83-84).

When arrangements are made to place unaccompanied minors with a foster family (in full-time care pursuant to Section 33 of the Social Code Book VIII), they can be placed in a family as well as with unmarried persons or with cohabiting couples. This type of accommodation is considered to be an alternative to residential homes yet it means above all that at least one of the foster parents must have suitable qualifications (Deutscher Caritasverband 2014a: 84-85).¹⁷

There are different types of residential facilities available in accordance with Section 34 of the Social Code Book VIII offering different levels of educational assistance. They are selected based on the young person's level of maturity and range from accommodation in residential facilities that provide care 24/7 to supervised residential groups which take in more independent young persons, ensuring they still receive regular socio-pedagogical support. As such, the accommodation provided is intended to help the young person to become independent. The more successful they become in their endeavours to become independent, the less care they will require.

It is much more difficult to illustrate the intensive socio-educational individual care pursuant to Section 35 of the Social Code Book VIII than the other types of assistance available, as it is tailored specifically to the needs of young persons requiring very individual care arrangements in helping them to cope with life. This kind of care comprises arranging accommodation and ensuring this is maintained, finding a school and vocational training place, teaching them how to manage their finances and how to spend their leisure time (Bayerisches Landesjugendamt 2001).

The follow-up accommodation tends to be arranged within the same federal state. However, some Federal Länder have developed a distribution system for

unaccompanied minors that is used to distribute them among local communities within the federal state (e.g. Hesse and Baden-Württemberg). Where this is not the case, they usually remain in the locality where they were taken into care but may move to a residential facility that can cater for their established needs (Deutscher Caritasverband 2014a: 87).

If it is established that they do not require educational support and assistance, unaccompanied minors who are capable of carrying out procedural acts may be referred to shared accommodation facilities after residing at the competent initial reception centre in accordance with Section 44 of the Asylum Procedure Act (for more information about accommodation arrangements for asylum seekers, please refer to Müller 2013). Experts consider this to be problematic as there is no guarantee they will receive adequate educational support and they do not receive any support from the Youth Welfare Office (B-UMF 2013: 6-7; Deutscher Caritasverband 2014a: 59-60). It is suspected that this is due to structural problems since it is not the young persons themselves who are entitled to educational support and assistance but the persons having parental authority – namely their legal guardians. When the Youth Welfare Office has been appointed legal guardian, this can mean that the legal guardian, who is in fact an employee of the Youth Welfare Office, has to enforce the entitlement to assistance in the process of upbringing against his or her employer who in turn decides whether or not the unaccompanied minor is eligible to this assistance (Deutscher Caritasverband 2014a: 73; Noske 2010: 20).

It is a matter of controversy whether refusal by the Youth Welfare Office to grant educational assistance and support is compliant with the provisions set forth in the Youth Welfare Act considering the large number of young people legal guardians from the Youth Welfare Office have to look after (they can have anything up to 50 charges), making it very difficult for them to perform individual educational and care-related tasks (Noske 2010).

The rejection of assistance in the process of upbringing can also have a negative impact on the young persons' prospects of remaining in Germany if they do not file an application for asylum or if the latter is rejected since the prospect of consolidating their stay depends heavily on the successful completion of school education or vocational training and successful integration.

¹⁷ Projects are being implemented in individual cities to recruit foster families for unaccompanied minors and to enable them to obtain the necessary qualifications, for instance, in Bremen. Cf. <http://www.pib-bremen.de/kinder-im-exil> (21 August 2014).

Assistance in the process of upbringing can be crucial in this regard.

Care situation

The financial support for unaccompanied minors depends both on the type of assistance granted and on their residence status. „If assistance is granted in accordance with Sections 32 to 35 or Section 35a subsection 2 numbers 2 to 4 [Social Code Book VIII], the requisite subsistence of the child or young person outside the parent’s home needs to be safeguarded. It encompasses the costs of material expenditure as well as board and upbringing of the child or young person“ (Section 39 subsection 1 of the Social Code Book VIII). This therefore includes relevant types of accommodation such as foster family, residential care facilities and supervised living quarters as well as intensive social educational individual care. In these cases, the young people must be granted an „adequate amount of cash for their own personal disposal“ (Section 39 subsection 2 of the Social Code Book VIII). The concrete terms are based on laws of the Federal Länder and are specified by relevant authorities indicated in the laws of the Federal Länder.

If protection is granted once the asylum procedure has been brought to a conclusion (cf. Section 3.5), the young persons have an unrestricted right to social benefits even if no need for youth welfare services was established.

The situation is different in respect of unaccompanied minors whose deportation has been suspended or who have been granted permission to stay for the duration of the asylum procedure and who were not granted any assistance by the Youth Welfare Office. They are merely entitled to benefits under the Asylum Seekers’ Benefits Act (for more detailed information, please refer to Müller 2013: 24-25).

4.3 Legal advice

Up to May 2013, the Family Courts were able to order a curator who specialises in residence-related matters when appointing a legal guardian pursuant to Section 1909 of the German Civil Code. This provided legal guardians with the possibility of referring the residence-related file to a lawyer who specialises in

residence-related matters. This option was leveraged frequently in relation to young people below the age of sixteen (Noske 2010: 21; Espenhorst/Berthold 2010a). This option was abolished with the relevant ruling handed down by the Federal Court of Justice (Bundesgerichtshof – BGH) on 29. May 2013 (XII ZB 530/11). The need for a legal representative who has specialist knowledge of residence-related matters arises above all when an employee of the Youth Welfare Office is appointed as legal guardian. They tend not to have sufficient knowledge of asylum and residence regulations because they have so many young people to look after whose needs and backgrounds differ greatly. The same applies to voluntary guardianships. The need for relevant advice arises during the clearing procedure when a decision needs to be taken whether or not an application for asylum should be filed in the actual case at hand or whether an alternative means of obtaining a residence permit should be pursued.

The filing of an application for asylum does not necessarily lead to the young person having the prospect of remaining in the federal territory since it excludes the possibilities of applying for a residence title pursuant to Chapter 4 of the Residence Act. A foreigner whose asylum application has been rejected as manifestly unfounded can no longer apply for a residence permit on humanitarian grounds or for a residence permit pursuant to Section 18a of the Residence Act without prior leaving the Federal Territory unless they have a legal entitlement to a residence permit (cf. Section 10 subsection 3 of the Residence Act). For this reason, the Federal Association for Unaccompanied Minor Refugees, for instance, considers intensive legal advice on residence-related matters to be indispensable within the framework of the clearing procedure. This is meanwhile being implemented accordingly in the majority of Federal Länder which means that in most cases no applications for asylum are filed before legal advice has been provided. Exceptions merely occur when young persons who are able to perform procedural acts are accommodated at an initial reception centre (temporarily) after being detected by public authorities. In any such cases, the application for asylum is generally filed without these young persons having received individual legal advice from persons with specialist knowledge of asylum regulations and residence law. This case scenario can only arise with 16 to 17-year-olds who are deemed capable of performing procedural acts in residence-related and asylum-related matters in the law as it stands.

By contrast, it should be possible to foresee at an early stage whether an application for asylum is likely to be granted if the relevant legal advice is available.

4.4 Access to healthcare

Unaccompanied minors' access to healthcare is organised, by and large, in parallel with their care requirements based on their need for assistance in the process of upbringing and their residence status. "If assistance is granted in accordance with Sections 33 to 35 or Section 35a subsection 2 Nos. 3 or 4 [Social Code Book VIII], health benefits must also be granted as specified in Sections 47 to 52 of the Social Code Book XII. The health benefits granted must meet all of the requirements in each individual case. They shall cover any additional charges and contributions" (Section 40 Social Code Book VIII). This also covers any need for psychological care.

If an unaccompanied minor has already been recognised as an asylum seeker or has been granted subsidiary protection, has been granted refugee status or a prohibition of deportation has been established, they are entitled to health benefits based on the sections of the Social Code commensurate with their situation even if it has been established that they do not need assistance from the Youth Welfare Office.

The situation is different in respect of unaccompanied minors whose deportation has been suspended or who have been granted permission to stay for the duration of the asylum procedure and who were not granted any assistance by the Youth Welfare Office. They are merely entitled to medical care under the Asylum Seekers' Benefits Act (for more detailed information, please refer to Müller 2013: 25).

4.5 Access to education

Situation regarding school education

Since the Federal Länder hold sole responsibility for arranging school attendance, it is not possible to provide an overview of the schooling situation of unaccompanied minors for the entire federal territory. In principle, all unaccompanied minors „have

a right to attend school or are subject to compulsory school attendance“, yet in practise this can cause major difficulties (Deutscher Caritasverband 2014a: 138). This ensues above all from the fact that they arrive in Germany at an age that renders it difficult for them to start school because they may lack the necessary educational prerequisites. They tend to be too old for general schooling whereas vocational schools are not equipped to cope with their needs (Deutscher Caritasverband 2014a: 175-239).

Notwithstanding this, pilot projects are being implemented in some conurbations to facilitate school education by providing courses that are tailored specifically to the needs of this target group. One example of this is the project „School-equivalent Education for Young Refugees“ that has been launched in Munich (Schulanaloger Unterricht für junge Flüchtlinge – SchlaU).¹⁸ In addition to school education, within this project young people also receive intensive individual care with a view to giving them access to the German school education and the vocational training system.

Pursuant to Section 13 of the Social Code Book VIII, young persons also have a legal entitlement to support from the Youth Welfare Office during completion of their school education.

Vocational training situation

Although unaccompanied minors in the asylum procedure are in general prohibited from taking up employment for the first nine months (Section 61 subsection 2 of the Asylum Procedure Act), and persons whose deportation has been suspended are prohibited from taking up employment in the first year for their residence (Section 32 subsection 1 of the Employment Ordinance), this does not apply to vocational training in a training occupation recognised by the state or comparable training occupation (Section 32 subsection 2 No. 1 of the Employment Ordinance).

Unaccompanied minors face specific challenges in looking for a vocational training place because companies may be reluctant to take on trainees whose deportation has been suspended; they may also be unsure what

¹⁸ <http://www.schlau-schule.de/> (07.08.2014).

the outcome of the asylum procedure will be. This calls for a lot of persuasion work. Notwithstanding this, the young persons can resort to the Youth Welfare Office for support since its task includes offering socio-educational assistance to young persons „which promotes their school education, vocational education, integration into the workforce and their social integration“ (Section 13 subsection 1 Social Code Book VIII).

By contrast, gainful employment and vocational training are ruled out categorically for persons whose deportation has been suspended because they are themselves responsible for the obstacles to deportation (Section 33 of the Employment Ordinance).

4.6 Access to the labour market

Permission to take up employment is based exclusively on the provisions set forth in the Residence Act. Due to their residence title, persons granted refugee status, asylum or subsidiary protection have unrestricted access to the labour market (Section 25 subsection 1 sentence 4, subsection 2 sentence 2 of the Residence Act). Persons whose deportation is prohibited and persons in possession of another residence permit granted on humanitarian grounds in accordance with Part 5 of the Residence Act are permitted to take up employment to the extent explicitly permitted in the residence permit without requiring the approval of the Employment Agency (Section 4 subsections 2 and 3 sentence 1 of the Residence Act, Section 31 of the Employment Ordinance).

By contrast, persons undergoing the asylum procedure are prohibited from taking up employment for the first nine months; after this period they can take up employment if the Employment Agency has granted its approval or if a statutory instrument stipulates that taking up such employment is permissible without the approval of the Employment Agency (Section 61 subsection 2 of the Asylum Procedure Act).¹⁹ The same applies to persons whose deportation has been suspended. However, they are prohibited from taking up employment for the first year (Section 31 subsections 1

and 2 of the Employment Ordinance).²⁰ By contrast, gainful employment is ruled out for persons whose deportation has been suspended because they are themselves responsible for the obstacles to deportation (Section 33 of the Employment Ordinance).

4.7 Other integration measures

Unaccompanied minors have no legal entitlement to participate in an integration course while they are undergoing the asylum procedure or if their deportation has been suspended. By contrast, recognised asylum seekers, persons who have been granted refugee status and persons entitled to subsidiary protection within the meaning of Section 4 of the Asylum Procedure Act are entitled to participate in an integration course. Regardless of their situation under the Residence Act, children, young persons and young adults who are receiving a school education or are continuing a previous educational career in the Federal Republic, in principle, have no automatic entitlement to participation in an integration course. However, persons not legally entitled to participate in an integration course can be admitted if there are vacancies available.

Participation in an orientation course is probably irrelevant for unaccompanied minors who have been granted educational support and assistance since they receive support within the framework of youth welfare services that is tailored specifically to their needs. The aim is to prepare them to live their life independently in Germany. By contrast, learning the language is much more difficult. Given that unaccompanied minors are not entitled to participate in an integration course because of their residence status (permission to stay for the duration of the asylum procedure or exceptional leave to remain when their deportation has been suspended), they are unable to participate in the language courses that are offered in the framework of the integration course. This means the possibility unaccompanied minors have of learning the language depends on whether they have access to the education system in the respective Federal Land and whether German language courses are available. In addition,

¹⁹ Pursuant to the revision of the Asylum Procedure Act that has been passed in 2014, asylum seekers are entitled to take up employment after three months. The remaining conditions are still valid.

²⁰ In the future, the waiting period for persons whose deportation has been suspended and who have been issued an exception leave to remain to take up employment will be reduced to three months.

some clearing houses offer language courses (for an overview, cf. Deutscher Caritasverband 2014a: 175-239).

4.8 Withdrawal of reception and integration support

If the need for youth welfare services changes, for instance, because persons entitled to care and custody have rejoined the unaccompanied minors in Germany, the support and assistance available is adapted to the change in circumstances.

If the young person is considered to have attained majority, youth welfare services are usually revoked.

5 Transition to adulthood

Changes in residence status once unaccompanied minors turn eighteen

The way in which the transitional phase is organised when unaccompanied minors turn eighteen depends on a number of different factors. In addition to the outcome of an application for asylum, it also includes the unaccompanied minor's schooling and vocational training situation. Unaccompanied minors are granted a residence permit pursuant to Section 25 subsection 1, 2 or 3 of the Residence Act if they are recognised as being entitled to protection. The residence permit may be issued and extended in each instance with the duration depending on the type of protection granted (Section 26 subsection 1 sentence 2 of the Residence Act). The residence permit will be issued for three years in the cases of persons granted asylum status and foreigners granted refugee status; for one year in the case of persons granted subsidiary protection status; it may be extended for an additional two years. The residence permit shall be issued for one year in the case of persons whose deportation is prohibited in accordance with Section 60 subsection 5 or 7 of the Residence Act (Section 26 subsection 1 sentence 4 of the Residence Act).

If, after three years, the Federal Office for Migration and Refugees has provided notification in accordance with Section 73 subsection 2a of the Asylum Procedure Act that the conditions for revocation or withdrawal do not apply, a recognized asylum seeker or a person granted refugee status will be issued a settlement permit, which provides them with a permanent right of residence (Section 26 subsection 1 of the Residence Act). A foreigner who has been in possession of a residence permit for seven years in accordance with Section 25 subsection 2 sentence 1 second alternative of the Residence Act (persons entitled to subsidiary protection) or in accordance with Section 25 subsection 3 of the Residence Act (prohibition of deportation) may be granted a settlement permit if certain conditions are met, whereby the duration of residence pertaining to the asylum procedure preceding granting of the residence permit shall count towards this qualifying period (Section 26 subsection 4 of the Residence Act).

An unaccompanied minor who possesses a residence permit in accordance with Section 35 of the Residence Act can be granted a settlement permit after five years as they entered the Federal Territory before the age of 18.

However, the transitional phase in respect of unaccompanied minors is more difficult once they reach the age of 18 if the application for asylum was rejected or if they did not file an application for asylum and if their deportation was suspended. As a rule, Section 58 subsection 1a of the Residence Act provides the basis for suspension of deportation which says that „prior to the deportation of an unaccompanied foreign minor, the authority [must] ensure that in the state to which he or she is to be returned he or she will be handed over to a member of his or her family, to a person possessing the right of care and custody or to an appropriate reception centre“. If this is not possible, a legal obstacle to deportation is deemed to exist and the young person's deportation is suspended. This specific protection from deportation lapses when unaccompanied minors reach the age of eighteen.

However, this does not mean that the young person is deported as soon as they attain the age of majority; experts of the B-UMF say that this does not happen in practise. By contrast, the possibilities of being granted a residence permit while on exceptional leave to stay are relevant. There are a number of possibilities; the prerequisite in all cases is that the young person or young adult does not have a criminal record and is dedicated to graduate school education or vocational training. To this end a residence permit can be granted pursuant to Section 25 subsection 4 of the Residence Act on urgent humanitarian or personal grounds if the young person is completing his or her last year of school education or vocational training (General Administrative Regulations relating to the Residence Act 25.4.1.6.1). Section 25 subsection 5 of the Residence Act represents a further possibility that may be relevant for unaccompanied minors: „By way of derogation from Section 11 (1) of the Residence Act, a foreigner who is enforceably required to leave the federal territory may be granted a residence permit if

his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The residence permit should be issued if deportation has been suspended for 18 months. A residence permit may only be granted if the foreigner is prevented from leaving the federal territory through no fault of his or her own.“ According to information supplied by experts from the B-UMF, the foreigners authorities regularly avail themselves of this option in respect of unaccompanied minors who have a successful track record in terms of integration, for instance, if they have completed their school education or vocational training. This in itself highlights the relevance of assistance and support by the youth welfare services as it has a sustainable impact on enabling the young persons to accomplish these goals. However, this presupposes that any application for asylum filed was not rejected as being manifestly unfounded.

If no application for asylum has been filed, Section 18a of the Residence Act also offers the prospect of remaining in the federal territory which can be relevant for unaccompanied minors once they reach the age of eighteen. This residence permit can be granted to persons whose deportation has been suspended and who have completed vocational training in a training occupation recognised by the state or a comparable training occupation. The prerequisites include there being sufficient housing available, that the unaccompanied minor has a reasonable command of the German language, did not deceive the foreigners authorities about any circumstances relevant for residence and did not prevent or delay their deportation. This also highlights the relevance of educational assistance and support in helping them to accomplish their goals. According to experts from the B-UMF, it is also important how well cooperation between the Youth Welfare Office and the foreigners authorities is functioning. The Hardship Commissions of the Federal Länder can also influence the prospects unaccompanied minors have of remaining in Germany.

Youth welfare assistance for unaccompanied minors who reach the age of eighteen

As a rule, unaccompanied minors receive support from the Youth Welfare Office until they reach the age of eighteen. In principle, the Youth Welfare Office

can continue to provide services to unaccompanied minors over the age of eighteen „if and so long as the individual situation of the young person renders this necessary“ (Section 41 subsection 1 of the Social Code Book VIII). The type of assistance and support which unaccompanied minors are eligible for include educational support and assistance including educational advice (Section 28 of the Social Code Book VIII), social group work (Section 29 of the Social Code Book VIII), the appointment of a care assistant (Section 30 of the Social Code Book VIII), full-time care (Section 33 of the Social Code Book VIII), residential care and other types of supervised residential care facilities, (Section 34 of the Social Code Book VIII) as well as intensive socio-educational individual care (Section 35 Social Code Book VIII). As a rule, they may be eligible for this support until they attain the age of 21 (Section 41 subsections 1 and 2 Social Code Book VIII).

6 Return practises

The legal requirements for refusal of entry and removal to a third country or other Member State have been described in detail in Chapter 3.3. In the following, the general conditions for deportation to the country of origin and measures to enforce the return of foreigners obliged to leave the federal territory as well as alternatives to detention pending removal will be outlined. In addition, the prerequisites for voluntary returns and the access of third-country nationals to return programmes will be outlined, with special focus being placed on unaccompanied minors.

6.1 Forceful return

Section 58 of the Residence Act determines the circumstances under which third-country nationals can be deported from the Federal Territory. It says that “the deportation is permitted only and then also necessary if the foreigner is executable obligated to leave the country and if voluntary fulfilment of the obligation to leave is not assured or supervision of departure appears necessary, a warning of deportation has been served, the period of notice of departure has expired, and if no obstacles to or prohibitions of deportation exist (Sections 60, 60a)” (Bauer 2013: margin reference 4).

Section 58 subsection 1a of the Residence Act makes specific provisions for unaccompanied minors. Prior to the deportation of an unaccompanied foreign minor, the responsible authority must ensure that “in the state to which he or she is to be returned he or she will be handed over to a member of his or her family, to a person possessing the right of care and custody or to an appropriate reception centre“. Before unaccompanied minors are removed, the foreigners authorities examine whether they need to be accompanied when they leave the federal territory and whether it is ensured that the transfer and care of the unaccompanied minors is safeguarded by one of the above-mentioned persons or resp. institutions in the country of origin. If an unaccompanied minor is being transferred to ano-

ther EU Member State within the framework of the Dublin Regulation and the BAMF has liaison staff in the respective Member State²¹, they are notified of the transfer and can be present to welcome the unaccompanied minor – if this is deemed necessary.

6.2 Detention pending deportation

Detention of persons who are obliged to leave the federal territory is a measure of last resort. Persons who are refused entry or are removed at the external border of the Federal Republic can also be detained.²² Section 62 subsection 1 sentence 3 says that minors and families with minors may be taken into custody awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child. In the General Administrative Regulations relating to the Residence Act, it specifically says that if the parents of an unaccompanied minor are not residing in the federal territory, „the foreigners authorities must contact the relevant Youth Welfare Office so that arrangements can be made to accommodate the unaccompanied minor until he or she is expelled“ (General Administrative Regulations relating to the Residence Act 62.0.5).

21 To foster mutual support, an exchange of personnel has been organised between the Federal Office and the various partner authorities. The tasks incumbent upon liaison officers are: providing information and advice on the Dublin procedure, exchanging information about important trends in the area of legislation and administrative practise, particularly on matters pertaining to asylum, migration and integration, promoting the exchange of information about the situation in the asylum seekers' countries of origin and the relevant case law.

22 cf. Grote (2014) on the organisation and procedural structure of detention pending removal and on the alternatives to detention pending removal in general and on the conditions in the detention facilities for persons in detention pending removal in the individual Federal Länder in particular.

Several Federal Länder have issued additional provisions on the detention of minors for the purposes of deportation in decrees and administrative regulations. In Berlin, Hesse, Saxony, Schleswig-Holstein and Thuringia no unaccompanied minors under the age of sixteen can be detained for the purpose of deportation as a matter of principle (cf. Deutscher Bundestag 2012a: 47ff), although some are actually detained in individual cases (cf. Deutscher Caritasverband 2014a: 228). In North Rhine-Westphalia, a circular instruction says that minors cannot be detained – except if they have a criminal record – if

- they are attending school, have a training place or job or are still living with their parents, or
- if they have been taken into care by the Youth Welfare Office in accordance with Section 42 subsection 1 of the Social Code Book VIII and can be accommodated at a suitable youth welfare establishment or
- if there is no room available at a detention facility that can cater for the needs of minors, or
- if they are under the age of sixteen (Directive on Detention for the Purposes of Removal of North Rhine-Westphalia 2009).

In Rhineland-Palatinate, the rule is that „an application for detention for the purposes of removal should never be filed for young persons who have not yet turned eighteen, [...]“ (MIFKJF Rheinland-Pfalz 2013: 3). There is a similar rule in place for Bavaria (cf. Deutscher Bundestag 2012b: 60). In Baden-Württemberg (General Administrative Regulation relating to Asylum>Returns No. 3.6.7.1), Bremen (Deutscher Caritasverband 2014a: 195) and Saxony-Anhalt (Deutscher Bundestag 2012a: 46) minors under the age of fourteen cannot be detained.

Furthermore, in some Federal Länder, minors are detained in single rooms as a matter of principle or upon request (e.g. Brandenburg, cf. Deutscher Bundestag 2012a) or in separate quarters in special youth detention facilities for young persons pending expulsion (e.g. Hesse). The latter is no longer possible since the European Court of Justice handed down a ruling on 17 July 2014 (C-473/13, C-514/13, C-474/13) stating that

„it must be held that the obligation, laid down in the first sentence of Article 16 para. 1 of Directive 2008/115, requiring detention to take place as a rule in specialised detention facilities is imposed upon the Member States as such, and not upon the Member States according to their respective administrative or constitutional structures. The national authorities responsible for applying the national legislation transposing Article 16 of Directive 2008/115 must therefore be able to detain third-country nationals in specialised detention facilities. [...] This interpretation of Article 16 para. 1 of Directive 2008/115 nevertheless does not mean that a Member State which, like the Federal Republic of Germany, has a federal structure is obliged to set up specialised detention facilities in each federated state. However, it must be ensured, inter alia pursuant to agreements providing for administrative cooperation, that the competent authorities of a federated state that does not have such facilities can provide accommodation for third-country nationals pending removal in specialised detention facilities located in other federated states“ (cf. also Grote 2014).

There are no systematic statistics available on unaccompanied minors in detention for the purpose of deportation, neither at national nor state level (cf. Deutscher Bundestag 2012b: 45ff).

6.3 Alternatives to detention

The existence of grounds for detention does not rule out alternatives to detention being used if the grounds for detention (e.g. the intention to abscond) could reasonably be achieved by other means (e.g. by imposition of an administrative order in accordance with Section 46 subsection 1 of the Residence Act) (Section 62 subsection 1 sentence 1 of the Residence Act). Taking into care by the Youth Welfare Office and arranging accommodation at youth welfare facilities can be construed as an alternative to detention pending deportation in respect of unaccompanied minors (General Administrative Regulations relating to the Residence Act 62.0.5 in conjunction with Section 62 subsection 1 sentence 3 of the Residence Act; cf. also JRS 2011). In addition, Section 62 subsection 1 sentence 1 of the Residence Act says that „custody awaiting deportation shall not be permissible if the purpose of the

custody can be achieved by other, less severe means“.

Section 46 subsection 1 of the Residence Act specifies measures to facilitate the departure of a foreigner who is enforceably required to leave the Federal Territory (administrative orders): „The foreigners authorities may undertake measures to facilitate the departure of a foreigner who is enforceably required to leave the Federal Territory; in particular, it may oblige the foreigner to take up his or her residence at a place of its designation.“

Further alternatives are specified in the General Administrative Regulations relating to the Residence Act in relation to Section 46 of the Residence Act. The alternative coercive measures mentioned in Section 46 of the Residence Act are also subject to the principle of proportionality. All in all, 46.1.4 of the General Administrative Regulations relating to the Residence Act lists six administrative orders that can be used to „promote departure from the federal territory“:

- „46.1.4.1 – the obligation to report to the foreigners authorities on a regular basis for the purposes of monitoring a foreigner’s stay,
- 46.1.4.2 – the obligation to avail oneself of advice on returns,
- 46.1.4.3 – the obligation to save the amount of money required to return to the country of origin, that exceed the means to secure the minimum subsistence, and to pay this into a blocked account opened by the foreigners authorities,
- 46.1.4.4 – the obligation to take up residence in a certain location and in a certain type of housing (cf. No. 61.2.1),
- 46.1.4.5 – the obligation not to leave a certain geographical area (cf. also Section 61),
- 46.1.4.6 – the obligation to hand over documents to the foreigners authorities that, if checked, could create the wrong impression that the foreigner has a right of residence or is not obliged to leave the federal territory; this applies in particular to provisional residence documents after an application for a residence permit has been rejected.“

There is no data available on third-country nationals in general and unaccompanied minors in particular whose enforceable departure was carried out applying one of these alternative coercive measures.

6.4 Voluntary return

Before the competent authorities consider the forceful return of third-country nationals, in principle, they examine whether they may perhaps be persuaded to return to their country of origin voluntarily or whether their departure can be facilitated in some way. In Germany the voluntary return of third-country nationals has been promoted by the REAG programme since 1979 and the GARP²³ programme since 1989. In the year 2013, the programmes provided travel expenses to the amount of €200 for each adult and €100 for every child below the age of twelve and start-up assistance – depending on the nationality of selected countries of origin €300 to €750 for adults and half that for every child below the age of twelve (cf. IOM 2013: 7ff). In addition, with the Information Centre for Voluntary Return (Zentralstelle für Informationsvermittlung zur Rückkehrförderung – ZIRF) the BAMF provides advice to third-country nationals considering returning to their country of origin voluntarily, specifically on actual conditions prevailing in the country of origin and on reintegration in the country of origin.

The benefits within the framework of the REAG/GARP programme are granted to beneficiaries of Section 1 of the Asylum Seekers Benefits Act, recognised refugees and other third-country nationals whose residence has been permitted on humanitarian or political grounds or for reason of international law. Nationals of „safe third countries“²⁴ and European third countries, i.e. non-EU countries who do not require a visa to enter the federal territory and whose nationals entered Germany after the visa requirement was abolished are not eligible for travel expenses and start-up assistance

23 REAG: „Reintegration and Emigration Programme for Asylum-Seekers in Germany“; GARP: „Government Assisted Repatriation Programme“; cf. also Schneider/Kreienbrink (2009).

24 The EU Member States as well as Norway and Switzerland are classified as „safe third countries“ (Section 26a subsection 2 in conjunction with Annex I to Section 26a of the Asylum Procedure Act). In principle, an asylum seeker who has entered the federal territory from a safe third country will not be granted asylum status. Notwithstanding this, the asylum procedure will be carried out in Germany once the asylum seeker has entered the federal territory unless it has been determined that another Member State is responsible.

(IOM 2013: 8). Victims of human trafficking form one exception to this rule. They come under the special regulation that makes them eligible for support under the REAG/GARP programme even if they come from EU Member States (or non-EU countries not requiring a visa). They are reimbursed for travel expenses incurred and are eligible for travel grants.

Unaccompanied minors are also eligible for benefits under the REAG/GARP programme

„if at least one of their parents or an appointed legal guardian gives their consent to their travelling in writing. Minors must be picked up at the arrival destination by a parent or a legal guardian who can provide written proof that he or she has been appointed legal guardian“ (IOM 2014: 8).

All unaccompanied children and young persons under the age of eighteen are defined as unaccompanied minors within the framework of the REAG/GARP programmes. Within the context of the asylum procedure, this understanding differs from current German law which considers unaccompanied minors to have the capacity to carry out procedural acts once they are at least 16 years of age (Section 12 subsection 1 of the Asylum Procedure Act and Section 80 subsection 1 of the Residence Act). According to the IOM, in practise, the different provisions governing the capacity of minors to carry out procedural acts can cause problems, for instance, if one authority files an application for voluntary returns on behalf of a 17-year-old and the IOM insists that certain conditions need to be fulfilled for vulnerable persons – in this particular case unaccompanied minors – in order to grant the application:

In this regard, the IOM requests written confirmation from the persons, authorities and/or organisation requesting the return of the child to ensure the young person has been handed into the hands of a relative or competent youth welfare facility. The authorities filing an application for the return of the child or the legal guardian examine what is in the child's best interests, whether the young person actually wants to return to his or her country of origin and the family situation in the country of origin.

Since the REAG programme was launched (1979) and the GARP programme was launched (1989), over 550,000 migrants have either voluntarily returned from Germany to their countries of origin or migrated further to other countries (IOM 2013: 6). In the year 2013, 12,251 third-country nationals left Germany within the framework of the REAG/GARP programme (cf. Kohls 2014: 24ff). Unaccompanied minors accounted for a small proportion as indicated in Table 7 in the years 2009 to 2013. It is also vital to take into account in relation to the statistics provided that the unaccompanied minors include some young persons who were unaccompanied when they returned to their country of origin (e.g. when they flew back) but that from the residence-related perspective this did not necessarily mean they were unaccompanied minors in Germany. It is, for instance, possible that young persons may be residing with a relative or one of their parents in Germany even though they were planning to return to the (other) parent or person with parental authority in the country of origin while applying for assistance with travel expenses within the framework of the REAG/GARP programme. IOM does not make any distinction in the statistics provided.

Table 7: Return of unaccompanied minors within the framework of the REAG / GARP programmes broken down by gender 2009-2013

Unaccompanied minors	2009	2010	2011	2012	2013	2009-2013
Male	13	11	11	7	7	49
Female	7	11	14	13	5	50
Total	20	22	25	20	12	99

Source: IOM

They include all the cases of voluntary returns to the country of origin; onward migration to a third country willing to admit unaccompanied minors did not happen in the period under review. The nationality of

unaccompanied minors who left Germany documented in Table 8 therefore refers simultaneously to the respective country of origin and destination.

Table 8: Return of unaccompanied minors within the framework of the REAG / GARP programmes broken down by nationality 2009-2013

Nationality / destination country	Number of unaccompanied minors who left Germany in 2009
Angola	2
Bulgaria	1
Iraq	7
Kosovo	2
Macedonia, former Republic of Yugoslavia	1
Russian Federation	3
Turkey	3
Vietnam	1
Total	20

Nationality / destination country	Number of unaccompanied minors who left Germany in 2010
Afghanistan	1
Armenia	1
Bulgaria	2
Iraq	6
Kosovo	1
Lebanon	1
Macedonia, former Republic of Yugoslavia	1
Montenegro	1
Romania	3
Turkey	4
Vietnam	1
Total	22

Nationality / destination country	Number of unaccompanied minors who left Germany in 2011
Angola	1
Iraq	2
Iran	1
Jordan	1
Kosovo	3
Romania	2
Serbia	8
Syria	1
Tajikistan	1
Czech Republic	1
Ukraine	2
Hungary	1
Vietnam	1
Total	25

Nationality / destination country	Number of unaccompanied minors who left Germany in 2012
Albania	1
Bosnia and Herzegovina	1
Bulgaria	1
Iraq	6
Iran	1
Jamaica	1
Macedonia, former Republic of Yugoslavia	2
Nigeria	1
Romania	1
Serbia	1
Tajikistan	1
Turkey	1
Ukraine	1
Hungary	1
Total	20

Nationality / destination country	Number of unaccompanied minors who left Germany in 2013
Albania	2
Afghanistan	2
Bosnia and Herzegovina	1
Iraq	3
Nigeria	1
Pakistan	1
Romania	2
Total	12

Source: IOM

As indicated in the tables, a total of 24 Iraqi unaccompanied minors left Germany and returned to their country or origin between 2009 and 2013, accounting for 25 % of all unaccompanied minors who returned voluntarily. Another 25 % account for unaccompanied minors from Serbia (9), Romania (8) and Turkey (8). All in all, unaccompanied minors from 26 nations left Germany voluntarily to return to their countries of origin.

Reintegration measures

In addition to financial and advisory support services available to unaccompanied minors leaving Germany voluntarily, additional reintegration measures can be provided within the framework of special return projects under the leadership of the Federal Level (for instance in Northern Iraq or within the cooperation project between the Federal Level and the Länder “URA2” in Kosovo) or by individual Federal Länder.²⁵ The reintegration measures provided by the IOM as financial support in reintegration projects include assistance with business start-ups, establishment of micro companies, support in the search for employment, training and advanced training measures, advice and support in social matters, additional non-financial support (such as furniture) as reintegration assistance, special assistance for vulnerable persons, e.g. helping to find a school, adequate healthcare and psychological assistance (cf. IOM 2013: 22ff). In principle, unaccompanied minors have access to reintegration measures. The IOM has indicated that an application filed by an unaccompanied minor will be processed as a matter of priority. Notwithstanding this, no unaccompanied minors had filed an application in last year’s reintegration projects.²⁶ No voluntary returns of unaccompanied minors received support within the framework of the reintegration projects implemented by the BAMF either.

25 In the past few years, the IOM implemented special return and reintegration projects in Northern Iraq (Autonomous Region of Kurdistan), in Vietnam and Ghana (cf. IOM 2013: 24ff). These types of reintegration projects for voluntary returnees are usually financed by several players such as the BAMF, the European Return Fund or individual regional authorities (such as the Senate Administration for Internal Affairs and Sport in Berlin).

26 There are no statistics available on the extent to which unaccompanied minors have received reintegration support through programmes implemented by the Federal Länder without the involvement of the IOM.

7 Conclusions

Unaccompanied minors who seek protection in Germany or who are detected in transit only represent a small group among third-country nationals in relation to all migration activity; although their numbers have increased steadily in the past few years. This increase must be seen against the backdrop of numerous unsolved conflicts, war and political and social displacement in the countries of origin – in 2013 almost two-thirds came from Afghanistan, Somalia, Syria, Eritrea and Egypt. Even though there have been several changes within the rankings of the main countries of origin, there is no indication that the number of unaccompanied minors is likely to decline in the short term.

Unaccompanied minors represent a group of migrants who need special support not just because of the trauma they have suffered and are still dealing with but also because it is assumed they have a special need for development given their young age. This need for support is to be covered by measures enshrined in the Youth Welfare Act.

This is where the provisions set forth in the UN Convention on the Rights of the Child which have applied in full in Germany since 2010 overlap with the provisions set forth in the German Asylum Procedure Act, the Residence Act and the Youth Welfare Act. The statutory framework of the Youth Welfare Act has already made provision for a wide range of financial and non-financial support services ranging from taking into care to developing a support plan (as part of the clearing procedure), to accommodation, health services and school attendance.

The general trend and the rise in the number of persons entering Germany as well as the fact that the problem has become a lot more manifest shows, however, that some issues still need to be addressed in specific areas relating to residence law, accommodation and integration. It is vital that conclusive answers be found for these issues.

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Abbreviations

BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BGH	Federal Court of Justice (Bundesgerichtshof)
B-UMF	Federal Association for Unaccompanied Minor Refugees (Bundesfachverband Unbegleitete Minderjährige Flüchtlinge)
CDU	Christian Democratic Union (Christlich Demokratische Union)
CSU	Christian Social Union (Christlich-Soziale Union)
EG	European Community (Europäische Gemeinschaft)
EMN	European Migration Network (Europäisches Migrationsnetzwerk)
EU	European Union (Europäische Union)
ECJ	European Court of Justice (Europäischer Gerichtshof)
GiZ	German Association for International Cooperation (Gesellschaft für internationale Zusammenarbeit)
IOM	International Organization for Migration (Internationale Organisation für Migration)
JRS	Jesuit Refugee Service (Jesuiten Flüchtlingsdienst)
KJHG	Children and Youth Services Act (Kinder- und Jugendhilfegesetz)
MIFKJF	Ministry for Integration, Family Affairs Children, Youth and Women Rhineland-Palatinate (Ministerium für Integration, Familie, Kinder, Jugend und Frauen Rheinland-Pfalz)
PDV	Police Service Instruction (Polizeiliche Dienstvorschrift)
REAG/GARP	Reintegration and Emigration Programme for Asylum-Seekers in Germany/Government Assisted Repatriation Programme
SchlaU	School-equivalent Education for Young Refugees (Schulanaloger Unterricht für junge Flüchtlinge)
SPD	German Socialdemocratic Party (Sozialdemokratische Partei Deutschlands)
UAM	Unaccompanied minor
UNHCR	United Nations High Commissioner for Refugees (Hoher Flüchtlingskommissar der Vereinten Nationen)
ZIRF	Information Centre for Voluntary Return (Zentralstelle für Informationsvermittlung zur Rückkehrförderung)

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