



## Factsheet - Universal Periodic Review of Germany

<b>To</b>	Permanent Missions to the United Nations in Geneva
<b>From</b>	SOS Kinderdorf e.V.; Contact: Sven Stumpf, Advocacy Advisor Sven.Stumpf@sos-kinderdorf.de
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### Summary of key issues

Germany has been widely known as a country hosting large numbers of refugees and, according to data, remains the fourth largest hosting country in total numbers, following Turkey, Islamic Republic of Iran, and Colombia<sup>1</sup>. Specifically, after allowing large numbers of people, primarily from Syria, to arrive in 2015, the country has frequently been perceived as being refugee friendly.

However, in practice, after a short period of lower numbers of arrivals resources have been substantially cut, leading to substandard conditions of care and in the reception of unaccompanied and separated children, and limited or no access to services, including limited preparedness for managing larger numbers of arrivals.

Moreover, a clear differentiation by law of treatment of unaccompanied and separated children versus alternative care of nationals points towards systematic discrimination.

Unaccompanied children frequently live in substandard conditions going through the asylum system facing lower standards of alternative care than nationals who are separated from their parents due to various issues and in alternative care.

If these unaccompanied children come of age, they risk losing their residence status and in addition to being left without any support, fear deportation and can many times not continue build their life through accessing training and employment. Young people leaving alternative care are also referred to as 'care leavers'.

### Alternative care and reception standards of unaccompanied and separated children

The German Social Code VIII (Sozialgesetzbuch, 1990, SGB VIII, § 42) regulates the provision of alternative care for unaccompanied and separated children in Germany. The German Social Code (paragraphs 42a to 42f) basically establish a separate system for the alternative care of unaccompanied and separated children in Germany, creating two parallel systems for national children versus unaccompanied and separated children.

The German Asylum Act (Asylgesetz, previously Asylverfahrensgesetz, 1982) and the German Residence Act (Aufenthaltsgesetz, 2005, changes in 2022) are relevant for applicants of asylum and residence.

Further, the 2013 EU Directive laying down standards for the reception of applicants for international protection (2013/33/EU) has to be considered.

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<sup>1</sup> [UNHCR - Refugee Statistics](#)



Overall, an increasingly reduced availability of placements, a shortage of skilled personnel coupled with discriminatory practices of lower standards of reception and care of unaccompanied and separated children lead to conditions violating children's basic rights.

To lower costs and replace gaps of workforce shortage, insufficiently trained staff oversee and are involved in key processes including first reception, which would require child protection specialists. For example, in the federal state of Baden-Württemberg, security guards are allowed to be the only person present overnight in some facilities. The waiting period to determine the age of unaccompanied children is sometimes 6-8 months (as of June 2023) which leaves the children in a very insecure situation for a long time because further treatment e.g., access to school depends on the age determination.

The division of responsibility between the federal government, the federal states ('Länder') and municipalities poses major challenges due to the lack of a coherent strategy. In reality, a patchwork of varying standards exists across the federal states. Many federal states currently accommodate unaccompanied and separated children in inadequate housing conditions.

They often undergo age assessment procedures based on ethically questionable and unproven or unreliable medical methods, with a risk of children being considered and treated as adults. During this procedure pursuant § 42a SGB VIII the youth authority can serve as legal guardian and opponent party deciding on the conditions of adequate youth care and medical examinations. That constitutes a conflict of interest. According to a survey legal protection in this procedure is regarded as (very) bad by 75,6% of the skilled workers in this area. (Fachkräfteumfrage BumF 2021)

While there is an independent commissioner for sexual abuse and separately, a commissioner for integration, there is no comprehensive child rights focused ombudsperson. As a result, while public discussions include arguments that the current numbers of unaccompanied and separated children are unmanageable, in reality, investing the necessary resources, provision of adequate care would be possible.

### **Access to support services, especially mental health and psychosocial support**

Access to healthcare as established in the Asylum Seekers Assistance Law is also limited in practice due to the need for people to acquire certificates of illness from their local social welfare office to seek medical assistance as well as language barriers. Moreover, in the first 18 months after arrival asylum seekers have access to healthcare only in the case of acute illness or pain.

Particularly undocumented children's basic right to health care is frequently violated due to risk of being reported. Although the Asylum Seekers Assistance Law (Asylbewerberleistungsgesetz), grants undocumented migrants access to some health services, the German Residence Act (Aufenthaltsgesetz) requires Social Welfare Offices to report undocumented migrants to the immigration authorities, except in cases of emergency care. This legal contradiction means that families which are undocumented might choose not to see a doctor when their child is ill out of fear of being reported and eventually deported.

Administrative procedures during and after arrival put additional pressure on children, frequently disregarding their best interest, including their need of an environment providing a sense of safety and stability, which results in increased mental health pressures.

### **Young people with migration background transitioning into adulthood**

According to the German Social Code VIII (SGB VIII, §§ 6,7), under circumstances of specific needs which are difficult to certify, young people without parental care could stay in alternative care and receive services until the age of 27 but in reality even receiving services between the age of 18 to 21 is rarely granted.



The current government coalition foresaw a prospect for a right to residence, under certain conditions, for young people coming of age in the context of migration. However, making 12 months with the specific status of suspension of deportation (Duldung) a requirement to obtain this residence permit, as per the Residence Act (Aufenthaltsgesetz, § 25a), means that well integrated, qualified young adults have to live 12 months with an insecure status, fearing potential deportation and with limited job opportunities.

Germany was also found to have unlawfully denied family reunification of Syrian applicants because they reached the age of majority while their parents' application was still processed. On 1 August 2022, the European Court of Justice (ECJ) overruled German courts by stating that the age of the minor at the time of filing the application for family reunification determines if a family can retain the right for family reunification, rather than the age on the date of calling a decision (joined cases C-273/20 and C-355/20).

## Recommendations

- **Guarantee equal access to quality alternative care and adequate conditions of reception, including services and long-term care, of unaccompanied and separated children in line with the UN Guidelines for the Alternative Care of Children. This includes removing measures which lead to systematic discrimination of unaccompanied and separated children and young people, regardless of residence status, and the provision of adequate services for children with complex needs.**
- **Expand and strengthen family reunification and take all measures to prevent child family separation in the context of migration, in line with the concluding observations of the UN Committee on the Rights of the Child. Siblings in countries of origin need to be equally entitled to be reunified with their unaccompanied and separated siblings in Germany to avoid that families break up when parents are reunified but have to leave other children behind.**
- **Adequately assess the best interest of children at all stages of administrative processes concerning applications for protection and family reunification, arrival, age assessments, periods pending recognition of status, stateless and undocumented children and return procedures of children and/or their parents.**
- **Equip the wider youth welfare sector for potential future need of adequate placements for unaccompanied and separated children. This needs to include a coherent plan defining responsibilities at federal state and municipality level including adequate resourcing of facilities and investments into care professionals' working conditions and qualifications. This also needs to include adequately resourced contingency plans which can be swiftly activated at times of larger numbers of arrivals.**
- **Require that administrative processes in the context of arrival, application for protection and stay are accompanied by specialists in child protection, including complex needs and specifically trauma informed practices. Ensure child-friendly information on the procedures.**
- **Ensure equal access of families in the context of migration to free and affordable support services including mental health and psychosocial support and early intervention measures, regardless of residence status. This needs to include counselling in different languages.**
- **End the practice of mandatory reporting of undocumented children and adults by social welfare services, including a necessary legislative amendment of the Residence Act (Aufenthaltsgesetz).**



- **Establish an independent ombudsperson's office for children with adequate authority and resources to collect and investigate reports of child rights violations and abuses concerning any child, regardless of residence status.**
- **Grant equal support for unaccompanied and separated young people who grew up without parental care and transition from alternative care into adulthood ('care leavers') as for national care leavers, including support until the age of 27.**
- **Provide pathways to residence status for young people coming of age in the context of migration, including accessible and adequate information and support in respective administrative procedures as a prerequisite for their effective inclusion, and access to training and employment.**
- **Guarantee equal access to professional training and employment opportunities for young people coming of age in the context of migration, providing specific financial and other support for those without parental care, especially in light of a rising demand for workforce in Germany.**
- **Strengthen family reunification by accelerating procedures, to prevent that children have to wait extensive periods including until adulthood to be reunited with family members.**
- **Ensure that authorities at federal state and municipality level collaborate with housing administrations and engage in housing policy debates to identify adequate accommodation for young unaccompanied people transitioning from care to independent living.**