



Universal Periodic Review of Germany

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Submitted by:

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I. INTRODUCTION

- 1.1 This report was prepared and submitted by SOS Children's Villages Germany (SOS Kinderdorf e.V.). The organisation was established in 1955 in Germany. Our target group are children without, or at risk of losing, parental care. We provide alternative care, support for youth leaving care and family strengthening programmes.
- 1.2 This submission of SOS Children's Villages Germany (SOS Kinderdorf e.V.) focuses on reception conditions, of unaccompanied and separated children, especially in alternative care, their access to services with a focus on mental health and psychosocial support, and on after care support for young people with migration background transitioning to adulthood.
- 1.3 The report is also based on recommendations made to the government of Germany during the last review and the government's commitments made.
- 1.4 Germany has been widely known as a country hosting large numbers of refugees and, according to data, remains the third largest hosting country in total numbers, following Turkey and Colombia.¹ 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, resources have not been adjusted to rising numbers of refugees and high inflation, 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 of treatment of unaccompanied and separated children versus alternative care of nationals points towards systematic discrimination.

II. ALTERNATIVE CARE AND RECEPTION STANDARDS OF UNACCOMPANIED AND SEPARATED CHILDREN

A. Third-cycle UPR recommendations to Germany

- 2.1 During the third cycle, a large number of states recommended the German government to eliminate discriminatory practices, to combat racism, xenophobia and related intolerance, which the German government noted, stating that racial profiling and all forms of discrimination are prohibited.²
- 2.2 The German government also supported a number of recommendations to take action in relation to combating racism and on the protection and integration of refugees and other migrants.³
- 2.3 The German government also noted the recommendation to establish an independent ombudsperson office for children with the authority to collect and investigate reports of violations and abuses of the rights of the child.⁴
- 2.4 During the third cycle, there have otherwise been no specific recommendations concerning unaccompanied and separated children's access to quality alternative care.

B. Legal and Institutional Framework

¹ See: <https://www.unhcr.org/refugee-statistics/>

² 155.78–84

³ 155.99–111

⁴ 155.200

- 2.5 The German Social Code VIII (Sozialgesetzbuch, 1990, SGB VIII, § 42) regulates the provision of alternative care for unaccompanied and separated children in Germany as well as processes such as the distribution across federal states (§ 42b) and age assessments (§ 42f). 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.
- 2.6 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.
- 2.7 Further, the 2013 EU Directive laying down standards for the reception of applicants for international protection (2013/33/EU) has to be considered.
- 2.8 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.
- 2.9 Since the activation of the EU Temporary Protection Directive (TPD, 2001/55/EC), Germany has been obliged to provide immediate access to quality alternative care for children without parental care from Ukraine, as well as access to services for families, and allow for immediate employment of Ukrainians including as care workers. The TPD's implementation in Germany has, on the one hand, proven that with political will, an immediate reception and the provision of necessary services is possible while, on the other hand, it further laid bare an underfunded care and reception system. While efforts for the immediate reception and alternative care of children without parental care from Ukraine have been an important step in the right direction to fulfil children's rights to adequate care and protection, a two-track system of children receiving or not receiving adequate care, services and protection, depending on their origin, has been further intensified.
- 2.10 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 defining responsibilities and actions to prevent gaps and a lack of long term contingency planning. In reality, a patchwork of varying standards exists across the federal states.
- 2.11 While there is an independent commissioner for sexual abuse and separately, a commissioner for integration, there is no comprehensive child rights focused ombudsperson.

C. Violation of the principle of non-discrimination

- 2.12 Many federal states currently accommodate unaccompanied and separated children in large facilities including sports halls, camps and other substandard accommodation. While there are also shortcomings in alternative care for national children, there is a clear second-class treatment of unaccompanied and separated children.
- 2.13 In some federal states, unaccompanied and separated children have been accommodated in mass accommodation for adults on a temporary basis. These neither provide a safe environment, nor the right to privacy or adequate sanitary conditions and access to services. At times, security firms are employed to oversee residents including children.
- 2.14 Age assessment procedures are based on ethically questionable and unproven or unreliable medical methods, with a risk of children being considered and treated as adults.
- 2.15 In summary, unaccompanied and separated children face high levels of discrimination at all stages of processes regarding their reception and alternative care, violating their rights as children as stipulated in the UN Convention on the Rights of the Child.

D. Lack of investments into facilities and trained staff as key barrier to adequate care

- 2.16 A general shortage of skilled personnel disproportionately affects the wider care sector, also due to low wages, unsatisfactory working conditions and an overall devaluation of care work.
- 2.17 Providers of care do not want to feel forced to provide services under conditions potentially implying child rights violations.
- 2.18 The COVID-19 pandemic coupled with an overall undervalued and under resourced care sector has added to shortages of qualified personnel in social work, social pedagogy and the wider social welfare sector.
- 2.19 Expectations to care professionals' duties are in stark contrast to the reality of an under-resourced care sector. This is increasingly frustrating to care workers who, in many cases, are forced to work in crisis mode rather than being able to address individual children's needs.
- 2.20 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 who are trained in areas such as trauma informed care and identifying specific vulnerabilities and needs of children. For example, in the federal state of Baden-Württemberg, security guards are allowed to be the only person present overnight in some facilities.
- 2.21 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.

E. Recommendations:

We recommend the government of Germany to:

- 2.22 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.
- 2.23 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.⁵ 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.
- 2.24 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.⁶ Make the best interest of the child the primary consideration in line with Article 3 of the UN Convention on the Rights of the Child.
- 2.25 Support efforts of government authorities at federal state level, municipalities and independent welfare organizations to employ and retain professionals in the alternative care sector. This should include training and recognition of relevant professional qualifications.

⁵ See:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FDEU%2FCO%2F5-6&Lang=en 40. (d)

⁶ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022CO0484&from=DE>

- 2.26 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.
- 2.27 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.

III. ACCESS TO SUPPORT SERVICES, ESPECIALLY MENTAL HEALTH AND PSYCHOSOCIAL SUPPORT

Third-cycle UPR recommendations to Germany

- 3.1 At the last review, Thailand recommended the German government to take necessary legislative measures to promote access to health-care system of undocumented migrants on equal grounds as nationals⁷ which the German government 'noted'.
- 3.2 The German government supported the recommendations to guarantee birth registration and prenatal care and postnatal care of newborn children regardless of their migration status⁸, and the recommendation to make efforts in order to ensure that children with a migration background have adequate and unhindered access to health-care services.⁹

Legal and Institutional Framework

- 3.3 Every child has the right to the highest attainable standard of health as stipulated in the UN Convention on the Rights of the Child.
- 3.4 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)¹⁰, grants undocumented migrants access to some health services, the German Residence Act (Aufenthaltsgesetz)¹¹ 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.
- 3.5 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.

Promotion and Protection of Human Rights on the Ground

- 3.6 While children in the context of migration often have specific needs for mental health and psychosocial support as a result of traumatic experiences in their countries of origin and during dangerous journeys, they receive limited or no access to adequate health care

⁷ 155.225

⁸ 155.258

⁹ 155.201

¹⁰ articles §§1, 3, § 6

¹¹ § 87

including mental health after arrival.

- 3.7 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.

Recommendations:

We recommend the government of Germany to:

- 3.8 Invest in additional qualifications of care and social workers including trauma informed practices, and to increase standards in alternative care facilities for unaccompanied and separated children. This should include child protection training for all those in contact with children.
- 3.9 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.
- 3.10 Ensure equal access of families in the context of migration to free and affordable support services including mental health and psychosocial support, regardless of residence status. This needs to include counselling in different languages.
- 3.11 Put in place early intervention measures to reduce mental health pressures reducing the need for later referral to professionals.
- 3.12 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).

IV. YOUNG PEOPLE WITH MIGRATION BACKGROUND TRANSITIONING INTO ADULTHOOD

This section refers to unaccompanied and separated children who come of age and transition from alternative care to adulthood, frequently referred to as 'care leavers'.

Third-cycle UPR recommendations to Germany

The German government supported the following recommendations:

- 4.1 To establish measures to encourage young migrants to further their studies with the aim to empower and enable them to reduce socioeconomic inequalities.¹²
- 4.2 To continue to implement policies designed to protect the rights of young people and ensure their access to welfare, without exception.¹³
- 4.3 To improve access to integration services and the job market for persons who enjoy subsidiary protection; facilitate family reunification; strengthen the refugee sponsorship programme; and enhance settlement, integration and inclusion programmes.¹⁴

Legal and Institutional Framework

¹² 155.230

¹³ 155.199

¹⁴ 155.237

4.4 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 can stay in alternative care and receive services until the age of 27.

4.5 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 must live 12 months with an insecure status, fearing potential deportation and with limited job opportunities.

4.6 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).¹⁵

Promotion and Protection of Human Rights on the Ground

4.7 Children in the context of migration coming of age frequently risk losing their residence status and thus protection when losing their status as. This leads to additional stress and mental health pressure, especially considering their fear of being deported to countries they often hardly know, fearing for their safety, stability and loss of family members and friends.

4.8 In reality, opportunities for young people to continue their education remain limited and unavailable for those with an insecure or no residence status.

4.9 These risks are added to general support needs of all young people leaving care who do not have the support of parents, including financial support to access professional training, mental health counselling, and being insufficiently prepared for independent living, also as a result of the above-mentioned substandard condition of reception and care.

Recommendations:

We recommend the government of Germany to:

4.10 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.

4.11 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.

4.12 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.

4.13 Strengthen family reunification by accelerating procedures, to prevent that children have to wait extensive periods including until adulthood to be reunited with family members.

4.14 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.

¹⁵ See: <https://curia.europa.eu/juris/documents.jsf?num=C-279/20>;
<https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-08/cp220136fr.pdf> (FR);
<https://curia.europa.eu/jcms/upload/docs/application/pdf/2022-08/cp220136de.pdf> (DE).