

Unaccompanied Minors in Germany and Europe

by

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1. Introduction

Unaccompanied minors are, according to the United Nations High Commissioner for Refugees, children under 18 years of age who have been separated from both parents and are not being cared for by an adult who is responsible (UNHCR 2). The phenomenon of unaccompanied minors traveling to Europe seeking protection is not a new one. Yet country profiles, their individual problems and abilities to deal with this group that can fall into several different categories vary to a great extent. This overview – with a focus on Germany – will depict the current trend that member states are slowly aligning to a common EU policy. Firstly, a statistical overview will be given after which current issues will be outlined, alongside suggestions for further developments. The last part will focus especially on Germany and its most recent points in policy development.

2. Facts and statistics

GERMANY

In Germany, the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge) provides statistical information on the numbers and developments of unaccompanied minors (UMs) in Germany. Children arriving in Germany, or those who have been apprehended inside of the country, and who are determined to be under-aged are delegated to the *Länder* (the federal states) where communities and individual organizations carry responsibility for them. Though this usually implies cooperation between police and the local youth welfare office, specific practices of dealing with unaccompanied minors vary within the country.

Also, uniquely to Germany, the legal age of UMs was, until May 2010, considered to be 16 and not 18.

Having receded from an all-time high in 2001 when 1,075 unaccompanied minors applied for asylum, a total of 268 applications were made by unaccompanied minors (up to and including the age of 15) in 2009 in Germany. Of these, 104 minors were granted refugee status (82 hailing from Iraq) and three were given asylum status. 132 applications were rejected; 20 were redirected according to the Dublin procedure.

Comparatively, 324 applications by under-16 minors were made in 2008. The same year was also the first year that statistical information of 16 and 17-year-old unaccompanied minors were made in Germany. A total of 439 applications were handed in by this age group in 2008 (Parusel 22 – 25). The protection rate lay at 43,3%, including both age groups (Parusel 45).

The most important countries of origin of unaccompanied minors in Germany in 2008 were Iraq, Vietnam, Afghanistan, Guinea, and Ethiopia. Ethiopia stands out from these top countries of origin because of its exceptional gender ratio, which, contrary to general trends, shows a greater number of girls than boys applying for asylum.

OTHER EUROPEAN COUNTRIES

According to the relatively detailed Directorate of Immigration of Norway, 2,500 asylum applications from unaccompanied minors were made in 2009, 1,172 of which were processed. Of these, 65 (5.5%) were granted asylum, 628 individuals (53.6%) were granted “other protection”, 90 (7.7%) were rejected, 195 (16.6%) fell under the Dublin Convention, 44 (3.8%) applications were dropped, and 112 (9.6%) were allowed to stay based on humanitarian grounds.

In Norway, the Directorate of Immigration is responsible for minors ages 15-18 whereas the Child Welfare Service is responsible for all those younger (Directorate of Immigration).

In the Netherlands there were a total of 739 unaccompanied minors in 2008, rising to 1,031 in 2009. In 2008, according to the national statistics office, 25% of all asylum seekers were children, of which the number of UMs had sharply increased since the 1990s.

Similar to the Norway, the COA (Centraal Orgaan Opvang Asielzoekers) is responsible for unaccompanied minors aged 15 to and including 17. Younger children are placed in the care of a youth service foundations, which delegates the children to children's housing, or to foster homes (Ministerie van Justitie). Unaccompanied minors granted asylum status can have this renewed yearly, if all conditions are fulfilled, for up to three years. If a child turns 18 and has not stayed for three years, he must return to his country of origin.

The greatest number of applications submitted by unaccompanied minors in Europe in 2008 was in the United Kingdom with 4,285. The least number were recorded in Lithuania with a single application. Poland had 376, Italy 573, and Spain 13 applications (newly entered countries were not part of statistics) (EU comparative study).

EUROPEAN UNION

In 2007, around 9,040 asylum applications were made by unaccompanied minors in Europe, 80% of the total number of asylum applications noted by the UNHCR (UNHCR 2). There is little exact statistical information on the make-up of unaccompanied minors' profiles on a European basis because, as exemplified above, there are differences in definitions of UMs and practices vary from country to country.

The European Council has attempted to present a general picture of the kind of children that were applying for asylum in Europe, mentioning, though that the difference between member states' profiles were large.

Generally, according to the EU Council analysis, unaccompanied children make up four to five percent of all asylum applications in industrialized countries.

Afghans made up the largest portion of unaccompanied minors in Europe, followed by Somalis. Moroccans, Egyptians and West Africans tended to stream towards southern Europe, whereas Ukrainians and Russians headed for eastern Europe.

The largest part (three fourths) of unaccompanied minors was made up of boys between 15 and 17 years of age, while Somali and Eritrean minors had, as reflected in German

statistics mentioned already, higher proportions of girls than boys (EU Council analysis, Statewatch).

Little further specifications can be made about the general profiles of the average unaccompanied minor traveling to Europe.

3. Current Issues

There are a number of debates currently revolving around the issue of the migration of unaccompanied minors.

The most prominent critique from the widest ranger of actors involved in the area names the problem of acting according to the child's best interest instead of governmental, bureaucratic, or strictly legal positions. With a lack of consideration for children's maturity levels and the Children's Rights Convention of 1989, children are often treated as adults in terms of the types of accommodation, legal support, psychological treatment etc. they (do not) get offered. For example, it is common practice to hold children in detention centers for administrative reasons. Another lack of consideration for maturity level is exemplified in Germany where, up until this year, children aged 16 and older were not given a legal representative, as they were considered capable of self-representation.

The topic of EU governmental financing of reception houses in countries of origin was also criticized. Several governments, including that of the Netherlands, Norway, Sweden, Denmark, and the UK consider the existence of these reception houses as a justification to refuse residence permits, as there is a "safe and adequate place" for the child to return to (Position Paper 2). According to the position paper, this practice is not in line with the Children's Rights Convention. It does not lie in the best interest of the child and includes the risk of child trafficking. Noting that the best returns are voluntary ones, suggestions have been made that a guardianship system should be established in order to properly assess the best interest and safety of the child going back, case by case.

Practically speaking, so aside from moral and legal issues, states also have series of problems. In order to present a European-wide picture of the situation of unaccompanied minors in the EU, member states have concluded on several issues that stand in the way of a coherent picture. Generally the most common problem recognized by all European countries is lack of sufficient statistics. No centralized mechanisms exist to record statistics of unaccompanied minors, neither in countries themselves and nor on a European level. This can be problematic, as “the availability of statistical data is essential in order to identify and combat direct and indirect discrimination as well as devise and implement targeted positive action programmes and subsequent measures for monitoring progress achieved” (de Schutter 43). Furthermore, higher levels of information and knowledge exchange are needed. Better reception practices with care and protection would enhance reception process. Also, the necessity of more reliable age assessment was an issue alongside the general problem of the lack of guarantee of proper identification. Lastly, there is a general concern of disappearances of unaccompanied minors from accommodation facilities.

RECOMMENDATIONS

Several recommendations have been made by various institutions to adapt to the problems mentioned. Generally, these revolve around better information exchange and cooperation between member states and countries of origins.

Concerning the treatment of the children themselves, Save the Children discusses the lack of guarantee to ensure proper identification of children and actions in their best interests before return. It asks for a definition of ‘adequate’ in ‘adequate reception facility’, stating that it is not clear as children might be sent to camps without guarantee of proper custodial care. Also, suggestions have been made to guarantee children’s basic legal protection in the EU before their return and to stop children being held in detention centers for administrative reasons (Öström).

The UNHCR also mentions the child’s maturity level, adding that not only must material be presented on a level for children to be able to comprehend, but also that their best interests and needs must be professionally established and respected. It goes on to criticize current practices in migration regulation, namely the issue of the country that is

responsible for the application, the Dublin Regulation, and the Reception Conditions Directive in light of the child's situation: "UNHCR also supports the recent proposals by the European Commission for a recast of two main instruments of the EU Asylum acquis – the Reception Conditions Directive and the Dublin II Regulation – because we believe that they could strengthen the protection of separated children, notably by making the 'best interests of the child' a more decisive criterion and by prohibiting detention of separated children" (Einzenberger).

4. German development

Returning to Germany, one of the significant recent developments was the unconditional agreement to the terms of the Convention on the Rights of the Child (UNCRC) in May 2010. This implied that children up to the age of 18 were considered unaccompanied minors. It had been accepted with reservations in 1992 and has caused dispute ever since. The most controversial issue was the country's outright discrimination between German and irregular children with respect to the issue of legal maturity: the Convention defined it to be 18 years, whereas in Germany only those up to the age of 16 were considered children. All older persons were treated as adults, i.e. not according to the child's best interest, but strictly according to immigration law. Practically speaking this implied that they were placed in custody pending deportation, had no right to a legal representative because they deemed fully capable to own representation (contrary to German children, who need to be 18 for full legal status), and they had no right to therapy places or other forms of support (Deutscher Bundestag). "[D]ifferences of treatment between these two categories may be especially difficult to justify when they affect children, who bear no responsibility for the choices of the parents, for example as regards their choice to remain on the territory in an irregular situation." (de Schutter 43). Thus, especially refugee and migrant children will profit off of this landmark decision

Currently, the German government is, according to the National Action Plan for a Child-friendly Germany, picking up on issues pushed forward by various NGOs and other institutions. It is looking how support for refugees includes the special protection needs

of children, both nationally and internationally. It aims to set up clearing processes for all unaccompanied minors seeking protection. Questions that are being addressed include issues if the return into country of origins without large danger is possible, if a family reunification in a country outside of the EU can come into question, and if an asylum application based on humanitarian grounds should be reached based (Bundesministerium für Familie, Senioren, Frauen, und Jugend). Furthermore, a focus on education and training, an unobstructed entry into the labor market, and general youth support as part of the right of refugee children has been set as well.

5. Conclusion

The situation of unaccompanied minors in Europe is complicated, especially considering the variation of practices within member countries. A short overview of the range of statistical information available has been given in the cases of Norway and the Netherlands. Individual states, as exemplified by Germany, are in the process of attaining international standards (such as the United Nations Children's Rights Convention) in the manner of dealing with UMs. It seems likely that this practice of harmonization of UM's treatment within the EU will continue in the future. If one single common policy will be developed, though, is another question.

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