



International Organization for Migration (IOM)



UNACCOMPANIED MINORS IN AUSTRIA

Legislation, Practices and Statistics



Saskia Koppenberg

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BM.I



REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF THE INTERIOR

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway. The National Contact Point Austria in the EMN is financially supported by the European Commission and the Austrian Federal Ministry of the Interior.

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EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003 by the European Commission (EC) by order of the European Council in order to satisfy the need of a regular exchange of reliable information in the field of migration and asylum at the European level. Since 2008, Council Decision 2008/381/EC has constituted the legal basis of the EMN and National Contact Points (NCPs) have been established in the EU Member States (with the exception of Denmark, which has observer status) plus Norway.

The EMN's role is to meet the information needs of European Union (EU) institutions and of Member States' authorities and institutions by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU in these areas. The EMN also has a role in providing such information to the wider public.

The NCP for Austria is located in the Research and Migration Law Department of the Country Office Austria of the International Organization for Migration (IOM) in Vienna, which was established in 1952 when Austria became one of the first members of the organization. The main responsibility of the IOM Country Office is to analyse national migration issues and emerging trends and to develop and implement respective national projects and programmes.

The main task of the NCPs is to implement the work programme of the EMN including the drafting of the annual policy report and topic-specific focussed and main studies, answering Ad-Hoc Queries launched by other NCPs, carrying out visibility activities and networking in several forums. Furthermore, the NCPs in each country set up national networks consisting of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data. Exceptions might occur when existing data and information is not sufficient. EMN studies are elaborated in accordance with uniform specifications valid for all EU Member States plus Norway in order to achieve comparable EU-wide results. Since the comparability of the results is frequently challenging, the EMN has produced a Glossary, which

assures the application of similar definitions and terminology in all national reports.

Upon completion of national reports, the EC with the support of a service provider drafts a synthesis report, which summarizes the most significant results of the individual national reports. In addition, topic-based policy briefs, so called EMN Informs, are produced in order to present and compare selected topics in a concise manner. All national studies, synthesis reports, informs and the Glossary are available on the website of the EC DG Home Affairs.

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METHODOLOGY

The present study is a Focussed Study that has been conducted by the National Contact Point (NCP) Austria in the European Migration Network (EMN) in the framework of the EMN's Work Programme 2014. The study follows a common study template with a defined set of questions developed by the EMN in order to facilitate comparability between the findings from all Member States. It is important to note that the information contained in this study refers to the situation up to and including December 2014.

The study is based on the latest information available at the Austrian level, including legislation, academic literature, reports, statistics and Internet resources. Furthermore, the study draws upon a continuous media monitoring carried out by the International Organization for Migration (IOM), Country Office for Austria. This monitoring collected press and online articles from the main daily and weekly newspapers and news websites dealing with migration and asylum issues throughout the years 2010 to 2014 in order to gain an overview of the most important public debates.

In order to complement the information gained through desk research, two methods of primary research were applied.

Firstly, qualitative semi-structured face-to-face interviews were carried out with experts working on the topic of unaccompanied minors in Austria. Interviewees included Gerald Dreveny, Section III (Law), Department III/5 (Asylum and Aliens Affairs) and Michaela Malz, Section III (Law), Department III/9 (Basic Welfare Support and Federal Care), both Federal Ministry of the Interior; Bernhard Krumphuber, Department B/I (Principles and Legal Affairs), Unit B/I/1 (Legal Principles), Federal Office for Immigration and Asylum; Elena Kalogeropoulos, Austrian Integration Fund, Deputy Managing Director; Norbert Ceipek, Head of the centre *Drehscheibe*, socio-pedagogical institution of the Children and Youth Service Vienna (Magistrate 11); and Katharina Glawischnig, Coordinator for unaccompanied minor refugees issues at *Asylkoordination Österreich*.

Secondly, a written questionnaire was sent out by e-mail to experts from Children and Youth Service Authorities, reception facility operators, non-governmental organizations (NGOs) and international organizations in Austria. The questionnaire was designed to collect opinion-based

information (view, belief, judgement, experiences) using a mix of structured (standardized responses) and open format (open-ended) questions. Replies were received from Katharina Benedetter and Marianne Dobner, both project coordinator, IOM Country Office for Austria; Günter Ecker, director, association *Verein Menschenrechte Österreich*; Adelheid Moser, chief officer, Youth Welfare Office of the City of Salzburg; Reinhard Seitz, coordinator for integration affairs, Children and Youth Service Upper Austria; Anh Thu Tran, team leader at Caritas archdiocese Vienna as well as Astrid Winkler, director, ECPAT Austria (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes).

The present study did not carry out interviews or group discussions with unaccompanied minors (UAMs) themselves and therefore does not cover their perspectives. For an insight into UAMs' experiences, please see Blecha (2012) or Fronek (2010).

The study describes the legal framework, practices and statistics with regard to UAMs in Austria in detail, thereby covering the areas of entry, residence, asylum procedure, age assessment, guardianship, legal advice, accommodation, reception conditions, health care, education, vocational training, employment, integration support, absconding, turning 18, return and reintegration. It shall be stressed that this array of topics is covered because it was selected by the EMN as the construct for a common study template to be followed by all NCP when preparing their national report. Thus, from the selected topics no conclusions can be drawn with regard to a preferred durable solution for UAMs in Austria (i.e. voluntary return, local integration or resettlement to a third country). While describing the legal framework, national practices and statistics with regard to UAMs in Austria, the study highlights developments in these areas that took place over the last five years, between 2010 and 2014, thus providing an adequate follow-up study of the 2010 EMN study on "Policies on Reception, Return and Integration Arrangements for, and Numbers of, Unaccompanied Minors".

In line with the EMN's definition of UAMs (EMN, 2012: 132; see also 1.3) this study focuses primarily on UAMs who are third-country nationals. Nevertheless, in order to provide a more comprehensive picture of UAMs in Austria, references will be made to the situation of UAMs who are EU nationals where relevant. Within the group of third-country

national UAMs, the study differentiates between UAMs who applied for international protection and those who did not.

This study was conducted by Saskia Koppenberg (Research Associate, IOM Country Office for Austria) under the supervision of Julia Rutz (Head of Research and Migration Law, IOM Country Office for Austria). Special thanks go to Katerina Kratzmann (Head of Office, IOM Country Office for Austria) for reviewing the report and to Adel-Naim Reyhani (Legal Associate, IOM Country Office for Austria) for reviewing the legal sections. Thanks go also to Andrea Bednarik, Corinna Geißler, Iris Hamberger and Judith Tutzer (all (former) interns, IOM Country Office for Austria) for their support in conducting research for the study.

EXECUTIVE SUMMARY

Circumstances and Migration Trends

The trend of asylum-seeking unaccompanied minors (UAMs) coming to Austria has been relatively stable over the past five years. The number of applications for international protection lodged in 2013 (999) was lower than in 2009 (1,069). At the EU-level, the number of UAMs applying for international protection was slightly higher in 2013 (12,675) than five years ago (2009:12,225). Furthermore, the characteristics of UAMs applying for international protection in Austria have not changed significantly since 2009. The majority were Afghan nationals (2009: 40%; 2013: 44%), male (2009: 90%; 2013: 91%) and between the age of 14 and 17 (2009: 96%; 2013: 93%). Comparably, in 2013 the majority of asylum-seeking UAMs in the 27 EU Member States were Afghan nationals (26%), male (84%) and between the age of 14 and 17 (90%). The characteristics of UAMs applying for international protection in Austria undeniably resemble those of the EU-27.

Overall, UAMs' motives for migration are manifold and are often a combination of several reasons. Fleeing persecution or serious harm and economic and aspirational reasons are the main sources of motivation for UAMs to come to Austria. This has not changed over the past five years. These motivations are linked, for example, to Afghanistan (which is the main country of origin of UAMs who apply for international protection in Austria). The UAMs' motives are consequently quite similar to those of adults, and further the link between motivations and countries of origin are not specific to UAMs. The circumstances under which unaccompanied minors come to Austria seem not to have changed either. UAMs most often make use of smugglers that were paid by their families. A smaller number of UAMs come to Austria as a trafficked person. They originate, aside from Bosnia and Herzegovina, mostly from an Eastern European Member State. A consideration of the UAMs motivations for coming to Austria and the circumstances of their journey reveal that the decision is not necessarily related to Austria but reflect the general motivations and conditions.

Residence Options

On 1 January 2014 specific provisions for UAMs to apply for the residence title Red-White-Red Card plus were introduced. However, no information with regard to the number of applications or titles granted is available. In general, there is no disaggregated data available on the kind and number of residence titles provided to UAMs. Also, just how often asylum-seeking UAMs were granted either asylum or subsidiary protection status is unknown. Nevertheless, it is assumed that almost all UAMs in Austria apply for international protection and that only in exceptional cases no protection status (i.e. asylum or subsidiary protection) is granted.

In January 2014, a major institutional change took place with the establishment of the Federal Office for Immigration and Asylum. It is now the single authority competent for first instance asylum procedures, some aliens police matters and residence titles for exceptional circumstances. Appeals are decided by the newly established Federal Administrative Court, which replaced the former Asylum Court. Notably, the four-week deadline for submitting an appeal is twice as long for UAMs than for other applicants.

Age Assessment

Since 1 January 2010, a multifactorial medical age assessment is provided for by law in case of doubt with regard to the age of a UAM, and if the minor age cannot be proven with the certificates or similar documents. The multifactorial medical age assessment includes physical, dental and radiological examinations. The combined results of these examinations lead to a defined minimum age.

Age assessments are mainly carried out in the framework of asylum procedures but can also be applied in procedures of the Settlement and Residence Act or in aliens police procedures. In 2013, 15.8 per cent of UAMs who applied for international protection were found to be adults based on an age assessment. Five years ago, in 2009, it was 10.4 per cent. It must be stressed that the results of an age assessment carried out in the asylum procedure have no binding consequence for areas other than the asylum procedure. Until the assessment has been undertaken and the results are available, the potential UAM – as a matter of principle – is treated as a minor.

Guardianship, Legal Representation and Legal Advice

The Children and Youth Service Authorities becomes the guardian of UAMs. Children and youth service is the competence of the provinces with own implementation laws; consequently there is no coherent approach throughout Austria with regard to when a guardian is appointed or how guardianship is implemented. Usually the guardians' duties include care and education, asset management and legal representation but some duties may be outsourced to reception facilities, NGOs or law firms. In general, the guardian always has to consider and ensure the best interest of the child. In 2013 in the Austrian Civil Code defined what factors must be considered. In 2009 the lack of information among the UAMs when it comes to their guardians and their responsibilities was identified as a practical challenge, which still exists today.

Further to the guardianship provisions, UAMs who seek asylum are appointed a legal advisor during the admission procedure who is charged with their legal representation with regard to the asylum procedure.

In addition, UAMs have access to the free legal advice that is provided to all those who are in asylum procedures, aliens police procedures, appeal procedures before the Federal Administrative Court or who are victims in criminal procedures. Access to free legal advice in the actual asylum procedure and in aliens police procedures was introduced in 2011.

Accommodation and Reception Arrangements

Depending on the residence status of the UAM, the accommodation and reception arrangements are provided in the context of basic welfare support or care of the Children and Youth Service Authorities. This means that the legal framework, the responsible authorities, the financial regulations, the accommodation and the reception arrangements differ.

The provision of basic welfare support is regulated in the Basic Welfare Support Agreement that defines the distribution of competencies between the federal government and the provinces, as well as the kind of reception conditions and maximum allowances to be provided. In 2013, some of the maximum amounts for accommodation and food per UAM per day were increased.

The services of the Children and Youth Service Authorities are regulated in the federal and provincial Children and Youth Service Acts. In 2013 the Youth Welfare Act from 1989 was revised and a new Federal Children and

Youth Service Act entered into force; provincial laws followed, only the provincial law of Salzburg is still due. The reforms touch upon, for example, the introduction of qualification standards of staff working in the socio-pedagogical facilities of the Children and Youth Services Authorities.

Access to Education and Vocational Training

UAMs who stay in Austria for at least one school semester and who fall under the compulsory schooling age (which starts at six years of age and applies for duration of nine years) have access to education that is equal to children of Austrian nationality. Access to secondary education for non-school-age UAMs, who make up the majority of the asylum-seeking UAMs, is more challenging. Private initiatives or NGO projects provide support in this regard.

After completing compulsory schooling, UAMs often look for vocational training. Since June 2012, asylum-seeking minors (including UAMs) can be granted a work permit for vocational training. As a condition, the minor must have been admitted to the actual asylum procedure for at least three months and must have passed a labour market test. The access is, however, restricted to occupations where there is a shortage of apprentices.

Integration Measures

There are no specific state-led integration measures that target UAMs. Instead, UAMs who have an asylum status, a subsidiary protection status or a long-term residence title are eligible to apply for measures provided by the Austrian Integration Fund. Asylum-seeking UAMs may receive integration support in the context of basic welfare support. There are, however, several projects providing support specifically to UAMs that are carried out by NGOs and international organizations.

Turning 18

In Austria, UAMs who turn 18 become fully contractually capable and are no longer entitled to a guardian. Also, they have to move out of UAM-specific reception facilities. The relocation can be a challenge when schooling and vocational training have to be interrupted, social networks cut or siblings separated from each other. In exceptional cases former UAMs can stay in their reception facility for a limited period of time (e.g. until they graduate from school). The Federal Children and Youth Service Act provides for the

possibility of continued care and educational support for former UAMs under certain conditions but only up to a maximum age of 21.

Absconding

There is no comprehensive overview available on UAMs absconding from reception facilities in Austria. Nevertheless, the phenomenon exists, but experts' and practitioners' experiences differ. If UAMs disappear they mostly do so within the first few days after arriving in Austria. There are several reasons why UAMs abscond, such as onward journey to another EU Member State in order to join family members or long asylum procedures and (perceived) limited chances of being granted asylum in Austria. In this regard informing UAMs about the legal regulations in Austria and the EU can be a measure to prevent them from absconding.

Return and Reintegration

UAMs are rarely returned and, further, the number of voluntary returns is rather low. In the unusual cases where a return does take place, it has to be ensured that the minor is handed over to a family member, a guardian or an adequate reception facility in the country of return. This provision was introduced in 2011 through amendments to the Aliens Police Act. To ensure these obligations are met, family tracing is carried out. On 1 January 2014 a new provision was introduced that obliges UAMs between the age of 14 and 17 to cooperate with the authorities in tracing their family members, given that this is in the best interest of the child. This provision was controversially discussed.

Since the amendments to the Aliens Police Act in 2011 minors below the age of 14 must not be kept in detention pending removal, while minors who are 14 and 15 years old shall primarily be provided with alternatives to detention. Detention is only possible if age-appropriate accommodation and care is provided and only for a maximum period of two months.

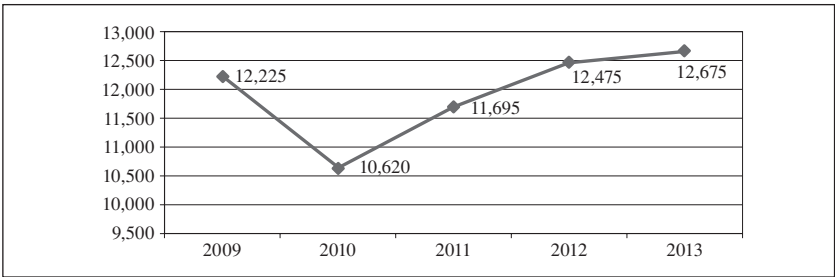
Assistance for the voluntary return of UAMs depends on the organization providing the support and usually includes booking of flights and the provision of pocket money. Reintegration support is provided through projects for specific return countries and differs according to the project. Support may include assistance for education and income generation, temporary housing, medical assistance, or other.

1. INTRODUCTION

1.1 Global Migration Trends of Unaccompanied Minors

Children and youth migrating are an important group of today's global and mixed migration flows (IOM, 2011b: 11). One reason for that is that children and youth make up a significant proportion of today's migrants. The UN indicates, for example, that around 35 million (or 15%) of the estimated 232 million international migrants are below the age of 20 (UN DESA, 2013a; UN DESA, 2013b). In addition, the United Nations High Commissioner for Refugees (UNHCR) assumes that almost half of the world's forcibly displaced people¹ are children (UNHCR, 2014a: 2). Among the migrant children and youth the number of those who are unaccompanied and asylum-seekers is not negligible. In 2013, some 25,300 asylum applications were lodged by UAMs worldwide (UNHCR, 2014a: 3). Looking at the number of asylum applicants in the EU-27 considered to be UAMs over the last five years, it becomes apparent that the number – after a decrease from 12,225 in 2009 to 10,620 in 2010 – increased. It reached 12,675 asylum-seeking UAMs in 2013 (see Figure 1 and Table A.1 in the Annex).

Figure 1: UAM asylum applicants in the EU-27 (2009–2013)

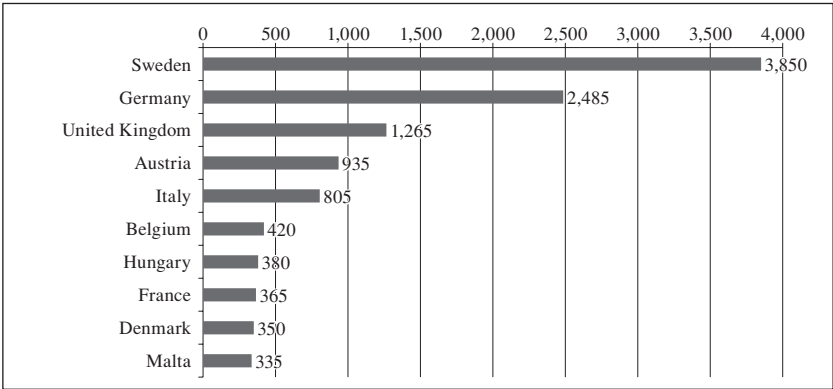


Source: Eurostat, extracted on 10 October 2014.

1 By end-2013, 51.2 million individuals were forcibly displaced worldwide, including 33.3 million internally displaced people, 16.7 million refugees and around 1.2 million asylum-seekers.

In 2013 Sweden was the main receiving country among the (at that time) 27 EU Member States, with 3,850 asylum applicants who were UAMs. Austria was ranked fourth – after Sweden, Germany and the United Kingdom (see Figure 2 and Table A.2 in the Annex).

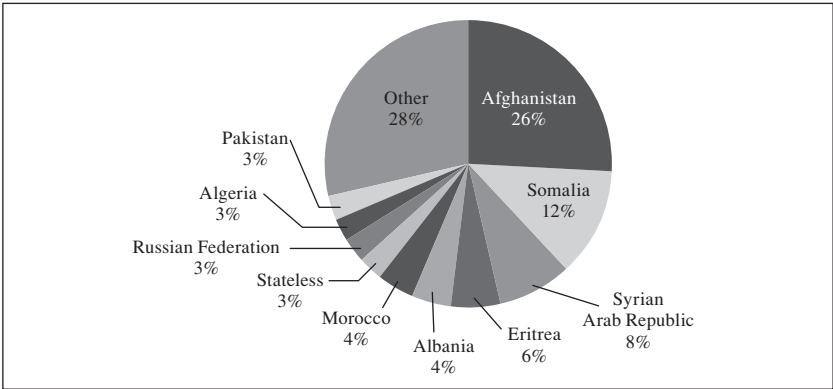
Figure 2: UAM asylum applicants in the EU-27 by receiving country, top-10 (2013)



Source: Eurostat, extracted on 10 October 2014.

The vast majority of asylum-seeking UAMs in the 27 EU Member States in 2013 had Afghan nationality (3,280 or 26%), followed by Somali (12%) and Syrian (8%) (see Figure 3 and Table A.3 in the Annex).

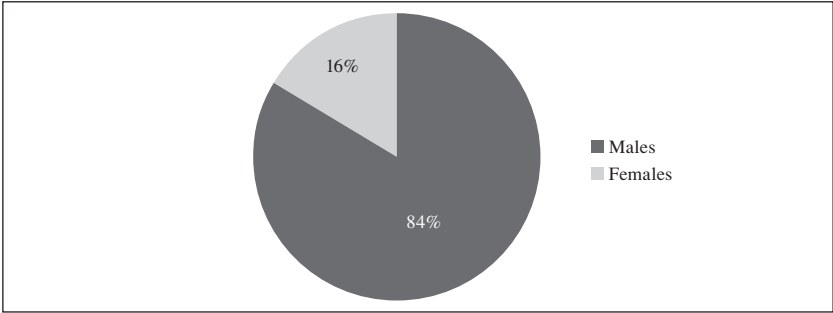
Figure 3: UAM asylum applicants in the EU-27 by citizenship, top-10 (2013)



Source: Eurostat, extracted on 10 October 2014.

With regard to gender, 84 per cent of UAM asylum applicants in the 27 EU Member States in 2013 were male; only 16 per cent were female (see Figure 4 and Table A.4 in the Annex).

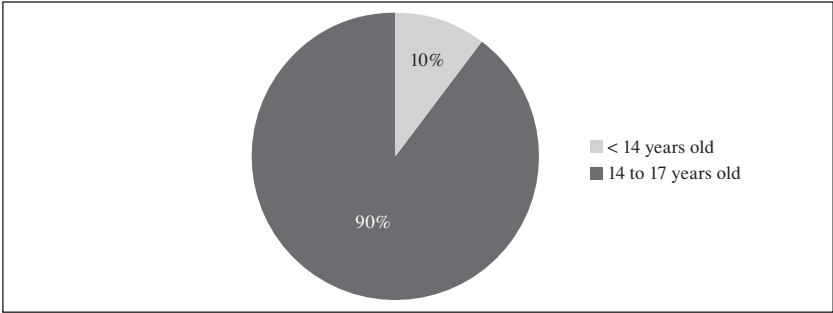
Figure 4: UAM asylum applicants in the EU-27 by gender (2013)



Source: Eurostat, extracted on 10 October 2014.

The majority of UAM asylum applicants in the 27 EU Member States in 2013 were youngsters between the age of 14 and 17 (90%). Only 10 per cent were young UAMs below the age of 14 (see Figure 5 and Table A.5 in the Annex).

Figure 5: UAM asylum applicants in the EU-27 by age (2013)



Source: Eurostat, extracted on 10 October 2014.

1.2 International and European Legal Framework and Policies

Next to the significant presence of UAMs worldwide, the increasing importance given to children in international law also makes UAMs a relevant political topic (Bhabha, 2014: 2–3). The basis of the international

framework for children's rights is the Convention on the Rights of the Child from 1989.² The Convention is the most widely ratified human rights treaty in history (Crépeau, 2013: 2); 194 countries had become parties to the Convention as of April 2014.³ In accordance with article 43 of the Convention on the Rights of the Child, a Committee on the Rights of the Child consisting of 18 independent experts was established to monitor the implementation of the Convention and its Optional Protocols.⁴ To date, the Committee on the Rights of the Child issued 14 "General Comments". Its General Comment No. 6 (from 2005) specifically focuses on the treatment of unaccompanied and separated children outside their countries of origin.⁵ Austria ratified the Convention on the Rights of the Child in 1992.⁶ In 2011, Austria adopted the Federal Constitutional Act on the Rights of the Child,⁷ thereby incorporating the Convention into the Austrian Constitution. Beforehand, however, a debate erupted because only selected articles of the Convention were adopted⁸ and because of the legal reservation in article 7 of the Act, which stipulates that certain rights could be limited (AT EMN NCP, 2011: 21).

Further international treaties and conventions exist, which focus on migration and also provide a guiding framework for migrant children. These include, for example, the Convention Relating to the Status of Refugees, which entered into force in 1954,⁹ and the Protocol Relating to

- 2 Convention on the Rights of the Child, A/RES/44/25, 20 November 1989, United Nations Treaty Series vol. 1577.
- 3 Convention on the Rights of the Child, A/RES/44/25 – Status table. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed on 30 September 2014).
- 4 United Nations High Commissioner for Human Rights (UN OHCHR), Committee on the rights of the Child, *Monitoring children's rights*, available at www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx (accessed on 30 September 2014).
- 5 Committee on the Rights of the Child, General Comment No 6 (2005) – Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005.
- 6 Convention on the Rights of the Child, A/RES/44/25 – Status table. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed on 30 September 2014).
- 7 FLG I No. 4/2011.
- 8 Netzwerk Kinderrechte Österreich, *Verankerung der Kinderrechte in der Verfassung*, available at www.kinderhabenrechte.at/index.php?id=95 (accessed on 14 May 2014).
- 9 Convention Relating to the Status of Refugees, 28 July 1951, United Nations Treaty Series vol. 189 – Status table. Available at <https://treaties.un.org/Pages/ViewDetailsII>.

the Status of Refugees, which entered into force in 1967.¹⁰ Both, the Convention and the Protocol, were ratified by Austria in 1954 and 1973 respectively. More targeted – but not binding – are the UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum from 1997 (UNHCR, 1997), the UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan from 2009 (UNHCR, 2009) and the joint UNHCR and United Nations Children’s Fund (UNICEF) guidelines on ensuring respect for the best interests of unaccompanied and separated children in Europe (UNHCR/UNICEF, 2014). Also, Austria ratified the Hague Convention of 5 October 1961 Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants in 1975¹¹ and its successor, the Convention of 19 October 1996 Concerning the Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, in 2010.¹²

At the European level, the European Convention on Human Rights (ECHR), which entered into force in 1953 and is binding for the 47 Council of Europe Member States, plays an important role – mainly with regard to subsidiary protection and removal, even though it does not specifically address migrant children. The Charter of Fundamental Rights of the European Union of 2000, which has binding legal effect for all EU Member States, explicitly lays down the rights of the child in article 24.¹³ The related “EU Agenda for the Rights of the Child” from 2011 aims to reinforce the

aspx?&src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en (accessed on 30 September 2014).

- 10 Protocol Relating to the Status of Refugees, 31 January 1967, United Nations Treaty Series vol. 606 – Status table. Available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en (accessed on 30 September 2014).
- 11 The Hague Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of infants – Status table. Available at www.hcch.net/index_en.php?act=conventions.status&cid=39 (accessed on 30 September 2014).
- 12 The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children – Status table. Available at www.hcch.net/index_en.php?act=conventions.status&cid=70 (accessed on 30 September 2014).
- 13 Charter of Fundamental Rights of the European Union, 2010/C 83/02, 30 March 2010, Official Journal of the European Union, C 83.

full commitment of the EU – as enshrined in the Charter of Fundamental Rights – to promote, protect and fulfil the rights of the child in all relevant EU policies and actions (EC, 2011). Furthermore, different EU legislation on asylum and immigration addresses the situation of UAMs. An overview is provided in the EU Reference Document.¹⁴

The European Commission recognized that “the arrival of unaccompanied minors is not a temporary phenomenon, but a long-term feature of migration into the EU” (EC, 2012b: 2) and that UAMs are a “particularly vulnerable category of children” (EC, 2010: 2). Against this background and in order to reach greater coherence and better cooperation within the EU, the European Commission adopted an “Action Plan on Unaccompanied Minors (2010 – 2014)” in 2010 (EC, 2010). This action plan provides a common approach to tackle the challenges relating to the arrival of UAMs, thereby upholding the principle of the best interest of the child. Some of the actions recommended were informed by the outcomes of the 2010 EMN-Study on “Policies on Reception, Return and Integration Arrangements for, and Numbers of, Unaccompanied Minors”. A “Mid-term report on the implementation of the Action Plan on Unaccompanied Minors” was subsequently produced by the European Commission in late 2012 (EC, 2012b). It highlights developments and identifies priority areas of action (EC, 2012a). The publication of the Report was followed by a European Parliament resolution on the situation of UAMs (European Parliament, 2013), which called for the EU to adopt strategic guidelines in the form of common minimum standards to better protect unaccompanied children. The present EMN study provides information regarding changes in legislation, practices and statistics over the past five years and fills existing knowledge gaps, thereby feeding into a follow-up of the European Commission Action Plan in line with the EMN’s objective “to meet the information needs of Community institutions and of Member States’ authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas” (Art. 1 para 2 Council Decision 2008/381/EC).

14 CONNECT (2014), *EU Reference Document – A Compilation of Relevant EU Laws & Policies*, available at www.connectproject.eu/eu.html (accessed on 21 November 2014).

1.3 Definition of Unaccompanied Minor

In the Austrian national context the term “unaccompanied minor” is defined in the framework of the Settlement and Residence Act¹⁵ as a foreign minor national who is not accompanied by an adult person accountable for the minor by law (Art. 2 para 1 subpara 17 Settlement and Residence Act). Concerning the definition of minority age, the Austrian Civil Code¹⁶ considers – in line with the Convention on the Rights of the Child – a person who has not reached the age of 18 to be a minor (Art. 21 para 2 Austrian Civil Code). This definition is in line with that of relevant international stakeholders, such as the International Organization for Migration (IOM) that speaks of “[p]ersons under the age of majority in a country other than that of their nationality who are not accompanied by a parent, guardian, or other adult who by law or custom is responsible for them” (IOM, 2011a: 102).

In the framework of this EMN study a slightly different definition is applied that comprises the Austrian and IOM definition except for the fact that it refers to third-country nationals exclusively. Hence, according to the EMN Glossary a UAM is “a third-country national or stateless person below the age of eighteen, who arrives on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States” (EMN, 2012: 132). Within the group of third-country national UAMs, the study differentiates between UAMs who applied for international protection and those who did not (e.g. UAMs who entered irregularly and/or were trafficked).

1.4 Migration Trends of Unaccompanied Minors Coming to Austria

In Austria, the group of asylum-seeking UAMs is well known in terms of numbers, gender, age and country of citizenship (an overview is outlined below). No comprehensive data is available on other groups of UAMs such as, for example, trafficked children (Mancheva/Nonchev, 2013: 73). However, in many cases there is more than one possible categorization, meaning that trafficked children may also seek asylum.¹⁷

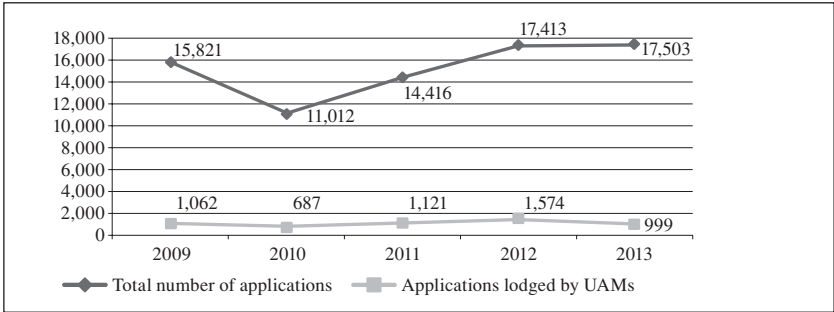
15 FLG I No. 100/2005, in the version of FLG I No. 40/2014.

16 JGS No. 946/1811, in the version of FLG I No. 33/2014.

17 For further information see Reyhani, 2014.

The number of applications for international protection lodged by UAMs fluctuated over the past five years. The number decreased from 1,062 in 2009 to 687 in 2010. It then increased to 1,574 in 2012 and after that decreased again to 999 in 2013, thereby falling below the number of 2009. This fluctuation follows a similar trend than that of the total number of applications for international protection lodged in Austria between 2009 and 2013. During the same time period, the share of applications lodged by UAMs among the total number of applications decreased between 2009 and 2010 from 6.7 per cent to 6.2 per cent; then increased to 9 per cent in 2012; and decreased again in 2013, reaching with 5.7 per cent a share that is lower than it was in 2009 (see Figure 6 and Table A.6 in the Annex).

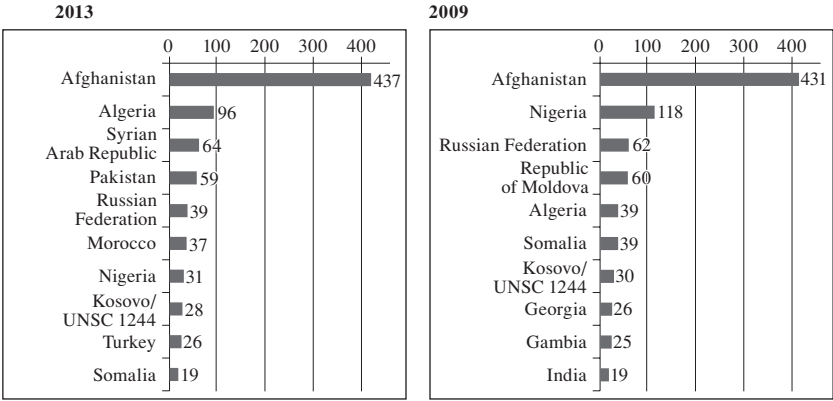
Figure 6: Applications for international protection lodged in Austria, total and UAMs (2009–2013)



Source: Federal Ministry of the Interior, Asylum Statistics 2009–2013.

In 2013, Afghanistan was the main country of origin of UAMs applying for international protection with 437 applications (44% of all applications for international protection lodged by UAMs). Algeria is in second position and Syria in third. Looking back five years, it becomes apparent that this situation has not changed significantly – in 2009 the main country of origin was still Afghanistan (40%) (see Figure 7 and Table A.7 in the Annex).

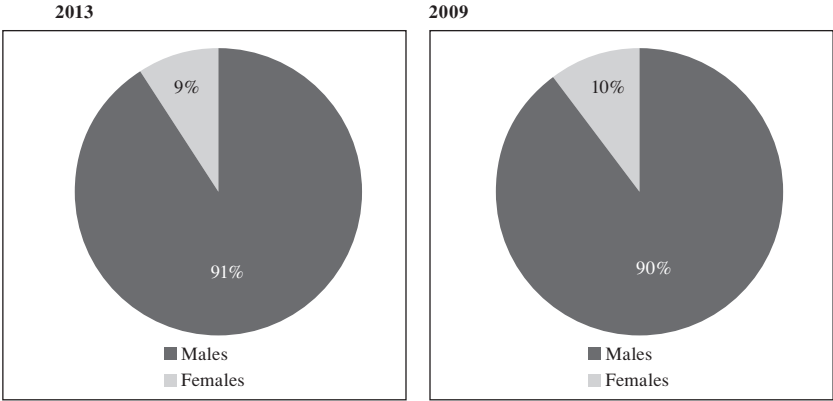
Figure 7: Applications for international protection lodged by UAMs in Austria by citizenship, top-10



Source: Federal Ministry of the Interior, Asylum Statistics 2009 and 2013.

Of the total number of applications for international protection lodged by UAMs in 2013 in Austria, males lodged the vast majority (91%); only 9 per cent were females. Five years ago, in 2009, the portion of male UAMs was similarly high (90%) (see Figure 8 and Table A.8 in the Annex).

Figure 8: Applications for international protection lodged by UAMs in Austria by gender

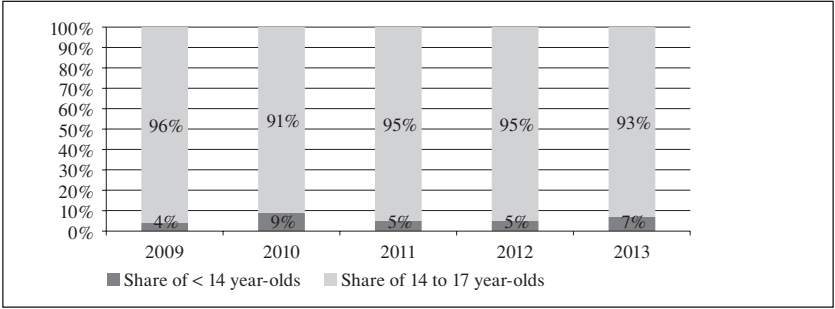


Source: Eurostat, extracted on 10 October 2014.

The vast majority of applications for international protection lodged by UAMs were from minors between 14 and 17 years old (between 91% and 96% over the past five years). Between 2009 and 2013 those younger than 14 years of age lodged less than 10 per cent of all applications for

international protection lodged by UAMs. Over the same time period there was a low point in 2009 with 4 per cent and a peak in 2010 with 9 per cent (see Figure 9 and Table A.10 in the Annex).

Figure 9: Applications for international protection lodged by UAMs in Austria by age in per cent (2009–2013)



Source: Federal Ministry of the Interior, Asylum Statistics 2009–2013.

2. MOTIVATIONS AND CIRCUMSTANCES OF UNACCOMPANIED MINORS' MIGRATION

The motivations and circumstances of unaccompanied minors (UAMs) for starting a migration path towards a specific region or country of destination are manifold. As Bhabha outlined:

Some travel to join families that have already migrated. Others leave home to flee war, civil unrest, natural disaster, or persecution. Some migrate in search for work, education, opportunity, adventure. Others travel separated from their families but not actually alone, in the company of traffickers or smugglers, risking exploitation and abuse (Bhabha, 2014: 1).

In addition, UAMs' motives for migration are not only manifold but multidimensional; meaning that often a combination of reasons apply that makes UAMs become part of the mixed migration movements (Bhabha, 2014: 1; Crépeau, 2013).

The 2010 EMN study on "Policies on Reception, Return and Integration Arrangements for, and Numbers of, Unaccompanied Minors" found a similar array of considerations with regard to motivations and circumstances for entering the EU. The most frequently mentioned reasons were fleeing persecution and seeking protection as well as economic and aspirational reasons. With regard to circumstances of the migratory journey both human trafficking and migrant smuggling were mentioned. Some of the UAMs were in transit to another country, which was their original country of destination (EMN, 2010: 29).

Furthermore, it becomes apparent – when considering the motivations outlined above – that they are quite similar to those of adults. This was also stressed by Levinson (Levinson, 2011).

When considering the UAMs' motivations for coming to Austria and the circumstances of their journey (see 2.1 and 2.2) it is clear that these are not necessarily related to Austria but reflect the general motivations and conditions as outlined above. There is no systematic register of the circumstances of the UAMS' journey and motivations for coming to Austria.¹⁸

18 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

Thus, there is no comprehensive information available. However, the national report of the EMN study from 2009 looked at this specific question and other, more recent, expert knowledge is also available.

2.1 Motivations of Unaccompanied Minors to Come to Austria

The answers to the questionnaire sent out by e-mail to experts within the framework of this study (see Methodology) identified two main motivations for UAMs to come to Austria: firstly, fleeing persecution or serious harm,¹⁹ often caused by war or internal conflict in the country of origin.²⁰ According to information gathered by Katharina Glawischnig from the NGO *Asylkoordination Österreich*, UAMs who flee persecution, war or internal conflict do so mainly because of forced recruitment, forced marriage and blood vengeance. These reasons mainly apply to UAMs who are 16 years or older.²¹ Secondly, economic and aspirational reasons regarding education, training and employment are considered a main motivation²² and are linked to a lack of perspectives in the countries of origin.²³

The experts also suggested that the aim to join family or the diaspora community in Austria,²⁴ or to reunite with their family through family

- 19 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014; Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.
- 20 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014.
- 21 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.
- 22 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.
- 23 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.
- 24 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

reunification in Austria,²⁵ is also an important motivation for UAMs. Often, however, the motivations are unknown, either because UAMs are reluctant to report their motivations (e.g. due to trauma)²⁶ or because they are not able to explain why they have entered Austria (e.g. due to their early age).²⁷

Furthermore, Austria is not always the country of destination as UAMs are sometimes in transit to another EU Member State²⁸ where family members reside.²⁹

Looking at the findings from the national report of the EMN study on “Policies on Reception, Return and Integration Arrangements for, and Numbers of, Unaccompanied Minors” from 2010, the main motivations of UAMs have not changed. Back then fleeing persecution or serious harm as well as economic and aspirational reasons represented the main motivations for UAMs to come to Austria (AT EMN NCP, 2010: 15–17).

Some motivations are linked to the country of origin of the UAM who is seeking international protection in Austria (AT EMN NCP, 2010: 15). The motivations of UAMs originating from Afghanistan, which is the main country of origin (see 1.4 and the Annex for further information), are mainly to flee persecution or serious harm (e.g. due to forced recruitment by the Taliban or family disputes)³⁰ and economic and aspirational reasons (e.g. lack of perspectives or lack of possibility to go to school).³¹ In

25 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

26 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

27 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014.

28 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

29 Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

30 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

31 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

addition, Afghans born in Iran face the constant fear of being returned to Afghanistan.³²

Also, as Ecker stressed, the link between motivations and countries of origin is not specific to UAMs but similar to those of adults.³³

2.2 Circumstances under which Unaccompanied Minors Come to Austria

According to recent responses from interviews and questionnaires by experts (see Methodology), UAMs most often make use of smugglers when starting in their countries of origin, until they reach Austria and then they enter Austria unlawfully.³⁴ They are often sent away by their parents.³⁵

Experts did not mention human trafficking as a main circumstance under which UAMs come to Austria. According to Norbert Ceipek, most UAMs who do not seek international protection and come to Austria in the context of organized crime with the intention of pickpocketing or begging were trafficked. Aside from Bosnia and Herzegovina, they mainly come from the EU Member States Bulgaria, Slovakia, Hungary and Romania are, therefore, beyond the focus of this study.³⁶

These circumstances seem not to have changed over the past five years. According to the findings of the national report of the 2010 EMN study on “Policies on Reception, Return and Integration Arrangements for, and Numbers of, Unaccompanied Minors”, UAMs were often smuggled with the financial support of their families that sometimes had taken on debts to be able to do so (AT EMN NCP, 2010: 15–17).

32 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

33 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014.

34 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014; Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

35 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

36 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014.

3. ENTRY AND ASSESSMENT PROCEDURES

3.1 Documentation and Entry

With regard to **entry** into Austria, there is – overall – no specific regulation for unaccompanied minors (UAMs). Mostly, the general provisions apply.³⁷ For the (first) entry to Austria, UAMs have to provide the same documents as all foreign nationals, namely a valid passport or travel document and a visa according to the general provisions (Art. 15 para 1 and 2 Aliens Police Act). Exempted from the visa requirement are third-country nationals holding a residence permit of another Schengen state and those falling under a visa-free regime (Schumacher et al., 2012: 23). The visa has to be applied for prior to the entry at an Austrian representation (i.e. embassy or consulate) abroad (Art. 11 Aliens Police Act). Minors below the age of 14 cannot apply for a visa themselves; minors of 14 years of age or older can apply but need the consent of their legal representative (Art. 11 para 8 Aliens Police Act).

The table below displays the conditions that need to be fulfilled with regard to the required entry documents.

Table 1: Entry documents required by UAMs

Entry documents	Conditions
National visa permitting entry and stay	In order to receive a visa, the following conditions have to be met inter alia: passport/travel document, health insurance and sufficient financial means for stay (Schumacher et al., 2012: 28–29; Art. 21 para 1 and 2 Aliens Police Act). ³⁸ The visa fees amount to 35 EUR for minors between the age of 6 and 12 years; no fees for minors below the age of 6 are charged. ³⁹
Passport	The passport needs a validity exceeding the duration of the visa by three months (Art. 20 para 3 Aliens Police Act).
Travel document	Other travel documents may be regarded as sufficient/equal to a passport; i.e. in the case of students on school travel or European Economic Area (EEA) and Swiss citizens (Art. 17 Aliens Police Act).

37 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

38 For a full list of conditions see Art. 21 para 1 and 2 Aliens Police Act.

39 Federal Ministry for Europe, Integration and Foreign Affairs, *Einreise und Visum*, available at www.bmeia.gv.at/reise-aufenthalt/einreise-und-aufenthalt-in-oesterreich/einreise-und-visum/ (accessed on 13 January 2015).

In practice, **refusal of entry** is possible as the general entry conditions apply also to UAMs. However, the best interest of the child is always a prime consideration.⁴⁰ One particularity of the Austrian legislation with regard to the refusal of entry is the differentiation between, on the one hand, the immediate rejection at the border and, on the other hand, the forcible return of foreign nationals who were apprehended within the Austrian territory not later than seven days after their entry (Schumacher et al., 2012: 32).

Rejection at the border by national authorities is allowed under the conditions listed in article 41 Aliens Police Act. These include the following: (i) unlawful entry (i.e. no valid passport or travel document and visa), (ii) entry ban, (iii) exclusion order, (iv) threat to public order or national security of Austria or another EU Member State, (v) intent to work without work permit, (vi) participation in smuggling, (vii) no residence and insufficient means to finance stay and return, and (viii) evidence of the intent to commit financial or currency crime. Article 45a of the Aliens Police Act provides a restriction to the rejection of a foreign national at the border, which is not allowed until it is verified if such a rejection could lead to a violation of article 2 or 3 of the European Convention on Human Rights (ECHR)⁴¹ or its Protocols No. 6⁴² or 13,⁴³ if the foreign national would be at risk of persecution as defined in the Geneva Convention on Refugees,⁴⁴ or if a rejection would counteract an interim measure of the European Court of Human Rights (ECtHR). The legislation does not differentiate between different categories of foreign nationals and does not provide specific provisions for UAMs.

Forcible return of foreign nationals following apprehension within the territory not later than seven days after the entry can be imposed under

40 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

41 European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, Council of Europe Treaty Series, No. 5.

42 Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty, 28 April 1983, European Treaty Series No. 114.

43 Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances, 3 May 2002, European Treaty Series 187.

44 Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189.

the conditions listed in article 45 Aliens Police Act. These include the following: (i) unlawful entry (i.e. no valid passport or travel document and visa), (ii) return obligation due to return agreement, (iii) requirements for legal stay are no longer fulfilled, and (iv) return because of irregular stay. The same restrictions provided by article 45a of the Aliens Police Act as outlined above also apply to forcible return.

3.2 Apprehension by National Authorities

When a UAM is apprehended by Austrian authorities, some particular rules and procedures apply. As a general rule, if an apprehended unaccompanied foreigner claims to be a minor – even if the minor’s age is doubtful but is not apparently false – then the Children and Youth Service Authority has to be contacted immediately (Art. 12 para 4 Aliens Police Act). In case of the particularly vulnerable group of trafficked UAMs they are referred to the centre *Drehscheibe*, a specialized socio-pedagogical institution of the Children and Youth Service Vienna (see Box 2) or – in the case of female minors who are 16 years or older – to the association LEFÖ-IBF⁴⁵ (Reyhani, 2014: 32).

With the aim of fostering the identification of and assistance for trafficked children, some training programmes for border guards, police authorities and others were organized in the past. Most recently, the NGO network ECPAT Austria (End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes),⁴⁶ for example, implemented several training programmes and presentations of its training manual on child trafficking for police authorities and soldiers in 2013 (Federal Ministry for Europe, Integration and Foreign Affairs, 2013: 24). Further, a brochure on how to identify trafficked children was published in 2013 by the former Federal Ministry for Economy, Family and Youth together with the Working Group on Child Trafficking.⁴⁷ The brochure targets the Children

45 Counselling, Education and Support for Migrant Women-Intervention Centre for Trafficked Women (LEFÖ-IBF); *LEFÖ, IBF – Interventionsstelle für Betroffene von Frauenhandel*, available at www.lefoe.at/index.php/ibf.html (accessed on 30 September 2014).

46 ECPAT Austria, www.ecpat.at (accessed on 12 August 2014).

47 The Working Group on Child Trafficking is a sub-group of the Task Force on Combating Human Trafficking that was set up in November 2004 under the leadership of the Federal Ministry for Europe, Integration and Foreign Affairs. The Task Force consists of representatives of competent Ministries, authorities, federal provinces,

and Youth Service Authorities, police authorities, the aliens police, embassies, consulates, and the judiciary (Federal Ministry for Economy, Family and Youth, 2013). Another example is the IOM project “IBEMA – Identification of potential trafficked persons in the asylum procedure”.⁴⁸ In the framework of the project a handbook and trainings on how to identify trafficked persons have been developed and implemented for officials of the Federal Office for Immigration and Asylum and employees of the federal reception facilities. However, the project does not specifically focus on UAMs.

3.3 Guardianship

With regard to the question of ensuring guardianship of UAMs, there is no difference in national rules and procedures if a UAM is apprehended at the border or within the Austrian territory. In any case the Children and Youth Service Authorities are immediately informed in line with article 12 paragraph 4 Aliens Police Act and accommodation is organized.⁴⁹ The rules and procedures are described below.

3.3.1 The Organization of Guardianship

The arrangements for guardianship of asylum-seeking and non-asylum-seeking UAMs are the same. If a minor is found on the Austrian territory whose parents are unknown, the Children and Youth Service Authorities take guardianship (Art. 207 Austrian Civil Code). As the Austrian Supreme Court clarified in its decision on 19 October 2005, this applies to all minors irrespective of their age and no differentiation can be made between Austrian citizens and foreign nationals.⁵⁰

NGOs and international organizations and is in charge of the development and implementation of National Action Plans to Combat Trafficking in Human Beings. Issues regarding child trafficking are dealt with by the Working Group on Child Trafficking that is coordinated by the Federal Ministry for Families and Youth (Federal Ministry of Economy, Family and Youth, n.d.: 3–4).

48 The project is co-funded by the (former) European Refugee Fund and the Austrian Federal Ministry of the Interior; International Organization for Migration (IOM), Country Office for Austria, *IBEMA – Identification of potential trafficked persons in the asylum procedure*, available at www.iomvienna.at/en/ibema-identification-potential-trafficked-persons-asylum-procedure (accessed on 28 September 2014).

49 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

50 Supreme Court, 19 October 2005, 7Ob209/05v.

According to the Austrian Civil Code, the Children and Youth Service Authorities have to actively apply to the courts for the guardianship within eight days (Art. 211 para 1 Austrian Civil Code). The guardianship has to be taken by the Children and Youth Service Authority of the province in which the minor has his/her usual residence (i.e. normally residence of at least six months) or – if this is not applicable – has his/her residence (Art. 212 Austrian Civil Code). In the provinces, there are several field offices of the Children and Youth Service Authorities established within the municipalities or within the districts. After the Children and Youth Service Authorities' application, the courts have to appoint a Children and Youth Service Authority as the minor's guardian if no other suitable person (e.g. relative) can be found (Art. 209 Austrian Civil Code).

In practice, guardianship is not always appointed immediately but it can take up to six months because either the Children and Youth Service Authorities wait to see if the minor will stay in Austria or because the courts take time to make a decision (Fronek/Rothkappel, 2013: 16). In general, it is considered a challenge to ensure a coherent approach throughout Austria because children and youth service is the competence of the provinces with their own implementation laws (see also 4.1.1). According to Mancheva/Nonchev “no consistent practice has been established as far as the appointment of legal guardians is concerned” (Mancheva/Nonchev, 2013: 40).

Until a decision has been made by the court regarding guardianship the Children and Youth Service Authorities can take measures with regard to care and education of the minor in case of imminent risk (Art. 211 Austrian Civil Code). In that case the local Children and Youth Service Authority in whose sphere of action the minor is present (i.e. established through main residence, usual residence or residence) is responsible (Art. 5 para 3 in conjunction with para 2 Federal Children and Youth Service Act).

3.3.2 Guardians and their Responsibilities

According to article 207 of the Austrian Civil Code, the Children and Youth Service Authorities take guardianship. However, foster parents can also be entrusted to do so (Art. 209 Austrian Civil Code). In practice, guardianship is usually given to the Children and Youth Service

Authorities.⁵¹ Exceptions are made if relatives live in Austria. Often these are granted partial guardianship rights with regard to caretaking and financial matters, while legal representation becomes the responsibility of the Children and Youth Service Authority (Fronek/Rothkappel, 2013: 15).

First and foremost, guardians always have to consider and ensure the best interest of the child (Art. 138 Austrian Civil Code). Since 1 February 2013, the concept of the best interest of the child is defined in the Austrian Civil Code, comprising a non-exhaustive list of factors that have to be considered (Art. 138 Austrian Civil Code). More concretely, the guardians' duties include care and education, asset management and legal representation (Art. 160–169 Austrian Civil Code). According to Friedl these duties mean that the guardian has to ensure the physical well-being, health, care (accommodation, food, and clothing), education, personal development, cultural and linguistic orientation, support of professional development as well as the legal representation (Friedl, 2010: 74). With regard to care and education, the guardian usually assigns tasks to the reception facility where the UAM is accommodated.⁵² In practice also the legal representation in asylum and alien law proceedings is usually outsourced to law firms or NGOs (Fronek/Rothkappel, 2013: 17). In most cases also the legal representation with regard to administrative authorities, schools, nurseries, medical and psychological treatment, conclusion of vocational training agreements, etc. is outsourced.⁵³

When it comes to the practical implementation of guardianship there are differences between the provinces (FRA, 2010: 51), which is due to the fact that guardianship is the competence of each individual province and that there are no guidelines concerning its implementation. Differences also depend on, for example, local conditions, financial resources or personal engagement (ECRE/Save the Children, 2011: 220; Fronek, 2010: 139–141; Fronek/Rothkappel, 2013: 21).⁵⁴ In order to coordinate their agendas and to promote the rights of the child, representatives of the

51 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

52 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014; Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014.

53 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

54 Ibid.

Children and Youth Service Authorities come together in the form of a Working Group (*ARGE Jugendwohlfahrt*).⁵⁵

A practical challenge to the implementation of guardianship in Austria is the lack of information that the UAMs have about guardians and their responsibilities. Research that the IOM Country Office for Austria conducted in 2009 for the European Union Agency for Fundamental Rights (FRA) found out that in Austria (as well as in other EU Member States) most children interviewed did not know whether they had a guardian or what the guardian's responsibilities were (FRA, 2010: 52). This situation seems not to have changed over the past few years as interviews with UAMs carried out by Blecha in 2011 came to the same conclusion (2012: 24–25). The challenge remains today. In 2013 Fronek/Rothkappel found that “[i]n numerous cases, the juveniles do not know their guardians or are insufficiently informed about the tasks of the guardians” (Fronek/Rothkappel, 2013: 24).

3.4 Age Assessment

The age of an asylum-seeker, or more precisely the question whether he/she is below the age of 18, plays a crucial role in the asylum procedure⁵⁶ as it influences, for example, the decision as to whether Austria is responsible for examining the application for international protection according to the Dublin Regulation or the provision of a legal representative (see 3.5) (Lukits/Lukits, 2011: 17–18). In procedures according to the Aliens Police Act age is decisive for the minor's legal capacity or the question of imposing detention or alternatives to detention (see 6.2 and 6.3).

3.4.1 Age Assessments in Asylum Procedures

If a UAM applies for international protection, then the police authorities carry out a first interview during which – *inter alia* – the date of birth is investigated (Art. 19 para 1 and Art. 29 para 6 Asylum Act; for further details see 3.5.2) and registered in the so-called Integrated Foreigners' Administration, a centralized database.⁵⁷ If the results of the investigations

55 Österreichische Arbeitsgemeinschaft für Jugendwohlfahrt, www.jugendwohlfahrt.at (accessed on 30 September 2014).

56 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

57 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

carried out lead to doubts with regard to the age of the minor, and if a minor status cannot be proven with the help of certificates or similar documents, then the Federal Office for Immigration and Asylum or the Federal Administrative Court can order the implementation of an age assessment (Art. 13 para 3 Federal Office for Immigration and Asylum Procedures Act⁵⁸). Such an age assessment is carried out as soon as possible during the admission procedure but can also be carried out at a later stage (after admission) during the actual asylum procedure dealing with the substance of the asylum application.⁵⁹ Until the assessment has been undertaken and the results are available, however, the potential UAM – as a matter of principle – is treated as a minor according to the Federal Office for Immigration and Asylum.⁶⁰

In the past there were no specific provisions in Austrian legislation with regard to the age assessment procedure (AT EMN NCP, 2010: 28–29; Rudolf, 2009: 79–80) but since 1 January 2010, a multifactorial medical age assessment has been in force (Fronek, 2010: 66–67), which is based on physical, dental and radiological examinations (Art. 2 para 1 subpara 25 Asylum Act), whereby every examination has to be carried out with the least possible intervention and the participation in radiological examinations cannot be enforced (Art. 13 para 3 Federal Office for Immigration and Asylum Procedures Act). Nevertheless, in light of the general obligation to cooperate in the asylum procedure, a refusal can negatively influence the judgment of the asylum-seeker's credibility during the asylum procedure according to article 18 paragraph 3 of the Asylum Act (Lukits/Lukits, 2014a; Lukits/Lukits, 2013: 197).

During the first step of the age assessment, an inspection of the physical appearance is carried out.⁶¹ If this leads to doubts about the minority age, then an x-ray examination of the wrist is carried out in a second step. If the findings show a minimum age that is below 18 then no further assessments are carried out. Otherwise a physical examination, dental observation, dental x-ray and computed tomography of the clavicle is carried out

58 FLG I No. 87/2012, in the version of FLG I No. 40/2014.

59 For further details on the two phases of the asylum procedure see 3.5.2.

60 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014 (see also Art. 13 para 3 Federal Office for Immigration and Asylum Procedures Act).

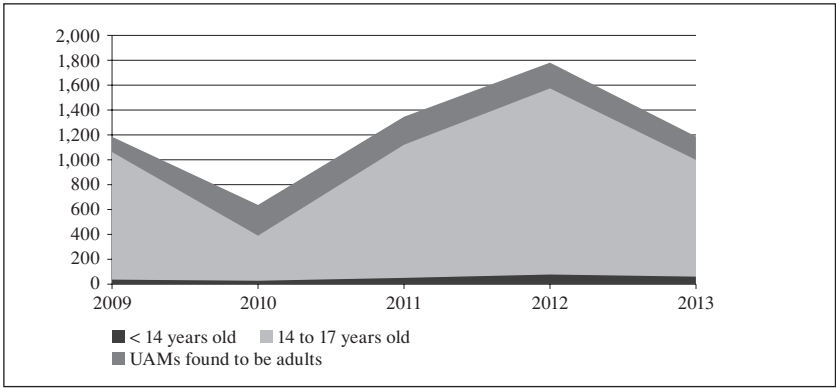
61 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

(Menschenrechtsbeirat, 2011: 16; Lukits/Lukits, 2013: 196). The combined results of these examinations then lead to a defined minimum age.⁶² If – after the age assessment – there are still doubts about the age then minority age is assumed in favour of the asylum-seeker (Art. 13 para 3 Federal Office for Immigration and Asylum Procedures Act).

If the minority age is not confirmed through the age assessment an interview with the asylum-seeker is carried out, during which the majority age is determined through procedural instruction.⁶³ Then, the age registered in the Integrated Foreigners' Administration is corrected so as to indicate the highest possible minimum age identified through the age assessment.⁶⁴ The age determination carried out in the asylum procedure has no binding consequence for areas other than that of the asylum procedure, e.g. guardianship (Lukits/Lukits, 2011: 20).

Over the last five years, the share of UAMs who were found to be adults among the total number of applications lodged by UAMs claiming to be minors fluctuated from year to year. The share ranged between a minimum value of 10.4 per cent (2009) and a maximum value of 26.4 per cent (2010) (see Figure 10 and Table A.9 in the Annex).

Figure 10: Applications for international protection lodged by UAMs in Austria by age (2009–2013)



Source: Federal Ministry of the Interior, Asylum Statistics 2009–2013.

62 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.
 63 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.
 64 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

The topic of age assessments is widely debated among different stakeholders in Austria. One aspect of concern is that majority age is declared through procedural instruction, which does not provide a separate right of appeal according to article 63 paragraph 2 General Administrative Procedures Act⁶⁵ but can only be contested together with an appeal against a negative decision on the application for international protection (e.g. Lukits/Lukits, 2011; Menschenrechtsbeirat, 2011: 19). The European Union Agency for Fundamental Rights and the Separated Children in Europe Programme (SCEP), for example, recommend that there should be a procedure to appeal against an age determination. (FRA, 2010: 55; SCEP, 2009: 25). Recently, however, the Austrian Constitutional Court confirmed in its decision from 3 March 2014 that an age determination through procedural instruction is in line with the constitution.⁶⁶

Another concern that has been raised is related to the health implication of radiological examinations and computed tomography (Menschenrechtsbeirat, 2011: 18). It is argued that the contamination has to be weighed against the incertitude of the methods with regard to determining age (Federal Ministry of Health, 2009; Austrian Medical Chamber, 2011) and the principle of proportionality according to article 13 paragraph 3 of the Federal Office for Immigration and Asylum Procedures Act (Lukits/Lukits, 2013: 200–201).

3.4.2 Age Assessments in Other Procedures

The Austrian legislation contains specific provisions regarding age assessment of non-asylum-seeking UAMs in procedures of the Settlement and Residence Act as well as section 3 to 6 and section 12 to 15 of the Aliens Police Act.

UAMs that are involved in Settlement and Residence or aliens police procedures are interviewed to clarify their residence status and register, *inter alia*, their age in the Integrated Foreigners' Administration.⁶⁷ If the minor age is questioned and cannot be proven with the help of certificates or similar documents, then the police administrations of the federal prov-

65 FLG No. 51/1991, in the version of FLG I No. 161/2013.

66 Constitutional Court, 3 March 2014, U2416/2013; for further information see Lukits/Lukits, 2014b.

67 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

inces can order the implementation of a multifactorial age assessment according to article 2 paragraph 1 subparagraph 25 Asylum Act, which includes radiological examinations. The participation in radiological examinations cannot be enforced. Also, every examination has to be carried out with the least possible intervention (Art. 12 para 4 Aliens Police Act; Art. 29 para 4 Settlement and Residence Act). According to the Federal Office for Immigration and Asylum, such an age assessment is usually carried out at the earliest possible procedural stage.⁶⁸

If, after the age assessment, there are still doubts about the age the minority age is assumed in favour of the UAM (Art. 12 para 4 Aliens Police Act; Art. 29 para 4 Settlement and Residence Act). If the assessment reveals a minimum age different from that registered in the Integrated Foreigners' Administration, then the entry will be corrected. In practice, there are only very few cases in which an age assessment is carried out in the framework of settlement and residence or aliens police procedures.⁶⁹

3.5 Asylum Procedures for Unaccompanied Minors

3.5.1 Application for International Protection and Legal Representation

In general, an application for international protection can only be made when already staying in the Austrian territory (Art. 17 para 1 and 2 Asylum Act); once the border to Austria has been crossed, the **application** can be made **informally** by notifying an organ of the public authority.⁷⁰ Minors who are not accompanied by their legal representative are allowed to apply for international protection on their own (Art. 10 para 3 and 6 Federal Office for Immigration and Asylum Procedures Act). Afterwards, they are brought to the federal reception facility east (located in Traiskirchen, Lower Austria)⁷¹ where they can **officially** lodge their

68 Ibid.

69 Ibid.

70 Ibid.

71 There are five federal reception facilities in Austria, one in the east (Traiskirchen, Lower Austria), one in the west (Thalham, Upper Austria), one in the north (Bad Kreuzen, Upper Austria), one in the south (Reichenau, Lower Austria) and one in the centre of Austria (Vienna). The federal reception facility east provides specific reception conditions to UAMs (Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014).

application for international protection in person (Schumacher et al., 2012: 242–243).⁷²

Minors above the age of 14 have the capacity to officially lodge their application for international protection according to article 10 paragraph 3 of the Federal Office for Immigration and Asylum Procedures Act. After lodging the application, their legal advisor at the federal reception facility east⁷³ becomes their **legal representative** in the asylum procedure and is thus responsible for setting all legal actions with regard to the UAM's asylum procedure (Art. 10 para 3 Federal Office for Immigration and Asylum Procedures Act). Minors below the age of 14 do not have this capacity. When they arrive in the federal reception facility east they are immediately appointed a legal advisor who is also in charge of their legal representation with regards to the asylum procedure and officially lodges the application for international protection on their behalf (Art. 10 para 6 Federal Office for Immigration and Asylum Procedures Act). These provisions only refer to the legal representation during the asylum procedure. Any other legal issues, such as consent to a medical examination or administration of finances, fall into the competency of the guardian, i.e. the Children and Youth Service Authorities (Nowak/Sax/Weichselbaum, 2013: 14).

During the actual asylum procedure (for further details see 3.5.2), the Children and Youth Service Authority of the province where the UAM is accommodated becomes the legal representative (Art. 10 para 3 and 6 Federal Office for Immigration and Asylum Procedures Act). If the UAM absconds from the asylum procedure or if a legal representative cannot be appointed due to any other reason, then the institution/person who previously carried out the legal representation (i.e. Children and Youth Service Authority or the legal advisor) has to take over until a legal representative can be assigned (Art. 10 para 5 and 6 Federal Office for Immigration and Asylum Procedures Act).

3.5.2 Asylum and Appeal Procedures

In Austria the asylum procedure is divided into two phases. The **first phase** is called admission procedure during which Austria's responsibility to assess the application for international protection is clarified. Austria is not competent if the asylum-applicant entered Austria via a safe

72 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

73 For further information see footnote 71.

third-country or if another EU Member State has responsibility for considering the application according to the EU's Dublin system (Schumacher et al., 2012: 246). If the asylum-seeker was admitted, then the **second phase** starts, thereafter referred to as actual asylum procedure. In this phase the substance of an application, e.g. whether refugee status or subsidiary protection status is granted, is considered and a decision is taken (Art. 28 para 1 and 2 Asylum Act 2005).

Since 1 January 2014 the new Dublin III Regulation,⁷⁴ that is directly applicable in Austria, brought about some changes with regard to the admission procedure for asylum-seeking UAMs. According to article 8 of the Dublin III Regulation, the Member State responsible for an asylum-seeking UAM is the Member State where a family member, sibling or relative is legally present, if that is in the best interests of the minor. If no such persons can be found then the Member State is responsible where the UAM has lodged the application for international protection. The judgment of the Court of Justice of the European Union from 6 June 2013⁷⁵ clarified that in case a UAM lodges an application for international protection in more than one Member State, the application has to be examined in the Member State where the UAM is present.⁷⁶

Since 1 January 2014, the new Federal Office for Immigration and Asylum is the first instance to make a decision on the application for international protection and the newly established Federal Administrative Court decides upon respective **appeals** (Art. 3 and 7 Federal Office for Immigration and Asylum Procedures Act).⁷⁷ For UAMs, the deadline for submitting an appeal is four weeks, which is longer than the usual two weeks deadline that is applicable to other persons (Art. 16 para 1 Federal Office for Immigration and Asylum Procedures Act).

74 Regulation (EU) No. 604/2013.

75 Court of Justice of the European Union, 6 June 2013, MA & Others vs. Secretary of State for the Home Department, C 648/11.

76 European Commission (2014), *Clearer EU rules for unaccompanied minors seeking international protection*. Press release, Brussels, 26 June 2014, available at http://europa.eu/rapid/press-release_IP-14-723_en.htm?utm_source=Kaldor+Centre+Mailing+List&utm_campaign=8cb080b2d7-Weekly_News_Roundup_20+June&utm_medium=email&utm_term=0_c5bfc89936-8cb080b2d7-145077165 (accessed on 10 July 2014).

77 For the institutional competencies applicable before 1 January 2014 see AT EMN NCP, 2012b.

In Austria there is no systematic information available on the **average duration** of asylum (including appeal) procedure for UAMs.⁷⁸ An indication is given by a study carried out by the NGO *Asylkoordination Österreich* in 2010 which states that “[d]ue to the often very long application process, many refugees who are still minors at the time of submitting their applications often ‘age out’ by the time a decision is made” (*Asylkoordination Österreich*, 2010: 3). According to more recent estimates done from Katharina Glawischnig, it often takes up to two years for a final decision to be made, including possible appeal procedures. Applications for international protection lodged by Syrian nationals, are the exception as they were relatively quickly in 2014.⁷⁹

A good practice example with regard to improving asylum and appeal procedures for UAMs and providing information to the minors is the UNHCR project UBAUM (*Unterstützung der Behörden bei Asylverfahren unbegleiteter Minderjähriger*).

Box 1: Good practice example – UBAUM

In 2011 the UNHCR started a project to assist the Austrian authorities in asylum procedures of UAMs (UBAUM). The project was funded by the Federal Ministry of the Interior and the (former) European Refugee Fund. In the framework of the project, quality assurance mechanisms were set up. A second project phase started in 2012 during which, amongst others, a child-friendly brochure was developed that explains the asylum procedure to UAMs. In 2014 an update of the brochure was carried out, which is available in German, English, Dari and Pashto (UNHCR, 2014, b).

3.5.3 Asylum Interviews

With regard to the asylum procedure in Austria, there are specific provisions for UAMs with regards to the asylum interviews that are carried out. Two different kinds of interviews can be identified. As a first step, either directly after applying for international protection or 72 hours after lodging the application the latest, the police searches the UAMs’ belongings, takes his/her fingerprints, provides information about the asylum procedure and carries out an **initial questioning** with the help of a police interpreter. During the initial questioning, the applicant is mainly asked questions about his/her identity (e.g. country of origin, nationality,

78 Written input by Gerald Dreveny, Federal Ministry of the Interior, 15 September 2014.

79 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

birthday and family) and the travel route (Art. 19 para 1 Asylum Act). In the case of UAMs below the age of 14, the legal advisor has to be present during the initial questioning in its function as legal representative (Art. 49 para 3 Federal Office for Immigration and Asylum Procedures Act). If the UAMs is 14 years or older and the initial questioning was carried out without the presence of the legal advisor, then an appeal can be made asking to redo the interview (Art. 10 para 3 Federal Office for Immigration and Asylum Procedures Act). Following the initial questioning, an **interview** is carried out during the admission procedure and also during the actual asylum procedure by representatives of the Federal Office for Immigration and Asylum. The interview mainly aims at investigating the reasons for fleeing the home country (Art. 19 para 2 Asylum Act). All minors, including UAMs, can only be interviewed when their legal representative is present (Art. 19 para 5 Asylum Act).

3.6 Residence Options Available to Unaccompanied Minors

When considering the residence options available to UAMs in Austria, it has to be stressed that, according to ECRE, almost all UAMs in Austria apply for international protection (ECRE, 2014: 66) and that according to the Federal Office for Immigration and Asylum only in exceptional cases no protection status (i.e. asylum or subsidiary protection) is granted.⁸⁰ However, since there are no respective statistics available, no verified statement can be made. Further, no statistics on other residence titles provided to UAMs in Austria are available.⁸¹

80 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

81 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

Table 2: Overview of residence options available to UAMs

Category of unaccompanied minors	(Selected) residence options available
Asylum seeking UAMs	Asylum status (Art. 3 Asylum Act). Subsidiary protection status (Art. 8 Asylum Act). “Residence permit” or “residence permit plus” based on reasons of article 8 ECHR (Art. 55 para 1 Asylum Act). “Residence permit for individual protection” (Art. 57 Asylum Act).
Non-asylum seeking UAMs	“Residence permit for individual protection” (Art. 57 Asylum Act). “Red-White-Red Card plus” (Art. 41a para 10 Settlement and Residence Act). “Residence permit” or “residence permit plus” based on reasons of article 8 ECHR (Art. 55 para 1 Asylum Act). “Residence permit” or “residence permit plus” in cases of particularly exceptional circumstances (Art. 56 Asylum Act). Tolerated stay (Art. 46a Aliens Police Act). ⁸²

3.6.1 Residence Options for Asylum-Seeking Unaccompanied Minors

Depending on the outcome of the asylum procedure, different residence options are available to UAMs.

If the final decision on their application for international protection was positive, i.e. if it is credible that the foreign national (including UAMs) would be at risk of persecution in the country of origin, as defined in article 1A of the Geneva Convention on Refugees, and if there is no reason for ineligibility, according to article 6 Asylum Act, then asylum status is to be granted (Art. 3 para 1 Asylum Act). The asylum status constitutes a permanent right of residence (Schumacher et al., 2012: 280). If no asylum status was granted, then an assessment with regard to subsidiary protection is carried out. The right of residence under subsidiary protection status is limited to one year and can be extended for two-year periods upon application, if the conditions for granting subsidiary protection remain (Art. 8 para 4 Asylum Act).

If a foreign national (including UAMs) applied for international protection and received neither asylum or subsidiary protection status a further assessment would be carried out *ex officio* to determine whether a residence title on grounds of article 8 ECHR (Art. 55 Asylum Act) or a “residence permit for individual protection” (Art. 57 Asylum Act) has to be

82 Tolerated stay is not a residence permit as such and does not constitute a right of residence.

granted.⁸³ If it is necessary to uphold the right to private and family life according to article 8 ECHR (Art. 55 para 2 Asylum Act), a “residence permit” on grounds of article 8 ECHR can be granted. If, in addition, module 1 of the integration agreement⁸⁴ is fulfilled or the foreigner is employed with a salary above the minimum threshold then a “residence permit plus” can be granted (Art. 55 para 1 Asylum Act). A “residence permit for individual protection” can be granted if the previous stay was tolerated for at least one year and the conditions for tolerated stay remain, unless the third-country national poses a threat to the community or the state and unless he/she was convicted of a crime. The “residence permit for individual protection” can also be granted if the person is a witness or victim of human trafficking or of forced prostitution and if criminal or civil proceedings in connection to these crimes are ongoing. Finally, the “residence permit for individual protection” can be granted if the person is a victim of violence and needs protection (Art. 57 para 1 Asylum Act).⁸⁵

3.6.2 Residence Options for Unaccompanied Minors Who Do Not Seek Asylum

In the case of trafficked children, a “residence permit for individual protection” can be granted according to article 57 paragraph 1 Asylum Act as described in section 3.6.1.

UAMs can also apply for the residence title “Red-White-Red Card plus” according to article 41a para 10 Settlement and Residence Act.⁸⁶ Several exceptions from the usual provisions apply to UAMs. Firstly, UAMs

- 83 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.
- 84 The Integration Agreement was established in 2005 to foster the integration of third-country nationals who want to settle in Austria based on a two-module system. Module 1 requires German language skills at level A-2 of the Common European Framework of Reference for Languages and module 2 requires skills at level B-1. These have to be fulfilled if the third-country national wants to be granted a certain residence permit (migration.gv.at, *Integrationsvereinbarung*, available at www.migration.gv.at/de/leben-und-arbeiten-in-oesterreich/rahmenbedingungen-der-integration/integrationsvereinbarung.html, accessed on 25 September 2014).
- 85 The “residence permit for individual protection” (Art. 57 Asylum Act) replaces since 1 January 2014 the former “residence permit – special protection” (Art. 69a Settlement and Residence Act).
- 86 This residence title replaces the former article 69a paragraph 1 subparagraph 4 Settlement and Residence Act (Aliens Authorities Restructuring Act, Preamble and Explanatory Notes, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/fname_255385.pdf (accessed on 19 December 2014), p. 46).

can be allowed to apply with the local authorities in Austria (Art. 21 para 3 Settlement and Residence Act). Secondly, despite the reasons outlined in article 11 paragraph 1 subparagraph 4–6 Settlement and Residence Act that usually prevent the “Red-White-Red Card plus” being granted, the residence title may be permitted to UAMs. Thirdly, the “Red-White-Red Card plus” can also be granted to UAMs if the general conditions for receiving a residence title according to article 11 paragraph 2 are not met (Art. 41a para 10 Settlement and Residence Act). Furthermore, the requirement of proven elementary German language skills at the time of application can be suspended (Art. 21a para 1 and para 5 subpara 1 Settlement and Residence Act). Also, the usual fee of 100 EUR for applying for and receiving a “Red-White-Red Card plus” is not charged in the case of UAMs (Art. 41a para 10 Settlement and Residence Act).

For cases where the entry requirements are not fulfilled and no right of residence exists, the framework of return procedures provides for an *ex officio* assessment of whether to grant a residence title on grounds of article 8 ECHR (Art. 55 Asylum Act) or a “residence permit for individual protection” (Art. 57 Asylum Act) (see 3.6.1).⁸⁷

Further, in case of particularly exceptional circumstances a “residence permit” can be applied for, which can be granted if the foreigner (including UAMs) has continuously resided in Austria for at least five years (of which at least three years have to be regular residence) (Art. 56 Asylum Act). If, in addition, module 1 of the integration agreement is fulfilled, then a “residence permit plus” can be granted (Art. 56 para 1 Asylum Act).

In the case of irregular stay, the usual provisions apply to UAMs with regard to the determination of tolerated stay and consecutive issuing of an identification card for tolerated stay.⁸⁸ The stay is tolerated if removal is temporarily or permanently illegitimate or not possible due to reasons that are not caused by the foreigner himself/herself. As long as these reasons are valid, the stay is tolerated (Art. 46a Aliens Police Act).

87 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

88 Ibid.

4. RECEPTION ARRANGEMENTS AND INTEGRATION MEASURES

4.1 Accommodation and Reception Arrangements for Unaccompanied Minors

In Austria, specific accommodation and reception arrangements are provided for unaccompanied minors (UAMs), such as material reception conditions, care, supervision and health care. These accommodation and reception arrangements differ for UAMs who are covered by basic welfare support and UAMs who are in care of the Children and Youth Service.

4.1.1 National Legal Framework

According to the Basic Welfare Support Agreement,⁸⁹ which was concluded between the federal government and the nine Austrian provinces, also asylum-seeking UAMs are provided **basic welfare support**. The category of asylum-seeking UAMs includes the following groups: UAMs in the admission and the actual asylum procedure, UAMs who are not admitted to the actual asylum procedure, UAMs who have been granted subsidiary protection status, UAMs who have been granted asylum (but only for a period of up to four months after receiving asylum), UAMs who have received a final negative decision and are awaiting return, as well as UAMs who were rejected but who cannot be deported due to legal or factual reasons (Art. 2 para 1 Basic Welfare Support Agreement). Aside from asylum-seeking UAMs, the following groups of UAMs who do not seek asylum are also entitled to basic welfare support: displaced persons, non-Austrians without a legal status who cannot be returned due to legal or factual reasons, and third-country nationals with a “residence permit for individual protection” according to Article 57 paragraph 1 subparagraph 1 (tolerated stay) and subparagraph 2 (victim of human trafficking) Asylum Act (Art. 2 para 1 Basic Welfare Support Agreement).⁹⁰

89 FLG I No. 80/2004.

90 Written input by Michaela Malz, Federal Ministry of the Interior, 22 September 2014.

The Basic Welfare Support Agreement defines the kind of reception conditions and maximum allowances to be provided. Special reception conditions for UAMs are outlined in Article 7; Article 9 sets specific maximum amounts to cover the reception conditions, including those for UAMs. These provisions are transposed into the Federal Government Basic Welfare Support Act⁹¹ and respective provincial laws. In order to coordinate the interpretation and implementation of the Basic Welfare Support Agreement, a federal government-province coordination council has been set up according to Article 5 Basic Welfare Support Agreement.

Those UAMs who are not entitled to basic welfare support fall under the care provisions of the **Children and Youth Service** (AT EMN NCP, 2010: 36–37; Fronek, 2010: 99–100). Services provided by the Children and Youth Service Authorities are regulated in the Federal Children and Youth Service Act⁹² and the respective provincial acts. While the federal act provides the basic principles, the provinces have their own implementation laws that regulate the children and youth service in more detail (Nowak/Sax/Weichselbaum, 2013: 12). In 2013 the Youth Welfare Act from 1989⁹³ was revised and a new Federal Children and Youth Service Act entered into force; provincial laws followed, only the provincial law of Salzburg is still due. The draft of the Salzburg Children and Youth Service Act was criticized for excluding unaccompanied minors from its scope of applicability (BIM, 2014). At the time of writing (the beginning of December 2014) the draft act has not yet been approved.

4.1.2 Responsible Authorities and Funding

The competencies with regard to **basic welfare support** are shared between the federal government and the provinces. The federal government is responsible for the initial reception of asylum-seeking UAMs in admission procedures as well as for the reception of UAMs rejected during admission procedures until they leave the country (Art. 3 para 1 Basic Welfare Support Agreement). The provinces are responsible for providing basic welfare support to UAMs during the actual asylum procedure and other UAMs who also fall under the basic welfare support provision (Art. 4 para 1 Basic Welfare Support Agreement). The federal government and the

91 FLG I No. 405/1991, in the version of FLG I No. 68/2013.

92 FLG I No. 69/2013.

93 FLG No. 161/1989, in the version of FLG I No. 41/2007.

provinces can outsource the provision of basic welfare support (Art. 3 para 5 and Art. 4 para 2 Basic Welfare Support Agreement). The federal government has contracted a private institution, *ORS Service GmbH*,⁹⁴ while the majority of provinces have outsourced the basic welfare support for UAMs to NGOs and church-based organizations.⁹⁵

The responsible institutions are the Federal Ministry of the Interior at the federal level (Art. 15 Federal Government Basic Welfare Support Act) and the provincial governments at the provincial level (see, for example, Art. 20 Provincial Law Regulating Basic Welfare Support in Tyrol⁹⁶ or Art. 17 para 1 Provincial Law Regulating Basic Welfare Support in Lower Austria⁹⁷). One exception is the province of Vienna, where the responsibility for providing basic welfare support is outsourced to a fund, the *Fonds Soziales Wien*, which is under the control of the City of Vienna.⁹⁸

The funding arrangements for basic welfare support as laid down in Article 10 and 11 of the Basic Welfare Support Agreement also apply to the provisions for UAMs. The costs are split between the federal government and the provinces at a ratio of six to four; the costs borne by the provinces are distributed according to their reception quota, which is based on the respective population.⁹⁹

Through their Children and Youth Service Authorities the provinces (namely the province in which the minor is present) are responsible for providing **children and youth services** to UAMs who do not fall under the basic welfare support (Art. 5 para 2 and Art. 10 para 1 Federal Children and Youth Service Act). The benefits are provided by the local branches of the respective Children and Youth Service Authority or by contracted private service providers (Art. 10 para 3 Federal Children and Youth Service Act). The federal government provides the provinces with a yearly grant to finance all the child and youth services (including those provided to UAMs) of the amount stipulated in Article 46 paragraph 1 of the Federal Children

94 Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014.

95 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

96 PLG No. 21/2006, in the version of PLG No. 130/2013.

97 PLG No. 9240-0, in the version of PLG No. 9240-2.

98 Fonds Soziales Wien, *Grundversorgung Wien*, available at <http://wohnen.fsw.at/grundversorgung/> (accessed on 30 September 2014).

99 For further information see Koppenberg, 2014b: 16.

and Youth Service Act. The amount is paid by the Federal Ministry of Family and Youth (Art. 46 Federal Children and Youth Service Act).

4.1.3 Accommodation and Other Material Reception Conditions

With regard to the accommodation of (asylum-seeking) UAMs in the context of **basic welfare support**, two different stages can be distinguished. UAMs who are in the admission procedure are accommodated in organized reception facilities of the federal government. Currently there is one such facility available that provides specific reception for UAMs, namely the federal reception facility east, located in Traiskirchen, Lower Austria.¹⁰⁰ The facility also accommodates other applicants for international protection (e.g. single adults, families). Therefore, male minors above the age of 14 are accommodated in a separate wing of the building (commonly referred to as “house 5”), while male minors below the age of 14 and female minors are accommodated in a designated wing for women (commonly referred to as “house 8”).¹⁰¹

When UAMs have been admitted to the actual asylum procedure, the federal government decides (in agreement with the provinces) on relocation to a reception facility in the provinces. The allocation is based on quotas that are in proportion to the provinces’ population (Art. 1 para 4 Basic Welfare Support Agreement). In the provinces UAMs are accommodated in three different categories of reception facilities, depending on the degree of care and supervision that they need. The facilities are apartment-sharing groups, residential homes, or supervised accommodation (Art. 7 para 1 and 2 of the Basic Welfare Support Agreement). Currently the majority of facilities fall under the highest category, the apartment-sharing groups.¹⁰²

Overall, almost all UAMs who receive basic welfare support are accommodated in organized reception facilities as described above.¹⁰³ The number of UAMs who receive basic welfare support has fluctuated over the past five years, thereby reflecting the fluctuating number of applications for international protection lodged by UAMs (see Figure 6 and Table A.6

100 For further information see footnote 71.

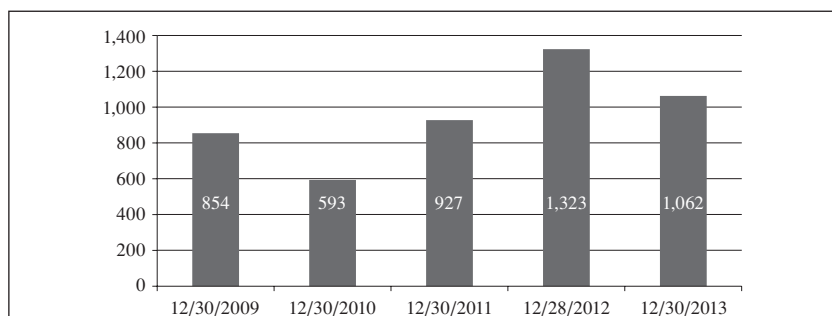
101 Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014.

102 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

103 Written input by Gerald Dreveny, Federal Ministry of the Interior, 15 September 2014.

in the Annex). At the end of 2013, 1,062 UAMs were receiving basic welfare support (see Figure 11 and Table A.11 in the Annex).

Figure 11: Number of UAMs receiving basic welfare support (2009–2013)



Source: Federal Ministry of the Interior.

The table below provides an overview of the accommodation and material reception conditions provided to UAMs in the framework of basic welfare support. In 2013 some of the maximum amounts were increased by the Agreement Increasing Maximum Amounts.¹⁰⁴ Among others, the amounts for accommodation and food per UAM per day were increased by 2 EUR. The Agreement was applicable since 1 March 2013 with retro-active effect as of 1 January 2012 (Art. 4 and 7 Agreement Increasing Maximum Amounts).

Table 3: Accommodation and material reception conditions provided to UAMs in the context of basic welfare support

Accommodation and food	Specific provision of 77 EUR when accommodated in an apartment-sharing group; 62 EUR when accommodated in a residential home and 39 EUR when accommodated in supervised accommodation per UAM and day (Art. 9 Basic Welfare Support Agreement; Agreement Increasing Maximum Amounts).
Clothing	General provision of 150 EUR per person per year (Art. 9 Basic Welfare Support Agreement).
Pocket money	General provision of 40 EUR per person per month (Art. 6 para 1/3 and Art. 9 Basic Welfare Support Agreement).
Leisure activities	General provision of 10 EUR per month per person (Art. 9 Basic Welfare Support Agreement).

UAMs who are in care of the **Children and Youth Service Authorities** can be accommodated in the general socio-pedagogical facilities of the

104 FLG I No. 46/2013.

Children and Youth Service Authorities in the framework of the so called full care that includes care and education (Art. 17 para 1 and Art. 26 Federal Children and Youth Service Act). In order to receive full care, the UAM needs a main residence, usual residence or actual residence in Austria (Art. 5 para 2 Federal Children and Youth Service Act) and the Children and Youth Service Authorities need to have the full custody with regard to care and education. The facilities can be emergency reception facilities, facilities for the permanent reception of children and youth or supervised accommodation for youth (Art. 17 para 3 Federal Children and Youth Service Act). Overall, the financial resources are higher than the maximum amounts foreseen in the basic welfare support. The minimum amount of the children and youth services starts at 120 EUR per person per day (Glawischnig, 2014b: 5).

4.1.4 Care and Supervision

In the reception facilities of the basic welfare support system the staff are tasked with the care and supervision of the minors. This includes information provision, counselling and social support (Art. 9 Basic Welfare Support Agreement). In the case of UAMs, socio-pedagogical care must be provided if necessary (Art. 7 para 1 Basic Welfare Support Agreement). Furthermore, the care of UAMs comprises an adequately structured daily routine (e.g. through education, leisure activities or sports), the clarification of question with regard to age, identity, origin and family tracing, as well as the clarification of future perspectives (Art. 7 para 3 Basic Welfare Support Agreement).

In the federal reception facility east, each UAM has a supervisor 24 hours a day to whom he/she can refer with any questions or problems.¹⁰⁵ A special practice is applied to UAMs below the age of 14. They are – in addition to the supervisor – taken care of by selected women also living in the federal reception facility east, who officially function as so-called remuneration mothers. In agreement with the Children and Youth Service Authorities they take care of the UAMs and are remunerated.¹⁰⁶ In the reception facilities of the provinces the supervision depends on the category of the facility but is equally ensured 24 hours a day.¹⁰⁷ In apart-

105 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

106 Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014.

107 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

ment-sharing groups the supervision rate is 1:10 (one supervisor for ten UAMs), 1:15 in residential homes and 1:20 in supervised accommodation (Art. 9 Basic Welfare Support Agreement).

No minimum qualification or experience requirements are outlined for supervisors in the Basic Welfare Support Agreement. Instead, contractual provisions exist. For example, the Federal Ministry of the Interior's contract with the service provider running the federal reception facility east defines that the staff have to be pedagogues by training or have to have relevant work experience.¹⁰⁸ According to Katharina Glawischnig, the staff working in the provincial reception facilities have various qualifications, ranging from social workers and psychologists to cultural and social anthropologists or migrants with respective language skills.¹⁰⁹

In the socio-pedagogical facilities of the Children and Youth Service Authorities that provide full care, the responsibilities of the staff comprises the care and education of the minor (Art. 17 para 1 and Art. 26 Federal Children and Youth Service Act). The tasks are not otherwise specified. Also, no specific supervision rate is stipulated in the federal or provincial Children and Youth Service Acts. With regard to the qualifications of the staff working in the socio-pedagogical facilities of the Children and Youth Service Authorities, the Federal Children and Youth Service Act defines – since its revision in 2013 – set qualification standards.¹¹⁰ The details are stipulated in the legislation of the provinces (Staffe, 2013: 122). According to Article 11 paragraph 2 of the Federal Children and Youth Service Act, the service provider has to show a sufficient number of specialists and assistants. The specialists have to be qualified in the respective field (e.g. social pedagogues)¹¹¹ and be personally fit for the job. The required qualifications and competencies have to be further defined by the Children and Youth Service Authorities. Regular in-service training has to be provided (Art. 12 para 4 Federal Children and Youth Service Act).

108 Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014.

109 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

110 Federal Children and Youth Service Act, Preamble and Explanatory Notes, Government Proposal, available at www.bmf.gv.at/dam/bmf/ministerium/Rechtsgrundlagen/Kinder-und-Jugendhilferecht/BKJHG-2013-Erlaeuterungen/BKJHG%202013%20Erlaeuterungen.pdf (accessed on 19 December 2014).

111 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

4.1.5 Healthcare Provisions

The healthcare needs of asylum-seeking UAMs are assessed in the framework of a medical examination according to the health authority's requirement; the assessment is carried out during the admission procedure in the federal reception facility east (Art. 6 para 1 subpara 4 Basic Welfare Support Agreement). Based on the assessment, specific healthcare provisions may be granted. UAMs who receive basic welfare support are covered by the general health insurance system (Art. 6 para 1 subpara 5 Basic Welfare Support Agreement); these are also usually the UAMs accommodated in facilities of the Children and Youth Service Authorities.¹¹² Thus, UAMs' access to health care is equal to that of Austrian child citizens. The table below provides an overview of the healthcare provisions available to UAMs who are covered by basic welfare support and to UAMs who are in care of the Children and Youth Service Authorities.

Table 4: Healthcare provisions for UAMs

Healthcare provision	UAMs receiving basic welfare support	UAMs in facilities of the Children and Youth Service Authorities
Emergency treatment	Must be provided in any case (Art. 6 para 4 Basic Welfare Support Agreement).	Is provided (Mancheva/Nonchev, 2013: 41).
Basic medical care	Payment of contributions of general health insurance (Art. 6 para 1 subpara 5 Basic Welfare Support Agreement).	If UAMs are accommodated in facilities of the Children and Youth Service Authorities then they are usually covered by the general health insurance. ¹¹³
Specialised health care	Treatment that is not covered by the health insurance may be paid upon request (Art. 6 para 1 subpara 6 Basic Welfare Support Agreement).	No information available.
Psychological support / counselling	Provided if needed (Art. 7 para 1 Basic Welfare Support Agreement).	Access to psychological support depends on the respective policies of the provinces; in the context of trafficked children the Children and Youth Service Authorities may also offer such services (Mancheva/Nonchev, 2013: 41). In the case of UAMs accommodated in the Viennese Youth Welfare Authority' reception facility Drehscheibe, access to psychological support is provided. ¹¹⁴

112 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014; Interview with Katharina Glawischning, Asylkoordination Österreich, 16 September 2014.

113 Ibid.

114 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014.

4.1.6 Challenges and Good Practices

No general statement regarding the quality of accommodation and reception arrangements for UAMs can be made because no overall assessment studies are publicly available. According to some experts that were interviewed in the framework of this study or that filled in a questionnaire (see Methodology), however, the accommodation and reception arrangements for UAMs are good overall and needs-based oriented. Nevertheless,¹¹⁵ Katharina Glawischnig and Anh Thu Tran stress that the resources for financing some of the reception arrangements such as clothing, leisure activities, food, care and supervisions are not sufficient; even after the 2013 increase of some maximum amounts.¹¹⁶ The healthcare provisions are considered to be good overall, as UAMs are usually covered by the general health insurance.¹¹⁷ However, not all medical or therapeutic treatments are covered. Psychological and psychiatric therapies in particular are not always available for traumatized UAMs.¹¹⁸

On a structural level two challenges with regard to the accommodation and reception arrangements for UAMs can be identified. Firstly, the standard for UAMs receiving basic welfare support is below that of UAMs in the care of the Children and Youth Service Authorities (Glawischnig, 2014b: 5).¹¹⁹ UAMs in basic welfare support are structurally disadvantaged compared to minors who are accommodated in the framework of the children and youth service. According to the Ombudsman for Children and

115 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

116 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

117 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

118 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

119 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

Youth¹²⁰ in Salzburg and Katharina Glawischnig this is caused by the division of state competencies between the Federal Ministry of the Interior (asylum portfolio) and the Federal Ministry for Families and Youth (children and youth service) (Glawischnig, 2014b: 5).¹²¹ Astrid Winkler and Glawischnig suggest applying the children and youth service standards to all UAMs in Austria irrespectively of whether they receive basic welfare support or whether they are under the care of the Children and Youth Service Authorities (Glawischnig, 2014b: 5–6).¹²² Secondly, the reception conditions for UAMs receiving basic welfare support differ from province to province because each province has its own implementation laws and practices (Glawischnig, 2014b: 5).¹²³

With regard to the particular group of UAMS who were trafficked the lack of specific reception facilities is considered a challenge (Mancheva/Nonchev, 2013: 91, 94–95). In this regard, Mancheva/Nonchev highlighted in their study the centre *Drehscheibe* as a good practice example that is the only one of its kind in Austria. It has “gained particular relevance and prominence in Austrian efforts against child trafficking”, its strength being strong expertise, a wide range of services and well-established contacts with child protection actors, mainly in South-Eastern Europe (Mancheva/Nonchev, 2013: 109).

120 Based on article 35 Federal Children and Youth Service Act, an Ombudsman for Children and Youth has been established in every Austrian province. The Ombudsmen are independent. Their task is to protect the interests of children and youth in Austria, which they do through, for example, issuing comments and providing information (Ombudsman for Children and Youth, *Kija über Kija*, available at www.kija.at/kija, accessed on 25 September 2014).

121 Ombudsman for Children and Youth in Salzburg, *Erstmals Pflegegeld für Flüchtlingskind*, Press Release, 4 August 2014, available at www.kija-sbg.at/nc/home/news-einzelansicht/artikel/erstmal-pflegegeld-fuer-fluechtlingskind.html (accessed on 23 September 2014).

122 Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

123 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014.

Box 2: Good practice example – Drehscheibe¹²⁴

The Viennese centre *Drehscheibe* is a socio-pedagogical institution of the Children and Youth Service Vienna that provides first reception of all unaccompanied foreign minors who were picked up in Vienna, including asylum and non-asylum seeking UAMs. Therewith it is the only centre of this kind in Austria. Reception includes care (medically and psychologically) and/or arranging secure return and monitoring of reintegration. If the UAM picked up by the *Drehscheibe* applies for asylum, then he/she is admitted to the basic welfare support system and allocated to respective reception facilities. If this is not the case, the UAM is referred to a reception facility of the Children and Youth Service Vienna. In 2013, the *Drehscheibe* received a total of 202 UAMs, the majority coming from Bosnia and Herzegovina (around 63). Of the 202 UAMs, around 113 (56%) were non-asylum-seeking UAMs.

A challenge of the Austrian reception system that dominated policy and public discussions in 2012 and 2014 is related to the distribution of asylum-seeking UAMs to reception facilities in the provinces. This is a general challenge of the reception system that applies to all applicants for international protection. If the provinces face difficulties in meeting their reception quotas, the applicants for international protection – after being admitted to the actual asylum procedure – are not directly referred to reception facilities in the provinces but remain in the federal reception facility. Hence, in the past years the number of applicants accommodated in the main federal reception facility, the facility east, was – from time to time – above the foreseen 480 applicants.¹²⁵ This leads to non-adequate reception conditions with – according to the NGO *Asylkoordination Österreich* – negative implications particularly for the vulnerable group of UAMs (Glawischnig, 2014a: 24).¹²⁶ Thus, the UNHCR called for more available reception facilities, especially for UAMs.¹²⁷

124 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014; Number of UAMs received by Drehscheibe in 2013. Statistics provided by Norbert Ceipek, Drehscheibe, 8 September 2014.

125 The actual maximum capacity of the federal reception facility east lies at 1,750 residents. In 2010, however, the governor of the province of Lower Austria agreed with the Federal Ministry of the Interior not to accommodate more than 480 people (Dossier, *Wie die Politik Traiskirchen instrumentalisiert*, available at www.dossier.at/dossiers/asyl/seit-jahrzehnten-wird-mit-dem-fluechtlingslager-in-traiskirchen-politik-gemacht/, accessed on 14 January 2015).

126 Asylkoordination Österreich, *Agenda Asyl kritisiert Betreuung von minderjährigen Flüchtlingen – ‘Ein Bett allein ist zu wenig’*. Press release, Vienna, 7 October 2014, available at www.asyl.at/fakten_2/betr_2014_02.htm (accessed on 21 November 2014).

127 UNHCR, *Lösung für unbegleitete Asyl suchende Kinder überfällig*. Press release, Vienna, 22 October 2012, available at www.unhcr.at/no_cache/detail/artikel/artikel//loesung-fuer-unbegleitete-asyl-suchende-kinder-ueberfaellig.html?L=0 (accessed on 30 September 2014).

4.1.7 Withdrawal of Accommodation and Reception Arrangements

Accommodation and reception arrangements provided in the context of basic welfare support can be partially granted, limited or withdrawn.

In general, granting basic welfare support only partially is possible if own financial means, for example through income, are available (Art. 6 para 2 Basic Welfare Support Agreement). In this case the beneficiary may also have to make a refunding (Art. 3 para 2 Federal Government Basic Welfare Support Act). In practice, if UAMs have an income, for example through vocational training, then they can keep 110 EUR per month. The rest is partially paid to a savings account and partially refunded; this differs from province to province.¹²⁸

The limitation or withdrawal of basic welfare support is generally possible if a specific reason applies. This may be a) a serious violation of the house rules of the reception facility, b) a prohibition order to enter the facility due to an act of violence (Art. 6 para 3 Basic Welfare Support Agreement), or a criminal conviction that represents a reason for not being granted asylum (Art. 2 para 4 Basic Welfare Support Agreement). In practice, the limitation or withdrawal of basic welfare support is not implemented in the case of UAMs.¹²⁹ According to Katharina Glawischnig, only if UAMs are absent from the facility for more than two days and their absconding was reported, is the basic welfare support withdrawn.¹³⁰

In the case of withdrawal of basic welfare support, there are no complaint mechanisms available that are specifically provided to UAMs. The general provisions apply, however. In case the basic welfare support is provided by the federal government, the competent authority to take such a decision is the Federal Office for Immigration and Asylum (Art. 9 Federal Government Basic Welfare Support Act) and appeals are decided upon by the Federal Administrative Court (Art. 9 para 1 and 2 Federal Government Basic Welfare Support Act). If a province provides the basic welfare support, the provincial government is taking the decision and the provincial administrative courts are responsible for deciding on appeals (Art. 130

128 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

129 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014; Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014.

130 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

para 1 and Art. 131 para 1 Federal Constitutional Act). In the special case of the province of Vienna, where the responsibility of taking decisions with regard to basic welfare support is outsourced to a fund, the *Fonds Soziales Wien*, (see 4.1.2) the complaint mechanism is not clear.¹³¹

4.2 Access to Legal Advice

4.2.1 National Legal Framework

In Austria, there are no specific provisions for UAMs with regards to legal advice. The general provisions as outlined in the table below also apply to UAMs.

Table 5: UAMs’ access to legal advice

Procedure	Legal advice available to UAMs
Asylum procedure – Admission procedure	Entitlement to a free legal advisor <i>ex officio</i> . Legal advisors are obliged to attend all interviews in light of ensuring the hearing of all parties (Art. 49 para 1 and 2 Federal Office for Immigration and Asylum Procedures Act).
Asylum procedure – Actual asylum procedure	No entitlement <i>ex officio</i> to a legal advisor but legal support can be provided free of charge (Art. 50 para 1 Federal Office for Immigration and Asylum Procedures Act). The provision was introduced in October 2011 in order to transpose article 15 of the Directive on minimum standards in the asylum procedure (2005/85/EC) (UNHCR, 2013a: 11).
Appeal procedures before the Federal Administrative Court	Asylum-seekers and other foreign citizens who were issued a return decision, who received a detention order or whose applications for international protection were denied (not in the case of subsequent applications for international protection) are to be appointed a legal advisor <i>ex officio</i> and free of charge (Art. 52 para 1 Federal Office for Immigration and Asylum Procedures Act).
Aliens police procedures	Foreign citizens who are arrested are – if the conditions for detention pending removal or alternatives to detention apply – to be appointed a legal advisor <i>ex officio</i> and free of charge (Art. 51 para 1 Federal Office for Immigration and Asylum Procedures Act). The provision was introduced in October 2011 in order to transpose article 13 of the Return Directive (2008/115/EC) (Stern, 2012: 45).
Victims in criminal procedures	Victims according to article 65 paragraph 1 (a) or (b) of the Code of Criminal Procedure (including trafficked children) are entitled to receive legal assistance upon request and when needed to guarantee the exercise of their procedural rights (Art. 66 para 2 Code of Criminal Procedure).

131 For further information see Koppenberg, 2014b: 31–32.

4.2.2 Responsible Authorities

There are no authorities specifically responsible for providing legal advice to UAMs; instead the general competencies are applicable. With regard to the admission procedure, the actual asylum procedure and the Alien Police procedure, the Federal Ministry of the Interior selects the legal advisors, contracts such advisors or organizations employing advisors and defines the amount of financial compensation (Art. 48 para 4–6, Art. 49 para 5, Art. 50 para 4 and Art. 51 para 4 Federal Office for Immigration and Asylum Procedures Act). In appeal procedures before the Federal Administrative Court, the Federal Chancellor selects the legal advisors, contracts such advisors or organizations employing advisors and defines the amount of financial compensation (Art. 48 para 4–6 and Art. 52 para 3 Federal Office for Immigration and Asylum Procedures Act). In the case of victims in criminal procedures, the Federal Ministry of Justice is in charge of contracting established adequate institutions to provide legal assistance (Art. 66 para 2 Code of Criminal Procedure 1975).

4.2.3 Challenges and Good Practices

In 2012 the UNHCR office for Austria carried out an evaluation of legal advice in the Austrian asylum procedure.¹³² Consequently, some challenges with regard to legal advice for UAMs during the admission procedure were identified, which also relate to the fact that the legal advisor of UAMs in the admission procedure not only provides advice but is also legally representing the minor (see 3.5.1). Firstly, a lack of information of the asylum-seeking UAM about who is his/her legal advisor or how to address the legal advisor was identified in the federal reception facility east. Secondly, legal advisors of asylum-seeking UAMs are found to often not to be able to consult with their clients before the initial questioning. Consequently, the UAM does often not consider his/her legal advisor as independent from the authorities, which has a negative impact on building trust between them. Thirdly, the tardiness of the first counselling/contact between the UAM and his/her legal advisor was also questioned in light

132 The evaluation is based on surveys and interviews with the main organizations providing legal advice, interviews with legal advisors and interviews with asylum-seekers in the provinces of Carinthia, Lower Austria, Upper Austria, Salzburg, Styria and Vienna. The evaluation was carried out based on a set of quality standards previously developed (UNHCR, 2013a: 11–12).

of the fact that the legal advisor has also to legally represent the UAM in the admission procedure (UNHCR, 2013a: 20, 24).

Some of the experts that filled in a questionnaire in the framework of this study (see Methodology) consider the provision of legal advice to be – overall – good.¹³³ Nevertheless, there are some additional challenges to those identified by UNHCR (see above). For example, language barriers¹³⁴ and the lack of available interpreters can be a challenge.¹³⁵ Also, according to Astrid Winkler, there is a lack of qualification and training of legal advisors especially with regard to expert knowledge on minors, the specific situation of UAMs or on the identification of potential victims of trafficking.¹³⁶ According to Katharina Glawischnig the limited time resources that the legal advisor can spend per case are also a challenge.¹³⁷ According to ECRE this is linked to the fact that the remuneration system for legal advisors does not differentiate between adult and UAM cases. As ECRE states “[t]his can directly impact quality as legal advisors generally need more time for meetings with the child, including to build a relationship of trust, and for preparing the case” (ECRE, 2014: 90).

4.3 Access to Education

4.3.1 National Legal Framework and Responsible Authorities

In Austria, UAMs have the same right to education as children with Austrian nationality and they attend the same schools. According to article 1 paragraph 1 of the Compulsory Education Act,¹³⁸ schooling is compulsory for children permanently staying in Austria. Permanent stay is defined as staying in Austria for at least on school semester (Federal Ministry for Education, Art and Culture, 2007: 5). Compulsory education

133 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

134 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014.

135 Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

136 Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

137 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

138 FLG No. 76/1985, in the version of FLG I No. 77/2013.

starts at the age of six and applies for the duration of nine years (Art. 2 and 3 Compulsory Education Act). Children who are temporarily staying in Austria are not obliged to attend school but are entitled to do so (Art. 17 Compulsory Education Act).

In practice, UAMs in the asylum process have access to education only after they have been admitted to the actual asylum procedure, i.e. access to school is normally not granted in federal reception facilities during the admission procedure (Fronek, 2010: 144–145, 149; Knapp, 2014: 63). According to the Federal Ministry of the Interior, usually only a few of the UAMs accommodated in the federal reception facility are of compulsory schooling age.¹³⁹

There are no authorities that are specifically responsible for UAMs' education. Education is, in general, a competence shared between the federal government and the provinces as regulated in article 14 and 14a of the Federal Constitutional Act. The school authority in the respective province is responsible for education.¹⁴⁰

4.3.2 Support Measures Available to Unaccompanied Minors

Minors with a lack of German language skills can make use of support in attending school. For example, children who still have to complete compulsory schooling but who do not speak sufficient German are to be enrolled as exceptional students (Art. 4 para 2 (a) School Education Act¹⁴¹) and their language difficulties are to be taken into account for graded work (Art. 18 para 9 School Education Act). Also, language support courses can be established for exceptional students for duration of one or two school years and at the extent of eleven hours per week (Art. 8e para 1 and 2 School Organization Act). Furthermore, children with a first language other than German are eligible to attend courses in their mother tongue (Ammer/Mandl/Sax, 2011: 18).¹⁴² UAMs who receive basic welfare support are entitled to support in the form of 200 teaching units of German language courses with a maximum cost of 3.63 EUR per unit per person

139 Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014.

140 Ibid.

141 FLG No. 472/1986, in the version of FLG I No. 76/2013.

142 In the school year 2012/13 the following languages were offered: Albanian, Arabic, Bosnian/Croatian/Serbian, Bulgarian, Chechen, Chinese, Czech, Dari, French, Hungarian, Kurdish, Pashto, Persian, Polish, Portuguese, Romanes, Rumanian, Russian, Slovakian, Slovenian, Somali, Spanish and Turkish (Garnitschnig, 2014: 50).

(Art. 9 Basic Welfare Support Agreement). UAMs who already have a residence status (i.e. asylum, subsidiary protection or other long-term residence title) can attend German language courses provided by the Austrian Integration Fund and can receive financial support of up to 3,500 EUR per person.¹⁴³

4.3.3 Challenges and Good Practices

Overall, according to Adelheid Moser, UAMs' access to education is good, especially for those who still fall under compulsory schooling.¹⁴⁴ However, only a minority of UAMs in Austria are of compulsory schooling age; the majority (2013: 93%) are 14 years or older (see 1.4 and Table A.10 in the Annex). With regard to secondary education, the rules for admission are the same as for Austrian nationals. However, in practice, UAMs' educational background, their lack of German language skills, psychological distress and often inappropriate learning conditions in their accommodations hamper their success in entering these schools (Blecha, 2012: 40; Ammer/Mandl/Sax, 2011: 18). The aforementioned support for UAMs with regard to language acquisition (see 4.3.2) is, according to Anh Thu Tran, insufficient in terms of courses available and financial resources provided.¹⁴⁵ Non-school-age UAMs thus have access to German language classes or secondary education only thanks to efforts undertaken by private initiatives or NGOs.¹⁴⁶ One good practice example that was stressed by Reinhard Seitz is the private gymnasium Dachsberg in Prambachkirchen (Upper Austria).¹⁴⁷ Another good practice example is the project *PROSA – Projekt Schule für Alle*.¹⁴⁸

143 Interview with Elena Kalogeropoulos, Austrian Integration Fund, 22 September 2014.

144 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014.

145 Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

146 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014.

147 Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

148 Questionnaire answered by Katharina Benedetter and Marianne Dobner, IOM Country Office for Austria, 1 August 2014.

Box 3: Good practice example – Gymnasium Dachsberg¹⁴⁹

In January 2013 the private gymnasium Dachsberg, located in Prambachkirchen, Upper Austria, set up a class for 32 Afghan UAMs who do not fall anymore under the compulsory schooling. The class is tutored every day from nine until three o'clock by a team of two teachers. The teachers, the school, the parents association and others dedicate their time and financial resources to make this happen. Also during the summer break, an educational program is offered.

Box 4: Good practice example – PROSA – Projekt Schule für Alle¹⁵⁰

PROSA – Projekt Schule für Alle provides classes in the field of basic education and other schooling for UAMs with a special focus on asylum-seeking UAMs who do not fall anymore under the compulsory schooling. PROSA is a project of the association *Bildungsinitiative Österreich*.

4.4 Access to Vocational Training and Employment

4.4.1 National Legal Framework

In general, minors who are 15 years or older are allowed taking up employment or vocational training if they have completed nine years of compulsory schooling (Art. 1 and 2 Minors and Youth Employment Act¹⁵¹). Specific protection regulations regarding, for example, working hours and off-time do, however, apply (Chapter 3 Minors and Youth Employment Act). In addition, specific provisions regulate the access of third-country nationals to vocational training and employment, which are applicable to all third-country nationals, including UAMs. The regulations, with regard to the residence titles that are available to UAMs as outlined in section 3.6, are presented in the table below.

149 Die Presse, *Schulprojekt: Ein bisschen Zukunft für Junge Asylwerber*, 31 July 2013, available at http://diepresse.com/home/bildung/schule/hohereschulen/1436308/Schulprojekt_Ein-bisschen-Zukunft-fur-junge-Asylwerber (accessed on 21 September 2014).

150 PROSA – Projekt Schule für Alle, www.prosa-schule.org (accessed on 23 September 2014).

151 FLG No. 599/1987, in the version of FLG I No. 138/2013.

Table 6: UAMs' access to vocational training and employment

Access to vocational training / employment	UAMs seeking asylum or with international protection status	UAMs not seeking asylum
Access to employment by legal (residence) status	<p>Asylum-seeking: Access to employment is conditional upon being granted a work permit (details see next row). Employment is restricted by the so called Bartenstein Decree (Bartensteinerlass) to selected occupations with quota-regulated work permits, i.e. seasonal work in tourism, agriculture or forestry.¹⁵²</p> <p>Asylum or subsidiary protection status: UAMs with asylum or subsidiary protection status have unrestricted access to the labour market (Art. 1 para 2 (a) Act Governing the Employment of Foreign Nationals¹⁵³).</p>	<p>“Red-White-Red Card plus”: Unrestricted access to the labour market (Art. 17 Act Governing the Employment of Foreign Nationals).</p> <p>“Residence permit plus”: Unrestricted access to the labour market (Art. 17 Act Governing the Employment of Foreign Nationals).</p> <p>“Residence permit”: Access to the labour market only with a work permit (Art. 3 para 1 Act Governing the Employment of Foreign Nationals).</p> <p>“Residence permit for individual protection”: Access to the labour market with a work permit but no labor market test required (Art. 3 para 1 and Art. 4 para 7 subpara 5 Act Governing the Employment of Foreign Nationals).</p> <p>Tolerated stay: In general no access to the labour market (Art. 4 Act Governing the Employment of Foreign Nationals).</p>
Provisions with regard to work permits	<p>Asylum-seeking: A work permit is applied for by the future employer and can be granted to asylum-seeking UAMs three months after they have been admitted to the actual asylum procedure if a labour market test has been passed, if there is no conflict with public or macroeconomic interests and if the conditions laid down in article 4 paragraph 1 Act Governing the Employment of Foreign Nationals are fulfilled (Art. 4 para 1 Act Governing the Employment of Foreign Nationals).</p> <p>Asylum or subsidiary protection status: UAMs with asylum or subsidiary protection status have unrestricted access to the labour market (Art. 1 para 2 (a) Act Governing the Employment of Foreign Nationals).</p>	<p>“Residence permit”: A work permit is applied for by the future employer and can be granted if a labour market test has been passed, if there is no conflict with public or macroeconomic interests and if the conditions laid down in article 4 paragraph 1 Act Governing the Employment of Foreign Nationals are fulfilled (Art. 4 para 1 Act Governing the Employment of Foreign Nationals).</p> <p>“Residence permit for individual protection”: A work permit is granted with no need for a labor market test (Art. 4 para 7 subpara 5 Act Governing the Employment of Foreign Nationals).</p>

152 Federal Ministry of Economy and Labour, *EU-Erweiterungs-Anpassungsgesetz; Durchführungserlass (Bartensteinerlass)*, 435.006/6 - II/7/04.

153 FLG. I No.218/1975, in the version of FLG I No. 72/2013.

Access to vocational training / employment	UAMs seeking asylum or with international protection status	UAMs not seeking asylum
Access to vocational training	<p>Asylum-seeking: Since June 2012, a work permit for vocational training can be granted to asylum-seeking minors (including UAMs). Since March 2013, this applies also to young adults and former UAMs until the age of 25. The work permit is restricted to occupations where there is a shortage of apprentices and as a condition, the (former) asylum-seeking minor have been admitted to the actual asylum procedure for at least three months and must have passed a labour market test (Art. 4 para 2 Act Governing the Employment of Foreign Nationals).¹⁵⁴</p> <p>Asylum or subsidiary protection status: No specific regulations; the provisions for access to the labour market apply.</p>	No specific regulations; the provisions for access to the labour market apply.

Besides access to vocational training and employment as outlined in the table above, UAMs accommodated in reception facilities in the context of basic welfare support can also take up auxiliary activities in the reception facility (e.g. cleaning, cooking) or carry out such activities on behalf of the federal government, the province or the municipality (e.g. landscape work). These activities are remunerated with a financial allowance but do not count as employment (Art. 7 para 3 Federal Government Basic Welfare Support Act).

4.4.2 Responsible Authorities

There are no authorities that are specifically responsible for UAMs' access to vocational training and employment. Vocational training and employment are generally the competence of the federal government (i.e. Federal Ministry of Labour, Social Affairs and Consumer Protection) (Art. 10 para 1 subpara 11 Federal Constitutional Act). The Public Employment Service Austria is responsible for procedures regarding the access to the labour market (AT EMN NCP, 2012b: 1) and provides advice and support

154 Federal Ministry of Labour, Social Affairs and Consumer Protection, *Erweiterung der Beschäftigungsmöglichkeiten für Asylwerber/innen*, BMASK-435.006/0005-VI/AMR/7/2012; Federal Ministry of Labour, Social Affairs and Consumer Protection, *Erweiterung der Beschäftigungsmöglichkeiten für Asylwerber/innen; Altersgrenze für jugendliche Asylwerber/innen*, BMASK-435.006/0005-VI/B/7/2013.

with regard to vocational training, employment, training courses or projects. UAMs with an asylum or subsidiary protection status or other long-term residence title can make use of these services. This does not, however, apply to UAMs who are still asylum-seekers. Nonetheless the Public Employment Service Austria has no services targeting specifically UAMs¹⁵⁵ but financially supports, for example, the project *Bildungswege*, implemented by the association Lobby.16. The project provides support to (former) UAMs with asylum and subsidiary protection status by organizing training workshops and brokering placement in vocation training.¹⁵⁶

4.4.3 Challenges and Good Practices

No overall assessment of UAMs' access to vocational training and employment is available. According to some of the experts who were interviewed in the framework of this study or who filled in a questionnaire (see Methodology), the legal provisions regulating UAMs' access to vocational training are too restrictive for asylum-seeking UAMs¹⁵⁷ who, hence, face challenges in accessing vocational training.¹⁵⁸ This is of importance because – according to Anh Thu Tran – most UAMs are looking for vocational training after completing compulsory schooling.¹⁵⁹ Also, public support such as from the Public Employment Service Austria is restricted to UAMs with a residence status (see 4.4.2). Other challenges that were highlighted by the IOM Country Office for Austria include, for example, the (assumed) lack of German language skills and general prejudices of the majority society that limit UAMs' chances to be selected for a vocational training or employment.¹⁶⁰

155 Written input by Gerda Challupner, Public Employment Service Austria, 23 September 2014.

156 Lobby.16, *Unsere Projekte*, available at www.lobby16.org/projekte.htm (accessed on 15 January 2015).

157 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

158 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014.

159 Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

160 Questionnaire answered by Katharina Benedetter and Marianne Dobner, IOM Country Office for Austria, 1 August 2014.

A good practice example of vocational training and employment support provided to UAMs irrespective of their residence status are – based on an assessment carried out in 2011 by Ammer/Mandl/Sax – the activities of the association *Lobby.16* (Ammer/Mandl/Sax, 2011: 32–35).

Box 5: Good practice example – *Lobby.16*¹⁶¹

Lobby.16 is located in Vienna and was established in 2008. The association supports UAMs in accessing vocational training and the labour market through providing mentoring and arranging internships, vocational training and employment.

4.5 Integration Measures

4.5.1 Organization of Integration Measures

Generally, foreign nationals who have asylum status or who are entitled to settle in Austria, including UAMs, can be granted integration support (Art. 68 para 1 Asylum Act; Art. 17 para 1 Settlement and Residence Act). This support includes:

- Language courses;
- Education and training courses;
- Events on the introduction to the Austrian culture and history;
- Joint events with Austrian citizens to facilitate mutual understanding;
- Information provision regarding housing (only for persons with asylum status); and
- Activities of the Austrian Integration Fund (Art. 68 para 2 Asylum Act; Art. 17 para 2 Settlement and Residence Act).

The activities of the Austrian Integration Fund¹⁶² are open to UAMs who have asylum status, a subsidiary protection status or a long-term

161 Lobby.16, www.lobby16.org (accessed on 31 July 2014).

162 The Austrian Integration Fund (ÖIF) is a fund of the Republic of Austria. The Fund provides support to refugees and migrants with regard to language, professional and social integration. It also supports the Federal Ministry for Europe, Integration and Foreign Affairs in managing the (former) European Refugee Fund and the (former) European Integration Fund (Federal Ministry for Europe, Integration and Foreign Affairs, *The Austrian Integration Fund*, available at www.bmeia.gv.at/en/integration/the-austrian-integration-fund/, accessed on 30 September 2014).

residence title.¹⁶³ Those UAMs who are eligible can apply for integration measures in the area of language, employment and participation in the society with a maximum financial support of 3,500 EUR per person. The measures include, for example, German courses, skills recognition, labour market information, extra-occupational measures, financing of membership fees for sports clubs or covering the costs of school trips. According to Elena Kalogeropoulos, initiatives such as the *Talenteticket*,¹⁶⁴ a financial award granted to especially talented pupils to support their further development or the *Liese Prokop* scholarship¹⁶⁵ for students, could be of interest for UAMs. However, there are no integration measures specifically targeting UAMs.¹⁶⁶

Asylum-seeking UAMs and others who are entitled to basic welfare support may receive integration support as defined in the Basic Welfare Support Agreement. The support includes the facilitation of family reunification, the development of an integration plan and preparation measures with regard to schooling, vocational training and employment (Art. 7 para 3 Basic Welfare Support Agreement).

4.5.2 Challenges and Good Practices

In practice it is a challenge for asylum-seeking UAMs to receive integration support because their access is restricted in comparison to those UAMs who have a residence title (see 4.5.1).¹⁶⁷ There are, however, several projects providing support, which are implemented by NGOs and international organizations.¹⁶⁸ One good practice example is the project Connecting People, which was awarded in 2011 with the Austrian State Award

163 Austrian Integration Fund, *Zielgruppen*, available at www.integrationsfonds.at/individualfoerderung/zielgruppen/ (accessed on 3 September 2014).

164 Austrian Integration Fund, *Das "Talenteticket" des ÖIF*, available at www.integrationsfonds.at/talenteticket/ (accessed on 22 September 2014).

165 Austrian Integration Fund, *Liese Prokop Stipendium*, available at www.integrationsfonds.at/integrationszentren/iz_wien/liese_prokop_stipendium/ (accessed on 22 September 2014).

166 Interview with Elena Kalogeropoulos, Austrian Integration Fund, 22 September 2014.

167 Questionnaire answered by Katharina Benedetter and Marianne Dobner, IOM Country Office for Austria, 1 August 2014.

168 Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

for Adult Education of the Federal Ministry of Education, the Arts and Culture in the category of “volunteering”.¹⁶⁹

Box 6: Good practice example – Connecting People¹⁷⁰

The project Connecting People was launched in 2001 and is implemented by the NGO *Asylkoordination Österreich*. The project brings together (former) UAMs who seek asylum or are already granted asylum status with Austrian sponsors who support them in their integration, e.g. through leisure activities, educational support or handling of administrative procedures. One of the main objectives is to find and train sponsors who are willing to build a long-lasting relationship with a (former) UAM and to support the minor emotionally and in daily life matters.

Another good practice example is the IOM project “CulTrain – Cultural Orientation Trainings for Young Refugees”¹⁷¹ that offers cultural orientation trainings for (former) UAMs between 15 and 27 years old.

Box 7: Good practice example – CulTrain¹⁷²

The project “CulTrain - Cultural Orientation Trainings for Young Refugees” started in 2012 and is implemented by the IOM Country Office for Austria. The project provides orientation for (former) UAMs with regard to legal, cultural and other aspects of daily life in Austria. Cultural orientation trainings are carried out throughout Austria, focusing on aspects such as Austrian society (history, culture, facts and figures, etc.), living together (behavioural codes, gender and family, etc.), as well as politics and daily life (accommodation, work, democratic values, etc.). The project furthermore conducts intercultural events in cooperation with Austrian youth organizations so as to facilitate the exchange between the (former) UAMs and Austrian youth.

169 Federal Ministry of Education, the Arts and Culture, *Bildungsministerin Dr. Claudia Schmied verleiht die Österreichischen Staatspreise für Erwachsenenbildung 2011*. Press release, Vienna, 15 November 2011, available at www.ots.at/presseaussendung/OTS_20111115_OTS0047/bildungsministerin-dr-claudia-schmied-verleiht-die-oesterreichischen-staatspreise-fuer-erwachsenenbildung-2011 (accessed on 4 September 2014).

170 Connecting People, www.connectingpeople.at/index.htm (accessed on 31 July 2014).

171 International Organization for Migration (IOM), Country Office for Austria, *Integration – Ongoing Projects*, available at www.iomvienna.at/en/ongoing-projects-3 (accessed on 31 July 2014).

172 Ibid.

4.6 Arrangements for Unaccompanied Minors when Turning 18 Years of Age

4.6.1 Changes in Accommodation and Reception Arrangements

In Austria, residence titles do not depend on the age of the holder. Therefore, there are no direct consequences in terms of residence status when a UAM turns 18.¹⁷³ A key change, however, regards the fact that when turning 18, UAMs become fully contractually capable (Art. 170 Austrian Civil Code) and are no longer entitled to a guardian¹⁷⁴ but are now responsible for ensuring their own care and education, asset management and legal representation (Art. 160 ff., Art. 164 ff. and Art. 167 ff. Austrian Civil Code). Another important change for UAMs who turn 18 relates to their accommodation. UAMs who receive basic welfare support have to move to organized reception facilities for adults or individual accommodation upon turning 18 and are no longer entitled to UAM-specific reception conditions (UNHCR/COE, 2014: 28; Fronek, 2010: 182).¹⁷⁵ The maximum amount for accommodation and food in organized reception facilities is 19 EUR per person per day; hence, less than for UAMs (Art. 9 Basic Welfare Support Agreement; Agreement Increasing Maximum Amounts). In exceptional cases former UAMs can stay in their reception facilities for a limited period of time (e.g. until they graduate from school) if places are available. Expenses that go beyond the maximum amount for adults, however, have to be covered by the children and youth service (Fronek, 2010: 183–184). If former UAMs are not covered but are in need NGOs may be able to provide assistance.¹⁷⁶ Also UAMs in the care of the Children and Youth Service Authorities usually have to leave the facility for minors when they turn 18. In certain cases, however, they can stay in the reception facilities of the Children and Youth Service Authorities and

173 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

174 Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

175 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

176 Ibid.

continue receiving support measures for limited period of time (e.g. until graduation from school or completion of vocational training).¹⁷⁷

4.6.2 Measures to Support Unaccompanied Minors when Turning 18

There are no specific measures available to support UAMs in advance of the transition. However, on an individual basis, the guardian and/or the staff of the reception facility inform the UAMs about the upcoming changes,¹⁷⁸ introduce them to the new reception facility¹⁷⁹ and prepare them for an independent life.¹⁸⁰

After UAMs have turned 18 there is the possibility to continue receiving support in the framework of children and youth service, if they received this support before and if it is absolutely essential, but only up to a maximum age of 20 (Art. 29 Federal Children and Youth Service Act). There is, however, no common practice throughout Austria on when and what kind of continued support is provided (Rothkappel, 2014: 58).

4.6.3 Challenges and Good Practices

One practical challenge associated with the transition to 18 years of age is that UAMs lose the UAM-specific provisions and are usually relocated to reception facilities in other municipalities or provinces in Austria and hence may have to interrupt schooling, vocational training or their social networks (UNHCR/COE, 2014: 28). However, some good practice examples exist where NGOs provide specific accommodation and/or other demand-oriented support to UAMs who turned 18 (UNHCR/COE, 2014: 28).¹⁸¹ NGOs in Salzburg, Upper Austria and Vienna, for example, provide accommodation and support with schooling, vocational training, and education also to former UAMs.¹⁸² Anh Thu Tran would like to see more

177 Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

178 Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

179 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014.

180 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014.

181 Questionnaire answered by Katharina Benedetter and Marianne Dobner, IOM Country Office for Austria, 1 August 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

182 Caritas Vienna, *Haus Daria*, available at www.caritas-wien.at/hilfe-einrichtungen/asylmigrationintegration/betreute-unterbringung/ (accessed on 14 January 2015);

of these reception places for former UAMs, which would require the provision of financial resources.¹⁸³

Relocation to another reception facility when turning 18 is, according to Katharina Glawischnig, especially challenging for UAMs who were staying with siblings who are minors. After the UAM sibling turned 18, he/she is accommodated in a separate facility, sometimes in a different village. There are, however, few reception facilities in Austria that can accommodate UAMs and their sibling/s who have already turned 18 together in one facility or in facilities near to each other.¹⁸⁴

Don Bosco Flüchtlingswerk Austria, Nachbetreuung Moses, available at www.fluechtlingswerk.at/so-helfen-wir-den-jugendlichen/nachbetreuung-moses (accessed on 31 July 2014); SOS Kinderdorf, *Clearing-house Salzburg*, available at www.sos-kinderdorf.at/sos-kinderdorf-erleben/wo-wir-arbeiten/osterreich/salzburg/clearing-house (accessed on 22 September 2014); SOS Menschenrechte, *Wohngemeinschaft "NOEMI"*, available at www.sos.at/index.php?id=43 (accessed on 31 July 2014); Verein Menschenleben, Hayat Maxglan, available at www.menschen-leben.at/einrichtungen/hayat-maxglan/ (accessed on 31 July 2014); for further examples see Rothkappel; 2014: 59–67.

183 Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

184 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

5. ABSCONDING

5.1 Overview of the Phenomenon

There are no official statistics available on the number of unaccompanied minors (UAMs) that abscond from reception facilities and no comprehensive studies or evaluations have been carried out so far. However, the phenomenon of absconding UAMs exists in Austria,¹⁸⁵ even though the experiences of stakeholders differ. According to Fronek/Rothkappel, for example, UAMs absconding is a frequent phenomenon in Austria (Fronek/Rothkappel, 2013: 26). Katharina Glawischnig states that on average every two month a UAM goes missing from a facility of 30 inhabitants;¹⁸⁶ and from the centre *Drehscheibe* (which receives asylum-seeking and non-asylum-seeking UAMs that were picked up in Vienna) 127 of the 202 UAMs that were received in 2013 (63%) absconded.¹⁸⁷ Adelheid Moser and Anh Thu Tran who filled in a questionnaire in the framework of this study (see Methodology) state – on the contrary – that based on their experiences there are no or only very few cases.¹⁸⁸

5.2 Point in Time when Unaccompanied Minors Abscond

The Federal Office for Immigration and Asylum states that, in general, asylum-seekers are most likely to abscond during the admission procedure in case they receive written information that their application for international protection is probably rejected because, under der Dublin Regulation, Austria is not responsible for assessing the substance of the application. How far this applies to UAMs, however, is unknown.¹⁸⁹ Fronek/Rothkappel also state that disappearances happen mostly during

185 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

186 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

187 Number of UAMs received by Drehscheibe in 2013. Statistics provided by Norbert Ceipek, Drehscheibe, 8 September 2014.

188 Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

189 Interview with Bernhard Krumphuber, Federal Office for Immigration and Asylum, 5 September 2014.

the admission procedure, i.e. UAMs abscond from the federal reception facility east (Fronek/Rothkappel, 2013: 26). Günter Ecker and Anh Thu Tran also support this, stating that UAMs are most likely to disappear within the first few days of arriving in Austria.¹⁹⁰

Specific moments are also considered key to the question of UAMs absconding, such as when an age assessment is imminent,¹⁹¹ when the UAM receives a negative asylum decision¹⁹² or – if Austria was not the country of destination – when the onward journey is organized.¹⁹³

5.3 Reasons and Accompanying Challenges

According to the experts that were interviewed or that filled in a questionnaire in the framework of this study (see Methodology) there are several reasons why UAMs abscond. One reason is that the UAM has family members or a diaspora community in another EU Member State whom he/she wants to join.¹⁹⁴ Further, if Austria was not the original country of destination UAMs abscond so as to continue their journey.¹⁹⁵ Other reasons for UAMs to abscond include: (perceived) limited chances of asylum in Austria, a long asylum procedure with extended wait periods until a final decision is made, or the issuance of a negative decision.¹⁹⁶ Also, sometimes

190 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

191 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

192 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014.

193 Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

194 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Adelheid Moser, Youth Welfare Office of the City of Salzburg, 21 July 2014; Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

195 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014; Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014.

196 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014; Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

they abscond to avoid removal.¹⁹⁷ According to Fronek/Rothkappel and Katharina Glawischnig, fear of wrongful or undesired declaration of age is also a reason for UAMs to abscond (Fronek/Rothkappel, 2013: 26).¹⁹⁸

According to the experience of Norbert Ceipek and Astrid Winkler UAMs that were trafficked abscond from reception facilities because they were instructed to do so.¹⁹⁹ Usually they stay in Austria only for two to three months and are then replaced by others. Around half of them are, however, non-asylum seeking EU nationals.²⁰⁰

Experts that filled in a questionnaire in the framework of this study (see Methodology) highlighted two challenges that derive from UAMs absconding from reception facilities. According to Astrid Winkler, the safety of the minor cannot be ensured anymore once he/she left the facility and may, therefore, run the risk of being exploited by third parties.²⁰¹ Based on the experiences of Anh Thu Tran, one absconding UAM creates trouble among the rest of the UAMs in the same reception facility who may start thinking about absconding themselves.²⁰²

5.4 Measures to Prevent and to React to the Absconding of Unaccompanied Minors

If a UAM absconds, the service provider running the reception facility informs the Children and Youth Service Authority that has the guardianship of the minor. A report is then filed with the police.²⁰³ If, and how quickly, such a report is made varies in practice and depends on the individual situation (i.e. if it is expected that the UAM will come back because he/she might stay temporarily with his/her friends).²⁰⁴ If there is a suspicion

197 Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014; Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

198 Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

199 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014; Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

200 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014.

201 Questionnaire answered by Astrid Winkler, ECPAT Austria, 28 July 2014.

202 Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

203 Interview with Michaela Malz, Federal Ministry of the Interior, 10 September 2014.

204 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014; Interview with Katharina Glawischnig, Asylkoordination Österreich, 16 September 2014.

that the UAM might have become a victim of crime or human trafficking this is reported to the police as well.²⁰⁵ As long as the UAM stays missing, his or her asylum procedure is on hold (in case he/she was asylum-seeking).²⁰⁶

Overall it is the intention of the Federal Ministry of the Interior to prevent UAMs from absconding by providing optimal reception conditions and supervision. Nevertheless, it is not possible to stop them from absconding because it is not in the interest of the Ministry to keep them in confinement.²⁰⁷ Also, according to the experiences of Günter Ecker it is impossible to entirely avoid UAMs choosing to abscond.²⁰⁸

Nevertheless, the experts that were interviewed or that filled in a questionnaire in the framework of this study (see Methodology) highlighted some effective measures to prevent the UAMs from absconding. According to Reinhard Seitz informing the UAMs about the consequences of absconding (e.g. violation of their obligation to cooperate with the authorities in the asylum procedure, pausing of the asylum procedure) and about the EU system in this regard (e.g. the Dublin Regulation, Eurodac) is helpful.²⁰⁹ According to Anh Thu Tran it is also important that the UAMs are aware of their situation in Austria and the situation that UAMs face in other EU Member States.²¹⁰

205 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014.

206 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

207 Ibid.

208 Questionnaire answered by Günter Ecker, Verein Menschenrechte Österreich, 13 July 2014.

209 Questionnaire answered by Reinhard Seitz, Children and Youth Service Upper Austria, 4 August 2014.

210 Questionnaire answered by Anh Thu Tran, Caritas archdiocese Vienna, 22 July 2014.

6. RETURN AND REINTEGRATION

Aside from residence and integration in Austria (see 3.6 and 4.5) return to the country of origin is also a potential option for unaccompanied minors (UAMs). It has to be stressed, however, that this option is mostly hypothetical. According to the Federal Ministry of the Interior, removals of UAMs, including Dublin transfers, are considered on a case by case basis and are, in general, rather exceptional. Also, the number of voluntary returns of UAMs is rather low.²¹¹ There is, however, no comprehensive and disaggregated data available to illustrate this.²¹²

6.1 Circumstances under which Unaccompanied Minors can Return

According to the Austrian legislation, the Federal Office for Immigration and Asylum has to ensure before the **removal** of a UAM that the minor can be handed over to a family member, a guardian or an adequate reception facility in the country of return (Art. 46 para 3 Aliens Police Act). This provision was introduced in the course of the amendments to the Aliens Police Act in 2011.²¹³

In order to be able to hand over the minor, family tracing is carried out. If it lies in the best interest of the child, UAMs between the age of 14 and 17 have – according to article 13 paragraph 6 of the Federal Office for Immigration and Asylum Procedures Act – to cooperate with the authorities in tracing their family members. This obligation of cooperation is not applicable to minors below the age of 14. They are, however, to be granted the support of the authorities with regard to family tracing if requested by the minor. This provision was introduced on 1 January 2014 in light of article 31 paragraph 5 of the recast of the Qualifications Directive (2011/95/

211 Interview with Gerald Dreveny, Federal Ministry of the Interior, 5 September 2014.

212 Written input by Gerald Dreveny, Federal Ministry of the Interior, 15 September 2014.

213 Act Amending the Aliens Law 2011, Preamble, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fname_206974.pdf (accessed on 19 December 2014), p. 27.

EU)²¹⁴ that had to be transposed by 21 December 2013.²¹⁵ Prior to its introduction discussions erupted with regard to several aspects of the new law. According to the Red Cross, which is the main provider of tracing services in Austria,²¹⁶ the obligation to participate in family tracing and to inform the Austrian authorities about the outcomes is difficult to reconcile with the principles of the Red Cross. Furthermore, they pointed out that article 31 paragraph 5 of the recast of the Qualifications Directive refers to family tracing after the UAM has been granted international protection, which is not reflected in Austrian law (Austrian Red Cross, 2013). The NGO SOS Children's Village, furthermore, stressed that the Qualifications Directive does not provide any obligation to trace the family.²¹⁷ The UNHCR also issued a statement raising its concern with regard to the obligation of UAMs to cooperate in family tracing procedures. According to UNHCR this might put the minor at risk in cases, for example, where the UAM was misused, neglected or persecuted by or with the help of parents or relatives (UNHCR, 2013b).

With regard to the **voluntary return** of UAMs, no prerequisites are laid down in national legislation. Also, there is no standard practice. Instead, the circumstances under which UMAs can return voluntarily depend on the organization supporting their return. For those UAMs who are assisted by the IOM Country Office for Austria, the three conditions apply. Firstly, there has to be a written consent of the guardian in Austria confirming that a best interest determination has been conducted, taking into account the opinion of the child. Secondly, a written confirmation of the guardian in the country of return (e.g. parents, family member or – as a last resort – the youth welfare authority) stating that he/she is taking over

214 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

215 Act Amending the Aliens Authorities Restructuring Act, Preamble and Explanatory Notes, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02144/imfname_285862.pdf (accessed on 19 December 2014), p. 10.

216 For further information see Blecha, 2012: 25–27.

217 SOS Children's Village, *SOS-Kinderdorf: Stopp für geplante Gesetzesänderung!* Press release, Vienna, 12 March 2013, available at www.ots.at/presseaussendung/OTS_20130312_OTS0028/sos-kinderdorf-stopp-fuer-geplante-gesetzesanderung (accessed on 30 September 2014).

the responsibility, that sufficient resources are available and that the minor will be picked up at the airport upon arrival has to be presented. And thirdly, background information and data on the UAM must be available.²¹⁸ If the UAM has been trafficked, the IOM Country Office for Austria ensures that a risk analysis has been carried out; if the result is negative IOM can decide not to support the voluntary return.²¹⁹

If UAMs are supported in their voluntary return by other organizations, different provisions apply. The centre *Drehscheibe*, for example, returns the minor to the Children and Youth Service Authority of the country of return, thereby applying the following prerequisites:

- Reliable partner in the country of return taking over the responsibility for the minor;
- Ensured security of the minor; and
- Confirmation of country of return that the secure entry of the minor is guaranteed.²²⁰

6.2 Circumstances under which Unaccompanied Minors can be Detained

6.2.1 Detention Pending Removal

Austrian legislation stipulates specific provisions for the detention pending removal of minors in general (including UAMs). The Aliens Police Act stipulates that minors below the age of 14 must not be kept in detention pending removal at all (Art. 76 para 1a Aliens Police Act). This change in law was introduced in the course of the amendments to the Aliens Police Act in 2011 (AT EMN NCP, 2012a: 18). Minors below 16 years old can only be detained if accommodation and care are provided that are appropriate for their age and level of development (Art. 79 para 2 Aliens Police Act). However, preferably they shall be provided with alternatives to detention unless certain facts justify the assumption that the purpose of detention cannot be achieved that way (see 6.2.2).

If minors are detained, the authority has to explain in its decision why no alternative to detention was imposed instead (Federal Ministry of the Interior, 2011: 154). Since the amendments to the Aliens Police Act in 2011

218 Interview with Agata Foryś, IOM Country Office for Austria, 8 August 2014.

219 Ibid.

220 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014.

the Federal Office for Immigration and Asylum (or its predecessor) has to review the proportionality of the imposition of detention at least every four weeks (Art. 80 para 6 Aliens Police Act).²²¹ This is applicable not only to minors but all detainees and was requested by article 15 paragraph 3 Return Directive (2008/115/EC), which states that “[i]n every case, detention shall be reviewed at reasonable intervals of time either on application by the third-country national concerned or ex officio.”²²²

In general, minors who are 14 years or older can only be detained for a maximum period of two months (Art. 80 para 2 subpara 1 Aliens Police Act). This provision was introduced in the course of the amendments to the Aliens Police Act in 2011 (AT EMN NCP, 2012a: 18) in light of a national attempt to consider the particularly vulnerable group of minors.²²³

In practice, there are only few minors in detention according to the Federal Ministry of the Interior. Statistics disaggregated by UAMs are unfortunately not available.²²⁴

6.2.2 Alternatives to Detention

Minors below the age of 14 can only be ordered alternatives to detention²²⁵ (see 6.2.1). Since the amendments to the Aliens Police Act in 2011 Austrian legislation stipulates that minors who are 14 and 15 years old shall be provided with alternatives to detention unless certain facts justify the assumption that the purpose of detention cannot be achieved this way (Art. 77 para 1 Aliens Police Act). According to the handbook of the Aliens Police Act (as of 1 July 2011), the facts that justify the assumption that the purpose of detention cannot be achieved through alternatives include the existence of a criminal conviction or the misuse of a previous alternative to detention with the aim to abscond (Federal Ministry of the Interior, 2011: 157).

221 Act Amending the Aliens Law 2011, Preamble, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fname_206974.pdf (accessed on 19 December 2014), p. 5.

222 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

223 Act Amending the Aliens Law 2011, Preamble, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01078/fname_206974.pdf (accessed on 19 December 2014), p. 5.

224 Written input by Gerald Dreveny, Federal Ministry of the Interior, 15 September 2014.

225 For more details on the alternatives to detention see AT EMN NCP, 2014: 34.

If the minor's age is doubtful and if no age assessment has yet been carried out, the minority age has to be assumed and therewith the priority of alternatives to detention or no detention at all (see 6.2.1) applies (Federal Ministry of the Interior, 2011: 158).

How many UAMs are in alternatives to detention is unknown because there are no such statistics available.²²⁶

6.3 Legal Capacity of Unaccompanied Minors in Detention, Alternatives to Detention and Return Procedures

All UAMs have a legal representative for aliens police procedures with regard to the eighth chapter of the Aliens Police Act (i.e. regarding return, detention and alternatives to detention). If the UAM is seeking asylum, then the legal representation is regulated as described in section 3.5.1 and as laid down in article 10 paragraph 3 and 6 of the Federal Office for Immigration and Asylum Procedures Act. If the UAMs does not seek asylum then the competent Children and Youth Service Authority is the legal representative (Art. 10 para 4 Federal Office for Immigration and Asylum Procedures Act).

The legal representative not only represents the UAM but is also allowed to set procedural actions in favour of the minor without the minor's consent.²²⁷

Despite having a legal representative, UAMs are entitled to set procedural actions in their own favour (Art. 10 para 3 and 6 Federal Office for Immigration and Asylum Procedures Act).

6.4 Measures to Support Returning Unaccompanied Minors

Before returning, foreign nationals (including UAMs) are informed by return counselling organizations about the options for assistance in their voluntary return and – if a reintegration project exists for the country concerned – about the opportunity to receive reintegration assistance.²²⁸

226 Written input by Gerald Dreveny, Federal Ministry of the Interior, 15 September 2014.

227 Aliens Authorities Restructuring Act, Preamble and Explanatory Notes, Government Proposal, available at www.parlament.gv.at/PAKT/VHG/XXIV/I/I_01803/fname_255385.pdf (accessed on 19 December 2014), p. 13.

228 Interview with Agata Forýš, IOM Country Office for Austria, 8 August 2014.

Assistance for the voluntary return of UAMs includes, in the case it is provided by the IOM Country Office for Austria, booking of flights, provision of assistance at the Vienna International Airport and organization of escort during the flight if required and possible.²²⁹ The centre *Drehscheibe* organizes the flight (a staff member accompanies the minor on the flight if possible in case the minor is below the age of 14) or drives him/her by car to the border.²³⁰ Upon arrival in the country of return, the minor is met by their guardian (e.g. a family member or representative of the Children and Youth Service Authority) or an IOM staff member.²³¹ Assisted voluntary return, including flight costs and pocket money are usually covered by the Austrian Federal Ministry of the Interior within the framework of General Humanitarian Return Programme.²³²

Reintegration support for voluntary returnees is provided through projects for specific return countries, implemented by various stakeholders (e.g. IOM Country Office for Austria, Caritas or International Centre for Migration Policy Development). Currently there are no specific projects focusing on the reintegration of UAMs but UAMs can participate in all country-specific reintegration projects implemented, for example, by the IOM Country Office for Austria.²³³ There is also one specific project that provides pre-departure, post-arrival and reintegration assistance for trafficked persons (including minors) who return voluntarily.²³⁴ Reintegration assistance is generally open to asylum-seeking as well as non-asylum-seeking UAMs, but depends on the respective eligibility criteria set by the donors funding the projects, such as the Federal Ministry of the Interior, the (former) European Return Fund and the provincial governments.²³⁵ The reintegration assistance differs depending on the project providing the assistance. It can include reintegration assistance for education and income

229 Ibid.

230 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014.

231 Ibid.; Interview with Agata Forýš, IOM Country Office for Austria, 8 August 2014.

232 Interview with Agata Forýš, IOM Country Office for Austria, 8 August 2014.

233 Afghanistan, Chechen Republic of the Russian Federation, Nigeria and Pakistan (implemented from July 2013 until December 2014); Interview with Agata Forýš, IOM Country Office for Austria, 8 August 2014.

234 International Organization for Migration (IOM), Country Office for Austria, CARE: *Coordinated Approach for the Reintegration of Victims of Trafficking*, available at www.iomvienna.at/en/care-coordinated-approach-reintegration-victims-trafficking (accessed on 1 August 2014); the project runs until 2015.

235 Interview with Agata Forýš, IOM Country Office for Austria, 8 August 2014.

generation that can be, depending on the needs of the UAM, partly provided to the minor's family and partly to the minor him-/herself. Also temporary housing, medical assistance, psychosocial support, etc. can be provided.²³⁶

6.5 Monitoring Mechanisms to Ensure Effective Return and Reintegration

Monitoring activities depend on the capabilities and resources available to the organization that provides return and/or reintegration assistance. The centre *Drehscheibe*, for example, receives bimonthly monitoring reports for a usual duration of six month after return from the receiving Children and Youth Service Authority. Also, they carry out on-site visits in the countries of return if possible (Mancheva/Nonchev, 2013: 46).²³⁷ The IOM Country Office for Austria monitors the reintegration through monitoring sessions with the returnees carried out by the IOM Mission or an external implementing partner in the country of return. One session is conducted shortly after the return and another one after the receipt of in-kind reintegration assistance.²³⁸

236 Ibid.

237 Interview with Norbert Ceipek, Drehscheibe, 8 September 2014.

238 Interview with Agata Forýš, IOM Country Office for Austria, 8 August 2014.

7. CONCLUSIONS

The study shows that the legislation on unaccompanied minors (UAMs) in Austria is characterized by a division of competencies. Notably the legislative competence is shared between the federal government and the provinces. Thereby, the federal government stipulates the basic principles (if applicable in consensus with the provinces) while the provinces (and the federal government accordingly) have their own implementation laws that regulate the matter in more detail. For example, the Children and Youth Service and the basic welfare support. The competencies are further divided among different portfolios and responsible ministries, i.e. asylum (Federal Ministry of the Interior) and Children and Youth Service (Federal Ministry for Families and Youth).

As a consequence of the division of competencies between the federal government and the provinces a complex set of practices arise. There are various implementation laws that are applied at provincial level by state actors, which can lead to discrepancies in practice, for example regarding guardianship, accommodation and reception conditions. As a consequence, there is an ongoing exchange among various stakeholders at different levels, for example in the Working Group on Child Trafficking, the Working Group of Children and Youth Service Authorities (*ARGE Jugendwohlfahrt*) or the federal government-province coordination council.

Furthermore, the study shows that the only comprehensive data accessible on UAMs in Austria relates to the area of asylum. Hence, the statistics relating to the number of applications for international protection lodged by UAMs and the number of UAMs in basic welfare support are available. Since it is assumed that the vast majority of UAMs in Austria apply for international protection and therefore fall under the basic welfare support system, these statistics already provide an essential part of the picture of UAMs in Austria. However, the study revealed that much of the data that was required by the common study template – for example on the residence permits granted, the number of UAMs not applying for asylum, the total number of UAMs in the care of public authorities, the number of UAMs that absconded or the number of UAMs that were removed or returned voluntarily – is not available in Austria.

In conclusion it can be assumed that UAMs will remain an important topic in Austria. This solely follows by virtue of the number of applications for international protection lodged by UAMs in Austria. While Austria has already recorded a relatively high number of asylum-seeking UAMs in the past (Austria ranked fourth in 2013 among the EU Member States) the number of UAMs applying for international protection increased even further in 2014.

ANNEX

A.1 Statistics

Table A.1: UAM asylum applicants in the EU-27 (2009–2013)

Year	2009	2010	2011	2012	2013
Number of UAM asylum applicants	12,225	10,620	11,695	12,475	12,675

Source: Eurostat, extracted on 10 October 2014.

Table A.2: UAM asylum applicants in the EU-27 by receiving country, top-10 (2013)

Year/ Receiving country	2013
Sweden	3,850
Germany	2,485
United Kingdom	1,175
Austria	935
Italy	805
Belgium	420
Hungary	380
France	365
Denmark	350
Malta	335
Other	1,485
Total	12,675

Source: Eurostat, extracted on 10 October 2014.

Table A.3: UAM asylum applicants in the EU-27 by citizenship, top-10 (2013)

Year/ Citizenship	2013
Afghanistan	3,280
Somalia	1,575
Syrian Arab Republic	1,025
Eritrea	730
Albania	560
Morocco	525
Stateless	350
Russian Federation	340
Algeria	335
Pakistan	335
Other	3,620
Total	12,675

Source: Eurostat, extracted on 10 October 2014.

Table A.4: UAM asylum applicants in the EU-27 by gender (2013)

Year/ Gender	2013
Males	10,600
Females	2,070
Unknown	10
Total	12,675

Source: Eurostat, extracted on 10 October 2014.

Table A.5: UAM asylum applicants in the EU-27 by age (2013)

Year/ Age	2013
< 14 years old	1,295
14 to 17 years old	11,230
Unknown	150
Total	12,675

Source: Eurostat, extracted on 10 October 2014.

Table A.6: Applications for international protection lodged in Austria, total and UAMs (2009–2013)

Year/ Applications	2009	2010	2011	2012	2013
Total number of applications	15,821	11,012	14,416	17,413	17,503
Applications lodged by UAMs	1,062	687	1,121	1,574	999
Share of applications lodged by UAMs among total number of applications (%)	6.7	6.2	7.8	9.0	5.7

Source: Federal Ministry of the Interior, Asylum Statistics 2009–2013.

Table A.7: Applications for international protection lodged by UAMs in Austria by citizenship, top-10 (2009–2013)

Year/ Citizenship	2009
Afghanistan	431
Nigeria	118
Russian Federation	62
Republic of Moldova	60
Algeria	39
Somalia	39
Kosovo/UNSC 1244	30
Georgia	26
Gambia	25
India	19
Other	213
Total	1,062

Year/ Citizenship	2010
Afghanistan	297
Nigeria	62
Republic of Moldova	42
Algeria	41
Russian Federation	34
Morocco	24
Kosovo/UNSC 1244	20
Somalia	16
India	15
Iraq	13
Other	123
Total	687

Year/ Citizenship	2011
Afghanistan	755
Pakistan	60
Somalia	53
Algeria	35
Russian Federation	26
Nigeria	20
Morocco	16
Iraq	13
Syrian Arab Republic	12
Republic of Moldova	10
Other	121
Total	1,121

Year/ Citizenship	2012
Afghanistan	1,035
Pakistan	160
Algeria	75
Morocco	45
Somalia	45
Syrian Arab Republic	28
Russian Federation	25
Nigeria	18
Islamic Republic of Iran	13
Bangladesh	10
Other	120
Total	1,574

Year/ Citizenship	2013
Afghanistan	437
Algeria	96
Syrian Arab Republic	64
Pakistan	59
Russian Federation	39
Morocco	37
Nigeria	31
Kosovo/UNSC 1244	28
Turkey	26
Somalia	19
Other	163
Total	999

Source: Federal Ministry of the Interior, Asylum Statistics 2009–2013.

Table A.8: Applications for international protection lodged by UAMs in Austria by gender (2009–2013)

Year/ Gender	2009	2010	2011	2012	2013
Male	935	535	955	1,295	850
Female	105	65	50	75	85
Total ²³⁹	1,040	600	1,005	1,375	935

Source: Eurostat, extracted on 10 October 2014.

239 Please note that the total does not equal the total number of applications lodged by UAMs as displayed in Table A.6 because the sources differ. While Eurostat is based on rounded data submitted by Austria on a monthly basis, the Federal Ministry of the Interior’s statistics are annually adjusted data.

Table A.9: Applications for international protection lodged by UAMs in Austria by age (2009–2013)

Year/ Age	2009	2010	2011	2012	2013
< 14 years old	43	34	57	84	67
14 to 17 years old	1,019	356	1,064	1,490	932
UAMs found to be adults	123	247	225	207	188
Total UAMs claiming to be minors	1,185	934	1,346	1,781	1,187
Share of UAMs found to be adults among total applications lodged by UAMs claiming to be minors (%)	10.4	26.4	16.7	11.2	15.8

Source: Federal Ministry of the Interior, Asylum Statistics 2009–2013.

Table A.10: Applications for international protection lodged by UAMs in Austria by age in per cent (2009–2013)

Year/ Age	2009	2010	2011	2012	2013
Share of < 14 year-olds	4%	9%	5%	5%	7%
Share of 14 to 17 year-olds	96%	91%	95%	95%	93%

Source: Federal Ministry of the Interior, Asylum Statistics 2009–2013.

Table A.11: Number of UAMs receiving basic welfare support (2009–2013)

2009 (as of 30.12.2009)	2010 (as of 30.12.2010)	2011 (as of 30.12.2011)	2012 (as of 28.12.2012)	2013 (as of 30.12.2013)
854	593	927	1,323	1,062

Source: Federal Ministry of the Interior.

A.2 List of translations and abbreviations

English term	English Abbreviation	German term	German Abbreviation
Act Amending the Aliens Authorities Restructuring Act	–	FNG-Anpassungsgesetz	–
Act Amending the Aliens Law 2011	–	Fremdenrechtsänderungsgesetz 2011	FrÄG 2011
Act Governing the Employment of Foreign Nationals	–	Ausländerbeschäftigungsgesetz	AuslBG
Aliens Authorities Restructuring Act	–	Fremdenbehörden-neustrukturierungsgesetz	FNG
Aliens police	–	Fremdenpolizei	–
Aliens Police Act	–	Fremdenpolizeigesetz	FPG
Asylum Act	–	Asylgesetz	AsylG
Austrian Civil Code	–	Allgemeines Bürgerliches Gesetzbuch	ABGB
Austrian Integration Fund	–	Österreichischer Integrationsfonds	ÖIF
Basic Welfare Support Agreement	–	Grundversorgungsvereinbarung	GVV
Children and Youth Service	–	Kinder- und Jugendhilfe	–
Children and Youth Service Authority	–	Kinder- und Jugendhilfeträger	–
Code of Criminal Procedure	–	Strafprozeßordnung	StPO
Compulsory Education Act	–	Schulpflichtgesetz	–
Constitutional Court	–	Verfassungsgerichtshof	VfGH
Convention on the Rights of the Child	CRC	Übereinkommen über die Rechte des Kindes	–
Counselling, Education and Support for Migrant Women-Intervention Centre for Trafficked Women	LEFÖ-IBF	Beratung, Bildung und Begleitung für Migrantinnen-Interventionsstelle für Betroffene von Frauenhandel	LEFÖ-IBF
Court of Justice of the European Union	CJEU	Gerichtshof der Europäischen Union	EuGH
End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes	ECPAT	Arbeitsgemeinschaft zum Schutz der Kinder vor sexueller Ausbeutung	ECPAT
European Commission	EC	Europäische Kommission	EK
European Convention on Human Rights	ECHR	Europäische Menschenrechtskonvention	EMRK
European Court of Human Rights	ECtHR	Europäischer Gerichtshof für Menschenrechte	EGMR
European Economic Area	EEA	Europäischer Wirtschaftsraum	EWR
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
European Union	EU	Europäische Union	EU

English term	English Abbreviation	German term	German Abbreviation
European Union Agency for Fundamental Rights	FRA	Agentur der Europäischen Union für Grundrechte	FRA
Exceptional students	–	Außerordentliche Schüler	–
Exclusion order	–	Aufenthaltsverbot	–
Federal Administrative Court	–	Bundesverwaltungsgericht	BVwG
Federal Asylum Office	–	Bundesasylamt	BAA
Federal Chancellor	–	Bundeskanzler	–
Federal Children and Youth Service Act	–	Bundes-Kinder- und Jugendhilfegesetz	B-KJHG
Federal Constitutional Act	–	Bundesverfassungsgesetz	B-VG
Federal Constitutional Act on the Rights of Children	–	Bundesverfassungsgesetz über die Rechte von Kindern	–
Federal Government	–	Bund	–
Federal Government Basic Welfare Support Act	–	Grundversorgungsgesetz – Bund	GVG-B
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBL
Federal Ministry for Europe, Integration and Foreign Affairs	–	Bundesministeriums für Europa, Integration und Äußeres	BMEIA
Federal Ministry for Families and Youth	–	Bundesministerium für Familien und Jugend	BMFJ
Federal Ministry of Economy, Family and Youth	–	Bundesministerium für Wirtschaft, Familie und Jugend	BMWFJ
Federal Ministry of Education, the Arts and Culture	–	Bundesministerium für Unterricht, Kunst und Kultur	BMUKK
Federal Ministry of Justice	–	Bundesministerium für Justiz	BMJ
Federal Ministry of the Interior	–	Bundesministerium für Inneres	BMI
Federal Office for Immigration and Asylum	–	Bundesamt für Fremdenwesen und Asyl	BFA
Federal Office for Immigration and Asylum Procedures Act	–	BFA-Verfahrensgesetz	BFA-VG
Follow-up support	–	Nachbetreuung	–
Forcible return	–	Zurückschiebung	–
Full care	–	Volle Erziehung	–
General Administrative Procedures Act	–	Allgemeines Verwaltungsverfahrensgesetz	AVG
Governor of the province	–	Landeshauptmann	–
Guardian	–	Obsorgeberechtigte/r	–
Human Rights Advisory Board	–	Menschenrechtsbeirat	–

English term	English Abbreviation	German term	German Abbreviation
Identification card for tolerated stay	–	Karte für Geduldete	–
Initial questioning	–	Erstbefragung	–
Integrated Foreigners' Administration	–	Integrierte Fremdenadministration	–
International Centre for Migration Policy Development	ICMPD	–	–
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
Interview	–	Einvernahme	–
IOM Country Office for Austria	–	IOM Landesbüro für Österreich	–
Legal advisor	–	RechtsberaterIn	–
Minors and Youth Employment Act	–	Kinder- und Jugendlichen-Beschäftigungsgesetz	KJBG
Municipality	–	Magistrat	–
National Contact Point	NCP	Nationaler Kontaktpunkt	NKP
Non-Governmental Organization	NGO	Nichtregierungsorganisation	NRO
Ombudsman for Children and Youth	–	Kinder und Jugendanwaltschaft	KIJA
Police administration(s) of the federal provinces	–	Landespolizeidirektion(en)	–
Procedural instruction	–	Verfahrensordnung	–
Province	–	Bundesland	–
Provincial Law Gazette	PLG	Landesgesetzblatt	LGBl.
Public Employment Service Austria	–	Arbeitsmarktservice Österreich	AMS
Rejection at the border	–	Zurückweisung	–
Removal	–	Abschiebung	–
Residence permit	–	Aufenthaltsberechtigung	–
Residence permit for individual protection	–	Aufenthaltsberechtigung besonderer Schutz	–
Residence permit plus	–	Aufenthaltsberechtigung plus	–
Return decision	–	Rückkehrentscheidung	–
School Education Act	–	Schulunterrichtsgesetz	SchUG
School Organization Act	–	Schulorganisationsgesetz	–
Separated Children in Europe Programme	SCEP	–	–
Settlement and Residence Act	–	Niederlassungs- und Aufenthaltsgesetz	NAG
Settlement and Residence Act Implementing Regulation	–	Niederlassungs- und Aufenthaltsgesetz-Durchführungsverordnung	NAG DV

English term	English Abbreviation	German term	German Abbreviation
Supreme Court	–	Oberster Gerichtshof	OGH
Unaccompanied Minor	UAM	Unbegleitete/r Minderjährige/r	–
United Nations Children’s Fund	UNICEF	Kinderhilfswerk der Vereinten Nationen	UNICEF
United Nations High Commissioner for Refugees	UNHCR	Flüchtlingshoch- kommissariat der Vereinten Nationen	UNHCR

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