IN WHOSE BEST INTEREST?

Exploring Unaccompanied Minors' Rights through the Lens of Migration and Asylum Processes (MinAs)

NATIONAL REPORT - AUSTRIA

Authors:

Ayse Dursun
Birgit Sauer

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## EXECUTIVE SUMMARY

1. **INTRODUCTION** .................................................................................................................. 1
2. **THE PARAMETERS OF THE FIELD RESEARCH** .............................................................. 2
3. **Overview of the Austrian national context** ........................................................................ 4
   3.1 Contextual country information ......................................................................................... 4
   3.2 Institutional framework ...................................................................................................... 6
4. **FINDINGS** ............................................................................................................................ 11
   4.1 Legal status ....................................................................................................................... 13
       4.1.1 Asylum/Migration/International protection procedures ............................................. 13
       4.1.2 Age assessment procedure ....................................................................................... 16
       4.1.3 Care/guardianship appointment procedure ............................................................... 17
       4.1.4 Transition to 18 ........................................................................................................ 18
       4.1.5 Return procedure ..................................................................................................... 19
   4.2 Care provisions and day-to-day living .............................................................................. 19
       4.2.1 State funding and financial arrangements ................................................................. 19
       4.2.2 Accommodation and access to food .......................................................................... 20
       4.2.3 Access to physical and mental health care ................................................................. 22
       4.2.4 Access to education .................................................................................................. 23
       4.2.5 Access to paid work ................................................................................................ 24
       4.2.6 Formal support experiences ...................................................................................... 25
       4.2.7 Informal support network and social life .................................................................. 26
       4.2.8 Leisure ....................................................................................................................... 28
       4.2.9 Living in accordance to cultural orientation ............................................................... 28
       4.2.10 Life plan perspectives .............................................................................................. 29
   4.3 Best interest of the child determination .......................................................................... 30
   4.4 Towards durable solutions ............................................................................................... 32
5. **CONCLUSIONS** .................................................................................................................. 34
6. **BIBLIOGRAPHY** .................................................................................................................. 37

## Content

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXECUTIVE SUMMARY</td>
<td>1</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>2</td>
</tr>
<tr>
<td>THE PARAMETERS OF THE FIELD RESEARCH</td>
<td>4</td>
</tr>
<tr>
<td>Overview of the Austrian national context</td>
<td>6</td>
</tr>
<tr>
<td>FINDINGS</td>
<td>11</td>
</tr>
<tr>
<td>Legal status</td>
<td>13</td>
</tr>
<tr>
<td>Asylum/Migration/International protection procedures</td>
<td>13</td>
</tr>
<tr>
<td>Age assessment procedure</td>
<td>16</td>
</tr>
<tr>
<td>Care/guardianship appointment procedure</td>
<td>17</td>
</tr>
<tr>
<td>Transition to 18</td>
<td>18</td>
</tr>
<tr>
<td>Return procedure</td>
<td>19</td>
</tr>
<tr>
<td>Care provisions and day-to-day living</td>
<td>19</td>
</tr>
<tr>
<td>State funding and financial arrangements</td>
<td>19</td>
</tr>
<tr>
<td>Accommodation and access to food</td>
<td>20</td>
</tr>
<tr>
<td>Access to physical and mental health care</td>
<td>22</td>
</tr>
<tr>
<td>Access to education</td>
<td>23</td>
</tr>
<tr>
<td>Access to paid work</td>
<td>24</td>
</tr>
<tr>
<td>Formal support experiences</td>
<td>25</td>
</tr>
<tr>
<td>Informal support network and social life</td>
<td>26</td>
</tr>
<tr>
<td>Leisure</td>
<td>28</td>
</tr>
<tr>
<td>Living in accordance to cultural orientation</td>
<td>28</td>
</tr>
<tr>
<td>Life plan perspectives</td>
<td>29</td>
</tr>
<tr>
<td>Best interest of the child determination</td>
<td>30</td>
</tr>
<tr>
<td>Towards durable solutions</td>
<td>32</td>
</tr>
<tr>
<td>CONCLUSIONS</td>
<td>34</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>37</td>
</tr>
</tbody>
</table>
EXECUTIVE SUMMARY

This report elaborates on the findings of the field research conducted by the Austrian team within the framework of the research project “IN WHOSE BEST INTERESTS – Exploring Unaccompanied Minors’ Rights through the Lens of Migration and Asylum Processes” (MinAs). The data was obtained through qualitative interviews with 17 experts in the field and 12 (former) unaccompanied minors.

Unaccompanied minors flee their homes due to different yet similar reasons such as (civil) war and persecution on grounds of their ethnicity and/or legal status as well as gender-specific threats such as genital mutilation and forced marriage. Minors take a long and dangerous journey to Europe which may take up to several months and stretches over numerous countries. During their journey, unaccompanied minors experience physical and emotional exploitation and bad treatment.

After their arrival in Austria, a long asylum procedure with uncertain outcome awaits unaccompanied minors. The hearing by the Aliens Police and interviews with officers from the Federal Office for Aliens and Asylum are mostly concerned with security questions rather than the well-being of the minors which represents an additional source of anxiety for minors. Furthermore, age-assessment is a common practice at the initial reception centres. Most unaccompanied minors are accommodated at the initial reception centre in Traiskirchen during the admission procedure. Traiskirchen lacks any child-friendly infrastructure and resources and is characterized by overfilled dormitories and long eating lines, missing legal guardianship for minors as well as social isolation.

Once admitted to the asylum procedure unaccompanied minors are re-accommodated in one of the child-care facilities of the Länder where more favourable conditions await them. The Child and Youth Welfare Services are entrusted with the legal guardianship of the minor through court decision. Child and Youth Welfare Services transfer some of its guardianship tasks (e.g. care and education, legal representation during the asylum procedure) to other institutions and organizations (e.g. child-care facility, law firms). Minors sleep and eat the child-care facilities and show overall satisfaction although scarce resources jeopardize minors’ best interests as confirmed by minors and experts during the interviews. Low daily rates for unaccompanied minors (39-77 Euro) compared to Austrian children in out-of-home-care (starts at 120 Euro) provided by the Child and Youth Welfare Services impede the quality and quantity of services granted to the minors such as insufficient German classes (200 hours), pocket money (40 Euro monthly) and leisure time offers. Access to schooling is
a real challenge for unaccompanied minors older than 14 who do not fall under compulsory schooling. Also, access to paid work is hampered by strict employment regulations for asylum-seekers which further impacts unaccompanied minors’ skills development and future prospects for an autonomous life.

Our findings point to a “two-class-system” in Austria with respect to child-welfare. Social services provided to unaccompanied minors within the framework of Basic Care and Services (Grundversorgung) lag considerably behind the Child and Youth Welfare standards for Austrian children in out-of-home-care. Within the Austrian asylum regime, unaccompanied minors are treated as asylum-seekers with additional rights instead of as full children which undermines their ‘best interests’. There have been significant legal improvements in the last years such as the enactment of the Agreement on Basic Care and Services between the Bund and the Länder or the Supreme Court decision from 2005 that unaccompanied minors shall at all times be assigned a legal guardian. The next ambitious step Austrian policy-makers need to take is the integration of unaccompanied minors into the Child and Youth Welfare Services with the same social rights and benefits as Austrian children in out-of-home-care to assure minors’ best possible interests.
1 INTRODUCTION

An increasing number of people flee their homes each year due to war, persecution and poverty. In fact, today worldwide displacement has hit all-time high since the beginning of records.\(^1\) UNHCR’s recent report *Global Trends: World at War* (2015) demonstrates that the number of forcibly displaced people has risen to 59.5 million compared to 51.2 million one year earlier. One in every 122 humans is either a refugee (19.5 million), internally displaced (38.2 million) or an asylum-seeker (1.66 million). In 2014, 51 per cent of the world’s refugees were under 18 years old – the highest figure for child refugees in more than a decade.\(^2\) In 2014, 28,027 people applied for asylum in Austria compared to the 17,503 applications in 2013 which marks an increase of over 60 per cent (Bundesministerium für Inneres, 2014). 2,260 of them were unaccompanied minors. 129 of 2,260 were younger than 14 years old. The minors were mostly from Afghanistan and Syria.

This report focuses on this particularly vulnerable group among child refugees, namely unaccompanied minor asylum-seekers, in Austria and discusses the findings of the field research conducted with experts working in the field and unaccompanied minors within the framework of the international research project “IN WHOSE BEST INTEREST? Unaccompanied Minors’ Rights through the Lens of Migration and Asylum Processes” (MinAs). The research project assesses the perception and implementation of the ‘best interest of the child’ principle with regard to unaccompanied minors in Austria. Our field research establishes that despite recent legal improvements unaccompanied minors’ ‘best interest’ is systematically undermined by institutional arrangements and resource allocations within a “two-class-system” in which unaccompanied minor asylum-seekers and Austrian children in out-of-home-care do not enjoy the same services and standards.

This report is organizes as follows: Firstly, it outlines the parameters of the field research. Secondly, we outline the Austrian national legal framework and deliver recent data on asylum trends in Austria. Thirdly, we discuss our findings based on the data obtained from interviews with experts and minors. We conclude with a summary of the main takeaway of our research.

\(^1\) Worldwide displacement hits all-time high as war and persecution increase: http://www.unhcr.org/558193896.html
2 THE PARAMETERS OF THE FIELD RESEARCH

To answer our research question we conducted in-depth interviews with experts in the field and with unaccompanied minors from October 2014 to April 2015. We interviewed 17 experts in Vienna, Lower Austria, Salzburg and Tyrol. The group of experts included three care workers and two managers at child-care facilities for unaccompanied minors, two officers working at the Child and Youth Welfare Services in two different Länder, one manager at a non-profit organization, one lawyer who advises unaccompanied minors on the asylum procedure, one officer from the Federal Ministry of the Interior working on asylum issues, one employee from the Children’s Ombudsman (Kinder- und Jugendanwaltschaft3), one UNHCR employee, one expert on unaccompanied minors working for a pro-asylum NGO, one national politician engaged in human rights issues, one lawyer from a pro-asylum lawyers’ network, one godparent4 to an unaccompanied minor and one activist working with minor refugees. All but four interviews (one national politician, one officer at Child and Youth Welfare Services, one employee at Children’s Ombudsman one godparent) were conducted face to face. Two interviewees (officer at the Ministry of the Interior and lawyer at a child-care facility) denied audio-recording during the interview.

We also conducted 10 interviews with unaccompanied minors and two former unaccompanied minors in Vienna and Lower Austria. The (former) minors were from Afghanistan (6), Syria (2), Iran, Pakistan, Chechen Republic and Somalia. Their ages ranged from 14 to 22. All but one were male. All minors lived in child-care facilities for unaccompanied minors at the time of the interviews. The initial contact with the interviewees was arranged through the managers and care workers at child-care facilities. While in some of the cases the interview could be conducted during the first meeting, in other cases a second appointment had to be arranged. Although the project partners agreed on meeting minors up to three times, this proved to be inconvenient and time-consuming for the minors. In fact, when asked most of the minors we preferred only one appointment. All interviews with the minors were conducted face to face at the child-care facilities. During the interviews the ethics protocol drafted by the UK team was given primary consideration. Also, prior to the first interview with the minors an informal meeting with a competent expert working in the field was arranged and the Austrian researcher to conduct the interviews was advised

3 Kinder- und Jugendanwaltschaft is an independent public organ installed in nine Länder to supervise and promote the realization of children’s rights and welfare based in line with the UN Convention on the Rights of Children.
4 In this context, a godparent (Pate in German language) is an adult volunteer to support and guide an unaccompanied minor on various matters related to the minor such as school and work.
and sensitized on the interview questions and the treatment of unaccompanied minors during the interviews. Minors were at all times informed on the content and intent of the project and were guaranteed full anonymity. The interviews were conducted either in German or English without a translator since the minors had a good or sufficient command in one of the two languages. Finally, all interviews were transcribed, anonymized and analysed according to a common grid drafted and developed by the project partners.

Our analysis yields significant insights on structural drawbacks inhibiting the realization of the best interest of the child. Through the interviews with experts holding key positions in various institutions and organizations we gained insight into their daily work and acquired a sense of old and emerging structural and contextual challenges they face. Also, their perception and practical implementation of the ‘best interest of the child’ concept were illustrative for us to understand and interpret existing shortcomings as well as recent improvements within the Austrian asylum regime with respect to unaccompanied minors. The interviews with the minors inform on the socio-political background of minors’ escape, their arrival, living conditions and future prospects in Austria. The experiences and anecdotes collected from the minors give valuable insight into how they perceive their past and future prospects in Austria.

However, there are certain limits to our findings. Firstly, the small number of interviews conducted may not be representative for all minors’ life conditions in Austria. Secondly, due to time and financial constraints our sample mostly concentrates on Vienna and surrounding which may, in part, deliver a more optimistic picture than is really the case in Austria in general. Nonetheless, we are confident that our data contributes to the on-going scholarly and political debates about refugees in general and delivers insight into the lives of unaccompanied minors in Austria.
3 Overview of the Austrian national context

3.1 Contextual country information

The number of people applying for asylum in Austria increased dramatically in the last couple of years, in 2015 in particular, in accordance with the general trend world-wide. In 2015, as of September, the number of asylum applications reached 56,356 (Bundesministerium für Inneres, 2015) compared to the 17,010 (September 2014) applications for the same time period one year earlier. This marks an increase of over 230 per cent. The number of asylum applications is expected to reach 82,500 by the end of the year.\(^5\) The number of unaccompanied minors, too, has increased dramatically in 2015. As of September 2015, 6,175 unaccompanied minors applied for asylum compared to the 1,327 applications by unaccompanied minors in 2014 for the same time period (January-September). Unaccompanied minors were mostly from Afghanistan and Syria.

Most of the unaccompanied minors in Austria seek asylum (European Migration Network, 2010: 12). However, there is no valid data available on unaccompanied minors who reside in Austria without having applied for asylum (Fronk and Rothkappel, 2013: 13). Most of these children seem to be victims of human trafficking although secure numbers are missing here, too (cf. European Migration Network, 2010: 39). Another undocumented area concerns the gender of unaccompanied minors which hinders the exploration of gender-specific dimensions of migration and asylum for unaccompanied minors. Unaccompanied girls are assumed to make up five per cent of unaccompanied minors.\(^6\)

Austria is a federal state which is divided into nine sub-national government units, Länder. According to the federal principle, competencies for policy areas are distributed between the federal government, Bund, and the Länder. Asylum is a policy area where the tasks and costs are shared by the Bund and the Länder. Historically, this has caused tension between national and sub-national government levels when it comes to bearing the costs as. It has also caused asymmetries among the Länder with regards to the standards of services provided to unaccompanied minors. Thus, the welfare of unaccompanied minors in Austria depends very much on the resources and capacities of single Länder and on the political will of their decision-makers. Finally, the division of competencies between Bund and Länder

\(^6\) E-Mail correspondence with an official at the Ministry of Interior from November 2014.
opens a gap of non-decision and non-accountability between different levels which results in a violation of the rights of unaccompanied minors.

When Austria became a member of the European Union in 1995, it had to harmonize national law with EU law and work towards the development of common European policies, asylum being one such policy area since 1999 (see European Commission, 2014). During its Presidency of the Council of the European Union in 2006 Austria pushed its own restrictive asylum policy on to the Common European Asylum Policy (CEAP) (Harris, 2006; Jahn et al., 2006). This approach was favoured by a trend of ‘securitization’ of asylum and migration policies since 9/11 (Giner, 2007: 250-251; Jahn et al., 2006: 4; Vitus and Lidén, 2010: 65-67). The establishment of FRONTEX, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, by the Council Regulation EC 2007/2004 is demonstrative of this trend. Furthermore, this approach resonated with the government change in Austria to a Christian conservative/right wing coalition in 2000.

Since 2011, with the continuous rise of the number of refugees entering Austria, the situation of emergency became almost chronic. In 2012, Austrian Prime Minister, the social democrat Werner Faymann (Sozialdemokratische Partei Österreichs, SPÖ), made a call for an 'asylum summit' (Asylgipfel) with the Länder reminding them of their legal obligation to reach the admission quotas determined for each Land. While the Länder Carinthia, Styria, Salzburg, Tyrol, Upper Austria, Vorarlberg failed to reach their admission quota, Vienna, Upper Austria and Styria reached or almost reached them. Faymann emphasized that priority should be given to unaccompanied minors who shall be accommodated in a child-care facility of the Länder as quickly as possible. In June 2015, the situation of emergency reached alarming degrees and was scandalized as 'degrading for humans' when tents were pitched for asylum-seekers as a temporary solution to the accommodation shortage accompanied by overfilled dormitories and long eating queues. Member of the Austrian Board of Ombudsman (Volksanwaltschaft) Günther Grass who is in charge of social, nursing and health issues warned that Austria shall not mass-accommodate child refugees in Traiskirchen, that the guardianship for unaccompanied minors should immediately be taken over by the Child and Youth Welfare Services (Kinder- und Jugendhilfe) after minors' arrival.

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7 Asyl-Gipfel: Einigung zwischen Bundesregierung und Länder (Asylum summit: agreement between the federal government and the Länder):
https://www.bka.gv.at/site/infodate__05.11.2012/7650/default.aspx
in Austria and that no difference shall be made between Austrian and refugee children.\(^8\) The pro-asylum NGO *aslykoordination* has reported that as of late June 2015 1,300 unaccompanied minors were accommodated in the child-care facilities of the nine *Länder* whereas around 1,890 were accommodated in a federal reception centers (1,200 of them at the initial reception centre in Traiskirchen) and other federal accommodation facilities due to lacking care and assistance capacities in the *Länder*.\(^9\) In 2015, Länder expanded their offer for accommodation facilities for unaccompanied minors.

### 3.2 Institutional framework

Unaccompanied minor asylum-seekers’ social position as both minors and asylum-seekers is characterized by ambiguity. On one hand, unaccompanied minors are subject to restrictive state policies implemented by institutions such as the Ministry of Interior or the Aliens Police driven by national security concerns and 'institutionalized suspicion' (Giner, 2007) towards asylum-seekers. On the other hand, unaccompanied minors profit, to a certain degree, from special child-welfare provisions implemented by yet other institutions such as the Ministry for Families and Youth or the Child and Youth Welfare Services guided by child-protection concerns. These competing and at times contradictory logics behind the inner workings of different state institutions count both for the discrimination against unaccompanied minors (compared to Austrian children in out-of-home-care) and additional benefits (compared to adult asylum-seekers) for unaccompanied minors. They find themselves at the interface between the asylum regime and the child-welfare regime in Austria. Therefore, in the following, we consider both asylum- and child-relevant legal documents and institutions for a thorough understanding of unaccompanied minors’ intersectional social position.

In 1992, Austria ratified the United Nations Convention on the Rights of the Child (UNCRC 1989). The UNCRC was granted the status of a ‘simple law’, i.e. a law ranking lower than the Constitution. Besides, Austria adopted the UNCRC with a so-called ‘reservation for fulfilment’ (*Erfüllungsvorbehalt*) which means that the UNCRC is not directly applicable to the national law but needs to be incorporated whenever deficiencies and/or contradictions are identified within the national law (Holz-Dahrenstaedt, 2002: 39). In 2009, the federal government made a first attempt to upgrade the UNCRC to the rank of a constitutional law which failed due to the boycott decision of the opposition (Fronek, 2010: 20). In 2011, the Federal

\(^8\) Volksanwaltschaft: Missstände bei unbegleiteten Minderjährigen (Austrian Ombudsman Board: Drawbacks related to unaccompanied minors): http://derstandard.at/2000016897972/Volksanwaltschaft-Missstaende-bei-unbegleiteten-Minderjaehrigen

\(^9\) Aktuelle Entwicklungen in Österreich (Recent developments in Austria): http://umf.asyl.at/aktuell/
Constitutional Act on the Rights of Children (Bundesverfassungsgesetz über die Rechte von Kindern, BGB1. I Nr. 4/2011) was passed. Article 1 of the Act states:

„Every child has a right to protection and care which are necessary for his well-being, to best possible development and unfolding as well as to observing his own interests among others with respect to generation justice. In all measures taken by public and private institutions concerning the child, the welfare of the child shall be given primary consideration. “\(^{10}\)

The Act established children’s rights through a wide-range of issues from the child’s right to parents and family (Article 2) and the right to participation of the child in matters concerning him-/herself (Article 4) to the right of a non-violent education and protection from economic and sexual exploitation (Article 5). However, the Act does not cover all the issue areas as does the UNCRC. Also, it establishes that some articles, including Article 1, of the Act can be suspended if national security, social order and peace and the economic welfare of the country requires so.

The Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch, JGS Nr. 946/1811) defines a minor as any person younger than 18 years (Article 21). In every matter related to a minor, especially in matters of guardianship and personal contacts, the ‘welfare of the child’ (Kindeswohl)\(^{11}\) is to be followed as the guiding principle (Article 138). The welfare of a child includes adequate supply with nutrition, medical and sanitary care, housing and education, care, security, and protection for the physical and spiritual integrity of the child. Furthermore, the child’s skills and development shall be promoted and his/her opinion shall be taken into account in due consideration of his or her level of understanding and ability to opinion formation. Any damage to the child through a measure against his or her will shall be avoided. The child shall be protected against assault or violence. The rights, claims and interests of the child, his/her parents and the broader environment shall be observed. Furthermore, the Civil Code establishes that if a minor whose parents are unknown is identified within the country, the Child and Youth Welfare Services (Kinder- und Jugendhilfe) are entrusted with the legal guardianship of the minors (Article 207). However, despite existing legal grounds, guardianship for unaccompanied minors was an unsolved problem until 2005 (Fronek and Rothkappel, 2013) – in contrast to looked-after Austrian children. In 2005, the Austrian Supreme Court (Oberster Gerichtshof) decided that unaccompanied minors must be assigned a legal guardian (OGH 19.10.2005, 7 Ob 209/05v). The Court

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10 Authors' own translation.
11 This is the German language pendant to the ‘best interest of the child’. 
declared that no difference shall be made between Austrian citizens and foreigners with respect to the rights and duties defined in the Civil Code (Fronek and Rothkappel, 2013: 14).

In January 2014 the competency for asylum was re-regulated and assigned to the newly established Federal Office for Aliens and Asylum (*Bundesamt für Fremdenwesen und Asyl*, BFA), replacing the former Federal Office for Asylum (*Bundesasylamt*), within the Ministry of Interior. The Federal Office for Aliens and Asylum is the single competent authority for first instance asylum procedures, return matters, basic welfare support, and decisions regarding humanitarian stay, on alien police matters, and detention pending deportation as well as the issuance of travel documents (European Asylum Support Office, 2014: 59) and has branches in all nine Länder. In case of a negative decision by the Federal Office, the unaccompanied minor can submit a complaint to the Federal Administrative Court (*Bundesverwaltungsgericht*) (asylum agency of the second instance), which replaced the former Asylum Court (*Asylgerichtshof*) the same year.

The *Act on Asylum* (*Bundesgesetz über die Gewährung vom Asyl*), the main legal document which regulates matters related to international protection for foreigners in Austria, displays a number of special provisions with respect to unaccompanied minors although it lacks any mention of the 'best interest of the child' or the 'child welfare' as a guiding principle or concept in the treatment of minors in asylum procedure. According to this Act, the Federal Office for Aliens and Asylum shall carry out a search for family members or support the minor in his/her search for family members in the country of origin, another third country or a member state (Article 18). The Asylum Act furthermore establishes that unaccompanied minors can be heard or questioned in the presence of their legal representative only (Article 19(5)). The Act further defines a 'multifactorial investigation method' as a "model based on three individual medical examinations (physical examination, dental examination and X-ray examination in particular) for age assessment according to the state of the art of science" (Article 2(25)).

According to the *Act on Aliens Police* (*Bundesgesetz über die Ausübung der Fremdenpolizei, die Ausstellung von Dokumenten für Fremde und die Erteilung von Einreisetitel*) if a minor fails to prove minority through reliable documents, the Länder police department (*Landespolizeidirektion*) may demand a multifactorial examination method for age assessment (Article 12(4)). The participation of a person in an age assessment cannot be

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12 For the Länder branches see: http://www.bfa.gv.at/bundesamt/standorte/start.aspx

urged through coercive means. If the examination fails to eliminate any doubt about a minor's age, it shall be decided in favour of the foreigner. According to the same Act, if the decision for deportation concerns an unaccompanied minor, the Federal Office for Aliens and Asylum has to make sure that the minor is delivered to a family member, a legal guardian or an appropriate institution in the target country (Article 46(3)). An unaccompanied minor can be expelled when he/she poses a threat to the public security provided that it is in the best interest of the minor in accordance with the UNCRC Article 66(3). Minors shall not be taken into detention pending deportation (Article 76(1a)). The Federal Office for Aliens and Asylum shall apply moderate means for minors under 16 if the moderate means fulfils the function of a detention pending deportation (Article 77). If not so, the minor younger than 16 can be taken into detention provided that he/she is provided with appropriate accommodation and care for his/her age and the minor should be separated from adults (Article 79). The detention of the minor shall not exceed two months (Article 80).

Formerly, a federal minimum guarantee for social services (Bundesbetreuung) were granted to asylum-seekers. However, in practice only one third of the asylum-seekers received such services (Asylkoordination Österreich, 2005). The Council Directive (2003/9/EC) from 2003 urged the member states to set minimum standards for the reception of asylum-seekers by February 2005. In 2004, the Basic Services Agreement between the Bund and the Länder (Grundversorgungsvereinbarung, GVV – Article 15a B-VG)\(^4\) came into force which remedied some of the structural drawbacks within the Austrian asylum regime. According to the agreement, the supply of care and assistance for asylum-seekers during the admission procedure falls under the jurisdiction of the Bund, whereas the Länder are responsible for providing basic services for asylum-seekers during the asylum procedure (Asylkoordination Österreich, 2005). Basic care and services include health insurance, accommodation, pocket money, counselling (on voluntary return) as well as transport, school and clothing costs (Asylkoordination Österreich, 2005: 7). The Agreement furthermore establishes that unaccompanied minors shall be granted additional services (Article 7). According to this, if needed the minor shall be provided with pedagogical and psychological support. Unaccompanied minors shall be accommodated in different arrangements depending on their degree of self-dependence and need of care.\(^5\) A suitable daily routine for unaccompanied


\(^{15}\) Unaccompanied minors are accommodated either in Wohngruppen for unaccompanied minors with extensive care requirement, in Wohnheime for self-sufficient unaccompanied minors and betreutes Wohnen for unaccompanied minors who act self-sufficiently under expert supervision/instruction.
minors shall be promoted (e.g. education, leisure time, sports, individual and group activities). The minor receive support in processing issues related to his/her age, identity, country of origin and family members, reunification as well as future prospects. An integration plan for a living on his/her own shall be developed (e.g. school, training). Daily rates for unaccompanied minors range between 39 and 77 Euro whereas the same rate for Austrian children in out-of-home-care starts at 120 Euro (Glawischnig, 2014).
4 FINDINGS

In the following, we discuss the findings of our field research. We systematize the findings under four basic categories: (1) the legal asylum procedure, (2) care provisions for and day-to-day living of unaccompanied minors, (3) best interest determination for unaccompanied minors and (4) durable solutions. However, before we do so, we would like reflect on the escape background and route of unaccompanied minors for an understanding of the socio-political and psychological dimensions of migration. We assume that they are an integral part of what defines unaccompanied minors’ ‘best interest’.

Background of minors’ escape

The background of minors’ escape from their country is diverse yet similar. Among them (civil-) war stands out as a major reason (Hamed16, 17; Khalid, 16; Karim, 14). One minor was forced to join one of the conflicting armed parties when his father decided to send him away for his own security:

"Because if I, if I went to the IS of the areas, I have to fight with them. If I stayed in the (other) areas, I have to fight with [the others]. Ok, everywhere if I stayed in […] freedom, […] I have to fight with them. I don’t want to fight with anybody […]." (Adam, 16)

While (civil) war and armed conflicting parties in the region represent a major source of insecurity, they are not the only source. One minor reports that besides ‘terrorist attacks’, one has to fear simple robbing on the streets. When asked why he likes Austria or Vienna, Asif (16) replied:

"I love it [here] because I feel secure. Not because of just terrorist[s] and [attacks] or something. […] [T]here [Pakistan] was not just a terrorist attack or something; there are also like thief attack[s] and somebody come[s] and put[s] the gun on you and say[s] "Give me your phone and what you have got, give me everything” […]. So I got twice robbed on the street while I was coming home at night. […] Yeah, so when I came here like in this WG [child-care facility] in Vienna […], when I was coming at night time, I was still watching backwards [whether] somebody here [was] following me. You are not, I know it is secure, but still the fear I have got.” (Asif, 16)

One minor was persecuted on grounds of his ethnicity/religion or legal status (Rasheed, 17) whereas one girl faced the risk of genital mutilation and forced marriage (Aasiya, 17). These

16 We use fictive names for all the minors cited in this report.
different motives have in common the urge for physical and psychological integrity, security and future prospect which are indispensable to children’s human rights. Rasheed whose parents are originally from Afghanistan explains:

"Right, and my parents were in Iran and I grew up in Iran and I don’t have any [legal] documents in Afghanistan, and none in Iran. That is my problem. In Iran I was an Afghani, in Afghanistan I was an Iranian and none of these countries wanted to have me, yes. And right, the first country where I have a document or something with my name on is Austria. I find this superb. Now, I can feel like a human being. Because in Iran, when I was eight years old, I had to go to work and worked as a tailor for three years […]. Here, I have to attend the school, finish secondary school, then [do] an apprenticeship, then I will have a better chance or a better future. But in Iran I could not, I had to go to work every day and you don’t know what will happen tomorrow. Maybe you will have to leave for Afghanistan or go back to Iran because of the police.” (Rasheed, 17)

Our interview with a female unaccompanied minor from Somalia points at gender-specific factors behind the minor’s decision to leave the country of origin. Aasiya (17) explains that her family was against genital mutilation and she could avoid it because she and her family were living in Dubai and only recently moved to Somalia after her father lost his job and the family was not allowed to stay in Dubai any longer. When she moved to Somalia, the country of origin of her parents, the broader community started urging her to have a genital cutting and tried to force her into marriage. To protect her against these threats, her father decided to send Aasiya away.

The escape route, duration and experiences

Unaccompanied minors in Austria are either identified by the police in trains, train stations or other public places or they contact state authorities and apply for an asylum (Interview officer at Child and Youth Welfare Services 2). Only one of the minors (Aasiya, 17) we have talked to came to Austria by plane and applied for asylum at the airport. It may be due to the fact that girls and young women are vulnerable to additional gender-specific threats such as rape, forced prostitution and trafficking. Other minors we have interviewed travelled by land and sea. They describe a long escape route which stretches over numerous countries such as Iran, Turkey, Bulgaria, Greece and Hungary. Besides being long, the escape route is dangerous. Two minors we have talked to reported that they were kept in a jail-like place in Bulgaria for one month, were barely allowed to go outside and had no access to other
services such as health check-up or legal advice (Karim 14; Khalid 16). The older brother was relieved to arrive in Austria finally:

"[A]t first we [were] in Bulgaria and then we come to äh other place like Serbia, like äh Hungary, Bulgaria [where] I was 30 days in jail. [...] 30 days with my small brother. We [were] in jail in like, you know jail? [...] Äh just in one day one hour we can go outside and see [outside]. After that, all [the] time you must stay in this room and without sky and, I was always pray[ing] and say[ing]: "Allah when [will] we go out of this this, this place." So I don"t like that places, like in here [Austria] when we come, believe me, this is very very good we came here.” (Khalid, 16)

Another minor who had lost his family at the Turkish-Iranian border had to stay and work in Greece to save money in order to continue his journey within Europe. He had to fear for his life due to widespread racism against refugees in Greece. Besides, although he was even a younger minor then, he had to share a flat with adults and work for them in return for shelter:

"In Greece, there were two different groups who were against foreigners. [...] Yeah, racist groups. If you went to a park, for example, you may have never come out again. I saw with my own eyes that a boy died there. That is why I feared that I would have to stay there [in Greece]. [...] I lived in a flat share with various families from Morocco, Afghanistan and so on. The wife [of the family he lived with] was pregnant and was not able to cook. So I cooked for them and did not pay for the flat in return. Then, I was on an island in Greece and had to work there to spare some money and move on [to a different country].” (Rasheed, 17)

Unaccompanied minors’ depictions of their escape route and time period shows how life-threatening and physically and emotionally exploitative the escape is. This makes the development and implementation of safe means and procedures for asylum applications an indispensable part of the best interest and well-being of unaccompanied minors.

4.1 Legal status

4.1.1 Asylum/Migration/International protection procedures

Arriving in Austria: Police hearing, access to information and translation

The asylum procedure starts with the application of the minor for asylum. The first hearing of the minor with an Austrian official, mostly an alien's police, resembles a police 'interrogation’ (interview employee at pro-asylum NGO). During the interview, the minor is
asked questions such as where he/she is from, which route he/she took to Austria, where his/her family is and why he/she left his/her country in the first place. Numerous minors we have talked to reported bad, though non-violent, treatment by the police who were mostly concerned with security questions rather than the minor’s well-being. Given the fact that minors arrive in Austria upset about being separated from their families, exhausted due to the long and dangerous journey which may take up to two or three months, badly treated by the police in transit countries and worried about what is awaiting them in a new country, the questioning by the police displays an additional source of anxiety for the minors. Besides, minors are poorly or not informed at all on the asylum procedure awaiting them. One minor recalls the police hearing:

"When we come here, we said we [take] to Traiskirchen and this [you know] I said ok and we said â€œ but tomorrow maybe even when the translator come and said interview, I don’t know what is this Interview. Not said, they are asking how you come here, what is your problem, they said in your interview. I come and don’t have a, you know, ready, take a ready for [...] I remember that [...] the way was, you know, I said, I said to them because I come in this way, and I said not with â€œ more â€œ like with â€œ more information, too much information, that I come in this way, then this way, then this way. I just said in this way we come first, we come to Iran, Iran-Turkey, Turkey-Bulgaria, Bulgaria-Serbia, Serbia and then here.” (Khalid, 16)

One minor did not know where he would be sent after the initial reception centre and what he needed to do to stay in Austria (Rasheed, 17). One expert regrets that young people come to Austria and want to stay, but do not know how (interview employee at pro-asylum NGO). Only towards the end of the asylum procedure do young asylum-seekers become informed about the procedure rather than at the beginning (interview employee at pro-asylum agency). Another minor reports that although the police officers were kind to her, the whole reception setup was the opposite. She was treated in a way that made her feel like she was being punished for something she did:

"Like they took me to, like police station they asked me like questions [...]": "How you came, give me [your] document and this”. It was really bad. Then they took me to a place because it was late, they took me to a place like a jail. [...] Yeah only one night, not night like morning you will go out and you go to Traiskirchen [...]. It is locked, the door. You have one bed, this where I felt like it was bad, really bad that when I see police I get scared, like in
Aasiya recalls having a bad communication with the police officer to the bad language skills of her translator. One former unaccompanied minor remembers having a bad experience with his translator who, according to him, “didn’t want to translate what she didn’t like” (Malik, 18).

**Asylum procedure: Long and uncertain**

After the minor is admitted to the asylum procedure and reallocated from the initial reception center to a child-care facility of the Child and Youth Welfare Services in one of the Länder, a long asylum procedure awaits unaccompanied minors. This is in part due to the workload of the Federal Office for Aliens and Asylum. On the other hand, long asylum procedure seems, at least in part, to be a strategic choice to avoid becoming a more attractive destination for refugees (officer at the Federal Ministry of the Interior). One minor complains about the fact that it has taken the Federal Office too long to give him an appointment for an interview:

*I want [to] complain because if, if somebody especially underage it is the rule if he didn’t get Interview in six month he can apply for, for the like case he can do the case and they have to response in three month and I didn’t, they did not response in three month but they called my lawyer that he got his interview, but we don’t have the time, we should, we don’t know how bring to you because we have a lot of Interviews do for people to give, then he said we can give him on April and May. But still the rule, the rule from that thing is like you have to [send] the interview within in three month, but I am waiting after that, I am waiting since again six month. So that is what it is like. I don’t like it.* (Asif, 16)

One former unaccompanied minor depicts a similar picture of his own asylum procedure:

*I did not receive any decision [from the Office for Aliens and Asylum], none at all [for] five months, six months, eight months ... Then I filed in a complaint of delay; they should have decided within two months or forward the case to the Supreme Court. They did not take a decision, so I called the Supreme Court. They had not received any file about me. Then I re-filed a complaint of delay and again no reply. Then, I showed up personally, they did not give me any answer, then I sent a lawyer there. The lawyer searched everywhere and said one month later that the Federal Asylum Office [predecessor of Federal Office for Aliens and Asylum] in Vienna had changed its location from Schachthausgasse to Erdberg at the
beginning of 2014. And in the meantime, their computer broke down and the officer in charge of my case has quit and is no longer working for the Office. (Malik, 18)

Malik reports that his situation made him depressive and scared because he did not know what would happen to him next. At the time of the interview, Malik was still waiting for a decision and hoping for an asylum by June 2015.

While some of the minors were waiting for the first interview or outcome of their asylum procedure at the time of the interview, others already held a subsidiary protection. Most of the minors are granted subsidiary protection whereas mostly only Syrian minor asylum-seekers receive asylum (interview officer at the Federal Ministry of the Interior). None of the minors we interviewed had asylum status at the time of the interview.

4.1.2 Age assessment procedure

There is a common scepticism towards the statements and intentions of the minors among the public institutions and actors involved in the asylum procedure. For example, one official from the Federal Ministry of Interior defends that in many cases minors strategically state to be 16 so that there is enough time for family reunification in Austria when they, for example, acquire subsidiary protection the following year at the age of 17 (interview officer at the Federal Ministry of the Interior). Due to this institutionalized suspicion against unaccompanied minors age assessment has become common practice at the initial reception centre. According to the assessment of a state officer, with 80 to 85 per cent of the minors age assessment is conducted (interview officer at the Federal Ministry of the Interior) despite the fact that the reliability (the accuracy of results) and legitimacy (physical integrity of individuals) of age assessment is highly controversial among experts.

Among the minors we interviewed, eight of ten did not take an age assessment whereas two did (Asif, 16; Tahir, 17) even tough one of them (Asif, 16) had a copy of his national ID. Asif remarks:

"Yeah, I came, like I came with my documents that I study, I had like my ID, my work status everything abroad with my things, and this [...] I gave them, but still they say "We have to send you to the doctor." [...] Yeah. I said "I don't care about it, but you all of your guys are wasting my time because I have everything like the original documents with me." Not (written) but I had copies. I didn't trust the way I want to come, I was like "If I bring my original copies it will, I will [lose] it. [...] So I had the copies, so they said [to] me "OK, bring
the original one.” Then I contact[ed] with my sister who is in Afghanistan. She sent me, but still they [sent] me [to the] doctor. […] And the result was the same, as I told them.”

Tahir (17) on the other hand states that having to take the age assessment test did not disturb him since he wasn’t the only one to take the test and many youngsters had to do so. A former unaccompanied minor remembers taking the ‘small’ age assessment which approved his claimed age.

One expert points to a possible risk of age assessment: When the person claiming to be underage is identified to be 18 or older according to the age assessment, he/she loses access to legal representation by an adult. This person can then file a complaint against the test result at a second instant court. During this time, however, the person counts as full age although the court might decide otherwise in the end. In the meantime, however, the minor would still be disadvantaged (interview employee at pro-asylum NGO).

Although in most of the cases minority is confirmed, one expert notes that even with such positive outcome of the age assessment the age of the minor may be ‘corrected’ upwards, for example from 16 to 17 (interview lawyer at a child-care facility). Such ‘corrections’ have significant consequences for the minors’ access to accommodation at the child-care facility, legal representation and family reunification.

4.1.3 Care/guardianship appointment procedure

Despite existing law (see 3.2 Institutional Framework), guardianship for unaccompanied minors was an unsolved problem until Supreme Court’s decision from 2005. One expert celebrates this improvement:

"In 2005, there was a decision by the OGH [Oberster Gerichtshof, Supreme Court] that unaccompanied minors, too, have a legal right to guardianship. That is very, very important because this has considerably changed the system. They said, "It is not sufficient that they [unaccompanied minors] have a roof over their head and food; instead, it has be to taken care of them [properly]. That was a ground-breaking decision through which they [unaccompanied minors] started receiving more attention.” (Interview employee at pro-asylum NGO)

However, despite legal instructions and court decision, the assignment of a legal guardian for an unaccompanied minor may take up to several months in practice. Some Länder argue that the place of residence of the minor should first be determined definitely before he/she is assigned a legal guardian. This may take up to several months. When an unaccompanied
minor is already 17, then most of the time he/she turns 18 without ever having had a legal guardian (interview employee at a pro-asylum NGO).

Interestingly, there was almost no mention of the legal guardian during the interviews with minors. They rather seem to be either unaware or insecure of such a person’s existence or function.

4.1.4 Transition to 18

Adult asylum-seeker leave Basic Care and Services as soon as they acquire a status. In contrast, unaccompanied minors stay within the Basic Care and Services until they turn 18. Thus, turning 18 means losing significant state support and funding in form of social services and benefits for unaccompanied minor adding up to the major insecurities in their lives. First of all, minors who turn 18 have to move out of the child-care facility. Finding and affording an apartment is a big challenge for young persons (e.g. Tahir, 17). Another minor tells about the challenges of turning 18 from the point view of an unaccompanied minor in Austria:

"An asylum-seeker has many problems which he/she cannot always understand. For example, when you turn 18, you have to do everything on your own, but in Austria you do not have any support when you don’t have a job. This is bad. [...] For example, when you turn 18 and you do not have a § 8 [subsidiary protection] and you need to travel to Wiener Neustadt or so, you have to pay for the German course and your food by yourself and you do not get anything from the state or the AMS [Labor Market Service].” (Rasheed, 17)

Also, after turning 18 minors lose right to legal representation during the asylum procedure. A lawyer becomes difficult to afford which, in turn, may have consequences for the course and outcome youngsters’ asylum procedure. Furthermore, if a minor does not hold asylum or subsidiary protection (extended at least once) at the time he/she turns 18, a family reunification becomes impossible by law. Long asylum procedures often hinder a family reunification. One expert explains:

"Minors coming to Austria have to wait for their status which they acquire relatively fast and have the opportunity to bring their families to Austria as expected by their families. This, however, is possible for a minor only before his 18th birthday. [...] The minor either has to hold an asylum or has to have extended his subsidiary protection at least once after one year. Sometimes it does not work out due to long asylum procedures and the minor receives subsidiary protection at the age of 17½ or 18½ and family reunification becomes impossible. Now the question is whether this is really a good outcome [in the asylum procedure].“
Unaccompanied minors are disadvantaged in many ways compared to their Austrian peers (e.g. language skills, difficult access to paid work, thus inexperienced) which are to a small degree mitigated by additional services for unaccompanied minors compared to adult asylum-seekers. However, when an asylum-seeker leaves childhood, his/her degree of insecurity and vulnerability increases considerably.

**4.1.5 Return procedure**

During our field research we were not able to identify cases of return to the country of origin among unaccompanied minors. Unaccompanied minors usually receive subsidiary protection according to Article 8 of the Asylum Act. A small minority, mostly unaccompanied minors from Syria, receive asylum according to Article 3 of the same Act (interview officer at the Federal Ministry of the Interior).

**4.2 Care provisions and day-to-day living**

**4.2.1 State funding and financial arrangements**

Unaccompanied minors and Austrian children in out-of-home-care do not enjoy the same standards. There is a significant gap between the quantity and quality of services provided by the Child and Youth Welfare for Austrian children in out-of-home-care and the basic services granted to unaccompanied minors. In fact, one can talk about two different child-welfare systems for Austrian children and asylum-seeking children which is a violation of the equal-treatment imperative. One expert calls this a „two-class system“:

"I still think that it is a pity that there is a two-class system in Austria. An Austrian youngster does not live under the same conditions with the same resources [as an unaccompanied minor]. They are worlds apart and this starts with the accommodation and care and assistance to the financial resources at disposal. Even when we only consider the possibilities attached to financial resources: food, clothes, accommodation [...]. Everything is just so much less compared to an Austrian youngster who ends up under the custody of MA 11 [Child and Youth Care Services, City of Vienna]. And this is a pity, I think; this does not have to be. Children’s rights disappear under the law on foreigners.” (Interview care worker at a child-care facility 2)

Our field research confirms that almost every other shortcoming and drawback follows from unequal resource allocations as will be demonstrated in the following sections.
4.2.2 Accommodation and access to food

Accommodation during the admission procedure: initial reception centre

From their application for an asylum to their admission to the asylum procedure, unaccompanied minors are accommodated at the facilities of the Bund, mostly at the initial reception centre in Traiskirchen, where they may stay up to several months. Experts we have talked to confirmed that the infrastructure in Traiskirchen is inappropriate for minors. Over-crowded dormitories, long waiting lines for food and limited access to education (e.g. school and German courses) considerably impact the minors’ mental and physical well-being and hampers their physical and intellectual development. Ideally, unaccompanied minors need to be immediately accommodated in one of the child-care facilities of the Child and Youth Welfare Services as is the case with looked-after Austrian children. In fact, among the minors interviewed only one 14 year-old minor (Karim) and his brother (Khalid, 16) stayed only a couple of hours in Traiskirchen before being brought to a child-care facility. This can be due to the fact that minors who are 14 or younger count as ‘underage’ minors according to the Austrian law and require additional care. One expert regrets that:

"It is an exaggeration to talk about the 'best interest of the minor' in Traiskirchen currently. As far as I know more than 300 or 400 unaccompanied minors are accommodated there, currently -- but please do not take my numbers as fully accurate. There are too many unaccompanied minors in Traiskirchen and in the Länder there are not enough accommodation facilities or personnel. [...] Yes, and you cannot even talk about any 'care' [or supervision for unaccompanied minors]. They are just accommodated there until they find a place. This has nothing to do with care or the 'best interest of the child'.” (Interview manager at a child-care facility 1)

One minor describes Traiskirchen as a “jail-like” place and confirms the bad conditions described above:

"Here [at the child-care facility], we have everything and there is food. If you need anything, you can get it. But there [at the initial reception center in Traiskirchen], we did not even have breakfast. When you were a little bit late for breakfast, you did not get anything. [...] No breakfast. I either had to be there at half past nine or I got nothing. [...] It is like in a jail, you only leave to eat and then return back to your room. Every day new people would arrive and others would leave, you would not know to where. And you do not know how and where you will go to.” (Rasheed, 17)
One expert points to a further aspect of minors’ long stays at the initial reception center that is very problematic: To acquire the legal guardianship of an unaccompanied minor the Child and Youth Services in the respective Land needs to apply at the Guardianship Court (Pflegschaftsgericht) after the minor is admitted to the asylum procedure and moves from the accommodation of the Bund to the child-care facility in one of the nine Länder. During the asylum procedure the Child und Youth Services are entrusted with the legal guardianship of the minor through court decision. However, during the admission procedure when the minor is accommodated in one of the facilities of the Bund, no such court decision is available. Most minors lack a legal guardian and only have a legal representative during the admission procedure (interview officer at Child and Youth Welfare Services 2). The problem can be solved when unaccompanied minors are immediately accommodated at the child-care facilities of the Länder where they can enjoy more child-friendly living conditions and legal guardianship.

**Accommodation during the asylum procedure: child-care facilities**

Minors we have talked to were accommodated in a child-care facility at the time of the interview with full-time care and supervision. The care-facilities we visited were organized like hostels with numerous bedrooms in different size, a kitchen, one or two bathrooms and a living room/lobby. Three of the interviewed minors stayed in a single room (Hamed, 17; Majeed, 17; Salim, 17). Asif (16), Tahir (17), Karim (14) and Khalid (16) stayed in a room for two; Adam (16) and Aasiya (17) for three; and Rasheed (17) shared a room with four other minors.

In one of our visits to a child-care facility in Vienna, we witnessed minors cooking joyfully and collectively in the kitchen. When the dinner was ready, other minors were called to the table, which resembled a family-like environment. Minors hang out together in the living room to watch movies or play video games in the evenings.

**Access to food**

Overall, minors are satisfied with their access to and the quantity and quality of food. Basic food such as butter, marmalade and rice is provided by the child-care facilities. Still, minors have to spend some of their pocket money to complement the food. One minor explains that bread, milk, cheese and rice are provided by the care facility. However, the food is too limited and he himself has to spend money for food to bring some diversity into his diet (Asif, 16). At another care facility, as one minor reports, they are provided with one meal
(e.g. lunch) and need to buy themselves the other meals (e.g. breakfast, dinner) (Adam, 16). Others (Hamed, 17; Aasiya, 17; Khalid, 16; Karim, 14) are fully provided with food at their child-care facility. In one of our visits to a child-care facility in Vienna, we witnessed minors cooking joyfully and collectively in the kitchen. When the dinner was ready, other minors were called to the table which resembled a family-like environment.

4.2.3 Access to physical and mental health care

Physical health

The Basic Care and Services covers health insurance. Therefore, minors have access to public health services. However, our interviews show that minors’ experiences with access to and quality of health services vary greatly. One minor reports that he immediately received glasses and saw the dentist upon his arrival:

"Yeah we went to this [optician], I don’t have this, I about one year or two year before I, I didn’t see much thing, but situation of bad, no money, no (like this). I always tell my father ah I can’t tell my father just I one time, he said no money, but after I can’t tell my [heart] that be silent because you know [father] situation. So this when I came here, they said what was your problem, I said my eyes and teeth, they send everywhere the doctors.” (Karim, 14)

Another minor, on the contrary, reports that he has been denied new glasses after his were broken:

"[M]y glasses got broken. Like everybody know[s] I have no one here, like my glasses are broken and I cannot pay my glasses because here it is so expensive, for example two hundred around two fifty one hundred eight with the glasses and with the frame. So I can, I cannot afford that, I even try to say to Caritas to help me but everybody is saying it is so expensive but this thing I don’t like it because they already know I have no one and second one, (I am underage) they must, in every state it is the rule you should, like in European Countries you should ahm help the underage but like I have problem watching the everything TV, and blackboard especially while I am studying.” (Asif, 16)

Rasheed’s experience counts as a best practice example with respect to easy and high-quality access to health care:

"When I came here, they told me I had problems with my kidneys. I am registered at the AKH [Allgemeines Krankenhaus, General Hospital] and go to the hospital because 70 per
cent of kidneys are not functioning. They are in bad condition. I am taking medicaments and injection currently to stay healthy so that it does not get worse.” (Rasheed, 17)

Rasheed adds that he receives every medicament he needs and he has a good relationship with his doctor who is interested in his well-being.

The discrepancies between the quality and quantity of the health services provided to unaccompanied minors and Austrian minors in out-of-home-care needs further investigation.

Psychological health

Psychotherapy is an underfunded area which is of great significance to traumatized minors. Both unaccompanied minors and national children are insufficiently provided with psychological therapy with long waiting line (interview employee at pro-asylum NGO). This scarcity may at times take life-threatening turns when a traumatized youngster represents a danger to himself and is not treated due to shortage in neurological care (interview employee at pro-asylum NGO). There are a number of institutions, which offer psychological therapy to the survivors of torture and war such as Hemayat in Vienna (www.hemayat.org) and Jefira (Caritas) in Lower Austria (https://fluechtlingsdienst.diakonie.at) (interview care worker at child-care facility 1) sponsored by the European Union, a number of Federal Ministries and other international organizations. Another convenient way to offer therapy to unaccompanied minors is to recruit a therapist at the child-care facility (interview manager at child-care facility 1). An expert from Salzburg points to an important gap: Psychotherapy is covered by the health insurance whereas translation costs are not (interview employee at Children’s Ombudsman). According to the expert's assessment, therapy in mother tongue is the most meaningful option since it is easily accessible for unaccompanied minors. One minors interviewed told us that he went to therapy for two years twice and later once a week where he was able to speak in Persian with the therapist (Tahir, 17). Another minor reports that the care workers at the child-care facilities are worried about her because she does rarely leaves the child-care facility and ask her whether she wants to a therapist. The minor replies 'no' and thinks that time rather than a psychologist will help her get used to and adopt to her new environment (Aasiya, 17).

4.2.4 Access to education

Most of the minors we have talked to attended school over many years in their country of origin. They read and write in their mother tongue, speak other local languages in their country of origin (e.g. Pashtu or Dari in Afghanistan) as well as English or, in one case,
French. In our interviews with the minors, education proved to be among the most significant institutions for the current well-being and future prospects of the minors. Firstly, education in general (e.g. school, German classes) helps minors structure and organize their days. For example, minors who attend a German course adjust their eating and sleeping hours to the German classes while those who do not attend a German course (Aasiya, 17; Majeed, 17) seem rather bored and lost through the day. Unfortunately, minors only take around two or three hours of German classes per day which is insufficient for a well-structured daily routine. 14 year-old Karim represents a best case example since he attends the school with and as often as Austrian children because he falls under compulsory education. Secondly, education helps unaccompanied minors build relationships outside the child-care facility. For example, in one case, an unaccompanied minor met his English teacher at school and the same teacher later on became his ‘godparent’ (Rasheed, 17). Thirdly, education enables better future prospects for unaccompanied minors who are already disadvantaged in many ways compared to their Austrian counterparts (e.g. lack of family, stressful asylum procedure, uncertain outcome). Ideally, unaccompanied minors need affirmative action to make up for these structural and biographical disadvantages. Instead, they are further disadvantaged by insufficient German classes and difficult access to schooling for minors older than 14. Experts we have talked to confirm that most of the minors who apply for asylum in Austria receive at least subsidiary protection and stay in Austria. Therefore, it seems to be a waste of their time and potential to keep unaccompanied minors in the waiting line instead of integrating them into the conventional educational path as soon as possible. Several minors pursue a secondary school degree and professional training. Also, as will be discussed later (4.2.11 Life plan perspectives) many of the minors we have talked to aspire a university degree in the future.

4.2.5 Access to paid work

Asylum-seekers have very limited access to the labour market. Only after a positive outcome (asylum or subsidiary protection) can a person fully access the labour market. Access to paid work is an important source of security for unaccompanied minors. This is more so when the minor turn 18 and loses access to services provided to minors only such as accommodation at a child-care facility and legal representation in the asylum procedure. One minor explained that he accepted low-paid jobs at the municipality as a lumberjack to put some money aside for himself:

"I sometimes work for the municipality provided by our office [at the care facility]. We work for five Euros an hour [...]. I mean, soon I am turning 18 and have some problems because
of accommodation and money. So I work for the municipality and it’s working. I now feel superb.” (Tahir, 17)

Several of the unaccompanied minors we talked to held a subsidiary protection and had, ideally, full access to paid work. However, in practice finding a job is not an easy task for unaccompanied minors and requires at least some support from adults. One minor recalls:

"Because I did not have anything to do, I was at home all the time and attended a German course twice. And after that I wanted to work because I wanted to earn some money. I plan to fly to Iran and search for my family. Therefore, I need money. So I talked to my supervisor and he told me that he has a job for me.” (Rasheed, 17)

4.2.6 Formal support experiences

The first contact with state authorities, mostly the police, is inconvenient for the minors. After a long, physically and emotionally exhausting and dangerous journey minors are expected to answer questions such as why, how and with whom he/she came to Austria, which route he/she took and where his/her family currently is (see 4.1.1 Asylum/Migration/International protection procedures). One expert notes that despite structural drawbacks the treatment of the minors during the asylum procedure has improved in recent years:

"I think it has improved over the years. I mean I think there is more sensitivity, more training and attention paid to the issue of children’s rights and the treatment of traumatized youngsters. But there are still incidents where it [children's rights] does not receive sufficient consideration. Ideally, the legal representative accompanies the youngster through the procedure and pays attention and intervenes at the right moment or points at things that are especially worth considering or makes sure that the youngster is treated and perceived well in the procedure.” (Care worker at a child-care facility 2)

Care workers seem to be the main adults to whom minor develop a close relationship. Several minors state that they can see the care worker(s) in charge anytime and tell them about their problems (Khalid, 16; Tahir, 17). Yet, another minor thinks that the interest care workers show in her is rather ‘fake’ (Aasiya, 17). When they ask how her day was, she says, they do so to “type it down” on their computer (as if part of a bureaucratic procedure). Still, she likes it in her child-care facility and thinks that the care workers are good and helpful people.
4.2.7 Informal support network and social life

Two informal arrangements or institutions impact unaccompanied minors positively, namely god parenting and pro-asylum activism on voluntary basis. Two of the minors we have talked to have godparents who support them in important decisions and in organizational and logistic terms. Tahir turned 18 shortly after our interview. During the interview he mentioned that he has to move out of the care facility as soon as he turns 18 and plans to move in with his godparents temporarily until he finds a permanent flat share. This is an important relief for a young person without family. Besides, Tahir notes that his godparents help him out with buying clothes. Rasheed, too, has godparents. He tells us about how he found out about the concept of “god parenting”:

"Yes, they are a family. And she was my English teacher and I met her at school. After school, she wanted to practice with me and gave me her number. So we had contact and then she asked me "Would you like me to become your godparent?" [...] I said I did not know what it was. No, I did not know [what it was], but I had heard about it and so, and I said OK. Then she explained to me that they could help and support me if I needed help. And this they really did until now.” (Rasheed, 17)

Rasheed even seemed to have developed emotional attachment to this family. When asked whether his godparents had children, he replied:

"Yes, two children. I have a sister and a brother.” (Rasheed, 17)

Since he lives close by, Rasheed pays frequent visits to his godparents and spends the weekends at their place. When asked to whom he turns when he has problems, Rasheed mentions firstly the care workers at the child-care facility and secondly the godparents.

One godparent to an unaccompanied minor we have interviewed has been participating as a volunteer in a project for unaccompanied minors in Salzburg for five years. He explains that at trainings the volunteers are informed on the legal framework of asylum procedures and provided with practical experiences such as how unaccompanied minors travel to Austria and how they can access the labour market without a status. In one occasion the access of the unaccompanied minor to paid work required the extraordinary engagement of the foster parent:

"It was very difficult to get a job. In fact, it is only possible through seasonal work where he worked as a dish-washer at a restaurant. He was very satisfied and I assumed "Now, he is in Salzburg city, he is a dish-washer, has a job and his employer wants to keep him and in half
a year we will apply for an extension [of his employment permit].” […] I was horrified to find out that this is not possible because there is no seasonal work in Salzburg during winter-time. That was the case back then and as far as I know is still the case today. They would have sent him [the unaccompanied minor] to Arlberg or Zell am See [both skiing regions] which is unacceptable. He built himself some personal relationships in Salzburg which he cannot give up especially at his age and in his situation. That was a very hard struggle. We even went as far as to contact the Landeshauptmann [governor of the province] and got his letter of reference and special permit so that he could continue working [at the restaurant].”

(Godparent to an unaccompanied minor)

Another source of informal support for unaccompanied minors is provided by a small yet growing number of pro-asylum civil society initiatives. One of them, a Vienna-based initiative, engages in organizing leisure time activities for unaccompanied minors ranging from young children to youngsters. One volunteer explains their vision:

"We asked them [unaccompanied minors] on the occasion of a big event what their wish was, what they wanted us to organize for them. We did not expect this but they replied “We would be pleased if you organized something for us” so that they could meet some Austrian youngsters. Because they have no opportunity to meet them otherwise. They are among themselves at school. They attend PROSA [Projekt Schule für Alle, Project School for Everybody], UKI [Unterstützungskomitee zur Integration von MigrantInnen, Support Committee for the Integration of Migrants] and other schools which only their peer refugees attend. Also, in their flat shares and leisure time activities [they are among themselves]. They are interested in talking and making friendships with other youngsters but both parties do not dare to. We try through various projects in which we, for example, cooperate with Austrian schools and so on, to bring them [unaccompanied minors and Austrian youngsters] together. We have for example a theatre project in which a Gymnasium [high school] and UKI and students from PROSA prepare a play. But one of them has told me recently "When we rehearse together, it’s fine. But we haven’t become friends yet.” That means we have to watch them at all times that it somehow works out between them. It is just difficult.” (Pro-asylum activist)

However, these informal activities on a voluntary basis are insufficient to meet support and networks needs of unaccompanied minors. They cannot make up for but only complement the services that should be ideally provided by the state.
Finally, internet and smart phones are important tools for unaccompanied minors to stay connected with their families and friends in the country of origin. Most of the minors have internet access at the child-care facilities and also spend some of their pocket money for data volume on their phones. Skype and Facebook are important to create proximity over distance.

4.2.8 Leisure

There seems to be a systematic void when it comes to leisure time activities for unaccompanied minors. From the minors we have talked to, only two attended sports activities regularly. Tahir (17), for instance, likes Taekwondo although he had to quit for a year due to an injury. Salim (17) likes to play cricket. Others play occasionally soccer with friends, hang out in the parks or take walks along the river. Neither the budget of the care facilities where the minors live nor the pocket money the minors receive is sufficient to allow regular sports events for the minors. One activist who works at an initiative organizing leisure time activities for unaccompanied minors explains:

"They [unaccompanied minors] are, so to speak, rundown in their leisure time hanging out in the parks doing nothing..." (Pro-asylum activist)

One of the minors notes that he gets very bored every day after the German classes because he does not have anything to do (Adam, 16). Two of the minors interviewed (Asif, 16; Aasiya, 17) have a fitness studio membership which they finance with their pocket money. One of them (Asif) goes to the studio as often as four times a week and cooks and studies German in his leisure time. Another minor likes swimming and jogging (Hamed, 17). One expert complains about the relatively low daily rates which allow only very limited leisure time offers for unaccompanied minors:

"And yes, unfortunately I have to come back to the issue of daily rates. I think it has everything to do with money how much one can do and what one can achieve. Concerning leisure time, because we were just talking about soccer, it costs money and we have only 10 Euros monthly at our disposal for this and for 10 Euros I cannot offer much." (Care worker at a child care facility 1)

4.2.9 Living in accordance to cultural orientation

One important source of cultural identification for unaccompanied minors seems to be religion. On one occasion when we visited the minors at their child-care facility to speak to them, some of them were unavailable because they attended the Friday sermon at a
mosque. One of the minors starts his day with the Morning Prayer (Khalid, 16). Another minor (Salim, 17) goes to the mosque every day. Others only attend Friday sermons (Majeed, 17; Hamed, 17). Yet others rarely (Tahir, 17) or do not practice religion at all (Rasheed, 17).

Minors’ experience of how their religion is perceived within the Austrian society varies significantly. One minor explains:

"All religions are brothers here. That is not a problem, all religions are brothers here in Austria. I go to the mosque and the others go to the church, and that is fine. When I go to the mosque every day, no one tells me "You are a Muslim, what are you doing here?" [...] I like this about Austria; that no one asks you about your religion." (Salim, 17)

However, another unaccompanied minor who is a practising Muslim has a different perception than sketched above. He does not think that his religion is being respected by the people in Austria and that people have become afraid of Islam because of ISIS (Adam, 16). Another minor makes an interesting observation about shifting racism: She thinks that nowadays being a Muslim has become more difficult than being Black although most of the people she met in Vienna are nice (Aasiya, 17).

Two former unaccompanied minors we have talked to politically engage in matters related to refugees and asylum (Ehsan, 22; Malik, 18).

4.2.10 Life plan perspectives

Most of the minors we have talked to have ambitious plans for the future. Most of the minors wish to study different subjects ranging from medicine (Adam, 16) and engineering (Hamed, 17) to history (Aasiya, 17) and political science (Salim, 17). Others hope to get an apprenticeship training position to work for the Austrian National Railways (Tahir, 17) or become a cook (Rasheed, 17). One of them wants both to study and become a professional soccer player (Khalid, 16).

Besides future career plans, family reunification proves to be very central for minors. They wish to be with their families (Hamed, 17). One minor summarizes:

"My biggest wish is to live next to my family and to complete my apprenticeship and lead a peaceful life. That is my wish." (Tahir, 17)

Another minor lost his family in Turkey on their way to Europe and has not had contact to them since then. This summer, he is flying to Iran to search for his family:
“My biggest wish is that I am allowed to live here with my family and acquire the Austrian citizenship.” (Rasheed, 17)

The only female minor we have talked to wants to be happy and feel like she belongs to here (Aasiya, 17). The youngest of the minors we have talked to wants to “travel everywhere” with his friends (Karim, 14). When asked about his biggest wish, one minor replied:

“To have a bright future. [...] For me the bright future is to study hard as much as you can, and be what you want. That is it.” (Asif, 16)

4.3 Best interest of the child determination

Perception of the ‘best interest of the child’

Although ‘best interest of the child’ (Kindeswohl, German for ‘child welfare’) is a guiding principle anchored in Austrian law, it is at the same time a mostly vague principle leaving much room for interpretation. We asked various experts working with unaccompanied minors on their opinion of what defines the ‘best interest of the child’. Their answers cover a wide range of issues (we avoid repetition): The Right to a legal status, education including on sexual issues, information, accommodation, and care (manager at a child-care facility 1); legal representation, maintenance of the physical and psychological health of the minor, a child-friendly life, access to apprenticeship, leisure time (care worker at child-care facility 1); equal treatment and access to services as national children (employee at pro-asylum NGO); the feeling of being welcome in the society, a protected environment, services and offers suitable for his/her age (manager at a child-care facility 2); the opportunity to be a child again, the right to influence the decisions concerning their lives, contact to people of trust (officer at Child and Youth Welfare Services 1); the right to life, protection and physical integrity, right to therapy in case of trauma, access to food (politician); right to schooling (pro-asylum activist); the right to information on what is happening with them and their lives, the realization of the minor’s will, the right to co-determination (interview employee at Children’s Ombudsman); protection from violence and child trafficking, a prosperous growing-up (officer at Child and Youth Welfare Services 2); contact to family members, state coverage of transport costs for easy mobility, labour (manager at a non-profit organization); right to protection and development and family reunification (care worker at a child-care facility 2).
Our interviews with unaccompanied minors confirm that security for the present and predictability of future are very central to unaccompanied minors well-being. A permanent legal status, child-friendly accommodation and access to health services, food and clothing, education and paid work, access to information and counselling as well as family reunification are important pillars of unaccompanied minors’ ‘best interest’.

Obstacles for the implementation of the ‘best interest of the child’

In a next step, we asked experts to describe the obstacles for the realization of the ‘best interest of the child’. One of the most important structural drawbacks seems to be the long asylum procedures during which unaccompanied minors have limited or barely any access to education and labour (officer at Child and Youth Welfare Services 2) or family reunification. One expert illustrates the long duration of asylum procedures with an example:

"There are people who were admitted to the asylum procedure over two years ago and have not had the first hearing yet. We currently have a youngster who, after two and a half years, received his [first] invitation only last week (...). That is just insanely long." (Care worker at a child-care facility 1)

Besides long asylum procedures, the scarcity and/or unequal distribution of resources stand in the way of the realization of the BIC principle. For example, unaccompanied minors are granted only 200 hours of German classes which is far from being sufficient to acquire sufficient language skills. One expert points to the necessity for institutional arrangements to assure equal treatment between unaccompanied minors and Austrian children:

"There is no clear assignment [...]. Only when the Federal Ministry for Families and Youth starts feeling responsible for the UAMs would there be a progress. Unfortunately, they [unaccompanied minors] are assigned to the Federal Ministry of Interior." (Employee at pro-asylum NGO)

Unequal resource distribution unsurprisingly leads to or is part of unequal treatment. The lower daily rates for unaccompanied minors compared to Austrian children at child-care facilities is demonstrative of this. One expert notes that unaccompanied minors are treated as asylum-seekers in the first place and as children only in the second place which shapes their opportunities in life (care worker at a child-care facility 2).

Furthermore, accommodation capacities of the Länder for unaccompanied minors need to be expanded considerably. One expert reports that because accommodation facilities in the
It is insufficient, unaccompanied minors have to spend too much time in the initial reception center (officer at Child and Youth Welfare Services) which, as we discussed earlier, lacks any child-friendly infrastructure.

**Best interest determination**

There is no formal procedure of ‘best interest determination’ in Austria. One expert reports that formerly there existed a clearing procedure to identify the degree of care and assistance a specific unaccompanied minor needed (interview employee at pro-asylum NGO). Unfortunately, this mechanism does not exist anymore. Instead, an unaccompanied minor is re-accommodated from the facility of the Bund (during the admission procedure) to a child-care facility of the Länder (after being admitted to asylum procedure) without being assessed on his/her special needs and degree of self-sufficiency. These become clear only after the minor has already been accommodated at a child-care facility permanently until he turns 18.

Another expert argues that the only way to make the Federal Office for Aliens and Asylum to conduct a best interest determination with minors is to prescribe a formal procedure incorporated into the law (interview member of a pro-asylum lawyers’ network). Because the Federal Office for Aliens and Asylum bears a workload beyond its personnel capacities and thus gives priority to procedures that are prescribed by law. Also, an explanation on the practical implementation of the best interest determination needs to be delivered which then also needs to be supervised.

Currently, (sporadic) exchanges between the Child and Youth Welfare Services and the care workers at the child-care facilities are one of the very few occasions when actors and institutions involved in the child-care come together to discuss problems and take decisions (interview officer at Child and Youth Welfare Services).

We may conclude that ‘best interest determination’, as it is practiced in Austria currently, is rather informal and irregular. To avoid any arbitrariness the procedure needs to be introduced into the relevant legal act(s) as part of both the asylum procedure and child welfare services.

**4.4 Towards durable solutions**

One expert has noted that usually unaccompanied minors are not granted asylum but a subsidiary protection (Act on Asylum Art. 8) except for Syrian minors many of whom are granted asylum given the current political situation in the country (officer at the Federal Ministry of the Interior). A subsidiary protection is not a permanent status. The first time it is
issued mostly for one or two years. It is extended if the situation on grounds of which the person was granted the status still endures in the country of origin. In the lack of an asylum status, unaccompanied minors fail to enjoy the same rights as Austrian citizens and uncertainties about whether the subsidiary protection will be extended emerge.

Interviews with experts and unaccompanied minors show that the best durable solution for unaccompanied minors is their best possible integration into the Austrian society in every respect. For this, unaccompanied minors need to have equal access to social rights and services. Since most of the minors wish to stay study and work in Austria, they should be integrated into the educational path and the labour market and equipped with necessary resources to compete with their Austrian peers. Legal and institutional arrangements need to be made for the Länders Child and Youth Welfare Services to take full charge of unaccompanied minors. One expert who has a good overview of the existing practices in different Länders pointed at Lower Austria as a best practice example (employee at a pro-asylum NGO). In Lower Austria, as the expert explains, the child-care facilities concluded an agreement with the Child and Youth Welfare Services which obliges the latter to fund translator, transport, education, therapy costs and higher daily rates. This brings unaccompanied minors closer to the public service standards provided by Child and Youth Welfare Services. An expert from the Child and Youth Welfare Services in Lower Austria explained that this development is owed to the consensus within the Child and Youth Welfare Services that unaccompanied minors should fall under their purview rather than the Aliens Department (officer at Child and Youth Welfare Services 1).
5 CONCLUSIONS

This report has discussed the empirical findings of our field research conducted with unaccompanied minors and experts from various public institutions and private organizations as well as single individuals engaged in matters related to unaccompanied minors.

Unaccompanied minors take a long and dangerous journey to Europe which takes several months and stretches over numerous countries. During the journey, unaccompanied minors face the risk of trafficking, bad treatment and exploitation. In fact, two of the minors interviewed reported that they were jailed in Bulgaria for one month while another minor had to fear for his life due to widespread racism against refugees in Greece. He had to work in order to finance the rest of his journey to Austria. These risks can be mitigated by developing and introducing safe means and procedures to apply for asylum such as asylum applications to Austria from abroad. Also, unaccompanied minors need to be supported to continue their journey from countries with bad records in the treatment of minors such as Bulgaria, Hungary and Greece to countries such as Austria with relatively more child-friendly practices.

After their arrival unaccompanied minors are exposed to additional stress during the first hearing which rather resembles a police interrogation. Minors are asked too many (security) questions and expected to answer them coherently irrespective of their physical and emotional condition. Instead, unaccompanied minors should be received as children in the first place and given some time to rest. A more child-friendly asylum hearing and interview can be achieved through schooling and training for officers involved in the different stages of the procedure.

Many of the experts we have talked to report a long waiting time for the first interview and the finalization of the asylum procedure during which minors have limited access to social rights and benefits such as work permit and family reunification. It is in the best interest of unaccompanied minors that asylum procedures are more prompt. This requires more personnel capacities at the Federal Office for Aliens and Asylum and a basic understanding that asylum-seeking minors are children in the first place.

Before being admitted to the asylum procedure, most of the unaccompanied minors have to spend some time at the initial reception centre in Traiskirchen. The statements of the minors and the experts confirm that Traiskirchen is not a suitable place for minors due to overcrowded dormitories, long waiting lines for food and limited access to education and
other social facilities. Furthermore, the interviewees depict a rather isolated and policed setting with limited contact to the broader society. The long stay of unaccompanied minors in Traiskirchen is in part due to the lacking child-care facilities in the Länder.

According to the experts interviewed, age assessment is routine at the initial reception centre although most of the minors interviewed did not have to take it. Age assessment tests are controversial both with respect to their legitimacy and reliability. When an unaccompanied minor’s age is wrongly assessed to be older than 18, he/she loses the right to legal guardianship. Even if the court of the second instance annuls the test result, the minor will have lacked legal guardianship for the time period from the age assessment to the court decision. Our expert suggests that the person about whose age there is doubt should continue enjoying all the rights and services for minors until the court has reached a final decision.

Once admitted to the asylum procedure, unaccompanied minors are accommodated in the child-care facilities of the Länder where more favourable conditions await them such as care workers, family-like setting, education and internet. It is in the best interest of unaccompanied minors that they are accommodated in the child-care facilities immediately after applying for asylum.

Unaccompanied minors who are 14 or younger falls under compulsory schooling and are enrolled at school. Those older than 15 mostly attend a German course. The experts interviewed agree that the state-funded hours of German classes (200) are insufficient to acquire necessary language skills. Many of the minors wish to study different subjects at the university while others aspire apprenticeships. More attention should be paid to the integration of unaccompanied minors into common education paths as Austrian youngsters for an autonomous and self-determined future. Also, minors’ chances for apprenticeship and paid work should be increased by developing more inclusive employment policies for asylum-seekers.

There is a serious lack of offers for leisure time activities for unaccompanied minors. The daily rates for unaccompanied minors (39-77 Euro) leave child-care facilities with very scarce resources to organize leisure time activities for unaccompanied minors. Minors’ pocket money is not sufficient to pursue regular or frequent activities either. Many of the minors hang out in the parks doing nothing.
The main obstacle for the realization of the ‘best interest’ of the minors seems to be the “two-class-system” in Austria which envisions lower standards for unaccompanied minors under Basic Care and Services than Austrian children in out-of-home-care under Child and Youth Welfare Services. One way to lift discrimination against unaccompanied minors is to introduce a formal ‘best interest determination’ procedure to assess the degree of traumatization and need for care of the respective minor. Furthermore, necessary institutional arrangements and resource allocations should be made in order to bring unaccompanied minors closer to the Child and Youth Welfare Services standards. The ultimate goal of policy-makers should be the full assignment of unaccompanied minors to Child and Youth Welfare Services.
6 BIBLIOGRAPHY


