Applicants with special needs - Germany

Overview

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Relevant EU legislation

Germany is bound by the recast Asylum Procedures Directive has transposed its provisions through the Asylum Act | Asylgesetz

Germany is bound by the recast Reception Conditions Directive has transposed its provisions through the Asylum Act | Asylgesetz

National legislation

6 June 2013: Regulation on Employment, Verordnung über die Beschäftigung von Ausländerinnen und Ausländern, Beschäftigungsverordnung - BeschV

02 September 2008: Asylum Act | Asylgesetz

25 February 2008: Residence Act (Act on the Residence, Economic Activity and Intergation of Foreigners in the Federal territory), Aufenthaltsgesetz - AufenthG : Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet, AufenthG

27 December 2003: Twelfth Book of the Social Code – Social Assistance, Das Zwölfte Buch Sozialgesetzbuch – Sozialhilfe, SGB XII)

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05 August 1997: Asylum Seekers' Benefits Act, Asylbewerberleistungsgesetz AsylbG, Asylbewerberleistungsgesetz

24 March 1997: Third Book of the Social Code – Employment Promotion, Das Dritte Buch Sozialgesetzbuch – Arbeitsförderung, SGB III

Competent authority and other stakeholders

Federal states: The identification of vulnerable applicants as required by the recast APD is under the responsibility of the respective federal states and their procedures for identification in reception centres vary.

Youth Welfare Office: Unaccompanied minors arriving in Germany are first taken into care by the nearest local Youth Welfare Office.

Training initiatives

Specially commissioned case officers receive advanced training in Germany and EUAA training.

Training modules are available related to unaccompanied minors, gender-specific persecution, traumatised persons and victims of torture, victims of human trafficking, and security in the asylum procedure.

Special needs in reception

Identification of special needs

The identification of vulnerable applicants is under the responsibility of the respective federal states and their procedures for identification in reception centres vary.

Unaccompanied minors arriving in Germany are first taken into care by the nearest local Youth Welfare Office to ensure that they are accommodated with a suitable person, such as relatives or foster families, or within suitable facilities, such as 'clearing houses' specialised for the care of unaccompanied minors, or

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with youth welfare facilities.

Unaccompanied minors are identified during the application process and the specially-commissioned case officer is present for the subsequent interview.

More information about the procedure of unaccompanied minors is available on the BAMF website.

Referral of applicants with special needs

An initial screening of unaccompanied minors is carried out by local Youth Welfare Offices which includes examining the state of health, an age assessment, examining the possibility for family reunification, estimating whether the distribution procedure may endanger the child's best interests in physical or psychological terms and examining whether to accommodate the child with other unaccompanied minors with close social ties to him/her.

BAMF does not have specialised units specifically focusing on vulnerable applicants, but they have special officers (*Sonderbeauftragte*) carrying out the interviews and making decisions on claims by applicants with specific vulnerabilities.

The specially commissioned case officers serve as interviewers, decision-makers in the asylum procedure and provide advice to colleagues. In addition, they act as the Federal Office for Migration and Refugees contact for external players (such as NGOs). These case officers must have at least 2 years of professional experience in interviewing and decision-making processes and have a personal aptitude to handle this type of cases.

If special needs or vulnerabilities are already identified during the application process, then a special case officer is either present for the interview or involved in the case. If the special needs/vulnerabilities are only identified during the interview, a specially commissioned case officer will continue the interview or will be consulted.

Reception and care of applicants with special needs and vulnerabilities

The Asylum Act, Section 44(2a) requires federal states to have measures and provide specific support to ensure the protection of women and vulnerable persons in initial reception centres.

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Reception facilities and other housing arrangements

Housing arrangement: AnkER centres and functionally equivalent reception centres usually provide separate accommodation for women and other applicants with special needs. Some AnkER centres and functionally equivalent centres have separate accommodation for LGBTIQ persons. Several cities, authorities or NGOs also have opened specialised accommodation centres for LGBTIQ persons.

Detention of vulnerable persons and applicants with special reception needs

Families with children are only detained as a last resort and careful consideration is also given to detaining, for example, pregnant women, single parents, nursing mothers and the elderly. The Residence Act decrees that minors (and families with minors) “may be placed in pre-removal detention awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child”. Practices vary across federal states. Several states do not detain minors under 16 years of age, others do not do so if the minor is attending school, etc.

There is no regulation at the national level on the detention of people with serious illnesses, disabled people or those who have been subjected to serious violence or who are traumatised. Many federal states do not detain these profiles.

Reception of unaccompanied minors

The provisional taking into care of unaccompanied minors by the youth welfare office is regulated in the Social Code (SGB) VIII (Article 42 a-f). It determines the custody (Article 42 SGB VIII) and the tasks of the guardian (Article 27 SGB VIII).

There is a distribution procedure at the national level for unaccompanied minors which ensures that they are accommodated, supplied, cared for and supported in a way that is suited to the child’s best interests. The distribution of unaccompanied minors among federal states is regulated in the Social Code, Articles 42c and 42d SGB VIII. Following this distribution, the youth welfare office to which the unaccompanied minor has been assigned to, is responsible for their custody and either accommodate them with a suitable person or suitable facility.

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Reception facilities and other housing arrangements

Housing arrangements: Unaccompanied children are placed by the Youth Welfare Office which ensures that they are accommodated with a suitable person (e.g. foster family, relatives) or in a suitable facility (‘clearing houses’ specialised in caring for unaccompanied minors or youth welfare facilities). Unaccompanied minors do not generally stay where they have arrived as they can be sent to other places throughout Germany as part of the quota distribution system (*Königsteiner Schlüssel*).

An initial screening is carried out when minors are provisionally taken into care and the Youth Welfare Office estimates whether the implementation of the distribution procedure may endanger the child’s best interests in physical or psychological terms. Furthermore, the possibility of family reunification with relatives living in Germany is also examined in this context.

Age assessments

Age assessments can be requested by the respective authorities in cases such as

- the process of (provisionally) taking into care an unaccompanied minor (Youth Welfare Service, family court);
- at the border when an unaccompanied minor enters the country (mostly Youth Welfare Service, Border Police);
- in immigration proceedings for the purpose of verifying, securing and establishing identity in case of doubt regarding the age (foreigners’ authorities, Police);
- if there are doubts regarding an applicants’ age during the asylum procedure (mostly Youth Welfare Service, family court, under certain conditions the Federal Office for Migration and Refugees) and
- in criminal proceedings (police, court).

Section 42f of the Social Code VIII provides the basis for the age determination process. When establishing the minor’s exact age during the initial screening, the Youth Welfare Office first checks the identification documents and, if these are not available, an age assessment is carried out based on a qualified inspection of two experienced staff members of the office, which typically includes a visual impression of the person and evidence from experts or witnesses. When doubts remain concerning the age of the applicant, the Youth Welfare Office may initiate

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a medical examination, carried out by qualified medical experts using the most careful methods.

The Federal Office for Migration and Refugees respects the primacy of the Youth Welfare Offices, but decides in the asylum procedure based on the available findings in its own responsibility whether the age has been determined beyond doubts. This means that a person who is (provisionally) taken into care by the Youth Welfare Office is considered a minor until the facts of the case have been sufficiently clarified. The respective asylum procedure is handled by a specially-trained case-officer as all cases of unaccompanied minors. In the event that the Youth Welfare Office has not commissioned a medical age assessment and in case of persistent doubts about the age the Federal Office is responsible for initiating a medical age assessment acc. to Sec. 24 para. 1 Asylum Act in conjunction with Art. 25 para. 5 Directive 2013/32/EU (APD).

Access to education

All children residing in Germany have the right and the obligation to attend school, regardless of their status. Important distinctions may apply in law and in practice since the education system falls under the responsibility of federal states. Some initial reception centres have educational offers or provide state-organised schooling in the reception facilities.

Access to healthcare

Information is currently not available.

Transition to adulthood

Accommodation, socio-educational support and care, health care and legal advice are ensured in the Social Code SGB VIII. When reaching the age of majority, benefits can continue to be granted as long as the assistance is necessary, depending on each individual situation. As a rule, however, the coverage of benefits under SGB VIII expires when a minor reaches majority. More information on the BAMF website.

Detention of unaccompanied minors

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The detention of minors, including unaccompanied minors, is not prohibited, but minors and members of other vulnerable groups must not be detained while they have the status of an asylum applicant.

Special procedural guarantees

First instance determination for applicants with special needs

The Federal Office for Migration and Refugees BAMF does not have specialised units focusing on vulnerable applicants but they have special officers (*Sonderbeauftragte*) carrying out the interviews and making decisions on claims by applicants with specific vulnerabilities.

The specially-commissioned case officers serve as interviewers, decision-makers in the asylum procedure and provide advice to colleagues. In addition, they act as the Federal Office for Migration and Refugees contact for external players (such as NGOs). These case officers must have at least 2 years of professional experience in interviewing and decision-making processes and have a personal aptitude to handle this type of cases.

If special needs or vulnerabilities are already identified during the application process, then a special case officer is either present for the interview or involved in the case. If the special needs/vulnerabilities are only identified during the interview, a specially-commissioned case officer will continue the interview or will be consulted.

Access to information

Information on the right to make an asylum application and the steps of the asylum procedure is available through several means and in different languages: on the BAMF website, a special application called Ankommen, information brochures and flyers in Initial Reception Centres, at the border and in transit zones or in detention facilities.

The amendment of Section 12a of the Asylum Act (AsylG), which came into force on 1 January 2023, entails the promotion of asylum counselling that is independent from the authorities.

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Personal interview

The Federal Office for Migration and Refugees BAMF employs specially commissioned case officers for personal interviews of particularly vulnerable groups, for example unaccompanied minors.

The presence of the unaccompanied child would not be required and information could be sought from the legal representative.

Legal assistance

According to Section 12a, the federal government shall support independent, cost-free, individual and voluntary asylum procedure counselling. This asylum procedure counselling includes information on the procedure and may also include legal services in accordance with the Legal Services Act. The counselling should take into account the particular circumstances of the applicant, e.g. if special procedural guarantees or special reception needs are required. Advice is provided prior to the interview and may be provided until the asylum procedure has been concluded.

The providers of asylum procedure counselling transmit personal data to the Federal Office and the responsible federal state authority or body which indicate that the applicant requires special procedural guarantees or has special reception needs, if the applicant explicitly gave consent to the transmission of the data.

Guarantees for unaccompanied minors

The provisional taking into care of unaccompanied minors by the Youth Welfare Office is regulated in the Social Code (SGB) VIII (Article 42 a-f). It determines the custody (Article 42 SGB VIII) and the tasks of the guardian (Article 27 SGB VIII).

Making, registering and lodging an asylum application

Asylum seekers under 18 years do not have legal capacity within the asylum procedure and they cannot file an asylum application with BAMF by themselves.

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In such cases, the Youth Welfare Office or the guardian lodges the application in writing. If the application is lodged by a guardian, a certificate of appointment (*Bestallungsurkunde*) must be forwarded to BAMF.

There are specially commissioned case officers who have been trained to take a sensitive approach. This also includes, for instance, the determination that the interview does not take place until after a guardian has been appointed and is held as a matter of principle with the presence of the guardian.

More information about the procedure of unaccompanied minors is available on the BAMF website.

Information provision

The provisional taking into care of unaccompanied minors by the Youth Welfare Office is regulated in the Social Code (SGB) VIII (Article 42 a-f). It determines the custody (Article 42 SGB VIII) and the tasks of the guardian (Article 27 SGB VIII). More information about the procedure of unaccompanied minors is available at the BAMF website.

Best interests of the child in the Dublin procedure

There are no provisions in national law specifically addressing children/unaccompanied minors. The provisions of the Dublin III Regulation, especially Articles 6 and 8, are directly applied.

The representative appointed to the unaccompanied minor for the international protection procedure stays the same within the Dublin procedure. He/she takes part in the Dublin personal interview and is involved in the assessment of the best interests of the child.

Personal interview

Germany assesses to what extent a minor can contribute to the establishment of material facts during the personal interview. Interviews with minors under 6 years are not conducted. From 6 to 13 years, an interview may be conducted. From 14 to 18 years, an interview is conducted.

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Asylum seekers under 18 years do not have legal capacity within the asylum procedure and they cannot file an asylum application with BAMF by themselves. In such cases, the Youth Welfare Office or the guardian lodges the application in writing. If the application is lodged by a guardian, a certificate of appointment (*Bestallungsurkunde*) must be forwarded to BAMF.

Legal assistance and counselling

A guardian or legal representative must be appointed for an unaccompanied minor and the family court decides who assumes the guardianship of the child until majority. A subsequent clearing procedure entails the initiation of further steps under the law on youth assistance or on residence with which the residence status of the minor is clarified and it is decided on this basis whether an asylum application should be lodged. If the application is not successful, the competent immigration authority may issue a temporary suspension of a removal (*Duldung*) or consider other possibilities under the Act on Residence. If an asylum application is to be lodged, BAMF is responsible for the implementation of the asylum procedure.

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