

Implementing the Core Standards for guardians of separated children in Europe

Country Assessment: Germany

Thomas Berthold

Take Time !!!!



Be a Friend



Listen and Tell

take action



Take time !!

Fight 4U !!!



take the lead !!!

Take Time.



BE SURE

Take Time

ASK !!!!!!



Be honest



Be kind



TAKE TIME



Understand children

Take Time



Bundesfachverband
Unbegleitete Minderjährige
Flüchtlinge e.V.

With financial support of



European
Commission

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Image cover: separated children summarized in a couple of words what every Core Standard means for guardians in practice.

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LIST OF ABBREVIATIONS

<i>AufenthG</i> (<i>Aufenthaltsgesetz</i>)	Residence Act
<i>AsylVfG</i> (<i>Asylverfahrensgesetz</i>)	Asylum Procedure Act
<i>BAMF</i> (<i>Bundesamt für Migration und Flüchtlinge</i>)	Federal Office for Migration and Refugees
<i>BGB</i> (<i>Bürgerliches Gesetzbuch</i>)	Civil Code
<i>Bundesfachverband UMF</i>	Federal Association for Unaccompanied Refugee Minors
<i>SGB VIII</i> (<i>Sozialgesetzbuch VIII – Kinder und Jugendhilfe</i>)	Social Code Book VIII – Child- and Youth Welfare

1 INTRODUCTION

After a long debate the guardianship law was revised in 2011.¹ For the first time, the caseload of guardians was limited to 50 wards per guardian, and monthly personal contact became mandatory. For many guardians, social workers and researchers this new law was a mixture between a revolution and a necessary adaptation to a new reality.

Speaking about guardianship in Germany very quickly leads to a debate about the functioning of the youth welfare sector in general. There have been on-going discussions over the past few years concerning the question of whether the youth welfare, including the guardians, has failed in cases of extreme endangerment of the best interest of the child. Some children died or were found under extremely bad conditions, which were under the custody of the youth welfare office or a guardian. The whole youth welfare system was put under enormous pressure by politicians and the public opinion. Guardians had to defend themselves in front of criminal courts. But there were not so many articles about the successes of youth welfare, which can clearly be seen, if you take a closer look.

Separated children are a regular target group of the youth welfare system.² Ten years ago, this group did not get regular attention from the social workers and guardians responsible. For separated children aged 16 and 17 in particular, a guardian was seldom appointed. These minors came alone and had to organize their future mostly on their own. Since then, big changes have occurred. A reform of the Youth Welfare Act (Social Code Book 8 – Sozialgesetzbuch VIII) in 2005 clarified the question of whether the youth welfare offices have to take all separated children into care.³ This was the starting point for the integration of separated children into the German youth welfare system.⁴ They should be handled like other minors in Germany, regardless of whether they claim for asylum or are merely being tolerated. However the long-time debate over which law is higher ranking, the foreigner's law or the Youth Welfare Act, was not answered definitely. It is still currently disputed by authorities and parts of the government whether treatment as a minor must take precedence over treatment as a foreigner.

Due to the different developments in the municipalities, the standards of guardians and contact between guardians and separated children remain unequal. Some guardians have a closer contact with the minors than others. These differences are a result from the different forms of guardianships in Germany, which are developed from local traditions. Because the support for separated children from guardians differs from town to town, there is no accurate overview of the situation in Germany. The standards and the role of the guardians vary a lot, even if the tasks are the same in the whole country.

Consequently, the Core Standard project can have a lot of influence in developing a common strategy for guardians dealing with separated children. The experiences of the Bundesfachverband UMF show that the German guardianship system has a lot of competences and tools available to strengthen the situation of separated children. Nevertheless, there are gaps in protection and the quality of the guardians' work varies widely. The Core Standards for guardians of separated children can therefore contribute to the debate about the future of guardianship in Germany – with special attention to the situation of separated children.

1 See: Gesetz zur Änderung des Vormundschafts- und Betreuungsrechts, 5. Juli 2011.

2 § 6 para. 2 SGB VIII.

3 See: Gesetz zur Weiterentwicklung der Kinder- und Jugendhilfe (Kinder- und Jugendhilfeweiterentwicklungsgesetz - KICK), 8. September 2005

4 See more detailed: Berthold et. al. 2011: Eine erste Bestandsaufnahme der Inobhutnahme und Versorgung von unbegleiteten Minderjährigen in Deutschland, in: Dialog Erziehungshilfe, Number 3 and 4, 2011.

2 BACKGROUND OF THE PROJECT

In December 2009 the first ‘Closing a protection gap for separated children in Europe’ project started, financed by the EU Daphne III Programme, as a response to the differences in the level of protection separated children⁵ receive in European countries. There are approximately 100.000 separated children in Europe.⁶ Separated children have the right to a guardian who protects their rights and best interests. Not only do separated children have to live without their parents in a country they don’t know, but in some countries, they also run the risk of being detained because of their residence status or run the risk of being exploited by traffickers.⁷ Separated children can face risks in their country of origin, during their journey and in the host country. The type of protection and care a separated child receives from a guardian depends upon the country which the separated child has (often randomly) entered and it can differ depending on whether or not a separated child asks for asylum.

These differences are not acceptable. All European countries have ratified the Convention on the Rights of the Child (CRC) and have the obligation to take into account the special needs of separated children. Proper guardianship systems are essential to assist in finding a durable solution for separated children, whether that be integration into the host country, transfer to another country or return to the country of origin.

The first ‘Closing a protection gap for separated children in Europe’ project aimed to harmonize the protection separated children receive from their guardian by focusing on the qualifications of the guardian. The mission of this project was to improve the situation for separated children by means of: *closing a protection gap for separated children in Europe by developing core standards on qualifications of guardians based on the views of separated children in relation to their rights according to the Convention on the Rights of the Child*. Separated children in Europe should get the guardian they are entitled to irrespective of which EU country they entered. The assumption is that when all guardians have sufficient qualifications and mandates to work in the best interest of the child, the level of protection children receive in the different European countries will harmonize.

From December 2009 until December 2011, the project partners developed the Core Standards for guardians of separated children in Europe based on interviews and workshops with 127 separated and former separated children, 68 guardians and 39 other experts (for instance; foster parents, lawyers, social workers). The views have been measured against the Convention on the Rights of the Child (CRC), General comment No. 6 (treatment of unaccompanied and separated children outside their country of origin) and General comment No. 12 (the Right of the child to be heard) of the Committee on the Rights of the Child and the Statement of Good Practice of the Separated Children in Europe Programme⁸. The Core Standards for guardians have been inspired by the Quality4Children standards for Out-of-Home Child Care in Europe.⁹ 54 members of the national advisory councils in the eight research countries were consulted and shared their expertise.

5 In this country assessment the term separated child is used, as described in the Statement of Good Practice of the Separated Children in Europe Programme: separated children are under eighteen years of age, outside their country of origin, and separated from both parents, or their previous legal, or customary primary caregiver. Some authorities and organizations use a different terminology: the unaccompanied minor asylum seeker or unaccompanied minor foreigner.

6 In 2011 over 12.000 unaccompanied children seeking asylum entered the EU (Data from the Action Plan on Unaccompanied Minors (2010-2014), European Commission, COM(2010) 213). The number of children on the move is most probably even higher, because not all children apply for asylum, see: Ruxton, 2003 Separated Children and EU Asylum and Immigration Policy. According to the Separated Children in Europe Programme there are approximately 100.000 separated children in Europe, see: Ruxton, 2000 Separated Children Seeking Asylum in Europe: A Programme for Action. Comparing statistics and gathering of data remains a challenge, see: European Migration Network, Unaccompanied Minors-an EU comparative study, May 2010, p. 74, available at: [http://www.emn.fi/files/288/0_EMN_Synthesis_Report_Unaccompanied_Minors_Publication_\(Septio\)_1_.pdf](http://www.emn.fi/files/288/0_EMN_Synthesis_Report_Unaccompanied_Minors_Publication_(Septio)_1_.pdf).

7 See also: United Nations Committee on the Rights of the Child, General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin (2005), CRC/GC/2005/6, paragraph 3.

8 Available at: <http://www.separated-children-europe-programme.org/>.

9 Available at: http://www.quality4children.info/navigation/show.php?id=2&_language=en.

The Core Standards and indicators are written from the perspective of separated children and guardians. The Standards reflect the ideal standard of care for separated children and are formulated to address the role of guardians. The Core Standards should empower all guardians in Europe to work towards common goals and they should inspire State authorities to provide the guardian with the work environment and mandates needed to meet the Core Standards. The first six Core Standards focus on the role and responsibilities of the guardian. Core Standards seven, eight and nine focus on the relationship between the guardian and the separated child. Core Standard ten addresses the professional knowledge and competences of the guardian.

Core Standards as inspiration and goal for guardians

The Core Standards are a tool for guardians in practice. The Core Standards aim to inspire the guardians in their daily work and they offer a goal to work towards. The project partners, however, recognize the challenges a guardian faces. Due to the current guardianship systems in some countries there are a lot of hurdles to overcome for guardians in order to successfully implement the Core Standards. Guardians with a very high caseload are also confronted with multiple dilemmas. The guardians in these countries should not get frustrated when they cannot fulfil all the Standards immediately. Guardians can incorporate the Core Standards as a guideline for their work irrespective of the guardianship system and legislative framework. The Core Standards can be used as a checklist to monitor their current practice. Where there are Core Standards that are unfulfilled the guardian should feel empowered to advocate for change.

Core Standards as inspiration and goal for State authorities and guardianship institutions

The enjoyment of rights stipulated in the CRC is not limited to children who are citizens of a State party but must be available to all children, including asylum-seeking, refugee and migrant children, irrespective of their nationality, immigration status or statelessness.¹⁰ The positive aspect of protection obligations for separated children also extends to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage.¹¹

Closing a protection gap 2.0: Taking the next steps

The report Closing a protection gap provides core standards that should inspire policies at national and European level in order to improve the protection of separated children in our continent. It also highlights the need for harmonizing the quality of guardianship systems all over Europe and within countries, where huge differences still persist. The goals set for guardians and policy makers are ambitious, but not impossible to attain. It is all about applying systematically these standards in all policies on separated children and using them holistically."

From the preface of the report 'Core Standards for guardians of separated children in Europe: Goals for guardians and authorities' by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg.

¹⁰ See: United Nations Committee on the Rights of the Child, General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin (2005), CRC/GC/2005/6, paragraph 12.

¹¹ See also: United Nations Committee on the Rights of the Child, General Comment no. 6, on the Treatment of Unaccompanied and Separated Children outside their Country of Origin (2005), CRC/GC/2005/6, paragraph 13.

“Now we are going to promote the standards for guardians everywhere when it comes to separated children. However, more needs to be done. There have to be European rules on the qualifications of guardians.”

Member of the European Parliament at the launch of the Core Standards for guardians of separated children in Europe, November 2011 in Brussels.

These quotes highlight the support and the need to increase the awareness, implementation and extend the scope of the Core Standards for guardians of separated children in Europe developed in the project ‘Closing a protection gap for separated children in Europe’.

From December 2012 until December 2014 nine project partners¹² will work on the project ‘Closing a protection gap 2.0: Implementing the Core Standards for guardians of separated children in Europe in practice, feeding into policy and legislative instruments on guardianship’.

The objective of this large-scale and ground breaking follow up project is to take the next important steps to further close the protection gap by working with the Core Standards in practice and taking the work further on towards policy and legislative initiatives at the national and the European level. The overall aim of this endeavour is to provide the strongly needed framework for responsibilities of guardianship systems in order for all separated children in Europe to get the protection to which they are entitled.

The specific objectives of the project are:

1. Raising awareness of the Core Standards, tailor them to the situation in every EU country participating in the project and empower guardians;
2. The national implementation of the Core Standards in practice and advocate for provisions in national legislation;
3. The development of a European initiative/instrument for harmonisation of appropriate guardianship inspired by the Core Standards;
4. Enlarging the scope of the Core Standards for guardians of separated children in Europe in nine other EU countries.

In the **country assessments** the nine project partners analyze the implementation of the Core Standards for guardians of separated children in the various countries based on the input from workshops with separated children and guardians and a desk research of the existing laws, policies and methodologies. Promising practices as well as challenges will be discussed in every country assessment. The objective of the country assessment is to get a status quo picture in relation to every Core Standard.

An important source for the **country assessments** are the outcomes from the workshops with separated children and guardians. For the workshops a former separated child acted as an advisor. Because the former separated child is not dependent on his or her guardian anymore he or she can speak freely and provide essential suggestions to the implementation of the Core Standards in practice. Defence for Children- the Netherlands worked with Foundation Alexander (an organization specialized in the participation of children) to draft a programme for the workshop with separated children that could be used as a guideline by all project partners. Every project partner involved at least five separated children who still have a guardian. Their participation is essential for the sustainability of the Core Standards. The children were actively involved and asked to give their opinion on the implementation of the Core Standards, as well as think about tools guardians could

¹² The project partners are: Defence for Children-ECPAT the Netherlands (coordinator), Asylkoordination Österreich, Bureau d'accueil et de défense des jeunes (service droit des jeunes), HFC “Hope For Children” UNCR Policy Center, Bundesfachverband Unbegleitete Minderjährige Flüchtlinge e.v., Irish Refugee Council Ltd., Defence for Children International Italia, Conselho Português para os Refugiados, Slovenska filantropija.

use (for instance child friendly information on their rights) and to provide suggestions to implement the Core Standards.

During a training session for guardians (which focused on Core Standards 1 to 6 because they specify the responsibilities of the guardian), the project partners worked together with the guardians on practical tools and ideas for the implementation of the Core Standards in practice.

During a project partners meeting in Nicosia in Cyprus from the 26th until the 28th of June 2013 the preliminary results of the country assessments were discussed and guidelines to continue the work on national level were established.

More to come

The **country assessments** are the basis for the development of a toolkit for practitioners to work on the implementation of the Core Standards for guardians in practice. National and European changes in policy and legislation will be advocated during (expert) meetings. Consultations with Members of the European Parliament, the Council of Europe and (international) stakeholders will lead to a draft European initiative/instrument. To enlarge the scope of the project new partners are included in this follow up project and nine organizations from other countries will be trained. All information about the project will be made available on the project website.

3 NATIONAL METHODOLOGY

The **country assessment** is based on four pillars: desk-research, a workshop with separated children, workshops with guardians and social workers and the long experiences of the staff of the Bundesfachverband UMF and its members.

Lots of information was gathered in the first phase of the project through desk research. Although the literature about guardianship relating to separated children is very scarce, enough sources were found. Furthermore, it was possible to use lots of information gathered in the first Core Standard Project. The short overview of the national guardianship system largely follows the first report, because the system has not changed a lot.

A workshop with separated children took place on 4th June 2013 in Berlin. The minors were asked in cooperation with a youth welfare facility if they wanted to participate. The workshop took place in the leisure rooms of the youth welfare facility, so that the minors felt comfortable and really engaged in the discussion. It was a group of five minors and two former separated children, so different perspectives were present.

The main workshop with guardians took place during the spring conference of the Bundesfachverband UMF on 9th April 2013 in Hofgeismar. Twenty persons participated and there was an interesting, critical and motivating debate about Core Standards and guardianship itself. Furthermore, the Core Standards have also been presented in other workshops and seminars with guardians and social workers since June 2012. The Bundesfachverband UMF therefore received a lot of feedback on the standards.

The last pillar consists of the experiences of the Bundesfachverband UMF itself: The Bundesfachverband UMF is a nationwide network of professionals, guardians, social workers, lawyers and activists with two offices in Berlin and Munich, in which 8 persons work on the topic of separated children. So a lot of information about the situation of separated children in relation to guardians was already present, especially informal background information. In addition to public sources and the inputs during the workshops, single standards or parts of the catalogue were discussed with relevant stakeholders during phone calls, conferences and other meetings.

4 SUMMARY CORE STANDARDS FOR GUARDIANS

The role and responsibilities of the guardian

Standard 1: **The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.**

The guardian is able to advocate, assess and adjust the best interest of the child on a regular basis, involves all relevant actors and ensures that the assessment of the best interest of the child is based on the views of the child and the individual circumstances.

Standard 2: **The guardian ensures the child's participation in every decision which affects the child.**

The guardian provides information in a child friendly way and checks if the child understands and recalls the information, listens carefully to the child and ensures plans are based on the views of the child and shared with the child, is open to feedback and manages expectations.

Standard 3: **The guardian protects the safety of the child.**

The guardian gives the highest possible priority to the child's safety, knows the signals of child abuse and trafficking, acts and reports upon signals of any harm or danger, ensures the child knows he/she is welcome to voice anything concerning his/her safety, only breaks the confidentiality norm when a child is at risk, ensures victims get appropriate treatment and is open to being monitored on own behavior.

Standard 4: **The guardian acts as an advocate for the rights of the child.**

The guardian is an assertive, committed watchdog, dedicated to defending the rights of the child, shows emotional strength, opposes decisions which are not taken in the best interests of the child and pursues fair procedures concerning the child.

Standard 5: **The guardian is a bridge between and focal point for the child and other actors involved.**

The guardian keeps in contact with all relevant actors, ensures to be informed about all decisions which have an impact on the child and is where necessary present at meetings, assists in establishing links with the child's community and developing relationships that give the child a sense of belonging to a family or group.

Standard 6: **The guardian ensures the timely identification and implementation of a durable solution.**

The guardian ensures the identification of a durable and safe solution and challenges others to prove that their proposed solutions take the best interest of the child as a primary consideration, supports the reunification of the child with his/her family and supports the integration of the child in the host country when this is in the best interest of the child, defends safety guarantees when a child is returned and prepares the child for all predictable changes which will occur after turning eighteen.

The guardian and the separated child

Standard 7: **The guardian treats the child with respect and dignity.**

The guardian demonstrates appropriate behavior, treats the child unprejudiced with respect to the child's identity, privacy and cultural differences, supports the child in developing peer relationships and shows a flexible approach tailored to the individual needs of the child.

Standard 8: The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

The guardian is always honest with the child, keeps his/her promises and keeps all information confidential unless it is necessary to break confidentiality to keep a child safe, pays attention to verbal and nonverbal communication, is empathic towards the child and gives moral support and makes clear to the child that a child who disappears is always welcome to return.

Standard 9: The guardian is accessible.

The guardian can be reached easily, lives near enough of the child to be able to respond quickly to difficulties, sees the child as soon as possible after his/her appointment and pays visits to the child on a frequent basis and communicates in a way which fits the age and development of the child, making use of interpreters whenever necessary and contacts the child to keep in touch also when there is no specific need to do so.

The qualifications of the guardian

Standard 10: The guardian is equipped with relevant professional knowledge and competences.

The guardian is proactive in identifying learning and development needs, manages his/her caseload and available resources, is accountable, works according to a set methodology, knows personal and professional limits, seeks support and counselling whenever necessary and is open to supervision and monitoring.

5 DEVELOPMENTS IN RELATION TO GUARDIANSHIP AND MIGRATION

Since the revision of the Youth Welfare Act in 2005 there has been a major trend of integrating separated children in the common youth welfare system, which has an incredible (positive) impact on the minors.¹³ The most obvious consequence is that the minors are taken into care by youth welfare; this includes a placement in housing suitable for minors. The revision of the law has also had consequences for the guardianship. Currently the Bundesfachverband UMF estimates that 90% of separated children have a guardian. Before 2005 the 16 and 17 year old separated children in particular often did not have a guardian. This change in the reception policy of on separated children is still not finished, as there are still municipalities in which minors are not taken into care or where no guardian is appointed.¹⁴ Separated children have become an economic factor as well: on the one hand the costs for the placements in youth welfare facilities are higher than the treatment other asylum seekers receive. On the other hand, thousands of new jobs have been created since 2005 to ensure effective treatment in youth welfare facilities.

Over the last four years an average of 4 000 separated children arrived in Germany, 2 000 of whom applied for asylum.¹⁵ These are the only reliable statistics concerning the numbers of separated children in Germany. About 50% of all separated children are from Afghanistan, other countries of origin include Iraq, Somalia, Eritrea and Ethiopia. The minors are widespread over the whole country, but there are bigger groups of separated children in nearly all bigger cities. In a parliamentary request the German government estimated that 75% of all minor asylum seekers will stay in Germany, but not all of them with a secure residence permit.¹⁶

Since the last assessment during the first Core Standards project, three topics became especially relevant:¹⁷

- a) Some family courts have established a jurisprudence, which is quite negative for separated children. The courts, e.g. in Giessen (Hessen) and Chemnitz (Saxony), argued in some cases that parental care is not suspended and a guardian should not be appointed if the parents are alive, because it is justifiable that an unaccompanied minor could have contact by phone or skype with his parents. Also, the Higher Regional Court in Berlin (Kammergericht Berlin) held that if the minor can have contact with his parents, wherever they may be, a guardian will not be appointed. The consequences are quite negative, because most parents in such a situation are unable to contact their children act like this. Furthermore, it often takes quite a long time to find out if contact is possible, so that the time between arrival and the appointment of the guardian increases. Another new phenomenon is the legal stance of the family court in Bielefeld: the court only recognizes someone as a minor if a medical age assessment has been made. A medical exam is foreseen for nearly everybody, there are only a few exceptions. The reports by the youth welfare office, psychologists, and care facilities are ignored by this court. If there is no medical age assessment, the court does not decide on the appointment of the guardian. The youth welfare office in Bielefeld refuses to conduct such medical exams. The consequence is that the person is taken into care by youth welfare, but no steps for a durable solution are taken, e.g. there will be no asylum claim or other residential procedures.

13 About the legal change, see more: Peter, Erich 2006: Die Inobhutnahme unbegleiteter ausländischer Minderjähriger. Grundlegende Erläuterungen zur Neuregelung des § 42 Abs. 1 S. 1 Nr. 3 SGB VIII, in: Das Jugendamt 2006, p. 60.

14 More: Berthold et. al. 2011, Fn. 4

15 Bundesfachverband UMF 2013: Im Jahr 2012 wurden über 4.300 unbegleitete minderjährige Flüchtlinge von Jugendämtern in Obhut genommen, <http://b-umf.de/images/inobhutnahmen-2012-b-umf.pdf>

16 Kleine Anfrage der Fraktion Die Linke, Bt.-Drs.: 17/14748

17 During the first Core Standards Project the German guardianship system was evaluated, a report is available here: http://b-umf.de/images/vormundschaftsstudie_2010.pdf

- b) The other current major topic of debate in relation to guardianship and migration is supplementary curatorships. Based on § 1909 BGB a supplementary curator can be appointed by the family court. The difference with a guardian is that a curator is additionally responsible for a single matter (e.g. the residential procedure) if a guardian is not able to do so. In most cases a lawyer is appointed as curator. Asylum-seekers, including separated children, have no right to free legal support, and the curatorship can be seen as an “answer” to this problem. Only in the federal state of Hessen is a curator for nearly all separated children appointed. In most other federal states curatorship is rejected by the courts based on a decision of the Higher Regional Court of Karlsruhe (Oberlandesgericht Karlsruhe) from December 2010. In this decision it is stated that an unaccompanied minor above 16 is capable of acting pursuant to the Asylum Procedure Act (Asylverfahrensgesetz) and the Residence Act (Aufenthaltsgesetz) and can therefore not claim for a curatorship.¹⁸ In May 2013 the Federal Court of Justice (Bundesgerichtshof) refused to appoint a curator and argued that if a guardian is not able to represent his ward, the guardian has to pay for a lawyer or additional support.¹⁹ The consequence of this decision will be that separated children will have less support from free lawyers.
- c) The practice of the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, FedOff) reveals another interesting development: since May 2011 the Federal Office for Migration and Refugees clearly demands that all guardians support their wards during the asylum-hearing, this includes all minors until the age of 18. Furthermore, the hearing during the asylum-procedure will not be scheduled until the appointment of a guardian.²⁰ This is a “historic” step: during the last two decades there was an emotional discussion over how to deal with 16- and 17-year old minors who are legally capable of acting. With the above-mentioned decision, the FedOff accepted the importance of the fact to treat all separated children until the age of 18 as minors. This has to be viewed in relation to the revision of the youth welfare act in 2005, see above.

18 OLG Karlsruhe 2 UF 172/10, 2. December 2010

19 Bundesgerichtshof: XII ZB 124/12, 29. May 2013

20 Bundesamt für Migration und Flüchtlinge 2010: Dienstanweisung Unbegleitete Minderjährige, http://b-umf.de/images/da_unbegleitete-minderjaehrige-2010.pdf

6 A SHORT OVERVIEW OF THE NATIONAL GUARDIANSHIP SYSTEM²¹

The emergence of a fragmented system of guardianship

The current legislation that guardianship in Germany is principally based on, namely the German Civil Code (Bürgerliches Gesetzbuch - BGB) dates back to the year 1900. The regulations of the Civil Code that are still applied today consequently mirror the state of affairs at the outset of the 20th century. The need to reform Germany's guardianship legislation becomes more than obvious if one considers that the legislation was directed at a completely different social context. Yet, to understand the current shape of the German system of guardianship and its particular difficulties, it is necessary to briefly go into its emergence.

For centuries, legal practice regarding guardianship had constantly been in need of adapting changing societal conditions. Until the 19th century, it was mostly relatives who took over guardianship for orphans. Guardians generally held both legal representation and the responsibility for care and education. Only later did the question of the sharing of responsibilities between state institutions and other actors emerge: growing industrialisation paired with rising internal migration, poverty and loosened social structures made the recruitment of independent guardians, especially relatives, unreliable.²² The state became more involved in the care of orphans. In order to strengthen the position of relatives and to make the recruitment of family members as easy as possible, the Civil Code stresses the preferential appointment of independent guardians. Advocates of independent guardianship still frequently refer to this regulation – even though independent guardianship today differs considerably from independent guardianship in 1900.

It was only at a later point that alternative forms of guardianship (public, associational and professional) became more established. As the first Youth Welfare Act (Reichsjugendwohlfahrtsgesetz) came into effect in 1922 and youth welfare offices (Jugendämter) became institutionalized in the whole country, it was established that employees of the youth welfare office became guardians. The incorporation of the guardian into the structures of the youth welfare offices brought along a conflict that is still present today: the dependency of the public guardian on his employer, the youth welfare office. Both recipient and giver of benefits are consequently employed at the same institution. It is therefore occasionally doubted that the guardian can do justice to the partiality towards his/her wards that is expected of him. Critics say that hierarchies, constraints and diplomatic engagement within the guardians' working environment of the youth welfare office become a disadvantage for the youths.

Because guardian and social services were merged beneath one roof, competences and responsibilities became blurred. A debate that is still present today appeared: where should the division line run between legal representation, the organization and the execution of care and education? During the 20th century, it became common practice that the guardian merely was in charge of the ward's legal representation. Other actors carried out the actual care. The leeway the legislation gives to guardians makes guardianship such a hard-to-grasp institution.

Current legal foundations

The Civil Code establishes the cornerstones of guardianship. Children and youths have to be appointed a guardian if they are not under parental care or if their parents are not authorized to represent them.²³ The Civil Code roughly lists the tasks of the guardian. The description of tasks remains rather sketchy and vague, wherefore divergent readings are of no surprise. The following regulation is often cited to explain the function of the guardian: 'The guardian has the right and the

21 Parts of the following chapter are taken from the description of the guardianship system in the German country report written by Barbara Noske, p. 8 ff.: <http://www.defenceforchildren.nl/p/43/522/mo89-mc97/english>

22 See: Hansbauer, Peter; Mutke, Barbara; Oelerich, Gertrud 2004: Vormundschaft in Deutschland. Trends und Perspektiven., p. 21 ff.

23 § 1773 BGB

duty to care for person and fortune of the ward, especially to represent the ward.’²⁴

The legislator attempts to be somewhat more concrete by stating that ‘personal custody comprises in particular the duty and the right to care for, to educate, to supervise the child and to determine the place of residence of the child.’²⁵

The guardian thus has wide-ranging responsibilities regarding the child’s personal custody. How exactly they are fulfilled, however, remains unclear.

The Civil Code assumes that there are three different types of guardians:

1. Independent guardian (Einzelvormund): guardianship that is taken over by an individual who is not employed at an association or public authority
2. Associational guardian (Vereinvormund): the guardian is either a member of or employed at an association
3. Public guardian (Amtsvormund): guardianship is taken over by employees of a public authority

The Civil Code also determines a ranking order regarding the appointment of the guardian. According to the law, preference in theory should be given to the independent guardian. This depends on the traditions of the guardianship system. In former times a member of the extended family would have to take over the guardianship. The youth welfare office can recommend volunteers to the court. Alternatively, potential volunteers themselves can approach the court. The law provides that associations can be appointed if no suitable independent guardian is available.²⁶ The youth welfare office in turn shall only be appointed if no association or volunteer is available.²⁷ The professional guardian (who has not been mentioned so far) finds himself in the weakest position. He shall only be appointed if the court assumes that he is more suitable in a specific case than the youth welfare office, association or volunteer. It is often criticized, however, that in most cases it is assumed that no volunteers are available and therefore the check does not take place.

24 § 1793 para. 1 BGB

25 § 1631 para. 1 BGB

26 § 1791a BGB

27 § 1791b BGB

The guardian in the context of the current youth welfare system

In July 2011 a reform of the guardianship system came into force. Since then it is clearly defined that the guardian must maintain personal contact with the ward.

“(...) He/she should as a rule visit the ward once per month in his/her customary environment unless shorter or longer visiting intervals or a different place are required in individual cases.”²⁸

Furthermore the number of wards per guardian is limited to 50 wards.²⁹ This reform is the result of long discussion about the role of the guardian within the youth welfare system. The cornerstones of guardianship as established by the German Civil Code (BGB) are complemented by the Youth Welfare Act and the Family Act (FamFG). For the discussion about the Core Standards and the role of guardians of separated children it is important to locate the guardian in the youth welfare system. Other than the guardians, the main actors are:

- Youth welfare offices: in every municipality there is a youth welfare office run by the local administration. Youth welfare is a communal task, which means that there is a nationwide law, but the concrete arrangements depend on the local administration and political decisions.
- Youth welfare care facilities: the youth welfare care facilities are run by public and independent organisations. Independent organisations can be profit and non-profit corporations, e.g. lots of youth welfare care facilities are run by welfare associations.

Guardians in a federal State

Germany's public administration is basically subdivided on three levels: the Federal, the Federal States and the Communal levels, the scope of functions being regulated by the German Constitution. Each level is thus independent from the other two regarding specific matters. The independence regarding these responsibilities and competences applies not only vertically, but also horizontally: the sixteen federal states are autonomous from one another; municipalities are detached from other municipalities. This leads to a great fragmentation regarding public administration, of which youth welfare is one organisational unit.

The Youth Welfare Act (SGB VIII) applies throughout Germany. However, a broad range of competences regarding youth welfare is transferred to youth welfare authorities on the federal state and local level. Each federal state establishes one – or sometimes two - central youth welfare offices. The central youth welfare office takes charge of instigating and advancing the activities of the communal youth welfare offices and supports them in the realization of their tasks.³⁰ Generally though, communal youth welfare offices are quite independent in their action – just like the central youth welfare offices are relatively independent from the Federal Republic of Germany. Furthermore, both central and communal youth welfare offices have sovereignty over staff, internal organization and finances. Consequently they have developed different ways of dealing with their tasks. Despite the fact that the responsibility of youth welfare is ultimately in the hands of public authorities, they give a share of their tasks to non-state organizations,³¹ which leads to a further fragmentation of the system. The heterogeneous organization of youth welfare offices results in a heterogeneous organization of guardianship.

28 § 1793 BGB

29 § 55 para. 2 SGB VIII

30 § 82 SGB VIII

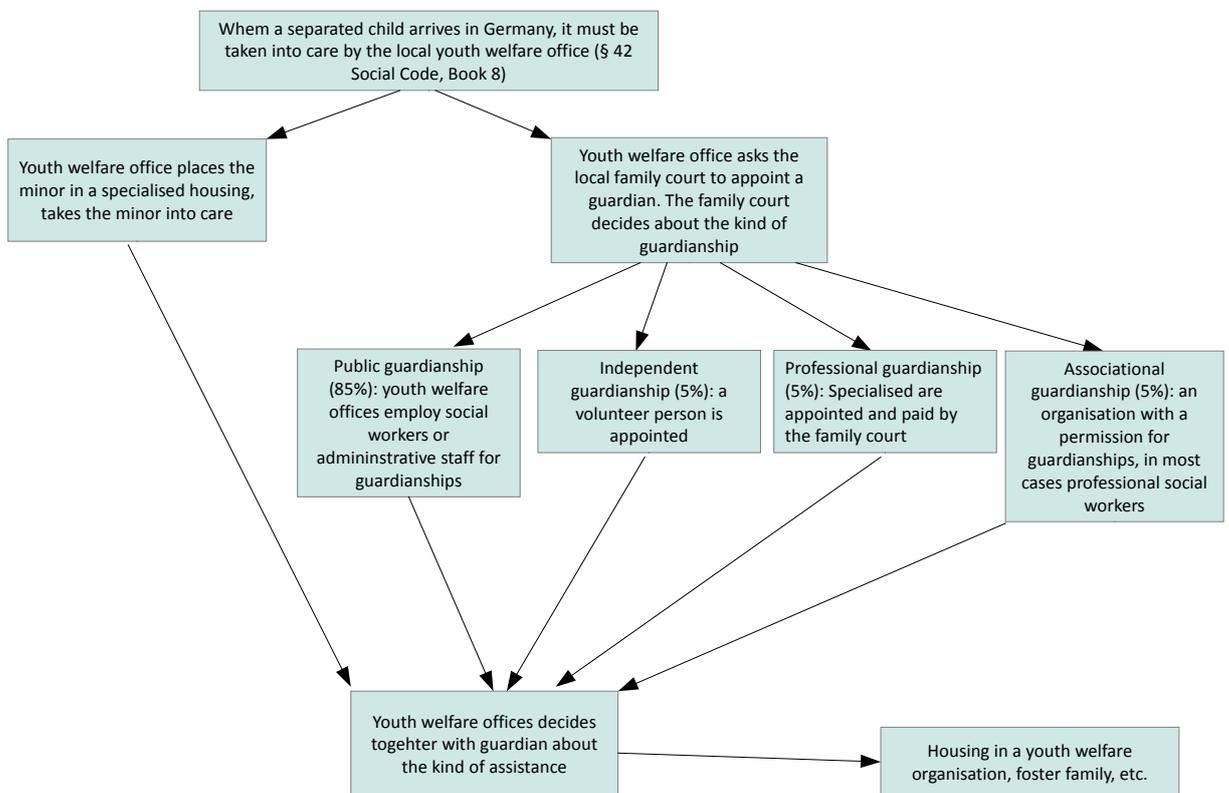
31 §76 SGB VIII

Engagement of a guardian

The following figure shows at which stage the guardian will be engaged in cases of arrival of separated children. It becomes apparent that guardians are not involved directly at the beginning. At first, the youth welfare office has to take the minor into care.

“The youth welfare office is authorized and obligated to take over custodial care if [...] an alien child or an alien youth comes to Germany unaccompanied and if neither the person having the care and custody of the child nor the legal guardian sojourn in Germany. [In this case] the appointment of a guardian needs to be arranged instantaneously.”³²

Often it takes up to six months until the local family court decides about the guardianship. The practices vary a lot, there are also municipalities in which a guardian is appointed within one day after the arrival. It is important to note that before the appointment takes place after a possible age assessment. At this stage no guardian is present.



The Youth welfare office is the central institution within the reception of separated children in Germany. The other relevant actors are the social workers in the placements of the minors. From arrival, they have the closest contact and often the minors build up a close relationship. If a guardian is appointed, the contact is often made by the social workers or the youth welfare offices. In cases when independent guardians are engaged, they are provided by social workers.

32 § 42 SGB VIII

Responsibility of family court

As mentioned above, the legal practice in Germany varies. The family court is responsible for the appointment of guardians. Pursuant to the law, there has to be a hearing in front of the court.³³ The youth welfare office asks the local court to appoint a guardian within the first three days after the arrival. The youth welfare office has only this short period of time to contact the family court, because otherwise the right to claim a coverage of costs by the youth welfare office will be lost. The family court itself is not time-bound.

The appointment of a guardian is often linked to an age assessment, this gives special meaning to this procedure. There are family courts (e.g. Frankfurt, Hamburg, Saarbrücken) that decide mainly based on the files of the youth welfare office. Only in exceptional cases is the view of the youth welfare offices disputed. Other family courts like the one in Stuttgart give special attention to the hearing in front of the court; there are cases in which the court comes to a different age assessment than the youth welfare office, which can sometimes be to the advantage of the minors. As mentioned in chapter 4, there are also family courts which only appoint a guardian if a medical age assessment has been made. Other forms of assessments are not accepted.

The percentages presented in the above chart show the quota of every form of guardianship related to separated children, the numbers are estimations by the Bundesfachverband UMF. The public guardianship prevails. The other three forms are not in use in every city, as the arrangements of youth welfare depend on local settings, so local traditions are reflected. It is obvious that the public guardianship is the most relevant form for separated children due to the fact that most youngsters are in contact with public guardians. Nevertheless the other forms are relevant alternatives, especially if there are conflicts with the public guardians. Somehow this does not reflect the law, which prefers the independent guardian. In practice, however, public guardianship is the most relevant form for different reasons: public guardians are professionals and always available for the courts. Furthermore, other forms of guardianship are based on the engagement of individuals (independent guardians and professional guardians) or associations, this engagement does not take place nationwide so often they are not present. Costs for public guardians are paid by youth welfare. Costs for all other forms of guardians are paid by the family court. To conclude: the appointment of guardians reflects local practices, financial reasons and is based on confirmed habits.

A recently adopted Family Act (FamFG) establishes that youths over the age of 14 need to be heard by the family court.³⁴ The implementation of this prescription has as yet been irregular throughout Germany. Furthermore the minor has the right to be heard about the question who will be his guardian. This provision was part of the reform of the guardianship system and is controversial. Guardians are afraid of being in competition with each other and there are still not many ways in which to deal with this topic. From the perspective of the Bundesfachverband UMF it can be an important tool in ensuring that personal aspects (e.g. if a girl wants only a woman to become her guardian) are respected by the court.

Once appointed, the guardian is required to report to the family court regularly about the child's wellbeing. This is the central monitoring mechanism. From the outside it is quite unclear how successful this kind of monitoring is. Due to the fact that the minor is not part of this process, family courts do not have to ask the minors for their impression and view.

One important pillar of the guardian's work is the helper's conference that is supposed to take place every six months.³⁵ Youth, guardian, social services and social workers get together and discuss the youth's advancement and how help can be improved. The Youth Welfare Act states that the guardian continuously needs to be involved in the assistance that is given to the youth.³⁶ He must be informed and advised regarding the type and range of help, with the possible consequences, which may need

33 § 159 FamFG

34 § 159 FamFG

35 § 36 Abs. 2 SGB VIII

36 § 36 Abs. 1 SGB VIII

to be explained to the youth. This delineation of tasks implies that the guardian's role is situated somewhere outside of the immediate circle of helpers surrounding the youth. The law thus assumes that he is monitoring and supervising the help his ward receives from youth welfare.

Germany has created another legal foundation that considerably influences the work of guardians: the Asylum Procedure Act (AsylVfG) and the Residence Act (AufenthG). The Acts determine that 16 and 17 year olds are 'legally capable of acting' in their asylum and residence proceedings, meaning their representation through a guardian in asylum proceedings and other residence procedures is not necessary. The 16 and 17 year olds, however, can explicitly authorize their guardians to represent them in their proceedings.

In German, "the best interests of the child" is commonly translated as "Kindeswohl". "Kindeswohl", however, would re-translate as "welfare of the child" and has a long legal tradition in Germany, especially in connection with the withdrawal of parental care. The duties and responsibilities of the guardians should be in line with the term "Kindeswohl". In many provisions of the Civil Code (BGB), "Kindeswohl" is the reference. Therefore that usage is ambivalent. It leads to some problematic misunderstandings because "Kindeswohl" focuses on the question of when the state has to intervene in a child's life. Based on § 1666 BGB there is wide legal practice which focuses on the absence of physical, mental or psychological danger. The term best interest of the child is wider, particularly emphasizing the participation of the minor.³⁷

³⁷ Berthold, Thomas: Stellungnahme zum Entwurf eines Gesetzes zur Verbesserung der Situation Minderjähriger im Aufenthalts- und Asylverfahrensrecht, BT-Drs.: 17/9187, http://b-umf.de/images/stellungnahme_bumf_innenausschuss_dbt_2013.pdf

STANDARD 1



The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.

Indicators:

The guardian:

- A) Makes an assessment on the best interests of the child, for example before decisions are taken about:
 - Legal procedures,
 - The choice of a lawyer,
 - Housing accommodation and placement,
 - Education,
 - (Health)care,
 - Leisure activities.
- B) Other support.
Makes sure that an assessment on the best interest of the child is based on the views and opinions of the child and on individual circumstances.
- C) Involves all relevant actors in the determination of the best interest of the child in decisions impacting upon the child to ensure a multi-disciplinary approach.
- D) Avoids having a conflict of interest concerning the child and works independently from other actors who make decisions about the welfare and status of the child.
- E) Adjusts the assessment of the best interests of the child regularly, while taking at a minimum into account:
 - The child's personal background and past experience in the country of origin and journey,
 - His/her development,
 - Family situation,
 - Duration of stay in the host country,
 - Phase of residence procedure or immigration status.

The legal basis for the representation of guardians for separated children is governed by the Civil Code and Social Code Book VIII. The only relevant exception regards the capability to act in the asylum procedure and residence law. Here it is stipulated that minor foreigners aged 16 years onwards are legally capable to act. This leads to a situation of unclear responsibility of the guardian in the asylum and residence procedure. There is no uniform practice and no common legal understanding of whether and how separated children over 16 years are represented by the guardian, or whether they need to empower him. In principle, there is no extra legal basis for guardianship of separated children, they must be treated like other children. This condition is of great importance because, from a legal perspective, the unaccompanied minor should be treated as a minor and not as a migrant first.

Pursuant to the BGB the guardian has the responsibility to act in favor of the “Kindeswohl” (German translation of best interests of the child). The term “Kindeswohl” is defined by the absence of hazards. In § 1666 Civil Code it is stated: (1) Where the physical, mental or psychological best

³⁸ The Benchmarks refer to the desk-research and the workshops held during the project.

interests of the child (Kindeswohl) or its property are endangered and the parents do not wish or are not able to avert the danger, the family court must take the measures necessary to avert the danger.” This definition of “Kindeswohl” is widespread and sets the tone for the debate.

There are no standardized guidelines on how the guardians have to take into account the best interest of the child, or on how to proceed with the custodial care. An assessment of the child’s best interest takes place in two stages: First, there should be a clearing procedure (Clearing-Verfahren) after arrival. In this procedure all relevant information about the minor (family situation, psychosocial situation, etc.) is collected. The clearing-procedure is done by social workers or by the youth welfare office within the first 3-5 months, therefor the minor is taken into care. After completion of the clearing procedure, youth welfare should decide on the type of support. The persons responsible have to report on the outcomes of the clearing procedure, focusing on the development of the minor, family situation, etc. Focus should be given to questions of residence status, and together with the guardian it should be decided whether the minor should apply for asylum or whether other options are realistic (e.g. family reunification in another country). The decision about the kind of assistance is part of the second relevant assessment, which could be also seen as a best interest determination. The decision about which kind of help³⁹ is provided is part of the helpers conference in which the minor, the guardian, the personal social worker and the youth welfare office are involved.⁴⁰ The guardian is responsible for the application for the relevant help, which is granted by youth welfare. If the guardian does not agree with the decision of the youth welfare office, he has the opportunity to appeal about this, even at an administrative court.

During the different workshops the time until the appointment of the guardian was discussed quite often: The problem is that the guardians are often appointed very late, so their participation in the clearing process is not ensured. Some minors do not get to know their guardians before the helpers conference. The guardian is often not the main player in the processes described, the social workers in the facilities are often closer to the minor. The perspective of the minor plays a role insofar as the clearing process and the helpers conference are focused on him, it’s all about his story. During the helpers conference the guardian can act as a manager or supervisor. This is because all persons of concern will report during the conference about the success of their work and the reasonable progress of the process.

A problematic situation sometimes occurs in practice if an asylum claim is refused; there are guardians who accept a decision by the Federal Office for Migration and Refugees without a critical perspective. The Bundesfachverband UMF experienced such problems, especially with public guardians, who considered the views of other offices more than the perspective of their wards. Guardians told the Bundesfachverband UMF that they are sometime unsure what to do in such cases.

Currently, no determination of the best interests of the child takes place. The helpers conference or the clearing-procedure can be described as best interest-assessments, but there is no procedure to determine the residence status. During the asylum procedure the best interest is not regularly assessed. Therefore the Bundesfachverband UMF will work closely together with UNHCR and UNICEF to implement the expected BID Guidance for industrialized countries. It is planned to present our own training to enable trainers to spread the BID Guidance. Furthermore a conference on this item will take place in spring 2014.

The legal basis to fulfil this standard exists. The main problem is that the guardians act differently throughout Germany and not every guardian fulfils this standard.

Recommendations

1. There has to be an open debate about the term best interests of the child in relation to the “Kindeswohl”.
2. The legal capability to act for children above 16 should be abolished.

39 There are different kinds of support, e.g. a placement in residential youth welfare facility or in assisted living.

40 § 36 SGB VIII

STANDARD 2



The guardian ensures the child's participation in every decision which affects the child.

Indicators:

The guardian:

- A) Provides the child with all relevant information concerning his/her rights and information needed for his/her participation in a language the child understands and in a child friendly way, repeats this information as often as necessary and checks if the child understands and recalls the information.
- B) Listens carefully to the child and takes his/her views into account in the most appropriate way in accordance with his/her age, development and evolving capacities.
- C) Informs the child of the outcome of the decision making process and explains how his/her views were considered.
- D) Manages expectations of the participation of the child.
- E) Makes sure that action or development plans are based on the views of the child and shared with the child.
- F) Ensures that appointments are made with the informed consent of the child.
- G) Informs the child about complaint procedures concerning the guardianship and is open to feedback from the child.
- H) Uses creative tools, like visual materials, where necessary to ensure participation.

Formally, the minor is involved in all decisions. This is laid down in the relevant legal principles, particularly in the Youth Welfare Act. The involvement means that the minor must be heard if he is able to be. For many years there has been an on-going debate between the rights of the parents and the rights of the child. The relationship between these two main principles is becoming more and more balanced; especially in the Youth Welfare Act special attention is given to participation.

In practice, participation is often difficult due to the poor quality of commitment of individual guardians or by poor structural conditions. This was also expressed during the workshops. In fact, the guardians often get to know the minors quite late, their role in the reception process is limited (see above). Furthermore, guardian and minor already meet with knowledge about each other, which has a big influence on their relationship: minors are often informed by others (separated children, social workers, etc.) about what they can expect from the individual guardian. Minors will also often have already found confidence with other stakeholders, especially with the social workers in youth welfare facilities. The guardian is therefore not necessarily able to engage the minor in the situation, it is more the minor and the social workers who let the guardian participate in all proceedings.

The information about the role of the guardian and his work is given individually. During the workshops the guardians explained individual ways of informing the children. There is no uniform information for young people about the tasks of the guardian. In many cases most information about the guardian is provided by the social workers in the youth welfare facilities where the minors live. In such situations good and bad experiences with guardians are repeated, especially experiences by other minors. This inevitably influences the relationship.

The central element of the participation of young people is the helpers conference, which is partly described above. In this process other actors are still involved, but there is the possibility for the exchange with the guardian and the development of a durable solution. The helpers conference

is initiated by the youth welfare office, after receiving an application for youth welfare support by the guardian. The outcomes of the helpers conference is the legal basis for the decision over the application. This is an administrative act, so the minor and his guardian are able to appeal against it. The sequence of the helpers conference provides that the youth is actively part of the meeting and development will be closely followed. The helpers conference shows the role of the guardian: he is part of the network around the minor, but he cannot decide on his own.

From the perspective of the Bundesfachverband UMF it is obvious that there are many decisions in which the minor's views are not taken into account. Local structures in the youth welfare system and deficits in the knowledge about the ways to receive a residence permit determine the child's participation. To explain this thesis, here are some examples: currently there are procedures to distribute the minors in nearly all federal states. Distribution is part of the Residence Act⁴¹ and contradicts with Youth Welfare Act. From our experience the views of the minors are not taken into account in every single case. Often distribution is justified by the argument that every municipality has to fulfil a quota. This contradicts the idea of participation. Another example is the lack of suitable placements. Not every municipality has enough housing-opportunities for all minors, often specialized housing is not available. This contradicts the right of the guardian to express their wish and make an appropriate choice as well, if they have no possibility to choose the right placement.

In the workshop with the minors this standard was not ranked high. This could be interpreted in the sense that participation is not seen as a task of the guardian. Participation seems to be the task of the social workers.

During the workshops with the guardians important challenges were also discussed: it was mentioned that the short time provided to get to know each other affects their work and the possibility of recognizing the minor's wishes. Another outcome was the guardians describing themselves as a kind of manager who supervises the help-process.

This standard was not seen as important as it is in practice. From the point of view of the Bundesfachverband this is related to the situation that there are lots of other processes (e.g. in residential procedure) which seem to be more important. So the guardians focus on other topics than participation.

Recommendations

1. There should be written and oral material for separated children in which is explained what role the guardian has and that they have the right to be heard.
2. Existing procedure (e.g.) the distribution of separated children in some federal states have to revised with focus on participation.

41 § 15a AufenthG.

STANDARD 3



The guardian protects the safety of the child.

Indicators:

The guardian:

- A) Gives the highest possible priority to the child's safety and ensures that his/her own conduct does not put the child at risk.
- B) Makes sure the child knows he/she is welcome to voice anything concerning his/her safety or any danger that he/she feels.
- C) Keeps all information about and from the child confidential unless it is necessary to break confidentiality to keep the child or another child safe and informs the child, when possible, about a confidentiality breach.
- D) Can identify the signals of child abuse and trafficking, acts upon signals of any harm or danger to the child and reports those signals to the relevant child protection authorities.
- E) Is aware of the additional pressure, dangers and risks presented by those who facilitated the child's journey.
- F) Ensures that if a child is a victim of violence, abuse or trafficking the child gets appropriate treatment.
- G) Always reports the disappearance of a child.
- H) Is open about being monitored on his/her own behaviour.

If an unaccompanied minor arrives in Germany, his situation is assessed by law as endangerment of the best interest of the child.⁴² This means that all separated children entering the state must be taken into care by the youth welfare offices which have to adopt interim protective measures. The State has to exercise its governmental custodianship here. In this process, the guardian is not included because he is usually not appointed yet. The minor is taken into care until a placement in a youth welfare organization is found or he is passed to the parent or guardian.

The question of the safety of young people is in fact delegated by the guardian to the appropriate facilities. The guardian, in acting as a manager, tends in practice to remain in the background. Based on the discussions in the workshop, the key challenge is to have the issue of security discussed at more length and the possibilities of action for the guardian precisely defined.

The topic of human trafficking is almost completely absent in the debate about the custodial care of separated children, there is clearly very little experience and knowledge about how to deal with such cases. As reported by other NGOs working with victims of human trafficking, the number of cases is very low. A possible explanation could be that the victims do not come to Germany as separated children or are not identified as such.

The second particularly relevant matter in the field of security in Germany concerns the question of disappearances. In Germany the number of incoming separated children is not recorded nationwide. Accordingly, there is no nationwide survey of the separated children who are missing. This is recognized only by the local youth welfare offices or in the family courts if the guardians files the corresponding reports. In addition, the appropriate police authorities will be informed. Separated children often disappear before the guardians are appointed, with the consequence that the guardian

42 § 42 SGB VIII

is unable to fulfil his duties accordingly. In the workshop it was articulated that the guardians do not have a lot of tools to act after the disappearance.

There are no specific rules or protocols on how guardians have to deal with issues such as human trafficking or exploitation. This shows, firstly, that the German guardians essentially work in a German youth welfare system and the special risks of separated children are unknown, and secondly that there are no specific training opportunities.

During the workshops, there were not many reactions to this topic, and in the opinion of Bundesfachverband UMF this is due to lack of relevant experiences. The topic of confidentiality was discussed under the theme of social data security, concerning what kind of information can be shared with other authorities/offices. And also beside the workshop this standard is not debated quite intensively right now.

Recommendation

There has to be an extended research to find out more about the situation of trafficked and missed separated children.

STANDARD 4



The guardian acts as an advocate for the rights of the child.

Indicators:

The guardian:

- A) Is an assertive, committed and brave watchdog, dedicated to defending the rights of the child.
- B) Is not afraid of taking different points of view from the authorities and acts independently, solely based on the best interests of the child.
- C) Opposes decisions which are not taken in the best interests of the child and pursues fair procedures concerning the child.
- D) Shows emotional strength to deal with wearing situations, frustrations and hostility or pressure through third parties.
- E) Is present during the determination of the best interest of the child at important decisions.

The guardian should act as an advocate for separated children, regardless of the nationality or residence permit of the ward. The main difference to cases of non-separated children is that the guardians of separated children often focus on the question of residence status, so that the requirements for custodial work differ significantly. In addition, the guardian is not always present, or may not be present. At the age determination process, for example, he is not present regularly.

The topic of legal representation was an important theme during the workshops: Of course, there are very dedicated guardians with a large legal knowledge to support the separated children. This is particularly necessary in the case of asylum and residence proceedings, as the separated children usually do not receive free legal representation. It follows that the guardians will be involved in many cases, he is part of the process and supports the young people in the formulation of appeals, etc. The extent of lawyers' involvement depends on the individual case, since this usually will not be funded. For many years the German government has ignored the claims of NGOs and others for free legal support during the asylum procedure. Due to the fact that the youth welfare is increasingly involved in the reception process of separated children, there is a burgeoning debate on whether these costs can be financed by the youth welfare itself. In the city of Hamburg there are some youth welfare projects which already include the costs for a lawyer in their daily rate, so the minors have the possibility of legal support. A common model is that the minors save a portion of their monthly pocket money to finance the lawyer. However there are some guardians with reservations about the appointment of lawyers, as they consider them to be unnecessary, see them as competition or for other similar reasons.

In the legal discussion there is still the question of whether the guardian may represent a minor who is capable of acting in the asylum and residence procedure, or whether they can be authorized. For practical reasons, many guardians ask their wards for a delegation.

There are several guardians, especially in municipalities with larger communities of separated children, who try to engage with NGOs and local help desks (these are run by welfare associations and they focus on the asylum- and residence procedure) if the rights of the wards are neglected. Thus a close link between refugee councils, advisory services, facilities and guardians has been cultivated in some cities, they struggle together for the sake of young people. Also, within the Bundesfachverband UMF some guardians are very active and try to solve problems not only in individual cases, but also at the political level.

In Berlin there is currently a huge problem with regard to the role of guardians: nearly every decision by the family court, which does not provide a medical age assessment or a comprehensive statement that no contact with the parents is possible, is appealed by public guardians. It is not known, why the guardians act like this. This delays the appointment often by many months, it creates a large gap in the protection and the perspective of young people is not recognized.

The guardians are all independent, including the public guardians. There is no way for the migration authorities to put pressure on the guardians. Pressure can occur when personal relationships are involved, e.g. guardianship authorities in small towns are often housed together with the immigration authorities.

In the workshops the guardians expressed that they often feel overworked, especially if they deal with the complicated asylum- and residence law. There is a huge difference between guardians who are in contact with separated children regularly and the guardians who are appointed rarely. The first group knows what to do and knows exactly which tasks should be done by a lawyer. The other group is not familiar with the situation and has to spend huge amounts of time on every unaccompanied minor, which is often not possible.

To conclude: the guardian can act like an advocate for the minor, but there are several cases in which he is not engaged as he should. Or the guardians are overstrained by the complicated foreigners which they have to face.

Recommendation

There has to be free legal support by a qualified lawyer for every separated child.

STANDARD 5



The guardian is a bridge between and a focal point for the child and other actors involved.

Indicators:

The guardian:

- A) Keeps in contact with and is the focal point for:
 - The lawyer,
 - Reception and social workers (mentors),
 - (Psycho)social and medical care givers,
 - Migration authorities,
 - School teachers,
 - Foster parents,
 - Social Services,
 - (Extended) family members in the host country and/or the country of origin,
 - Other relevant actors.
- B) Informs the child about his/her rights and obligations in relation to the other actors.
- C) Assists in establishing links with the child's community and developing key one on one relationships that gives the child a sense of belonging to a family or group.
- D) Ensures that he/she is informed about decisions which have an impact on the child and is present at key meetings and interviews where decisions are made.

In Germany the guardian should be part of a network around the minor. How this network is built and what role the guardian has really depends on local situations. Based on the information collected in the workshops and in several other interviews, the role of the guardian can be described in three main typologies: personal adviser, manager/supervisor or administrator. Volunteer guardians are often personal advisers who are engaged in a personal manner. They focus on a personal relation, the integration of the minor in German society. Their interpretation is often quite personal. Managers/Supervisors focus on the main tasks and emerging problems. Many paid guardians fulfil this role, a more personal role is impossible due to the caseload. The administrator is the one who only focusses on giving signatures if needed, personal support is done by other persons.

There is no common policy on how the guardians communicate with the other partners. As mentioned above the helpers' conference is the central event for developing the wards' perspectives. During the meetings the role of the guardians also differs a lot. Some guardians are only present in a passive manner, other act on behalf of the minors.

Currently there is an important debate around the position of the guardian within the Dublin-procedure.⁴³ The Federal Office for Migration and Refugees has interpreted the Dublin Regulation in recent years in such a way that the child's best interests are not considered in any case. In the meantime this perspective has been revised, but the question of how the guardians and the youth welfare offices have to be taken into account when examining the child's best interests remains. This question is still unclear and there is no published procedure for this.

Another important field is the ratio of guardianships to local authorities and the role of public guardians within the youth welfare offices. According to the law, (public) guardians are independent. Even if they are paid by the youth welfare office, they are not subject to directives. However guardians

⁴³ The Dublin-regulation determines the EU-memberstate which is responsible for the asylum-claim of a third country national.

are evidently part of the team of the youth welfare office, they are in daily contact with the other employees and they can be employed as guardians and as social workers. There is thus the possibility of conflicts of interests.

Most other parties e.g. the whole youth welfare system know about the role of the guardian. There are lots of experiences with the guardians. The problem is that the Federal Office for Migration and Refugees and the aliens authorities do not know enough about the role of the guardian and the best interest, and vice versa. The Bundesfachverband UMF is currently trying to train the staff of the Federal Office for Migration and Refugees about the guardians' role and the International Social Service is doing training sessions for youth welfare (including public guardians) and aliens authorities together.

During the workshops the guardians used the term manager to describe their role. Due to the big caseload this term can make sense, if they interpret their role if they interpret their role as controlling and supervising the work of the other stakeholders. Furthermore the ward should know that the guardian is accessible for him in cases of conflict.

There is no common understanding about the position of the guardian. Of course, in the law the position is clearly described but in practice it differs a lot. Especially the relation to other actors in the field is not clear.

Recommendation

The guardian should actively clarify his position to other stakeholders. Especially the alien authorities and the Federal Office for Migration should be informed more detailed about the guardians' role.

STANDARD 6



The guardian ensures the timely identification and implementation of a durable solution.

Indicators:

The guardian:

- A) Challenges others to prove their proposed solutions and implementation plan take the best interest as a primary consideration, while taking at least the following into account:
- The child's family situation,
 - The situation in the country of origin,
 - The adequacy of concrete care arrangements to ensure a safe and secure environment,
 - The safety and risks the child is exposed to,
 - The level of integration in the host country,
 - The mental and physical health of the child,
 - The possibilities of development in the various options.
- B) Supports the reunification of the child with his/her family when this is in the best interest of the child taking into account any danger related to the exile grounds for the child or his/her family.
- The guardian has personal contact with family members and organizations in the country of origin after consent of the child, and checks their abilities to take care of the child in a safe and appropriate way,
 - The guardian considers the signals of trafficking related to the role of family members.
- C) Supports the integration of the child in the host country when this is in the best interests of the child, giving particular consideration to:
- Language,
 - Social contacts,
 - Education and employment.
- D) Supports a safe return to the home country when this is in the best interest of the child.
- Depending upon the wishes of the child the guardian accompanies the returning child or he/she arranges somebody else to do this.
 - The guardian oversees the preparation and monitoring of a life project/reintegration plan before and after the return.
 - The guardian tries to be informed about the well-being of the child after he/she is returned to the home country.
- E) Prepares the child for all predictable changes which will occur after he/she turns eighteen.

The path to a lasting, sustainable perspective is handled individually, there are no specific procedures to be applied in every case. The focus is always to clarify the residency law perspective, this is expressed by most minors. In Germany, in most cases, attempts to achieve a permanent stay by applying for asylum is the first premise. Nevertheless, it is possible to receive a temporary tolerated stay (Duldung), because in practice minors are not returned by force. The temporary tolerated stay is not a residence permit and many separated children have the temporary tolerated stay before the asylum procedure or after a negative decision.⁴⁴ The issue of family reunification, especially from the perspective of young people, is very important, but in practice the guardians often lack the tools to initiate the appropriate processes. This was reported by several guardians. The possibilities that exist for example in the context of the Dublin Regulation are not used very often. Accordingly, for the guardians, the implementation of the new Dublin-III-Regulation is a challenge. In cases of

44 § 60a AufenthG.

family reunification in particular the resources of the ISS, UNHCR and Red Cross Tracing Service are used. However, these possibilities are not known to all guardians, information needs to be spread. The issue of return plays a minor role in Germany. There is in fact no return program for separated children, from all sides the focus is on integration. During the asylum procedure approximately 35% receive a protection status. But there are other ways to get a residence permit, one main factor is that it has to be shown, that the persons wants to integrate.

When the unaccompanied minor turns 18 the guardianship ends in accordance with statutory requirements. This does not apply when national law in the country of origin states a different majority age. In this case the end of guardianship depends on the nationality of the ward. The support from guardians ends abruptly when the separated child turns 18, this is a huge problem, which was described by guardians and separated children. The paid guardians are in fact not able to ensure a follow-up given their high number of cases, because there are no time-slots foreseen. For young people, the end of the guardianship often takes place during the process of still waiting for a residence permit. Without a guardian, they are often on their own, as coming of age often leads to the end of youth welfare measures as well, so that two main pillars of support disappear.

The independent guardianship offers the advantage that the relationship often “survives” the age limit, where previously a good relationship has been established. Experience in various projects shows that volunteer guardians can contribute significantly to the integration into society, as their personal network can benefit the youth. In the city of Stuttgart a best-practise-model is implemented: if a minor turns 18, the guardianship organization can still be paid by the City to support them in all relevant areas if support is needed. This directive has existed for several years and is the result of an associational guardianship organisation and youth welfare office.

One main difference with other minors is that the period of support of separated children by youth welfare and the guardian is quite short. The aim of the youth welfare, to ensure that all minors have the right to personal development and education, is hard to fulfil if the support stops at the age of 18. Due to fact that the middle- and long-term perspective is unclear, steps to become an independent person are made under pressure.

For many guardians, the subject of return is not a topic: on the one hand, there is no debate on this question, it is rather assumed that given the fact that the minor is here, the minor wants to stay here. Furthermore, there is little experience of return; there is only one project in Germany that intensively deals with the question of the return of children. There is also great lack of knowledge about cases of departure, whether voluntary or forced. Following the German legal situation, the guardian is responsible until the child is handed over to his parents or a new guardianship is established. This fact is relatively unknown, but it implies that the responsibility of guardians does not end with departure. They are appointed until the minor is in contact with his/her parents or until another person is appointed as guardian. Because there are just a few cases of return, no good information is available.

During the workshops, the separated children told different stories about the guardians’ activities to establish a durable solution. Some minors were really happy about the engagement, others reported that they were prepared by the social workers and not by the guardians for the asylum hearing.

The guardians fulfil this standard differently. It is important to note that the most guardians are only engaged until the separated child turns 18, so the time to find a durable solution is often quite short. Furthermore a durable solution is often linked with an extend knowledge of the foreigners law.

Recommendations

1. To find a durable solution the guardian should interact with qualified lawyers.
2. If the minor turns 18 there should be, if necessary, a transition of the case to another stakeholder to make sure that the ward is still supported.

STANDARD 7



The guardian treats the child with respect and dignity.

Indicators:

The guardian:

- A) Treats the child with an unprejudiced, open attitude.
- B) Listens to the child's views and concerns and takes them seriously.
- C) Demonstrates the appropriate behaviour and attitude he/she expects from the child too.
- D) Shows interest in the child's life by asking questions without being too obtrusive.
- E) Is sensible to cultural and/or religious differences.
- F) Respects the child's right to privacy and informs the child about the possibility to see other professionals on his/her own.
- G) Supports the child in maintaining and/or creating his/her identity and self-esteem.
- H) Shows a flexible approach tailored to individual needs of the child.
- I) Does not breach the right of the child to maintain his/her physical and mental integrity.

For the young people participating in the workshop, this standard was extremely important. The handling and manners, the interest in the career of the young person and an open behaviour towards young people - understandably - is of great importance.

In Germany there are no uniform standards for acting as a guardian beyond the abstract specifications of the legal texts. Elaborations were designed and spread by various institutions comparable to the core standards. For example the Central Youth Welfare Office Westfalia (LWL-Landesjugendamt Westfalen) in cooperation with Central Youth Welfare Office Rhineland (LVR-Landesjugendamt Rheinland) have published guidelines for guardians.⁴⁵ Also, there are several professional networks of guardians dealing with such topics, but a catalogue of standards which lists useful individual characteristics does not exist. Finally, there is also the question of whether a catalogue of criteria must exist. What is clear in all the publications is that the respectful handling is a key component of the relationship between the guardian and his ward.

During the research for this project, dissatisfaction with the quality of the custodial care has also been expressed by some young people. This refers in particular to contacts which do not take place, insecurity about the tasks of the guardian, alternative views to the views of the guardian and sometimes even bitterness about the missing activities with the guardians.

The only formal tool is the duty of the guardian to report to the family court about every single case. Another form of monitoring is done by the carers where the separated children are placed. Very often these persons have a closer relationship with the minor and can support the minors in case of conflicts with the guardian.

It is obvious that the control of the family court has a very high threshold, a teenager will not report easily to court and blame his guardian. Furthermore a complaint about a questionable guardianship action is difficult when no alternatives are available. In smaller youth welfare offices particularly, the guardianship may be disclosed only to a person who is probably in close contact with the previous guardian. To create a new basis of trust is then difficult for the young people. The new guardian will

⁴⁵ http://www.lvr.de/de/nav_main/jugend_2/metanavigation/service_1/arbeitshilfen/jugendmter_3/vormundschaftundbeistandschaft.html

also inevitably be under the pressure from the team and will not be able to simply act contrary to the old guardian.

This standard has also been described as very significant in the workshop. But it was also expressed that this standard is difficult to fulfil because the personal relations would sometimes simply not fit. For the Bundesfachverband UMF, however, the decisive problem is that the guardians who show non-respectful behaviour are unreachable. Again, the situation in Berlin supports these negative implications: there are a couple guardians, who act as public guardians and who will be appointed for almost all separated children, at least for the first months. There are several complaints about their working mode: often they meet their wards for the first time during the helpers conference, they do not believe the stated age of the minors and there is no relation of trust.

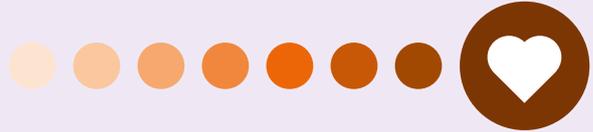
The main wish by the minors during the workshops was to be taken seriously by the guardians. Furthermore it was outlined that personal contact is desirable. Our impression during the talks with the guardians was that many of them try to fulfil this standard, but that there are differences between the views and the perception of minors and guardians. For a minor this relationship is somehow unique, for the public guardian it is daily work. Even if the guardian is absolutely motivated there are different expectations, which have to be compensated by others (e.g. social workers). Therefore volunteer guardians can be a perfect alternative, especially for minors who are interested in a personal contact with guardians. The workshop showed that their motivation is different to other guardians. The additional personal engagement with the minor enables a relationship of trust and respect. Another major aspect is that the volunteer guardians get to know the minors before the appointment, so it is possible to check whether a trustful personal contact exists.

It is really difficult to fulfil this standard in general, because every guardian can handle the relation to the minor on his own way. Nevertheless it is obvious that for the separated children it is extremely important for a relationship of trust to be treated respectfully.

Recommendations

1. There should be a low-threshold complaint mechanism, so that in cases of problems the separated child can more easily complain and maybe even change the guardian.
2. The personal relationship which is foreseen in the German law has to be strengthened by a further reduction of the caseload.

STANDARD 8



The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.

Indicators:

The guardian:

- A) Knows the child personally.
- B) Keeps all information about and from the child confidential unless it is necessary to break confidentiality to keep the child or another child safe and informs the child, when possible, about a confidentiality breach.
- C) Does not judge the child's reasons for exile or allow this to effect his/her relationship with the child.
- D) Is always honest with the child and keeps his/her promises.
- E) Gives clear information about his role and limitations in a way that the child understands and can recall.
- F) Demonstrates to the child that he/she really cares for the child – that he/she works from the heart – and that he/she feels responsible for the child.
- G) Makes clear to the child that a child who disappears is always welcome to return to the guardian.
- H) Pays attention to verbal, nonverbal and emotional communication.
- I) Is empathic towards the child and gives moral and emotional support.

The standard was perceived by all stakeholders as equally as important as Standard 7, the minors in particular mentioned this standard. At this point, the drawbacks will be discussed with reference to the age issue. In advance it should be noted that there are many guardians who meet this standard, who manage to build a working relationship with the individual young person. There can also be clear agreements between the guardians and other helpers (e.g. social workers), who take over the relevant tasks.

In Berlin, many appointments of guardians are appealed by guardians themselves. The guardians insist on a medical age assessment and a search for the parents to make sure that parental care is suspended and an appointment is needed. This behaviour is significant in assessing the standard, because it shows that there are guardians who assume overall that the young people have either cheated on their age or that there is a contact with the parents, so parental authority can be exercised. The appeal against the appointment is made before the young people come into contact with the guardians. Thus, there is a general distrust about the information of the minors and a serious relationship is inevitably hampered.

On the other hand, in reality there are young people reporting a false age when taken into care, whether consciously or unconsciously or because of instructions by a third party. If the wrong information is not noticed during an age assessment, it is possible that a guardian will be appointed to an adult. Especially in these cases, however, is the relationship of trust between guardian and ward essential in order to address this issue together. In many workshops this topic was discussed. By law the guardian has to notify the family court when he is appointed because of incorrect facts, or if the reasons for the appointment are no longer fulfilled. If a guardian should have a corresponding "suspicion", it would be important for these standards that both parties can talk confidently to work out a perspective. This discussion seemed to be important during the workshop with the guardians.

Another example illustrates the situation quite well: if you imagine a picture with 50 minors on it, you will see how big the caseload of a guardian is. It is impossible to build up a personal relationship with all of them and you are likely to concentrate on the ones who are having serious problems. Therefore many separated children are dependent on support of social workers.

Right now it is impossible for the (public) guardian to have a personal relations with all wards.

Recommendations

1. The guardian ensures that there is at least one person of trust for the minor, it does not matter if it is the social worker of the youth welfare facility or the guardian himself.
2. If a separated child points out the he is interested in a personal relation with the guardian, the family court and other stakeholder should search for an independent guardian.

STANDARD 9



The guardian is accessible.

Indicators:

The guardian:

- A) Sees the child as soon as possible after his/her appointment in a face to face talk.
- B) Pays visits to the child on a frequent basis.
- C) Can be reached easily by the child by phone or E-mail.
- D) Communicates in a way which fits the age and development of the child.
- E) Should make use of interpreters when necessary.
- F) The guardian lives near enough to the child to be able to respond quickly to difficulties.
- G) Informs the child where and when they can meet.
- H) Contacts the child from time to time to keep in touch also when there is no specific need to do so.

The accessibility of the guardian plays a major role for all involved. All the forms of guardianship in Germany offer very different ways to fulfil this standard. The professional guardians are in general more clearly linked to the accessibility of the normal office working hours, whereas the contact and the availability of volunteer guardians is often possible informally. In the workshops it was stressed by the present guardians that in fact someone is always available for the young people in the offices who can assist if necessary. Also phone numbers are given to the minors. The contact via Skype, Facebook or via email seems only occasionally to play a role here, there are still some reservations. For example some guardians report that they fear a mixing of business and personal affairs if their Facebook profile is known to the minors. From our point of view social media could be a good chance to simplify the contact without making an appointment.

A goal of the reform of the guardianship law in 2011 was the creation of a “personally managed” guardianship; guardians should no longer be needed only for signatures. Before that time there were several guardians in youth welfare offices with a caseload of up to 250 wards per guardian. The guardian was in general supported by case managers, but could provide no serious personal attention. The reform fixed contact rules, and therefore the guardian must see his wards once a month in the personal environment of the minor. In connection with the provision that a full-time guardian may not serve more than 50 wards, it follows that the guardian actually has to make 50 home visits per month, which is completely unrealistic in practice. Many guardians work under extreme pressure, they try to do the best for their wards, but they do not have enough time for them. The topic of translation was discussed with lots of stakeholders. There are not always interpreters present, how much money will get spent on this depends on the local youth welfare office. It is obvious that there have to be well-trained translators. During the first few months, a time when the need for translation is obvious, a translator has to be present at every conversation. This was expressed very much by the guardians and the separated children.

To have access to the guardian really depends on the form of guardianship and the individual interpretation of the role of the guardian. The major problem is that the guardian may be accessible but that there is no grown relationship of trust. So in urgent cases the minors contact at first the social workers in the youth welfare facilities.

Recommendation

Other forms of access like Skype or Social Networks should be used more often to keep the contact between ward and guardian.

STANDARD 10



The guardian is equipped with relevant professional knowledge and competences.

Indicators:

The guardian:

- A) Has working knowledge about:
 - Children's rights,
 - Migration and asylum law,
 - Child developmental psychology,
 - Trauma,
 - Trafficking,
 - Intercultural communication,
 - Child abuse and protection,
 - Social welfare,
 - The situation and life in the home country of the child.
- B) Knows his/her personal and professional limits and is open to improve his/her knowledge, methodology and attitude.
- C) Is proactive in identifying learning and development needs and requests training when necessary.
- D) Manages his/her caseload to give due attention to all the children he/she works with.
- E) Is well organized, keeps records and is accountable.
- F) Can manage costs and available resources.
- G) Works according to a set methodology.
- H) Seeks support and counselling whenever necessary and exchanges experiences with his/her colleagues on a regular basis.
- I) Is open to supervision and monitoring.
- J) Reflects on his/her actions, role and motivation.

The German guardianship system as described allows various forms of guardianship. Each form requires different qualifications. The public guardians were, until the reform of guardianship law in 2011, primarily from administrative staff. Since the reform, educational professionals are increasingly employed. According to § 72 SGB VIII all employees of youth welfare service, including the public guardians have to be skilled employees. This rule established that only professionals could work in the field of child and youth welfare. But this includes no indication about the necessary knowledge required for the care of separated children. The associational guardianships are in general led by social workers, this is recorded in detail in the operating licenses of the association. The professional guardians need no special formal qualification, however as they are ordered by the courts themselves, it can be assumed that people with special skills (e.g. social workers, lawyers, psychologists) are preferred. Experience has shown that professional guardians also work as custodians, lawyers or attorneys of the child. The volunteer need not to have an individual legal qualification, this form of guardianship is explicitly directed at family members (as it was created) and non-professionals, who are able to take over a guardianship.

There are different training courses for guardians, these are organized for example by youth welfare offices, federal youth welfare offices, in-house training or by the German Institute for Youth Human Services and Family Law (Deutsches Institut für Jugendhilfe und Familienrecht - DIJuF). The offers are voluntary, there are no mandatory courses for prospective guardians. The Bundesfachverband UMF also offers specific training for guardians of UMF, and a few federal youth services started

with such training courses during the last year. There is a very great need for training among the guardians and the UMF courses are in high demand. The experience with the high demand for training courses shows us that there is a willingness on the part of guardians to take over new tasks in a professional manner. During one workshop a discussion about the logic of such trainings started, because all guardians involved were in contact only once a year or even less with separated children. These guardians were absolutely interested and their main focus was to get an overview and orientation and to get addresses and useful literature.

Public guardians in Germany also have access to legal advice by the German Institute for Youth Human Services and Family Law. There they can ask questions about individual advice on legal matters. During the last few years, more and more advice about the situation of separated children has been prepared.

The minors told us in the workshop how important good training is, they feel that it is a basic need for a guardian to receive good training. One boy gave a perfect summary: *“You cannot play football without training.”*

Recommendations

1. Specialised training courses for guardians of separated children should be extended.
2. A handbook with all relevant information, especially knowledge about the foreigners’ law, would be a good support for guardians.

CONCLUSIONS

In Germany the guardian should be like a personal manager.⁴⁶ He should have a personal contact with the minor, even when his time is limited, he should be engaged in all relevant decisions. The tasks, together with differentiated forms of guardianship lead to a non-transparent system.

It must first be stated that in many cases it depends on chance whether an unaccompanied minor receives enough care by his guardian or not. This is often compensated by other stakeholders such as social workers. Nevertheless, the separated children do not benefit as much as they could from the possibilities that guardians can offer. There is therefore a long way to go to improve the German guardianship system and to implement standards like the Core Standards. It is important to note that in such a process the positive examples of guardianship work can be used as good examples. Germany can offer a well-functioning system, but this has to be developed.

The discussions after the desk-research and the workshops focused on five different aspects.

1. The role of the guardian can change a lot in the German system. The law offers a broad framework in which the guardian can act. So guardians are independent and can use this to provide absolute support to the unaccompanied minor, as often happens in practice. But it is also possible that the guardian reduces his role to a distanced sort of manager, who merely signs the relevant papers. The revised guardianship law and the emphasis on personal relations are challenged by the caseload which remains high.
2. During the research it becomes clearer that the existing monitoring system should be further developed. The main tool for complaints are the family courts, and this tool is a high-threshold for minors. Furthermore, during the monitoring the minors are not asked what they think about the quality of the guardians' work. The monitoring focusses only on the written reports by the guardian himself. This instrument is too weak, other stakeholders should to be included.
3. The benchmark of the different standards shows the variety and the different possibilities of the four relevant forms of guardianship. But in practice these forms are not embedded in a system, the chances that derive from the different forms of guardianship are not used. The guardian and the guardianship form could change quite easily if the relationship is improvable. But there is a lack of information for the unaccompanied minor about this and the minor is reliant on others, e.g. his social worker.
4. The cooperation between the different stakeholders is a major topic. Inside the youth welfare system there is plenty of knowledge about the work and the tasks of the guardian. But the cooperation with stakeholders, like the Federal Office for Migration and Refugees or local aliens authority, and the role of the guardian should be communicated in a more effective way. Of course, currently the role of the guardian in legal aspects concerning the residence procedure is quite complicated, especially because of the 16 and 17 year old minors who are legally capable of acting. In the context of this situation it seems important that the guardians – for example together via the regional youth welfare offices – clarify their position in discussion with the named authorities. This could strengthen them a lot, because currently the role of guardianship, e.g. in the Dublin-II-procedure – is not observed enough.
5. The education and training of guardians varies. Due to the fact that the requirements were low-threshold in the past, the focus has been on administrative matters and there is a lack of guardians with specialized socio-pedagogic skills. Furthermore the trainings and workshops offered cannot cater to the needs of the guardians.

46 § 1793 para. 1(a) BGB.

SUMMARY

Guardianships are a major topic in the reception of separated children in Germany. The situation is complex, especially due to the German federal structure and the local responsibility for the youth welfare system. In nearly every municipality traditions which frame the guardian's role have been established. Even the common Federal law and the common legal basis cannot compensate for this. The German law knows different forms of guardianships, four forms are especially relevant: public guardians, independent guardians, association guardians and professional guardians. Most separated children are supported by public guardians, although the law prefers the independent guardianship.

The Core Standards can be split in three main parts: (a) the first six standards focus on the role of the guardian, (b) standard seven to nine describe the relationship between guardian and ward and (c) the last standard is about the training for guardians.

- a) The tasks of the guardian presented in the Core Standards are not in conflict with the German law. To formulate it in a positive way, the law enables the guardian to fulfil the Core Standards. The guardian should act in the best interest of the child, but the term is defined in the sense of parental care. There are no common guidelines about the tasks of a guardian and the guardian is not part of all processes which determine the child's future (e.g. age assessment). The standards concerning the participation are implemented in the law, but in practice there are a lot of problems. The two main points to discuss are the poor structural circumstances which lots of guardians face and the inadequate quality of work by individual guardians. The high caseloads prevent a close relationship with and participation of the minor. The positive tools are the Helpers' Conferences in which the view of the unaccompanied minor has to be taken into account. In this conference the guardian takes part, but so does the personal social worker, the youth welfare office and for example a teacher from school. The protection of the unaccompanied minor, as presented in Standard three, is firstly the task of the youth welfare office, as they have to take the minor into care. The guardian is, responsible for the safety, but due to the late appointments, the youth welfare office acts before the guardian. It is important to note that the topic of trafficking and the disappearance of separated children is not discussed in a broader sense. Trafficking is often reduced to the question of forced prostitution, these cases are handled together with organizations that are specialized on this topic. Other forms of trafficking and the consequential exploitation are not discussed. The disappearance of separated children is not even counted in a nationwide statistic, but lots of minors seem to travel further to other EU-member states. This standard is not fulfilled yet. The legal representation plays a major role in the work of guardians of separated children, because they have no lawyer and in many cases the lawyer is not for free. So the guardian has to take over such tasks. Furthermore, the law stating that separated children are capable of acting during the asylum and residence procedure makes it more complicated for the guardian to act like an advocate for the minor. The guardian as a bridge between the minor and the other persons involved in the "helpers-conference" does not fit with the German reality. In Germany the guardian is part of a network around the minor, but this network can have different focuses, depending on the local structure and the wishes of the unaccompanied minor. But the guardians still interpret their role with the Federal Office for Migration and Refugees and the local foreigner authorities quite differently, so there is no common practice by all guardians. To search for a durable solution should be a task for the guardians, and nearly all of them try to find a solution, but the end of the guardianship, often during the asylum-procedure, terminates this process. The volunteer guardians, who often are appointed only to one or two separated children, can often offer a relationship which does not stop at the age of 18, so support after the 18th birthday is possible. Furthermore, it has to be stated that the topic of return is not often discussed if the guardians and wards are looking for a durable solution.

- b) The standards concerning the relationship between guardian and ward were ranked as the most important standards by the separated children during the interview. During the workshop it was clearly stated by the minors that they are really interested in personal contact and that they do not want the guardians just to meet them concerning administrative affairs. One minor said during the workshop that he wished just to have a walk and talk together. Debating the standard concerning respect and dignity made it obvious that there are no common standards about the work of guardians. Consequently, there are no official tools for building the relationship. There is also a lack of monitoring instruments. Even if the guardians have the duty to report to the family court, the minor has no low-threshold possibilities to complain about the guardian. The relationship is often not as it is described in standard eight. There are several complaints by separated children about guardians, who do not believe their age or the absence of the parents, for example. In these cases a good relationship is hindered by the lack of trust. The standards concerning the access to the guardian were also debated a lot: the caseload of most public guardians is more than 50 wards per guardian, so the personal access is limited. Furthermore, the missing translators were a prominent topic: this hinders the contact, in particular at the beginning.
- c) The closing standard on the training of guardians was also discussed at length. One minor stated: “you cannot play football without training.” The outcomes of the desk-research and the workshops showed us that there is a lack of training and workshops. There is a lot of knowledge but the guardians do not all have access to it. Furthermore, there are some guardians who are not often appointed to separated children, therefore support is necessary.

RECOMMENDATIONS FOR IMPLEMENTATION OF THE CORE STANDARDS ON NATIONAL LEVEL

1. The role of the guardian for separated children has to be communicated to all relevant stakeholders. We believe that the role of the guardian is underrated. The guardian receives the necessary attention only if he is quite active himself. The Federal Office for Migration and Refugees and the local Foreigner Authorities especially have to be informed about the guardians' role and what task the guardian has.
2. The monitoring system must be adjusted to the needs of the minors. A guardian who is not interested in the minors' situation is actually not sanctioned or even monitored in a precise way. Until now, the bar for questioning the guardian's role is too high. It seems unrealistic that the minors will contact the family court. There are of course minors who have done so, but for many minors this barrier is too high. One solution could be to develop an assessment tool for minors about the guardians' work, which will be sent directly to the family court.
3. There have to be more training seminars and workshops for guardians who work with separated children. Right now, there are not enough capacities and there is no common consensus as to which subjects a guardian has to be trained in. The relevant stakeholders (Federal Ministry for Families, Senior Citizens, Women and Youths, German Institute for Youth Human Services and Family Law, the regional youth welfare offices, experienced local youth welfare offices, the Bundesfachverband UMF, etc.) have to create a common training course to support guardians work.
4. Germany has a complicated guardianship system with four forms of guardianship. Nevertheless, these different forms can be a major opportunity for the minors, because family courts could appoint a guardian who fits well. There are separated children who are really looking for an intensive personal contact while others are already independent or receive enough support from the social workers. The problem is that the different forms are not discussed as a joint system, many family courts do not have the choice to search for the "perfect" guardian, they must just choose between one or two guardianship forms. Consequently, the advantage does not exist. To develop such a guardianship system, a strong support of independent guardians is necessary.
5. It is necessary to undertake a scientific study about guardianships and separated children. As far as we know, there is a lot of experience and knowledge, but this information is not systemically evaluated. The outcomes of the first Core Standard project could be good starting point, but a larger study is necessary regarding the question of which guardianship form leads to the best results for separated children.
6. An information brochure, including toolkit, presentation of experiences, relevant jurisprudence and contact addresses should be published and distributed to all guardians by youth welfare offices and family courts.
7. There should be access to legal aid for all separated children, which will support the guardian and the minor during the asylum and residence status procedure.
8. During their workshop they were mainly interested in the standards concerning the relationship between them and the guardian. Their wish was to be in contact with a guardian, who is trained very well, but who has enough time. The separated children explained that they wished the guardian to be interested in their personal matters.

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“A guardian is someone who takes care of you from a distance.”
a separated child

Core Standards for guardians of separated children in Europe:

- Standard 1**  The guardian advocates for all decisions to be taken in the best interests of the child, aimed at the protection and development of the child.
- Standard 2**  The guardian ensures the child's participation in every decision which affects the child.
- Standard 3**  The guardian protects the safety of the child.
- Standard 4**  The guardian acts as an advocate for the rights of the child.
- Standard 5**  The guardian is a bridge between and focal point for the child and other actors involved.
- Standard 6**  The guardian ensures the timely identification and implementation of a durable solution.
- Standard 7**  The guardian treats the child with respect and dignity.
- Standard 8**  The guardian forms a relationship with the child built on mutual trust, openness & confidentiality.
- Standard 9**  The guardian is accessible.
- Standard 10**  The guardian is equipped with relevant professional knowledge and competences.