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# Contested and unheard voices within the asylum framework – participation challenges of unaccompanied minors in Germany and Norway

## Angezweifelte und Ignorierte Ansichten im Rahmen des Asylsystems – Partizipationsdefizite von Unbegleiteten Minderjährigen in Deutschland und Norwegen

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### ABSTRACT

The construction of unaccompanied minor asylum seekers (UMAs) as a vulnerable group places UMAs into a social category that the welfare state is required to deal with. In general, welfare states have the choice of addressing UMAs' needs, either under the scope of the asylum system combined with special provisions, or to place them on a separate track and thus exclude them from ordinary migration framework. This article takes a comparative analysis of the Norwegian (migration track) and German (separate track) asylum and welfare system on how the regulations available for UMAs intersect and how these procedures shape the lived experiences of UMAs and their options for participation in their decisions on their asylum cases, as well as in their everyday lives. When discussing three characteristics of UMA status (their position as protection seeker, as under age, as unaccompanied), we will especially focus on participation rights in how regulations regarding the age assessment, asylum procedure, residence status, legal representation and welfare provisions are applied in practice. To this end, we will highlight experiences of UMA gathered through interviews in Norway and Germany.

### ZUSAMMENFASSUNG

Die Konstruktion von unbegleiteten minderjährigen Asylsuchenden (UMAs) als vulnerable Gruppe platziert UMAs in eine soziale Kategorie, mit der Wohlfahrtsstaaten umgehen müssen. Grundsätzlich haben Wohlfahrtsstaaten dabei die Wahl, den Bedürfnissen von UMAs entweder im Rahmen des Asylsystems mittels besonderer Garantien zu entsprechen oder sie von den regulären migrationsrechtlichen Verfahren auszuschließen, um die wohlfahrtsstaatlichen Verfahren für Minderjährige ohne Fluchthintergrund anzuwenden. In diesem Artikel wird eine vergleichende Analyse des norwegischen Asyl-Ansatzes mit dem deutschen Wohlfahrts-Ansatz vorgenommen, um die jeweilige

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Wechselwirkung von Asyl- und Wohlfahrtsregelungen dahingehend zu untersuchen, inwieweit sie sich auf Partizipationsmöglichkeiten von UMAs in den jeweiligen Verwaltungsverfahren auswirken und ihre Lebenserfahrungen im Alltag prägen. Bei der Untersuchung der Situation von UMAs als Schutzsuchende, als Minderjährige und als Unbegleitete, analysieren wir insbesondere die praktische Implementierung von Beteiligungs- und Informationsrechten im Rahmen der Altersfeststellung, rechtlichen Vertretung, des Asylverfahrens und des Zugangs zu Sozialleistungen. Zu diesem Zweck werden wir die Erfahrungen von UMAs beleuchten, die wir durch Interviews in Norwegen und Deutschland erhoben haben.

## Introduction

Unaccompanied minor asylum seekers (UMAs) are regarded within the Common European Asylum System as vulnerable persons. The construction of UMAs (Sandermann et al., 2017) as a vulnerable group places them in a social category that the welfare state is required to deal with.

The Asylum Procedure Directive 2013/32/EU (APD) provides several provisions to ensure UMAs a non-discriminatory access to the asylum procedure. This includes the right to have independent representatives and legal assistance to ensure participation (Article 22, 25 APD). In addition, under international law the Child Rights Convention (CRC) regards children as individual rights bearers with a need to be heard (Article 12, CRC) and to express their distinct needs and problems. Therefore, all children must be given access to asylum procedures in a child-sensitive and age-friendly manner (UN Committee on the CRC, 2009, para 66).

Further, the Reception Conditions Directive 2013/33/EU (RCD) obliges the states to introduce adjusted reception conditions (Article 24 [2] RCD) as well as a standard of living adequate for the minor's physical, mental, spiritual, moral and social development (Article 23 [1] RCD). While assessing the child's best interests, minors explicitly must be included to ensure that their views are sufficiently included in decisions (Article 22 [2] RCD).

Respecting these specific provisions, states generally have the choice of addressing the vulnerabilities<sup>1</sup> under the scope of the asylum system combined with special provisions or to place them on a separate track and exclude them from the ordinary migration framework in order to apply the procedures that are designed for the vulnerable group.

This article takes a comparative approach comparing Germany and Norway as cases. The aim is to discuss in what ways the youth welfare track (Germany) and the asylum track (Norway) ensure the participation of UMAs regarding the asylum procedure and the recognition of their welfare needs.

We will compare the framework regarding the effects they have on the factual situation and positions of UMAs (either treated mainly as minors or as asylum seekers) regarding their possibilities to participate in the relevant procedures and exercise their agency.

After clarifying our theoretical approach and methodology, we will examine the respective legal frameworks. Afterwards, we will shed light on implementation gaps by highlighting the experiences of UMAs in Norway and Germany. Finally, the two different approaches will be summarised regarding their impacts on the participation and agency of UMAs.

## Theoretical background

Several studies have revealed the discrepancy between the impacts of international principles and national legislations on UMAs (Arnold, 2018; Pobjoy, 2017; Gornik et al., 2018). The asylum procedure is the space for the tension between curbing immigration interests and children's universal rights, including participation rights, when simultaneously balancing welfare interests and ensuring the right to protection (Lundberg & Lind, 2017).

In this matter, the ways states govern the age specific group, as either mainly migrants or as mainly children, have significant implications for their resilience and option to be integrated on short and longer terms (Chase & Allsopp, 2021; Clayton et al., 2019; De Graeve et al., 2017; Garvik & Valenta, 2021; Gupta, 2019; Lidén et al., 2017; Zeller & Sandermann, 2017).

A recent literature review revealed that a problematic relationship remains between children's rights and international refugee law (Brittle & Desmet, 2020). Still, there is little recognition of their specific protection needs in the context of forced migration and the fact that they may seek protection alone (Arnold, 2018; Bhabha, 2009, 2014; Pobjoy, 2017). Further, an increased use of temporary permits can be observed instead of assessing the UMAs' applications for the international protection that may give them refugee status (Chase & Allsopp, 2021; Lidén et al., 2021).

Legal status has a significant impact on the social welfare of minors when including the children's own experiences of the consequences of regulation on their lives (Clayton et al., 2019; Chase & Allsopp, 2021). It is particularly complicated for children seeking asylum to have their voices heard in an effective and meaningful manner (Barnes, 2012; Kohli, 2006; Gupta, 2019). Accordingly, research has emphasised the need for a clear legal framework that guarantees participation rights in asylum procedures and in decisions concerning the care and welfare of UMAs (Pobjoy, 2017; Shamseldin, 2012).

It should be mentioned that UMAs tends to be studied as a group, which may risk reducing attention on their internal diversity how various forms of vulnerabilities intersect and how protection needs are met (Brittle & Desmet, 2020; Sandermann et al., 2017). Several researchers have highlighted the significance of recognising UMAs' agency, ensuring that they are actively involved in the decision-making processes that directly impact their lives (Gupta, 2019; Smyth, 2019). This includes the political recognition of a child-sensitive asylum policy and ensuring competence among lawyers and case workers in the hearing procedure and among representatives. Adequately trained guardians, lawyers and social workers acting in the best interests of UMAs are essential for protecting their participation rights.

## **Methodology – the VULNER project**

This analysis is based on desk research on the legislative and administrative practices related to minors in Germany and Norway and semi-structured non-representative interviews with UMAs conducted during the EU's Horizon 2020 VULNER research project. The project aimed to understand the multiple challenges, promises and pitfalls of relying on 'vulnerability' as a conceptual tool to design and implement institutional responses to migrants' protection needs.

Besides expert interviews (e.g. with social workers and persons representing immigration authorities), the Norwegian team conducted 35 interviews with protection seekers (including eight UMAs). The German team interviewed 28 protection seekers (including five UMAs) in various German states. The number of interviews with UMAs might appear low in this VULNER study that included various vulnerable groups in the sample, but the analysis is also based on former research on UMAs (see e.g. Lidén et al., 2017).

In analysing the data, we used sensitising concepts (Blumer, 1954) to identify the latent pattern in and across the participants' perspectives, while also allowing for nuances/distinctions in each narrative.

In addition to these research results, this article considers the cross-cutting analysis on age-related vulnerability on the basis of two internal surveys conducted by the VULNER project members. The first questionnaire identified relevant legislation and administrative practices in each country under study; the second identified everyday life challenges based on the interviews.

This article combines these data sources in discussing the similarities and differences in the policies and practices regarding UMAs in Germany and Norway.

## **The legal framework for UMAs in Norway and Germany**

In the following, we will compare the different legal frameworks in Norway and Germany, focusing on any modifications to the asylum procedure (application, hearing, decision-making) or legal status

of UMAs. We will do this by asking whether the respective asylum and welfare frameworks view UMAs primarily as asylum seekers or as minors and by examining the different arguments and rationales behind each approach.

### **Initial procedure and competent authorities**

In Germany, minors are treated differently based on whether they are accompanied or unaccompanied. While minors with relatives are included in the normal migration procedures, UMAs are excluded. For them, the primacy of child and youth welfare (*Primat der Kinder- und Jugendhilfe*) applies, which means that the accommodation, care and support of this group is the responsibility of the Youth Welfare Offices (*Jugendamt*) in accordance with Book VIII of the social code (SGB VIII). Therefore, UMAs are treated as unaccompanied minors without any migration or flight background (Zeller & Sandermann, 2017). In the following, we will only highlight the overall commonalities in Germany and ignore the characteristics of specific German states, since the implementation differs considerably according to the federal system.

When UMAs become known to German authorities, the local *Jugendamt* takes them into temporary custody (*vorläufige Inobhutnahme*). Until 2015, there existed only regular custody (§ 42 SGB VIII). Since then, an amendment was passed stating that minors may also be distributed to other German states. This law was meant to balance the distribution of minors between the German states. Temporary custody was introduced so the local *Jugendamt* can decide which *Jugendamt* will take the minor into regular custody and whether the distribution of the UMAs is contrary to the best interest of the child. After the decision concerning the distribution, the competent *Jugendamt* takes the minor into regular custody and conducts a comprehensive clearing procedure (§ 42 [1] SGB VIII) in which the individual needs of the UMAs are examined. According to the assistance plan, UMAs may be placed in foster families, group homes or shared flats dedicated to unaccompanied minors with and without flight backgrounds.

In contrast, the Norwegian asylum system generally includes UMAs in the same procedure that is run by the immigration authorities. They are uniformly referred to the arrival centre near the southern border to Sweden. Here, children are not differentiated by their 'unaccompanied' status, but by age and legal status.

On one hand, the Norwegian Directorate of Immigration (UDI) is responsible for providing care for UMAs between the ages of 15 and 18 until they are settled in a municipality. Their accommodation is regulated by the Immigration Act, which provides specific conditions that differ from adult accommodation (Regulation FOR-2021-05-12-1520); the allowance is differentiated by their residence status (Circular RS 2008-03V1).

On the other hand, those under the age of 15 at the time of application are accommodated in a special care centre for asylum-seeking minors provided by the Regional Office for Children, Youth and Family Affairs (*Bufetat*) in accordance with Chapter 5A of the Child Welfare Act (*Barnevernsloven*). However, they still undergo the same asylum procedure as those above 15.

Upon receiving refugee or humanitarian protection, UMAs are settled in the municipalities and the local child welfare authorities assume responsibility from the UDI and *Bufetat*. Foster care is the preferable solution for the youngest children, while most children 15 and older stay in shared accommodations (3–5 UMAs with around-the-clock staffing) or monitored housing for those 16 and older (without full-time staff; shared or individual).

### **Asylum procedure**

While, in Germany, there is no special competence or legal support within the framework of guardianship in the asylum procedure, in Norway a representative is assigned via the UDI as part of the standard procedure to give UMAs free legal advice early in the process. The on-call guardian

service at the arrival centre ensures that UMAs have their asylum claims registered with the support of a representative who may be a lawyer or a lay person.

Both Norway and Germany provide special training on child-related issues for the case workers conducting the asylum hearing: This concerns the so-called *Sonderbeauftragte* at the Federal Office for Migration and Refugees (BAMF) and the UDI special unit for UMAs (BFE/*barnefaglig enhet*).

### **Residence status**

UMAs residing in Germany illegally are issued a temporal leave to remain (*Duldung*) (§ 60a [2] Residence Act). A *Duldung* is a suspension of deportation issued for individuals who cannot be deported due to deportation bans. Even if the deportation of a minor is legally possible, Germany must guarantee that the handover and care of the minor in the country of return is ensured by a family member, a person with custody or a suitable reception facility (§ 58 [1a] Residence Act). If this is not the case, the deportation is banned and the immigration office must issue a *Duldung* (until the minor turns 18 or a residence permit is granted). During the asylum procedure, UMAs receive a residence authorisation (*Aufenthaltsgestattung*) on their applications at the BAMF (§ 55 Asylum Act).

Depending on the protection status, the residence permit is granted for either one year (subsidiary protection or humanitarian grounds) or three (asylum and refugee status). As UMAs usually cannot be deported until they turn 18, they may 'gather' preconditions for other residence permits in the interim. Several other possibilities exist in addition to the application for asylum towards a legal status. The decision as to whether an application for asylum or an application for a residence permit should be filed must be made individually in each case by the *Jugendamt* or the legal guardian.

If employment is achieved within six months after finishing vocational training, a residence permit can be issued for two years (§ 18a Residence Act).

Adolescents and young adults up to 21 years of age who have been living in Germany for four years can be granted a residence permit (§ 25a Residence Act) if they have been attending school for four years or have obtained a school or vocational certificate and have a positive integration prognosis.

According to the § 25 (5) Residence Act, a residence permit can be granted on humanitarian grounds if a ban on deportation is not expected to be removed in a reasonable amount of time.

Finally, the *Härtefallkommission* in each German state can determine upon request whether 'urgent humanitarian or personal reasons' favour a residence permit (§ 23a Residence Act). Such instances can arise for linguistic, economic, cultural and social integration reasons in Germany.

In contrast, Norway has no residence options for unaccompanied minors not applying for asylum (with the exception of potential victims of trafficking). Accordingly, they may only obtain either refugee status (Immigration Act Section 28a and b) or a permit on humanitarian grounds (Immigration Act Section 38). According to the UDI guidelines PN 2012-011, the assessment of the need for international protection or a residence permit on humanitarian grounds has a lower bar for minors than adults, given the particular vulnerabilities of children.

Since 2016, when the Norwegian parliament agreed on measures to restrict arrivals, residence permits and citizenship, an increased use of limited permits for UMAs has occurred. A provision to grant limited permits that expire at the age of 18 was introduced in 2009 (Immigration Regulations Section 8-8), but was scantily used until 2016. New restrictions were put into place due to the Norwegian parliament's Asylum Agreement of 7 November 2015. Since then, even if a minor qualifies for residence, if they are over 16 years at the time of the UDI's decision, the caseworker may determine whether an UMA-limited permit should be granted. It cannot be renewed, meaning that, upon reaching 18, the former UMA is required to leave Norway. Further, if there is doubt about the minor's identity, a restricted one-year residence permit may be issued, barring permanent residence until the identity has been documented.

The UMA limited permit led, in 2016–2017, to uncertainty resulting in an increased number of UMAs disappearing from reception centres, most of them travelling further to apply for asylum in Germany, France and other European countries.

### **Age assessment**

Age assessment is key to gaining access to the specific provisions dedicated to UMAs. A person should be presumed to be their stated age unless their physical appearance strongly indicates otherwise, allowing them the benefit of the doubt (Crawley, 2007). However, the measures are highly controversial, as they provide only an estimation of development that varies among individuals due to genetic and environmental factors (Feltz, 2015). Therefore, medical examinations should only be used as a last resort (EASO, 2018, p. 23, 64).

In Germany, age assessment follows a mandatory order (§ 42, 42a SGB VIII) and is carried out by the *Jugendamt*. First, identity papers are examined, however, self-disclosure (*Primat der Selbstausskunft*) must be accepted. If there is still doubt, the state of development and physical appearance is assessed in a conversation (*qualifizierte Inaugenscheinnahme*) by the *Jugendamt* to decide whether a person is a minor. As a last resort, a medical examination is conducted.

Recently, a change towards an increasing use of medical examinations has occurred (Caritas, 2020), indicating a change in the social discourse to consider age assessment a part of identity clarification and thus more clearly as a matter of security. This challenges the professional self-image of social work, which in practice leads to considerations about the legitimacy of the asylum claim being incorporated into the age assessment (Käckmeister, 2022). Therefore, the primacy of youth welfare is increasingly questioned.

In Norway, the Immigration Police usually register the stated age during the asylum application and determine whether this age is likely to be correct; otherwise, an age assessment is required. The UDI's arrivals unit then carry out the assessment using biometric measures. The age assessment is performed via a physical examination involving dental and carpal x-rays conducted by experts. The UDI may decide to exempt minors from age assessment if they are obviously under age 18 (Directorate of Immigration, 2010), but those whose declared an age between 16 and 18 are usually referred to age assessment.

In sum, the differences in age assessment between Norway and Germany are initially determined by different competent authorities. In Norway, age (and, by extension, access to protective measures) is determined by immigration authorities. In Germany, the primacy of self-disclosure is clearly dedicated to a child-friendly approach. Accordingly, the age assessment is meant to determine whether a person is obviously of age, whereas Norway focuses on precise differentiation between ages and excludes only those obviously underage. This is problematic, since this approach can strain UMAs and raise questions of reliability when the exact age cannot be determined scientifically.

### **Legal guardianship**

After the decision, for which the local *Jugendamt* is ultimately responsible, a guardian (an individual or an association with legal capacity) must be appointed 'without any delay' by the family court (§ 1773-1921 Civil Code). This procedure takes more than two months (BumF e, 2019). To shorten the procedure, there was a legal reform in 2021 for introducing a 'temporary guardian' who can be appointed by the family court if a suitable guardian has not been chosen yet (Socha, 2021). If a private guardian is not available, a public guardianship can be appointed by the *Jugendamt*; this is the most common occurrence. In many cases, one public guardian is responsible for up to 50 minors and often they are not able to adequately support minors in the asylum procedure, since they lack sufficient knowledge of migration law (Hoffmeyer-Zlotnik & Stiller, 2023;



Zeller & Sandermann, 2017). The idea to appoint a supplementary guardian (*Ergänzungspfleger*) with sufficient legal knowledge, such as a specialised lawyer, has been denied by the German Federal Supreme Court.

In Norway, the appointment of a legal guardian is linked to the asylum procedure (Section 98a Immigration Act); UMAs will get a representative at the registration stage. The representative will ensure that the child is heard, that all decisions made take their rights into account (including age assessment and filing appeals on behalf of the child) and that the child gets suitable care, housing, education, language support and health care.

When the UMA obtains a residence permit and is settled in a municipality, a new legal guardian is appointed. It is the responsibility of the local County Governor (*Fylkesmann*) to recruit, appoint, train and supervise the representatives, who are either lay persons or lawyers. Ordinarily, the legal guardians represent two to ten minors (but sometimes as many as 30).

### **Concluding reflections**

The initial procedures of the compared frameworks are characterised by fundamentally different approaches, since UMAs in Germany are excluded from the migration framework, whereas those in Norway above age 15 undergo the same procedure as adult protection seekers. This influences the procedures applied to UMAs regarding registration, accommodation, age assessment and legal representation.

The German approach follows a child-friendly approach that results in significant adjustments to the procedure, for example, the primacy of self-disclosure within the age assessment.<sup>2</sup> However, immigration rationales increasingly lead to difficulties in implementing the child-centred approach, as demonstrated in the distribution decision (which implies financial issues) and the increased regulatory considerations within age assessment.

Further, this means a lack of adequate support on asylum matters and independent representation. Since the *Jugendamt* is, on one hand, responsible for decisions on distribution and age assessment and, on the other, for legal representation, this constitutes a conflict of interest in which the *Jugendamt* acts in the proceedings as both counsel and opponent. A survey among professionals in youth welfare found that there are 'massive deficits' with regard to legal protection (Klaus et al., 2020). The main reasons for this are a lack of information and involvement of UMAs in decisions and a lack of independent legal representation. As a result, UMAs often think that they have no legal possibility to challenge the age determination (González Méndez de Vigo & Wiesinger, 2019).

In this regard, a protection shortage regarding the need to recognise the specific protection needs of UMAs can be observed, which the Norwegian approach seems to better address.

### **Implementation gaps**

From the comparison of the Norwegian and German legal frameworks, it can be concluded that the German procedure follows a more child-friendly approach to care needs. However, regarding legal representation, it is also evident that the exception from migration procedures leads to less consideration of asylum-specific concerns, compared to Norway. We will now look at the implementation of these regulations using the analysis of the narratives of the persons who arrived as UMAs.

### **Accusation of incredibility – the case of Norway**

Norway's asylum procedure, particularly the hearings and legal guardianship reveals inconsistencies due to conflicting interests and standards. Additionally to a child-focused asylum procedure, the 'reasonability assessment' for potential Internal Displacement solutions has been removed in 2016 as part of the stricter asylum policy, leading to more temporary stays for UMAs aged 16–18 and deportations when turning 18. As a consequence, in 2017 nearly half of all asylum applications from UMAs



led to a limited permit until turning 18. A report revealed that Norwegian immigration authorities often failed to recognise protection needs and vulnerability factors, because they disregarded the credibility of the information provided (NOAS et al., 2017).

Hamid's case, an UMA from Afghanistan arriving in 2015, highlights the repercussions of limited self-expression opportunities within the age determination and asylum procedure (Lidén et al., 2023). He tells about his journey to Norway:

It was a very difficult time. I experienced so many bad things on that journey.

Hamid initially informed the Immigration Police at the arrival centre that he was around 15 years old. However, the police officer suspected him to be 18, leading to his placement in a transit centre for adults, where he remained for approximately a year.

Instead of receiving assistance from a legal guardian in a swift asylum procedure designed for minors, Hamid felt insecure in an environment meant for adults, isolating himself or seeking solace in the company of staff members. The staff believed he was underage and, therefore, required additional support. They introduced him to the local Pentecostal church. Hamid found great comfort in the Christian faith and connected with fellow believers, finding a sense of security.

In his asylum interview almost a year later, Hamid disclosed his conversion to Christianity. However, the interviewer questioned the credibility of the claim, though they accepted that he might be a minor. Consequently, a medical examination was conducted that ultimately indicated his minority. As a result, a legal guardian was assigned and he was transferred to a reception centre for UMAs. However, Hamid turned 17 before the asylum decision was made and the initial age he disclosed to the police was deemed valid.

Hamid's explanation of his newfound faith did not meet the criteria outlined in the administrative guidelines regarding conversion to Christianity, since they are not tailored to the intensely emotional aspects of such conversions for young children. As a result, only a limited permit until age 18 was granted. Consequently, when he turned 18, Hamid no longer had the right to pursue education or even complete his exams. He says:

I had bad luck; I was born in a war zone. That was not my choice. I just want to go to school like every young person my age does. Why is this damaging for society? We are all human beings.

If he had been acknowledged as age 15 at the time of registration, he would have more likely received humanitarian status and his participation rights would have been considered more seriously. Instead of continuing his education, Hamid faced the prospect of forced repatriation to Afghanistan fearing the consequences of his Christian conversion.

The NOAS report found similar lacks as in Hamid's case. Limited permits were given to UMAs with multiple vulnerabilities, such as minors with long-term experiences of violence, cognitive and mental health problems, whose family members were executed or those being without care relations, lacking schooling and work experiences or have been living on the road for many years. Since the age at the time of the asylum decision is decisive for which status is granted, UMAs who are younger than 16 years on arrival also receive limited permits. The many limits in the policy of the asylum practices then add to the violation of the intended child sensitive approach.

### ***Arriving in Germany – the issue of not being heard as a minor***

Despite the legal requirement to include UMAs' views, all of the minors interviewed in Germany also reported at various stages a lack of participation in administrative procedures, which increased their dependencies (Junghans & Kluth, 2023). For example, Khaled was transferred to a group home by the *Jugendamt*. He protested, since the facility reminded him of the refugee camps in Greece, where he stayed previously. However, he was not heard, and he left the accommodation. In the end, his legal

guardian managed to organise a shared flat monitored by social workers. So, his view was considered only after having escaped the accommodation.

Also, Ali and Jaafar's arrival was characterised by a lack of information and involvement in decisions. After arriving in Germany in 2015, the siblings were arrested by police in Munich and transferred to a reception centre near Hannover without explanation. Despite being entitled to protective accommodations, they stayed there for three months. They independently enquired about a foster family to leave the reception centre.

Thus, although individual care plans should include the minors' perspective, their wishes are hardly met in practice. Adequate reception conditions are not guaranteed, even in protective accommodations. The federal government's 2022 report highlighted a lack of accommodation and a shortage of professionals as major challenges, preventing UMAs from receiving necessary assistance (BFSFJ, 2023). Sometimes UMAs are even 'cared for' by security staff (MSGI & KVJS, 2022). Most UMAs are placed in shared accommodations for eight to ten youths, supported by social workers 24/7. More independent minors can move to apartments, with social workers providing scheduled support each week (Zeller & Sandermann, 2017). Although no exact data is available, an explorative study from 2017 suggested that less than 15% of UMAs fit the criteria for a foster care arrangement (Betscher & Szylowicki, 2017). Recently, various German states have also reduced the standard of care by decree (BumF et al., 2023).

The case of Sami proves how relevant legislation towards minors is not applied in practice. He arrived in Germany three months before turning 18. The only time he was asked about his age was at the beginning of his asylum interview. Due to his minority the interview was cancelled. Instead of being referred to the *Jugendamt*, he was sent back to the camp without receiving any support and had to wait one year for his next appointment with the BAMF. He received no support, especially on his asylum application, and he felt as if he was being put off until turning 18. He described a prison-like environment, where he had to fight with occupants to find a place to sleep. He summarised:

Time doesn't count. You wait, but you don't know when a date for the next interview will come. [...] I wasn't allowed to go to school. I wasn't allowed to do anything [...] If you are under 18, you have to forget one year of your life.

This demonstrates a case where being a UMA did not lead to special support and increased his vulnerable situation by delaying his asylum hearing for one year. Thus, protective rules aimed to ensure participation (no hearing without representative) did the opposite.

Delays in distribution and age determination led to minors remaining in a waiting position for several months in structures that are not suitable for children without knowing if and when they will be distributed to another German state. As a consequence, there is no representation by a guardian, school attendance often does not take place, medical care is complicated and no assessment of individual needs is carried out (BumF, 2023). This increases the risk of the UMA absconding and becoming a victim of exploitation or human trafficking; in the past five years, an average of 2,500 UMAs per year were registered as missing (BFSFJ, 2023).

### ***Spheres of trust and mistrust through interactions and social contacts***

The situation involving UMAs arriving in the host county is shaped by the condition of being between societies while trying to re-root. It is characterised by situational vulnerability, as they must take risks when relying on others to act in their best interest. Thus, the issue of trust and mistrust becomes highly relevant.

The premises of NGOs and welfare organisations turned out to be important meeting points with volunteers, social workers or refugees, enabling social interactions and social activities. Thus, a sphere of trust was created through interactions with these actors, people received support and could talk about everyday challenges. Developing such social connections can be understood as a strategy to compensate for the loss of home and family and to face the 'conditions of liminality',

arising from living in uncertainty from being in-between societies while trying to re-root (Eide et al., 2020).

However, relationships with their transnational families remain crucial. Our interlocutors experienced a permanent tension between integrating into the host country and concerns about family members. In this regard, they reported a lack of participation in administrative procedures. Therefore, their interactions with authorities and lawyers were associated with opposite views characterised by insufficient information and respect, poor support and racism. In particular, the length of the asylum procedure led to frustration, since family reunification is only possible after having received a residence permit. For Ali and Jaafar, this took two years and caused ongoing distress, as their mother died only one week before their residence permit was granted.

Uncertainty and mistrust were also caused by federal restrictions on family reunification. A 2016 legal amendment limited family reunification for beneficiaries of subsidiary protection in Germany. Initially, most Syrian asylum seekers received refugee status. Only a few months later, the BAMF changed this practice, leading to a significant increase of granting subsidiary protection. This unforeseen and opaque interplay of legal changes and administrative practices prevented many UMAs from reuniting with their families. Sami, whose asylum procedure was delayed for a year because he was a minor at the time of the asylum hearing, felt betrayed and believed that the authorities delayed his procedure only to prevent his family reunification. If the *Jugendamt* had supported his hearing, he might have received refugee status instead of subsidiary protection.

In Khaled's case, institutional mistrust affected his attitude towards his representatives. He doubted whether social workers and his legal guardian adequately assisted with family reunification, reflecting the ambivalent process of building trust, which is affected by the distrust developed during the asylum procedure.

### **Concluding reflection**

This ambivalence highlights a critical need for UMAs to integrate into supportive social communities consisting of their own relatives, youth organisations, foster families or religious communities. Decisions to trust people can be seen as a way to resolve the tensions and ambivalences associated with their situations and, thus, as a way of exerting their agency. These social links are important in facing the condition of liminality that is connected to the loss of family. In this context, the community helped them to achieve their objectives and counter-balanced the long and stressful procedures. This is especially evident regarding the sphere of mistrust UMAs face through their interactions with immigration authorities.

Although lawyers play a distinct role, they were considered unreliable in Germany, indicating a deficit of legal assistance and leading to losses of trust towards their caregivers and guardians. This underscores the need of well-trained representative in child and asylum matters.

In particular, UMAs between 16 and 18 are in a situation of tension between the societal need for integration and their prospect of remaining after turning 18 (Lehner, 2016). The latter has limiting effects on access to integration measures for persons underage (Tangermann & Hoffmeyer-Zlotnik, 2018). Their situation is shaped by the liminality of turning 18, which exposes them more significantly to the limitations that adult forced migrants face. In Norway this state is aided by temporary residence permits granted until minors turn 18.

### **Conclusion**

After having explored the legal framework relevant to UMAs in Norway and Germany and having identified implementation gaps, we will now reflect on the impacts of these approaches on the participation and agency of UMAs.

The testimonies demonstrate that applying the social welfare system, rather than the migration framework, benefits UMAs by supporting individual plans, integration and participation. In contrast,

Norway's approach primarily views UMAs aged 15 years or older as asylum seekers under migration law, limiting their recovery from flight and social integration. Accordingly, this legal framework pays less attention to the agency of UMAs, hindering their opportunity to build on social links and re-root. Additionally, the age assessment in Norway demonstrates that a child-centred approach is systematically undermined if immigration authorities decide on access to protective measures, leading to accusations of incredibility.

Further, in Norway there is no prospect of having the residence status regularised for those with a limited UMA permit. Their transition into adulthood is thus marked by a great uncertainty and fear of deportation. In contrast, in Germany there exist several regularisation options concerning a residence permit in the case that asylum is declined. Thus, UMAs may, with legal and care support, build on individual perspectives regarding their future legalised stay during the transition into adulthood.

Nevertheless, significant deficits in implementing a child-centred approach could be revealed in Germany. Despite the requirement to include UMAs' views at all stages, insufficient resources and migration rationales shape the actual implementation of welfare provisions. Minors are often insufficiently involved in decisions about their relocation or support, leading to prolonged and burdensome waiting positions that delay education and affect their chances of obtaining preconditions for residence permits. Additionally, conflicts of interest for those responsible for minors undermine the best-interest principle and negatively influence the bonds of trust.

In this regard, Norway's focus on UMAs as protection-seekers offers advantages like fast-track asylum procedures, on-call guardian services and a lower bar for receiving protection. Thus, UMAs promptly receive independent and qualified representation and can rapidly leave the asylum system and integrate, if protection is granted. However, these benefits depend on being recognised as UMAs.

The selection of protection seekers (e.g. by prioritising those under age 15 and those to whom protection was granted) corresponds to an overall migration ratio increasingly applied since 2015. While advantageous for eligible children, this undermines a comprehensive and non-discriminatory approach addressing children's needs and ensuring their participation irrespective of their residence status. Focussing on asylum status disregards UMAs as individuals with intersecting vulnerabilities. Thus, integrating migration law issues into child-centred procedures may better uphold universal children's rights.

To enhance UMA participation rights, it is crucial to acknowledge the shortcomings and advantages of Norway's and Germany's approaches and adopt compensatory measures. Since many deficits arise from conflicts of interest, this concerns especially the independency of the actors executing age assessment and representation.

## Notes

1. We understand vulnerability beyond its ontological sphere. A person 'in a position of vulnerability' could attribute this to various internal, external and systemic factors – or be assigned that label by others.
2. As a consequence, this also results in a disparity with accompanied minors who are deprived of adequate child care under the migration framework (Méndez de Vigo et al., 2020).

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## Consent statement

The authors confirm that they have obtained written informed consent from the interlocutors to participate in the research and to publish the details from the affected individuals. Some names have been changed to protect our informants' privacy.

## Ethical statement

A common and detailed ethics strategy was established. It was approved by the VULNER project coordinator's ethics review board (Ethikrat der MPG, Decision of 29 November 2019 on the Application No. 2019\_15), as well as by the ethics review boards of all the partner institutions involved.

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## Data availability statement

The data that support this article is openly available at <https://www.vulner.eu/133237/data2>. Some participants of this study did not give written consent for their data to be shared publicly, so due to the sensitive nature of the research supporting data is not available.

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