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Abbreviations

ABGB	Allgemeines Bürgerliches Gesetzbuch (Austrian General Civil Code)
Art.	Article
BMI	Bundesministerium für Inneres (Austrian Ministry for Interior Affairs)
CDENF	Steering Committee for the Rights of the Child
CEAS	Common European Asylum System
CoE	Council of Europe
CMR Committee	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CRC	Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
e.g.	exempli gratia (for example)
EMN	European Migration Network
EU	European Union
EUCPN	European Crime Prevention Network
FRA	European Union Agency for Fundamental Rights
GRETA	Group of Experts on Action against Trafficking in Human Beings
ICAT	Inter-Agency Coordination Group against Trafficking in Human Beings
ILO	International Labour Organisation
IOM	International Organisation for Migration

NAG	Niederlassungs- und Aufenthaltsgesetz (Austrian Settlement and Residence Act)
NGO	Non-governmental organisation
NRM	National Referral Mechanism
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
OSCE	Organisation for Security and Cooperation in Europe
Para.	Paragraph
SIS	Schengen information system
THB	Trafficking in human beings
UK	United Kingdom
UN	United Nations
UNICEF	United Nation's Child Emergency Fund
UNHCR	United Nations High Commissioner for Refugees (The United Nations Refugee Agency)
UNODC	United Nations Office for Drugs and Crime
vs.	versus

journalism collective *Lost in Europe* reported that 18.292 unaccompanied minors went missing from care facilities throughout the EU between 2018-2020.⁷

Numerous reports, studies and literature recognised that unaccompanied minors are particularly vulnerable to exploitation and human trafficking (THB).⁸ When off the authorities' radar, the risk of being exploited and abused increases significantly.⁹ GRETA warned already in 2015 about the trafficking risks of unaccompanied minors and repeatedly expressed concerns about the significant number of unaccompanied minors going missing from reception centres within a short time after their arrival indicating that these children may be at risk of trafficking or re-trafficking.¹⁰ Also in 2015, the European Commission published a study according to which the number of unaccompanied asylum-seeking children who are at risk of child trafficking had increased in different EU countries, including Austria.¹¹

It is a common belief that unaccompanied minors disappear because they want to continue their journey to another country where they might have family, friends or expect to have better opportunities. But do these children actually arrive in their destination country? Are there other circumstances because of which they disappear?

⁷ Tagesschau, *Verschwunden in Europa*, 18.04.2021, (in German) available under <https://www.tagesschau.de/investigativ/rbb/fluechtlinge-kinder-verschwunden-101.html> (accessed 20 April 2021). See also the website of *Lost in Europe* under <https://lostoneurope.eu/file/no-numbers-file> (accessed 20 April 2021).

⁸ R. Forin and C. Healy, *Trafficking along Migration Routes to Europe: Bridging the Gap between Migration, Asylum and Anti-Trafficking*, Vienna, International Centre for Migration Policy Development (ICMPD), 2018, p. 14; UNODC, *Global Report on Trafficking in Persons 2016*, New York, United Nations publication, December 2016, pp. 60-61, available under https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf (accessed 12 April 2021); European Commission, *Study on high-risk groups for trafficking in human beings*, final report, Luxembourg, Publications Office for the European Union, 2015, pp. 34, 40, available under https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_children_as_high_risk_groups_of_trafficking_in_human_beings_0.pdf (accessed 23 May 2021); UN General Assembly, *Sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and trafficking in persons, especially women and children*, 18 July 2017, p. 8; GRETA Group of Experts on Action against Trafficking in Human Beings, *5th General Report on GRETA's Activities, covering period 1 October 2014 – 31 December 2015*, Council of Europe, February 2016, pp. 33-36, available under <https://www.coe.int/en/web/anti-human-trafficking/general-reports> (accessed 20 July 2021).

⁹ P. Ferrara, G. Corsello, A. Sbordone et al., 'The "Invisible Children": Uncertain Future of Unaccompanied Minor Migrant in Europe', *The Journal of pediatrics*, vol. 169, 2016, p. 333.

¹⁰ GRETA, 2016, p. 37 and 39.

¹¹ European Commission, 2015, p. 20.

During my internship at UNHCR Austria in 2020/21, I came across the phenomenon of unaccompanied asylum-seeking minors going missing and the nexus of this phenomenon to child trafficking. As I continued to research the topic in the Austrian context, I realized that many questions are still unanswered. Gaps in academic literature exist and data on missing unaccompanied minors cannot be found. Nevertheless, experts have no doubt that the phenomenon exists in Austria.¹²

This master thesis is an effort to shine the spotlight on missing unaccompanied asylum-seeking minors – the ‘invisible children’ – in the Austrian context, to identify the circumstances because of which unaccompanied minors go missing and the risks which (missing) unaccompanied minors face regarding child trafficking. I discuss potential prevention measures based on my findings, an assessment of child rights standards and their implementation in Austria. A special focus is thereby put on the ongoing debates on guardianship (upon arrival/registration what UNHCR, UNICEF, IOM and recently the *Kindeswohlkommission* [*Commission of Inquiry on the protection of the best interests of the child in the Austrian asylum system*]¹³ have been advocating for) as well as the establishment of federal safehouse for (potential) victims of child trafficking (which has been discussed in the Working Group on Child Trafficking).¹⁴

¹² Kindeswohlkommission, Bericht der unabhängigen Kommission für den Schutz der Kinderrechte und des Kindeswohls im Asyl- und Fremdenrecht, Kurzfassung, 13 July 2021, para. 107, (in German) available under <https://www.bmj.gv.at/themen/Kindeswohlkommission.html> (accessed on 19 July 2021); S. Koppenberg, Unbelgeitete Minderjährige in Österreich, Vienna, International Organization for Migration (IOM), December 2014, pp. 83-85, available under https://www.emn.at/wp-content/uploads/2017/01/EMN_UAM-Study2104_AT_EMN_NCP_de.pdf (accessed 29 April 2021); Forin and Healy, pp. 77-78.

¹³ Kindeswohlkommission, para. 201.

¹⁴ Arbeitsgruppe Kinderhandel, im Rahmen der Task Force Menschenhandel, ‘Prävention von Kinderhandel und Schutz von Opfern von Kinderhandel’, Bericht 2015-2017, p. 14, (in German) available under https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Bericht_AG_Kinderhandel_2015-2017.pdf (accessed 10 May 2021).

1.2. Methodology

The research question which I aim to answer in this thesis is:

Because of which circumstances are unaccompanied minors in Austria at risk of going missing, which risks do missing unaccompanied minors face regarding child trafficking and how could these risks be averted?

Methodologically, I combined secondary research and primary research methods. The secondary research is the foundation of the thesis primarily relevant for chapters 1.,2., 3.1., 4.1. and 4.2. I reviewed and analysed relevant conventions, laws and policies, academic literature, various reports and studies as well as other available relevant documents such as the annual asylum statistics published by the Austrian Ministry of Interior Affairs and responses to relevant parliamentary requests (especially regarding the numbers of applications for international protection by unaccompanied minors, the numbers of unaccompanied minors in reception facilities and the numbers of dismissed asylum procedures).

On top of this theoretical foundation, I conducted semi-structured interviews with 10 experts from the field of unaccompanied minors and child trafficking in Austria. The primary research is used to identify the circumstances because of which unaccompanied minors go missing and the risks they face regarding child trafficking as well as to discuss potential instruments for risk mitigation. I chose my interview partners based on a stakeholder mapping to get insights from different relevant perspectives, including NGOs, legal advisors, international organisations, officials and victim protection organisations.

I refrained from interviewing unaccompanied minors because of the limited timeframe, limited access and the consideration that unaccompanied minors who plan to disappear and/or who have relations to traffickers are unlikely to share their experiences and plans with me because of mistrust or fear of reprisals. Therefore, I chose the objective term ‘circumstances’ in my research question instead of a subjective term such as ‘motives’ for unaccompanied minors to go missing.

1.3. Limitations

This thesis focuses on unaccompanied asylum-seeking minors. Therefore, third country nationals who do not apply for international protection or children who are EU citizens are not included. For further research, it would be valuable to analyse if and due to which circumstances not asylum-seeking children from third countries or EU citizen children go missing and which risks these children face regarding child trafficking.

As already mentioned above, I refrained from interviewing unaccompanied minors. This master thesis therefore does not reflect their subjective motives for going missing. I think that it would be interesting for a future study to identify the motives and see whether the findings of this master thesis correspond to the view of unaccompanied minors.

Since most unaccompanied minors go missing from federal reception centres (*Erstaufnahmezentren*), my focus in this thesis is on the circumstances and risks which exist for unaccompanied minors accommodated in federal reception centres. I discussed the relevant differences regarding accommodation, care and guardianship of unaccompanied minors who are accommodated in federal reception centres on one side and who are accommodated in the provinces (*Länder*) on the other side. Due to the limited scope of this thesis, I was not able to analyse the circumstances in every province in depth. For further research, it would be interesting to analyse more specifically the circumstances in the *Länder* in order to identify possible regional differences and best practices.

Ultimately, I provide recommendations based on international child rights standards for the prevention of the risk of unaccompanied minors to go missing and the risks which (missing) unaccompanied minors face regarding child trafficking. The recommendations respond to the findings of my thesis and should therefore not be understood as an exhaustive catalogue for the prevention of child trafficking in Austria in general, since other counter-trafficking measures, for example understanding and addressing the root causes of child trafficking, are also of utmost importance.

2. Unaccompanied minors from a child's rights, refugee and child trafficking perspective

2.1. Definition of the term 'unaccompanied minors' and 'missing unaccompanied minors'

The term 'unaccompanied minors' and related terms such as 'unaccompanied and separated children' and 'unaccompanied asylum-seeking children' have been used, shaped and defined in the past years in various documents by different stakeholders.

The 1997 UNHCR *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*¹⁵ was one of the first documents to address this group.¹⁶ The Guidelines defined an unaccompanied child as

*'a person who is under the age of eighteen, unless, under the law applicable to the child, majority is, attained earlier and who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so.'*¹⁷

A very similar definition can be found in General Comment no. 6 which was developed by the United Nations (UN) Committee on the Rights of the Child in 2005.¹⁸

According to the definition of the 2011 EU Qualification Directive¹⁹, an unaccompanied minor is

'a minor who arrives on the territory of the EU Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the EU Member State concerned, and for as long as he or she is not effectively taken into the care of

¹⁵ UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, February 1997.

¹⁶ Bhabha, p. 4.

¹⁷ UNHCR, 1997, Definition.

¹⁸ See Committee on the Rights of the Child, General Comment no. 6, treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, III. 7.

¹⁹ Article 2 (1) of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011. The European Migration Network (EMN) adopted this definition in its Glossary on Asylum and Migration which aims to improve comparability within the EU, see European Migration Network (EMN), *Asylum and Migration Glossary 7.0*, July 2020, available under https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en (accessed 20 June 2021).

such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the EU Member States’.

This definition not only includes minors who arrive in the EU without parents or legal guardians but also minors who were separated from their parents or legal guardians after entering the EU. However, the definition excludes children who were born in the EU but not cared for (for example so called ‘Euro-orphans’²⁰) as well as children who are accompanied by presumable parents or guardians who are, in fact, exploiters or traffickers.²¹

The Austrian law defines an ‘unaccompanied minor’ (*‘unbegleitete*r Minderjährige*r’*) as

*‘a minor foreigner who is not accompanied by an adult legally responsible for him or her’.*²²

The Austrian law defines a ‘foreigner’ (*‘Fremde*r’*) as any human being without the Austrian citizenship.²³ Therefore, also EU-citizens and stateless persons are considered as foreigners under this definition. In accordance with the Convention of the Rights on the Child (CRC),²⁴ the Austrian law defines minors as human beings below the age of 18 years.²⁵

Child victims of trafficking who are ‘foreigners’ as defined by Austrian law are also ‘unaccompanied minors’ (provided they are not accompanied by an adult who is legally responsible for them). If a child is accompanied by an adult (e.g. a parent) who is involved in trafficking of the child, the best interest of the child is clearly at risk. In this case, the

²⁰ This term refers to children from Central or Eastern Europe whose parents left for employment in Western Europe and who are in the care of other family member (mainly grandparents). See Aerts, p. 10.

²¹ Aerts, p. 10.

²² Own translation from German to English of the definition in Article 2 (17) NAG (Austrian Settlement and Residence Act), BGBl I 100/2005 in the current version.

²³ Article 2 (1) NAG (Austrian Settlement and Residence Act), BGBl I 100/2005 in the current version.

²⁴ See Article 1 of the Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990).

²⁵ Article 21 (2) ABGB (Austrian General Civil Code), JGS 946/1811 in the current version.

Children and Youth Welfare Service can (and should) intervene and withdraw the guardianship of the adult.²⁶

Within the group of unaccompanied minors, some apply for international protection (unaccompanied asylum-seeking minors) while others do not seek asylum (for example migrants who do not flee persecution).²⁷

In the Austrian context, various terms are used for unaccompanied minors who seek international protection, such as ‘unbegleitete minderjährige Flüchtlinge’ (which translates to English as ‘unaccompanied minor refugees’), ‘unbegleitete asylsuchende Kinder und Jugendliche’ (English: ‘unaccompanied asylum-seeking children and adolescents’) or ‘Fluchtwaisen’ (English: ‘flight orphans’).

Since this master thesis is limited in its scope to asylum-seeking unaccompanied minors, I use the term ‘unaccompanied minors’ in the context of unaccompanied asylum-seeking children. The term ‘children’ is defined as any human beings below the age of 18 years.²⁸

There is no common legal definition of the term ‘missing unaccompanied minor’. The European Migration Network (EMN) defines missing unaccompanied minors by the following elements:²⁹

- Missing from the reception/accommodation facility: The child is absent from the facility where he or she is accommodated.
- Their whereabouts are unknown: Care takers, guardians or other responsible persons are not aware of the whereabouts of the child.
- They are suddenly unreachable: Care takers, guardians or other responsible adults are not able to contact the child (for example via phone).

²⁶ M. Nowak, H. Sax, B. Weichselbaum, ‘Kinderhandel in Österreich – aktuelle öffentlich-rechtliche Fragestellungen zu Kooperation und Opferschutz’, ECPAT Österreich, *ACT Now – Rechtliche Herausforderungen im Kampf gegen Kinderhandel*, Wien, Lexis Nexis, 2013, p. 10.

²⁷ Koppenberg, p. 26; Bhabha, p. 5.

²⁸ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), Art. 1.

²⁹ European Migration Network (EMN), How do EU Member States treat cases of missing unaccompanied minors? EMN Inform, 2020, p. 2, available under https://ec.europa.eu/home-affairs/sites/default/files/00_eu_inform_uam_2020_en_0.pdf (accessed 21 June 2021).

- The disappearance is out-of-character: The child did not inform care takers, guardians or other responsible persons about their plans to leave in advance of their absence.

2.2. From a children's rights perspective

2.2.1. International child rights standards

Unaccompanied minors are first and foremost children. Human rights are children's rights and their underlying principles of universality, indivisibility and interdependence apply equally to children as they apply to adults.³⁰ However, children are a specific social group with specific needs. International child rights standards specifically define the rights of children (including unaccompanied minors) and oblige states to respect, protect and fulfil these rights.

The cornerstone of international child's rights is the **Convention on the Rights of the Child (CRC)**.³¹ The CRC, which was adopted by the UN General Assembly in 1989 and entered into force already one year later, is the international convention with the highest number of ratifications in history³² counting 196 ratifications as of today.³³ So far, the CRC has been ratified by all countries except the US. The CRC defines children as 'every human being below the age of eighteen years' (unless majority is reached at an earlier age in a given state party)³⁴ and establishes children as distinct social group of bearers of rights.³⁵

Since the CRC includes all persons below the age of eighteen years – from new-born babies to adolescents – age, development and gender need to be taken into account.³⁶ Age

³⁰ H. Sax, 'Human Rights of Children and Young People – A Primary Consideration?', in M. Nowak, K. Januszewski, T. Hofstätter (eds.), *All Human Rights for All – Vienna Manual on Human Rights*, Vienna and Graz, NWV Neuer Wissenschaftlicher Verlag, 2012, p. 423.

³¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990).

³² Koppenberg, p. 22.

³³ See the ratification status of the CRC under https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN.

³⁴ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990), Art. 1.

³⁵ Sax, 2012, p.423.

³⁶ H. Sax, 'Child trafficking – a call for rights-based integrated approaches', in Piotrowcz, R., Rijken, C. and Uhl, B., (eds.), *Routledge Handbook of Human Trafficking*, London and New York, Routledge, 2017, p. 255.

should, on the other side, not be used in order to deny access to certain rights. In fact, the overall situation, including existing vulnerabilities, should be taken into account rather than a recent 18th birthday. The transition to adulthood is – especially for unaccompanied minors – challenging.³⁷ Therefore, ‘after-care services’ regarding welfare, housing and education should be available for young adults ‘*as long as considered necessary*’.³⁸ In the light of asylum procedures, age assessment procedures should be conducted in the least invasive way,³⁹ should ‘*not only take into account the physical appearance of the individual, but also his or her psychological maturity*’⁴⁰ and should consider a person as a child in case of ongoing doubts about the age.⁴¹

The CRC follows a comprehensive child rights approach, including civil, political, economic, social and cultural rights for children, contains provisions on child trafficking and other forms of exploitation (Art. 32-36 CRC, see also chapter 2.4.1.) and determines rights of refugee and asylum-seeking children (Art. 22 CRC).

The **Committee on the Rights of the Child (CRC Committee)** declared the following four provisions of the CRC as ‘**General Principles**’ which are relevant for the understanding of all child rights standards:⁴²

- The **child’s right to life** (Art. 6 CRC), which encompasses also obligation to actively ensure survival of all children and is closely linked to the right of an adequate standard of living;⁴³
- The **prohibition of any form of discrimination** of children, based on the child’s or his or her parents’ or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property disability,

³⁷ UNICEF, UNHCR and IOM, At a crossroads – Unaccompanied and separated children in their transition to adulthood in Italy, November 2019, p. 19, available under <https://www.unicef.org/eca/media/8591/file/report-unaccompanied-italy.pdf> (accessed 19 July 2021).

³⁸ UNHCR, 1997, para. 10.9.

³⁹ Committee on the Rights of the Child, Concluding observations in the combined fifth and sixth periodic reports of Austria, CRC/C/AUT/CO/5-6, 6 March 2020, para. 40 (c), available under https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUT/CO/5-6&Lang=En (accessed 1 July 2021).

⁴⁰ CRC Committee, CRC/GC/2005/6, para. 31 (i).

⁴¹ Sax, 2012, p. 426; CRC Committee, CRC/C/AUT/CO/5-6, para. 40 (c).

⁴² Committee on the Rights of the Child, General comment no. 5, General measures of implementation of the Convention on the Rights of the Child, CRC/GC/2003/5, 27 November 2003.

⁴³ Sax, 2012, p. 426.

birth or other status (Art. 2 CRC), which explicitly prohibits all form of discrimination between children/groups of children and implicitly prohibits discrimination of children in regard to adults;⁴⁴

- The **principle of the ‘best interest of the child’** as primary consideration on all actions concerning children (Art. 3 para. 1 CRC);
- The **child’s right to participation** which not only includes the right of children to express their views freely in all matters affecting them but also the rights that the child’s views are given due weight (Art. 12 para. 1 CRC).

Austria ratified the CRC in 1992.⁴⁵ The Federal Constitutional Law on Children’s Rights from 2011, however, includes reservations and implements only selected rights.⁴⁶ Nevertheless, the Law includes essential principles such as the primary consideration of the best interest of the child, the right to participation, special protection of children without parents and the prohibition of violence against and the exploitation of children.⁴⁷

In 2000, the UN General Assembly adopted two Optional Protocols to the CRC, the **Optional Protocol on involvement of children in armed conflict**,⁴⁸ which raises the recruitment into army or rebel groups to eighteen years, and the **Optional Protocol on the sale of children, child prostitution and child pornography**,⁴⁹ which adds more concrete state obligations to those already existing the CRC in this matter.⁵⁰ Both Optional Protocols were ratified by Austria.⁵¹ The **third Optional Protocol**,⁵² which was

⁴⁴ Sax, 2012, p. 426

⁴⁵ See the ratification status of Austria under https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN (accessed 20 July 2021).

⁴⁶ Bundesverfassungsgesetz über die Rechte von Kindern, BGBl I 4/2011.

⁴⁷ H. Sax, ‘Rechtliche, politische und organisatorische Rahmenbedingungen zur Bekämpfung des Kinderhandels in Österreich’, H. Sax, (ed.), *Kinderhandel - Strukturen und Maßnahmen zur Unterstützung betroffener Kinder in Österreich und im EU-Vergleich*, Vienna, Neuer Wissenschaftlicher Verlag, 2014, p. 17.

⁴⁸ Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict (adopted 25 May 2000, entered into force 12 February 2002).

⁴⁹ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted 25 May 2000, entered into force 18 January 2002).

⁵⁰ Sax, 2012, p. 427.

⁵¹ See the ratification status of the Optional Protocols under https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=10&Lang=EN (accessed 25 May 2021).

⁵² Optional Protocol to the Convention of the Rights of the Child on a communications procedure (adopted 19 December 2011, entered into force 14 April 2014).

adopted in 2011, allows individual children to submit complaints regarding violations of their rights under the CRC to the CRC Committee. So far, Austria signed but not ratified the Third Optional Protocol.

General comment no. 6⁵³ published by the CRC Committee provides specific guidance for the treatment of unaccompanied and separated children and sets out responses to the specific protection needs and challenges of unaccompanied minors, for example addressing age assessment procedures and the appointment of guardians and legal advisers.⁵⁴ Further recommendations for all children in migration, including unaccompanied minors, are provided in the Joint General Comment no. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMR Committee) and no. 22 of the CRC Committee⁵⁵ and the Joint General Comment no. 4 of the CMR Committee and no. 23 of the CRC Committee.⁵⁶

2.2.2. Regional child rights standards

On European level, children enjoy the rights set out in the European Convention for Human Rights (ECHR).⁵⁷ The ECHR plays an important role in the protection of people seeking international protection but does not contain specific provisions for children. Since 2006, the **Council of Europe (CoE)** has implemented **five strategies for the rights of the child**. The implementation of the current strategy (2016-2021)⁵⁸ (among others)

⁵³ CRC Committee, CRC/GC/2005/6.

⁵⁴ Bhabha, p. 8.

⁵⁵ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC3-CRC/GC/22, 16 November 2017.

⁵⁶ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC4-CRC/GC/23, 16 November 2017.

⁵⁷ European Convention on Human Rights (opened for signature 4 November 1950, entered into force 3 September 1953). Austria is a member state of the CoE and ratified the ECHR in 1958. Since 1964, the ECHR has the status of constitutional law in Austria and can be enforced in front of the Austrian Constitutional Court, Website of the Federal Chancellery of the Republic of Austria, (in German) available under <https://www.bundeskanzleramt.gv.at/agenda/verfassung/grund-und-menschenrechte/europaeische-menschenrechtskonvention-europaratsuebereinkommen/schutz-menschrechte-grundfreiheiten-europa.html> (accessed on 25 June 2021).

⁵⁸ Council of Europe Strategy for the Rights of the Child (2016-2021), March 2016.

addresses children in migration in general and unaccompanied children in specific,⁵⁹ and is overseen by the CoE Steering Committee for the Rights of the Child (CDENF) which was established in 2020.⁶⁰ Furthermore, the CoE developed an **Action Plan on Protecting Refugee and Migrant Children in Europe** (2017-2019).⁶¹ The Special Representative of the Secretary General on Migration and Refugees published a guidance on child friendly procedures.⁶² In January 2020, the **CoE Parliamentary Assembly** passed a **resolution on missing refugee and migrant children in Europe**.⁶³ The Parliamentary Assembly recalled that – as parties to the CRC – the CoE member states must uphold the best interest of the child as primary consideration. The resolution further sets out a number of protection standards for migrant children in general (such as no child should be in detention) and unaccompanied minors in particular (for example an adequate guardian should be appointed as early as possible).⁶⁴

On **EU level**, the **Charter of Fundamental Rights of the EU** (in the following **‘Fundamental Rights Charter’**), which is binding for all EU Member States, articulates the rights of the child in Art. 24.⁶⁵ This article is based on the CRC and states that children should have the protection and care necessary for their well-being. Art. 24 also ensures that children may express their views freely and their views are taken into consideration in all matter which concern them.⁶⁶ Also, the best interest of the child is declared as primary consideration in all matter relating to children, whether taken by public authorities or private institutions.⁶⁷

⁵⁹ Ibid, para. 22, 32.

⁶⁰ See <https://www.coe.int/en/web/children/cdenf> (accessed 20 July 2021).

⁶¹ Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019), Council of Europe, May 2017, available under <https://edoc.coe.int/en/children-s-rights/7362-council-of-europe-action-plan-on-protecting-refugee-and-migrant-children-in-europe-2017-2019.html> (accessed 19 July 2021).

⁶² Special Representative of the Secretary General on Migration and Refugees, Promoting child-friendly approaches in the areas of migration – Standards, guidance and current practices, Council of Europe, December 2019.

⁶³ Parliamentary Assembly, Missing refugee and migrant children in Europe, Resolution 2324 (2020).

⁶⁴ Ibid, para. 4 and 6.

⁶⁵ Charter of Fundamental Rights of the European Union (2012) C 326/02.

⁶⁶ Ibid, Art. 24 para.1.

⁶⁷ Ibid, Art. 24 para. 2.

Further EU instruments, such as the EU guidelines for the promotion and protection of the rights of the child⁶⁸ and the **EU strategy on the rights of the child (2021-2024)**⁶⁹ address children's rights, including children in migration. The 2021-2024 EU strategy, for example, explicitly names vulnerabilities and protection needs of children in migration in general and unaccompanied minors in specific and underlines the importance of implementing and reinforcing safeguards and protection standards for migrant children, such as strengthening guardianship systems.⁷⁰

Different EU policies and legislation provide a framework for the protection of children in migration. The Common European Asylum System (CEAS)⁷¹ foresees certain special provisions for children.⁷² Other EU instruments which address the rights and specific protection needs of unaccompanied minors, are, for example, the Communication from the Commission to the European Parliament and the Council on the protection of children in Migration,⁷³ the Action Plan on Unaccompanied Minors (2010-2014)⁷⁴ and the resolution of the European Parliament on the situation of unaccompanied minors in the EU from 12 September 2013.⁷⁵ These instruments emphasise that that child protection rather than immigration policies must be the leading principle when Member States deal with unaccompanied minors⁷⁶ and the best interest of the child must be priority over any other consideration.⁷⁷

⁶⁸ EU Guidelines for the Promotion and Protection of the Rights of the Child, 12 April 2017, available under https://ec.europa.eu/anti-trafficking/sites/default/files/eu_guidelines_rights_of_child_0.pdf (accessed 18 July 2021).

⁶⁹ European Commission, EU strategy on the rights of the child (2021-2024), COM(2021) 142 final, Brussels, 24 March 2021, available under <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12454-Delivering-for-children-an-EU-strategy-on-the-rights-of-the-child> (accessed 18 July 2021).

⁷⁰ Ibid, pp. 11, 13-15, 142.

⁷¹ The main legal instruments are: the Qualification Directive (Directive 2011/95/EU of 13 December 2011); the Asylum Procedures Directive (Directive 2013/32/EU of 26 June 2013); the Reception Conditions Directive (Directive 2013/33/EU of 26 June 2013); the Dublin III Regulation (Regulation No 604/2013 of 26 June 2013); and the EURODAC Regulation (Regulation No 603/2013 of 26 June 2013).

⁷² Forin, R. and Healy, p. 30.

⁷³ European Commission, COM(2017) 211.

⁷⁴ European Commission, COM (2010) 213.

⁷⁵ European Parliament resolution of 12 September 2013 on the situation of unaccompanied minors in the EU (2012/2263(INI)).

⁷⁶ Ibid, General recommendation 1 and 2.

⁷⁷ Ibid, European Commission, 2017, p. 3

On 23 September 2020, the Commission issues the **New Pact on Migration and Asylum** (which has not been adopted yet). The Pact includes a ‘vulnerability check’ involving child protection and anti-trafficking authorities where appropriate.

2.3. Unaccompanied minors from a refugee protection perspective

2.3.1. International and regional framework

The **1951 Convention relating to the status of refugees**⁷⁸ and the **1967 Protocol relating to the status of refugees**⁷⁹ (in the following together ‘**Refugee Convention**’) provide binding provisions for the protection of refugees regardless their age. Austria ratified the Convention and the Protocol.⁸⁰

More specific guidelines for unaccompanied minors can be found in the (non-binding) **UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum**.⁸¹ The Guidelines emphasise that, among others, the best interest of the child should be the guiding principle in all care and protection actions, unaccompanied children should not be kept in detention and a guardian should be appointed as soon as the unaccompanied minor is identified.⁸² Furthermore, UNHCR published guidelines on assessing and determining the best interest of the child in 2021.⁸³ In the Austrian context, UNHCR recently published recommendations for the consideration of the best interest of the child in (Austrian) asylum procedures.⁸⁴

2.3.2. Child-sensitive interpretation of the refugee definition

Art. 1A (2) Refugee Convention defines a refugee a person who

‘owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to

⁷⁸ Convention relating to the Status of Refugees (signed 28 July 1951, entered into force 22 April 1954).

⁷⁹ Protocol relating to the Status of Refugees (signed 31 January 1967, entered into force 4 October 1967).

⁸⁰ Ratification of the Convention in 1954, of the Protocol in 1973, see Koppenberg, p. 23.

⁸¹ UNHC, 1997.

⁸² Ibid, pp. 1-2.

⁸³ UNHCR, 2021 UNHCR Best Interest Procedure Guidelines: Assessing and determining the best interest of the child, UNHCR, May 2021, available under <https://www.refworld.org/docid/5c18d7254.html> (accessed 19 July 2021).

⁸⁴ See (in German) UNHCR Österreich, Der Kindeswohlvorrang im Asylverfahrenskontext – Rechtliche Grundlagen und Empfehlungen für die Umsetzung in Österreich, June 2021.

*avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*⁸⁵

The refugee definition applies to all persons, regardless their age.⁸⁶

UNHCR emphasises that child asylum-seekers require a **child-sensitive interpretation of the Refugee Convention**.⁸⁷ In general comment no. 6, the Committee on the Rights of the Child stated that the refugee definition

‘must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children. Persecution of kin; under-age recruitment; trafficking of children for prostitution; and sexual exploitation or subjection to female genital mutilation, are some of the child-specific forms and manifestations of persecution which may justify the granting of refugee status if such acts are related to one of the 1951 Refugee Convention grounds. States should, therefore, give utmost attention to such child-specific forms and manifestations of persecution as well as gender-based violence in national refugee status-determination procedures.’

2.4. Unaccompanied minors from a child trafficking protection perspective

2.4.1. Standards for child trafficking prevention and protection

Child trafficking violates numerous fundamental rights of children, including the right to protection from all forms of violence and exploitation, participation, adequate care, accommodation, education, health, private life and integrity.⁸⁸

The international anti-trafficking framework is composed of numerous legally binding (hard law) instruments as well as non-binding (soft law) instruments which have developed over time responding to various forms of trafficking in human beings and other

⁸⁵ For a deeper analysis of the elements of the refugee definition see UNHCR, Handbook on procedures and criteria for determining refugee status and guidelines for international protection, Geneva, UNHCR, February 2019, pp. 18-28, available under <https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html> (accessed 16 June 2021).

⁸⁶ UNHCR, 2019, p. 46.

⁸⁷ UNHCR, 2019, p. 146.

⁸⁸ Nowak/Sax/Weichselbaum, pp. 1-2.

forms of exploitation.⁸⁹ In Europe, including Austria, the regional frameworks co-exist with the (international) Palermo Protocol but go ‘*significantly further, both in terms of law enforcement and in victim protection and assistance.*’⁹⁰

Anti-trafficking instruments worldwide include policies for

- Prevention (e.g. awareness raising, addressing vulnerabilities and demand);
- Protection (e.g. early identification of [potential] victims, access to emergency services, counselling, issuance of residence permits);
- Prosecution (e.g. criminal prosecution of perpetrator, non-punishment of victim); and
- Partnerships (e.g. national referral mechanisms, international cooperation and data collection).⁹¹

The following instruments determine specific standards for victims of child trafficking on **global, European (CoE) and EU level**:

- UN Convention against Transnational Organised Crime⁹² and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children⁹³ (so called ‘Palermo Protocol’);
- Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC);
- ILO Minimum Age Convention (no. 138);⁹⁴

⁸⁹ For an overview of international standards see N. Ollus and M. Joutsen, ‘International Policies to Combat Human Trafficking’, in R. Dalla and D. Sabella (eds.), *Routledge International Handbook of Human Trafficking, A Multidisciplinary and Applied Approach*, London and New York, Routledge, 2020 p. 72.

⁹⁰ R. Piotrowcz, ‘The European legal regime on trafficking in human beings’, in R. Piotrowcz, C. Rijken and B. Uhl (eds.), *Routledge Handbook of Human Trafficking*, London and New York, Routledge, 2017, p. 41.

⁹¹ *Ibid.*, pp. 71, 78-98.

⁹² UN Convention against Transnational Organised Crime (adopted by UN General Assembly resolution 55/25 on 15 November 2000, entered into force 29 September 2003).

⁹³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (adopted by UN General Assembly resolution 55/25 on 15 November 2000, entered into force 25 December 2003). In Austria, the Protocol entered into force on 15 October 2005.

⁹⁴ ILO Minimum Age Convention, no. 138 (adopted 26 June 1973, entered into force 19 June 1976).

- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (no. 182);⁹⁵
- CoE Convention on Action against Trafficking in Human Beings (‘CoE Anti-Trafficking Convention’);⁹⁶
- CoE Convention on the Protection of Children against Sexual Exploitation and Abuse;⁹⁷
- EU Directive on preventing and combating trafficking in human beings and protecting its victims (‘EU Anti-Trafficking Directive’);⁹⁸
- EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography.⁹⁹

The **Palermo Protocol** contains specific standards for children regarding protection and assistance in its Art. 6 para. 4 in which it requires states to take the particular needs of children, including appropriate housing, education and care, into account.

The **CRC** contains with its Art. 35 a general provision on child trafficking by obliging state parties to ‘*take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form*’ while Art. 19 and 32-36 address other forms of exploitation. Art. 35 CRC addresses movement (‘traffic’) as well as ‘commodification (‘sale’) for the exploitation of children. Besides, the CRC provides trafficked children access to adequate accommodation, health, including recovery from trauma, and education, as well as protection of their personal integrity and liberty.¹⁰⁰ The **OPSC**, which complements the CRC, sets specific standard

⁹⁵ ILO Worst Forms of Child Labour Convention, no. 182 (adopted 17 June 1999, entered into force 19 November 2000).

⁹⁶ Council of Europe Convention on Action against Trafficking in Human Beings (signed 16 May 2005, entered into force 1 February 2008).

⁹⁷ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Abuse (signed 15 October 2007, entered into force 1 July 2010).

⁹⁸ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

⁹⁹ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography. The EU strategy for a more effective fight against child sexual abuse (2020-2025) aims to ensure that the Directive is fully implemented, see European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU strategy for a more effective fight against child sexual abuse, COM(2020) 607 final, 24 April 2020.

¹⁰⁰ Sax, 2017, p. 255.

for the criminalisation of the sale of children, child prostitution and child pornography as well as legal assistance, international co-operation and protection rights. Despite the fact that the sale of children and child trafficking may be interrelated, they are two different phenomena. While child trafficking targets the exploitation of children, in the context of the sale of children, *‘the focus lies not on further exploitation, but on the immediate personal gain – the remuneration for the transfer of a child to another person’*.¹⁰¹

Other international law instruments which are relevant in this context are, for example, the International Covenant on Economic, Social and Cultural Rights¹⁰² which provides protection of children from economic and sexual exploitation¹⁰³ as well as the absolute prohibition of slavery, which is a jus cogens norm under international law.

On regional level, the **CoE Anti-Trafficking Convention** puts human trafficking into a human rights context and established with the **Group of Experts on Action against Trafficking in Human Beings (GRETA)** the only independent monitoring mechanism in the field of anti-trafficking.¹⁰⁴ In its Preamble, the Convention explicitly calls for an ‘child rights approach’. Regarding child trafficking prevention, the Convention mandates the creation of ‘protective environments’ for children, linking anti-trafficking National Referral Mechanisms (NRM) to the concept of integrated child protection systems as promoted by UNICEF, CoE, the EU, and others.¹⁰⁵ Further standards set out in the Convention concern the identification of child victims of trafficking, the protection of their private life and their identity, services and assistance including education, accommodation and health care, the appointment of a guardian if the child is unaccompanied or it is in the child’s best interest (e.g. if parents are involved in the trafficking)¹⁰⁶ as well as repatriation and returns.¹⁰⁷ According to Article 12 (7), due account of the rights of children should be taken which requires to conduct a best-interest

¹⁰¹ Sax, 2017, p. 254.

¹⁰² International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 16 December 1966).

¹⁰³ UN General Assembly, Sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and trafficking in persons, especially women and children, 18 July 2017, p. 17.

¹⁰⁴ Nowak/Sax/Weichselbaum, p. 2.

¹⁰⁵ Sax, 2017, p. 257.

¹⁰⁶ Sax, 2017, p. 257.

¹⁰⁷ Art. 10, 11 para. 2, 12 para. 1 lit. f and para. 7, 14 para. 2, 16 para. 5 and 7.

assessment based on Article 3 (1) CRC.¹⁰⁸ The CoE Anti-Trafficking Convention further determines that states shall issue a residence permit if it is necessary due to personal situation of the victim and/or because their stay is necessary for investigation or criminal proceedings.¹⁰⁹ Regarding unaccompanied children, the CoE Anti-Trafficking Convention determines that states shall provide representation by a legal guardian acting in the best interest of the child, take the necessary steps in order to identify the child's identity and nationality and make every effort to locate the family when this is in the best interest of the child (Art. 10 para. 4).

The **CoE Convention on the Protection of Children against Sexual Exploitation and Abuse** outlines specific prevention standards (e.g. recruitment and training of people working in contact with children, informing children about the risks and means in order to protect themselves, awareness raising campaigns)¹¹⁰ as well as specific protection standards, such as the establishment of effective social programmes and multidisciplinary structures for the support of victims and the setup of helplines.¹¹¹

The **EU Anti-Trafficking Directive** states that victims of child trafficking shall be provided with assistance, support and protection and that the best interest of the child shall be primary consideration. The Directive also determines standards for the assistance and support, including access to education and the appointment of a guardian, and provides safeguards for criminal investigations and proceedings, such as free legal counselling and free legal representation. In Art. 16, the EU Anti-Trafficking Directive determines safeguards for unaccompanied minors, including the consideration of the child's specific circumstance and the appointment of a guardian. However, no EU Member State has a guardianship system only for child victims of trafficking. The appointment of a guardian for child victims of trafficking is subject to the same conditions

¹⁰⁸ J. Planitzer and H. Sax, (eds.), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings*, Cheltenham and Northampton, Edward Elgar Publishing, 2020, para.12.48.

¹⁰⁹ Council of Europe Convention on Action against Trafficking in Human Beings (signed 16 May 2005, entered into force 1 February 2008), Art. 14 para. 1.

¹¹⁰ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, Art. 13-15. See also Council of Europe, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201> (accessed 20 July 2021).

¹¹¹ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, Art 11-14.

as for other children, often depending on the particular migration and residence status of the child.¹¹² Residence permits for victims of THB are regulated in the **Council Directive 2004/81/EC of 29 April 2004**¹¹³ (see further chapter 2.5.)

Other EU instruments such as the 2021-2024 EU strategy on the rights of the child affirm the EU's efforts to prevent, combat and respond to child trafficking.¹¹⁴ The European Parliament and the Commission stressed that combating human trafficking is crucial because unaccompanied minors are particularly confronted with and vulnerable to trafficking, exploitation and abuse¹¹⁵ and demand, for example, that no child should be kept in detention; unaccompanied minors should immediately have access to services and information about their rights, protection, assistance and procedures; unaccompanied minors who are victims of trafficking should be provided with necessary assistance and protection; a guardian/responsible person should be appointed without delay; age assessment procedures should be multidimensional and multidisciplinary; and officials and staff working for authorities should be qualified and trained.¹¹⁶

2.4.2. Definition of child trafficking

The **Palermo Protocol**¹¹⁷ defines human trafficking (or trafficking in human beings/trafficking in persons, short: 'THB') as

'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of

¹¹² European Union Agency for Fundamental Rights (FRA), *Guardianship Systems for Children Deprived of Parental Care in the European Union: With a Particular Focus on Their Role in Responding to Child Trafficking*, Luxembourg: Publications Office of the European Union, 2015, p. 15.

¹¹³ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject to an action to facilitate illegal immigration, who cooperate with the competent authorities, Art. 6 and 8.

¹¹⁴ European Commission, COM(2021) 142, p. 20.

¹¹⁵ European Parliament resolution of 12 September 2013 on the situation of unaccompanied minors in the EU (2012/2263(INI)), General recommendation 9. Also, the European Commission stressed that unaccompanied minors are particularly vulnerable to trafficking and exploitation. European Commission, COM(2017) 211, p. 6.

¹¹⁶ European Parliament resolution of 12 September 2013 on the situation of unaccompanied minors in the EU (2012/2263(INI)), Strategic guidelines para. 13, 14, 15 and 17. European Commission, COM(2017) 211, pp. 6-16.

¹¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (adopted by UN General Assembly resolution 55/25 on 15 November 2000, entered into force 25 December 2003), Art. 3 lit. a. In Austria, the Protocol entered into force on 15 October 2005.

fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.

According to the definition, human trafficking is composed of three elements:

- **Action** (recruitment, transportation, transfer, harbouring or receipt of persons),
- **Means** (threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person),
- **Purpose** (exploitation).

The consent of a victim to the intended exploitation is irrelevant if any if the means have been used (Art. 3. lit. b Palermo Protocol). Often, victims of THB do not identify themselves as such or blame themselves for being in this situation or believe that there is no better option.¹¹⁸

Regarding **child trafficking**, the Palermo Protocol determines that the **recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is considered as child trafficking even if it does not include any of the means.**¹¹⁹ In other words, child trafficking is given when the criteria of action and exploitative purpose are fulfilled – the use of means is not necessary.

¹¹⁸ K. Skrivankova, ‘Defining exploitation in the context of trafficking – what is a crime and what is not’, in R. Piotrowcz, C. Rijken, and B. Uhl, (eds.), *Routledge Handbook of Human Trafficking*, London and New York, Routledge, 2017, p. 111.

¹¹⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (adopted by UN General Assembly resolution 55/25 on 15 November 2000, entered into force 25 December 2003), Art. 3 lit. c.

The definition of human trafficking and child trafficking as set out in the Palermo Protocol were adopted by the **CoE Anti-Trafficking Convention**,¹²⁰ the **EU Anti-Trafficking Directive**¹²¹ and the **Austrian Criminal Code** (*‘Strafgesetzbuch’*).¹²²

The ‘two element definition’ of child trafficking has been criticised in literature since it leads to difficulties in defining the scope,¹²³ especially blurring the line between child trafficking and exploitation of children.¹²⁴ For example, *‘questions arise such as whether parents demanding their children to perform child labour services or parents arranging marriages for their children should eventually also be considered child traffickers, or whether online grooming for child abuse images (including when done among teenagers) constitutes child trafficking or not.’*¹²⁵ Additionally, more far-reaching questions arise, such as whether State Parties’ obligations under UN, ILO or regional standards overlap or complement each other, questions regarding the division of labour between international institutions and of monitoring (e.g. between GRETA and the ‘Lanzarote Committee’ which supervises the Lanzarote Convention on child sexual exploitation and abuse).¹²⁶

Therefore, H. Sax and other authors support a narrow interpretation of child trafficking.¹²⁷ According to H. Sax, *‘[c]hild trafficking can be understood as preparatory actions for the exploitation of children – the recruitment/movement of children with exploitative intention which receives a penalty; the exploitation of children, itself, usually carries its own, separate penalty, and this distinction should be maintained. (...) However, the more criminal energy has been invested by perpetrators into the creation of a situation of dependency, the more investigations should be directed towards establishing the offence*

¹²⁰ Council of Europe Convention on Action against Trafficking in Human Beings (signed 16 May 2005, entered into force 1 February 2008), Art. 4.

¹²¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Art. 2.

¹²² Arbeitsgruppe Kinderhandel, *‘Prävention von Kinderhandel und Schutz der Opfer von Kinderhandel’*, Bericht 2015-2017, pp. 3-5.

¹²³ Sax, 2017, pp. 252-253.

¹²⁴ H. Sax, ‘Article 4 – Definitions’, in Planitzer, J. and Sax, H., (eds.), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings*, Cheltenham and Northampton, Edward Elgar Publishing, 2020, para. 4.54.

¹²⁵ Sax, 2020, para. 4.54.

¹²⁶ Sax, 2020, para. 4.56.

¹²⁷ See Sax, 2020, para. 4.57 with further references; see also Sax, 2017, p. 253.

of child trafficking.’¹²⁸ H. Sax advocates to pay particular attention to child-focused patterns of establishing dependency such as recruitment of unaccompanied minors and to serious forms of exploitation in order to draw the line between child trafficking and other forms of exploitation such as child labour.¹²⁹

2.4.3. Types of exploitation

The Palermo Protocol determines a (minimum) catalogue of forms of exploitation including exploitation of the **prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs**. The EU Anti-Trafficking Directive adds forced **begging** (as form of forced labour or services), the **exploitation of criminal activities** (such as pickpocketing, shoplifting, drug trafficking and similar activities), **illegal adoption and forced marriage** to the list of forms of exploitation.¹³⁰

Besides these catalogues on forms of exploitation, neither the Palermo Protocol nor the EU Directive or national law define the term ‘exploitation’ as such. In literature, it was emphasised that the real-life experience of workers stretches from the optimum (decent work) to the worst form of exploitation (forced labour¹³¹). Within this spectrum (the so-called ‘*continuum of exploitation*’) different degrees of exploitation exist reaching, for example, from non-payment of (minimum) wage to serious threats, withholding of documents, debt bondage or coercion.¹³² Some forms of exploitation may lead to civil and/or criminal claims but are not exploitation in the context of trafficking as a certain threshold of seriousness is required.

¹²⁸ Sax, 2017, p. 253.

¹²⁹ Sax, 2017, p. 253.

¹³⁰ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Preamble (11).

¹³¹ According to the ILO, forced labour is defined through 11 indicators which are: abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abuse working and living conditions and excessive overtime. In some cases, the detection of only one indicator may imply forced labour (e.g. in case of debt bondage). In other cases, more indicators would be required. ILO indicators of forced labour, available under https://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang-en/index.htm (accessed on 20 June 2021).

¹³² Skrivankova, pp. 109-111.

Unaccompanied minors are exploited in various different forms – reaching from forced labour (e.g. in private households, on cannabis farms, in hospitality or in the garment industry) to forced begging in the streets, sexual exploitation or exploitation of criminal activities such as pickpocketing, drug dealing and forced marriage.¹³³ Children may also be trafficked for illegal adoption.¹³⁴ Exploitation occurs in any sector of both, regular and shadow economies.¹³⁵ Online forms of exploitation (e.g. online prostitution) have increased in the recent years, especially due to the COVID-19 pandemic.¹³⁶

Even though trafficking for sexual exploitation is the form of trafficking that is most commonly officially identified by authorities (e.g. EU-wide 60 %),¹³⁷ stereotypes should be avoided. Trafficking is not merely selling of children (for sexual purposes) by organised ‘mafia’ groups – also family members or trusted religious or community leaders may be the perpetrators.¹³⁸ UNHCR therefore recommends to carefully examine the possible involvement of family member or caregivers in all cases of trafficked children.¹³⁹

2.4.4. Vulnerabilities of unaccompanied minors to trafficking and exploitation

a) General risk factors of unaccompanied minors

In January 2021, the United Nations Office for Drugs and Crime (UNODC) issued its global report for 2020 on human trafficking. According to this report, one in every three

¹³³ Sax, 2017, p. 251; see also UNODC, 2016, p. 61; European Commission, Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM(2020) 661 final SWD(2020) 226 final, 20 October 2020, p. 7, available under <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0661&from=GA> (accessed on 7 July 2021).

¹³⁴ UNHCR, 2019, p. 138.

¹³⁵ Skrivankova, p. 118.

¹³⁶ Conference organised by the ISF-funded Project THB LIBERI and the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) in the framework of the German Presidency of the Committee of Ministers of the Council of Europe, 4 May 2021 [Webinar], Workshop I – Exploitation of children and young persons through the internet. See also Save The Children, 29 July 2020, available under <https://www.savethechildren.net/news/covid-19-pushed-victims-child-trafficking-and-exploitation-further-isolation-save-children> (accessed 20 May 2021).

¹³⁷ European Commission, COM(2020) 661 final SWD(2020) 226 final, 20 October 2020, p. 7; see also Forin and Healy, p. 64.

¹³⁸ Sax, 2017, p. 251; Nowak/Sax/Weichselbaum, p. 1.

¹³⁹ UNHCR, 2019, p. 138.

detected victims of trafficking on a global level is a child.¹⁴⁰ The tendency of detected child victims of trafficking has been increasing in the last years. In the EU, almost a quarter of detected victims of human trafficking are children.¹⁴¹ Since only a few come forward due to fear, lack of information or mistrust¹⁴² and many victims are considered to remain undetected, the actual number of victims is estimated to be much higher.¹⁴³

UNODC¹⁴⁴ and GRETA¹⁴⁵ warned that migrants are an easy prey for traffickers and exploiters and unaccompanied minors are particularly vulnerable.¹⁴⁶ **Recently, GRETA highlighted that ‘the mere fact of unaccompanied children being present in the territory of a foreign country without an adult exercising parental authority or guardianship makes them vulnerable to trafficking.’**¹⁴⁷ According to ICMPD ‘some factors are specific to [unaccompanied asylum seeking and migrant] children, exposing only them to the risk of trafficking and exploitation, or exposing them to a heightened risk compared to adults.’¹⁴⁸ Recently, the European Commission stressed once again that unaccompanied minors ‘continue to be at higher risk of trafficking and exploitation along migration routes towards and within the EU.’¹⁴⁹ In January 2020, the EU Parliamentary Assembly emphasised that unaccompanied minors are ‘in need of special protection

¹⁴⁰ United Nations Office on Drugs and Crime (UNODC), Global report on Trafficking in Persons 2020, Vienna, United Nations, January 2021, p. 81, available under https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf (accessed 12 April 2021).

¹⁴¹ European Commission, COM(2020) 661 final SWD(2020) 226 final, p. 7.

¹⁴² Inter-Agency Coordination Group against Trafficking in Persons (ICAT), Trafficking in Children, Issue 06, 07/2018, p. 2, available under https://icat.un.org/sites/default/files/publications/icat-ib-06-trafficking_in_children.pdf (accessed 13 June 2021).

¹⁴³ UNICEF and IOM, Harrowing Journeys: Children and youth on the move across the Mediterranean Sea, at risk of trafficking and exploitation, 2017, p. 21, available under https://www.unicef.org/media/49046/file/Harrowing_Journeys_Children_and_youth_on_the_move_across_the_Mediterranean-ENG.pdf (accessed 19 May 2021).

¹⁴⁴ UNODC, 2016, p. 61.

¹⁴⁵ GRETA dedicated a thematic section in its 5th General Report to a number of issues related to the identification and protection of victims of trafficking among asylum seekers, refugees and migrants, and dedicated one chapter on risk of trafficking of unaccompanied and separated children, see GRETA, 2016, pp. 33-43. In the 2020 report, GRETA presented the most recent observations on asylum seekers and international protection for victims of trafficking, see GRETA Group of Experts on Action against Trafficking in Human Beings, 10th General Report on GRETA’s Activities, covering period from 1 January to 31 December 2020, Council of Europe, April 2021, pp. 35-59, available under <https://www.coe.int/en/web/anti-human-trafficking/general-reports> (accessed 25 May 2021).

¹⁴⁶ UNODC, 2021, pp. 87, 91; GRETA, 2016, p. 33.

¹⁴⁷ GRETA, 2021, p. 51.

¹⁴⁸ Forin and Healy, p. 69.

¹⁴⁹ European Commission, COM(2020) 661 final SWD(2020) 226 final, p. 7.

*against the multiple dangers they face along their journey, among them violence, sexual abuse, human trafficking and exploitation.*¹⁵⁰ Furthermore, numerous other studies and literature recognised that unaccompanied children travelling in mixed migration flows¹⁵¹ as particularly vulnerable to exploitation and trafficking.¹⁵²

Risk factors exist before, during and after the journey¹⁵³ as well as on policy level and on individual level¹⁵⁴ and are often intertwined.¹⁵⁵ In the reviewed literature, following risk factors have been stressed:

- Unaccompanied minors are considered to attract less attention from the authorities as they are often excluded from social services and monitoring their activities is considered to be difficult which makes them a favourable target group for traffickers.¹⁵⁶
- Children's capacities to take care of themselves, to judge people and situations and to assess risks, which they are exposed to throughout their journeys, are still developing which puts them – compared to adults – under a higher risk of exploitation.¹⁵⁷

¹⁵⁰ Parliamentary Assembly, Missing refugee and migrant children in Europe, Resolution 2324 (2020), para. 2.

¹⁵¹ The term 'mixed migration flow' refers to the phenomenon of a blurring or continuum between forced and voluntary migration. See Forin and Healy, p. 14; J. Borton and S. Collins, 'Responses to mixed migration in Europe: Implication for the humanitarian sector', London, Humanitarian Practice Network (HPN), Overseas Development Institute, Network Paper no. 81, December 2017, p. 4, available under <https://odihpn.org/wp-content/uploads/2017/12/NP-81-web-file.pdf> (accessed 15 May 2021); N. Van Hear, 'Managing Mobility for Human Development: The Growing Salience of Mixed Migration', United Nations Development Programme, Human Development Reports, Research Paper 2009/20, June 2009, p. 6., available under http://hdr.undp.org/sites/default/files/hdrp_2009_20.pdf (accessed 15 May 2021).

¹⁵² Forin and Healy, p. 14; UNICEF and IOM, pp. 20-21, ICAT, 2018, p. 1. UNODC, 2016, pp. 60-61; European Commission, 2015, pp. 34, 40; European Commission, COM(2017) 211, p. 6.; Joint report of the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and the Special Rapporteur on trafficking in persons, especially women and children, Sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material; and trafficking in persons, especially women and children, United Nations General Assembly, A/72/164, 18 July 2017, p. 8.

¹⁵³ A/72/164, p. 8; UNODC, 2016, pp. 57-63.

¹⁵⁴ Forin and Healy, pp. 70-81.

¹⁵⁵ UNICEF and IOM, p. 28.

¹⁵⁶ European Commission, 2015, p. 40.

¹⁵⁷ European Commission, 2015, p. 14; UNICEF and IOM, pp. 22-23.

- Sub-standard reception conditions¹⁵⁸ respectively lack of appropriate care and accommodation¹⁵⁹ or even being outside of the child protection system as well as the lack of adequate guardian¹⁶⁰ exposes unaccompanied minors to violence, abuse and exploitation.¹⁶¹
- Restrictive migration policies and practices (e.g. push-backs or detention¹⁶²) force unaccompanied minors to look for alternative routes, e.g. seeking help from smugglers.¹⁶³ Smugglers often demand more money along the way and offer exploitative ways to back debts (see further chapter 2.4.2.b.).¹⁶⁴ The longer the journey takes, the higher is the risk of being abused and exploited.¹⁶⁵
- Irregular and unclear legal status (being in a legal limbo)¹⁶⁶ as well long waiting periods in the asylum procedures, ‘aging out’ and delays in family reunification procedures increase vulnerabilities.¹⁶⁷ Often, unaccompanied minors are not aware of their rights and lack information about the asylum proceedings or were given wrong information.¹⁶⁸
- As unaccompanied minors do not have a legal right to work¹⁶⁹ or have difficulties finding a job and are, at the same time, often in a dire economic situation due to debts to smugglers, the responsibility to support their families in their countries of origin or need money for organising family reunification, they are vulnerable

¹⁵⁸ Parliamentary Assembly, Missing refugee and migrant children in Europe, Resolution 2324 (2020), para. 2 and 3.

¹⁵⁹ GRETA 2021, p. 45.; European Commission, 2015, p. 8; A/72/164, p. 10.

¹⁶⁰ Parliamentary Assembly, Missing refugee and migrant children in Europe, Resolution 2324 (2020), para. 2 and 3; Forin and Healy, p. 73.

¹⁶¹ Forin and Healy, pp. 75-78.

¹⁶² UNICEF and IOM, pp. 34-35; Parliamentary Assembly, Missing refugee and migrant children in Europe, Resolution 2324 (2020), para. 2 and 3.

¹⁶³ GRETA 2021, pp. 45 and 58.; A/72/164, 2017, p. 10; ICAT, 2018, p. 2.

¹⁶⁴ Forin and Healy, p. 81; A/72/164, 2017, p. 12; UNICEF and IOM, p. 24.

¹⁶⁵ Forin and Healy, pp. 74-75, 81; UNICEF and IOM, p. 34.

¹⁶⁶ A/72/164, p. 11.

¹⁶⁷ Forin and Healy, pp. 70-74; A/72/164, 2017, p. 12.

¹⁶⁸ Forin and Healy, p. 80.

¹⁶⁹ In Austria, asylum seekers are banned from most sectors of the labour market due to a decree which was recently abolished by the Constitutional Court, see Die Presse, VfGH hebt Beschränkung von Jobzugang für Asylwerber auf, 14 July 2021, (in German) available under <https://www.diepresse.com/6007915/vfgh-hebt-beschränkung-von-jobzugang-für-asylwerber-auf> (accessed 20 July 2021).

to labour exploitation during their journey as well as upon arrival in their destination country.¹⁷⁰

- Further risk factors include poor education (e.g. being illiterate, lack of knowledge of foreign language and rights),¹⁷¹ poor integration, poverty¹⁷² as well as limited educational or work opportunities.¹⁷³
- UNICEF and IOM found in a study in 2017 that the migration route plays a key role as unaccompanied minors are generally exposed to higher risks of exploitation on the Central Mediterranean Route than in the Eastern Mediterranean Route.¹⁷⁴

According to EUROPOL, traffickers have frequently used reception centres in order to identify potential victims and arrange their transport to places of exploitation.¹⁷⁵ GRETA found that in Italy, France and Portugal, traffickers maintain control over victims in reception centres and take advantage of the gaps in the identification and protection of trafficking victims of among asylum seekers.¹⁷⁶

Even though the majority of detected child victims of THB are girls (e.g. in the EU: 69 % of non-EU child victims), stereotypes should be avoided – THB clearly affects boys as well, especially among asylum seekers. For example, in Berlin 50 % of the victims of child trafficking are male.¹⁷⁷

¹⁷⁰ Forin and Healy, p. 67.

¹⁷¹ UNICEF and IOM, p. 33; ICAT, 2018, p. 2.

¹⁷² ICAT, 2018, p. 2.

¹⁷³ Forin and Healy, pp. 73-74. See also GRETA, 2021, p. 46.

¹⁷⁴ UNICEF and IOM, p. 29.

¹⁷⁵ EUROPOL, European Migrant Smuggling Centre (EMSC) 4th Annual Activity Report 2020, European Union Agency for Law Enforcement Cooperation, 2020, p. 12, available under <https://www.europol.europa.eu/publications-documents/emsc-4th-annual-activity-report—2020> (accessed 24 May 2021).

¹⁷⁶ GRETA, 2021, p. 45.

¹⁷⁷ Conference organised by the ISF-funded Project THB LIBERI and the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) in the framework of the German Presidency of the Committee of Ministers of the Council of Europe, 5 May 2021 [Webinar], Workshop III – Exploitation of children and young persons by family structures, Speaker: Thilo Strootmann, Police, Berlin.

b) The interrelation of smuggling and trafficking

According to the **Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime**, smuggling is defined as

*‘procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident.’*¹⁷⁸

Even though trafficking in human beings and smuggling are two different phenomena, they are – in practice – often intertwined. **Where smuggling occurs, human trafficking is very likely to occur as well.**¹⁷⁹ In the context of the Balkan route, for example, a study conducted in 2014/15 in the framework of the EU-funded project TRACE¹⁸⁰ indicated that with an increase of the number of smuggled migrants also the number of people vulnerable to THB increases.¹⁸¹ According to the Organization for Security and Cooperation in Europe (OSCE), *‘it has become increasingly evident that the migration and refugee crisis creates a perfect market for the trafficking of migrants within both transit and destination countries.’*¹⁸² One of the main factors of this interrelation is debt as means to forcing people into prostitution, criminality and forced labour.¹⁸³

In literature,¹⁸⁴ three ways in which smuggling can turn into trafficking were identified:

¹⁷⁸ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (adopted by UN General Assembly resolution 55/25, entered into force on 28 January 2004), Art. 3.

¹⁷⁹ Forin and Healy, p. 20.

¹⁸⁰ For more information on the project TRACE (Trafficking as A Criminal Enterprise) see https://ec.europa.eu/anti-trafficking/eu-projects-and-funding/trafficking-criminal-enterprise-trace_en (accessed 25 June 2021).

¹⁸¹ A. Weatherburn, R. Pavlova, V. Plotside, A. Tamas, A. Constantinou et al, Deliverable D5.2: A report on how future socio-economic, political and criminal trends might impact human trafficking in Europe, 2015, p. 7, available under https://humantraffickingsearch.org/wp-content/uploads/2017/07/TRACE_D5.2_FINAL_Nov-30-2015.pdf (accessed 15 May 2021).

¹⁸² OSCE Office of the Special Representative and Coordinator for Combating Trafficking in Human Beings, From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows, Vienna, OSCE, 2017, p. 15, available under <https://www.osce.org/files/f/documents/b/e/367061.pdf> (accessed 27 April 2021).

¹⁸³ UNODC, 2016, p. 61.

¹⁸⁴ Forin and Healy, p. 20; A. Triandafyllidou, Migrant Smuggling, in A. Triandafyllidou (ed.), *‘Routledge Handbook of Immigration and Refugee Studies’*, New York, Routledge, 2017, p. 351.

- Trafficking/exploitation upon arrival in destination country: Migrants are trafficked and exploited after the successful border-crossing and arrival in their destination country.
- Trafficking/exploitation during the journey: Smuggling turns into trafficking while migrants are still in transit.
- Either upon arrival in the destination country or in transit, (particularly stranded) migrants, who are in need of money, voluntarily accept informal/illegal work and only later realize that they are being exploited.

The interrelation between smuggling and trafficking represents an enormous risk for unaccompanied minors.¹⁸⁵ **In the absence of safe and regular ways and migrate, unaccompanied minors are often forced to use smugglers which increases their risk of exploitation and THB¹⁸⁶** and exposes them to a vicious circle.

Europe, as one of the main destinations for unaccompanied minors, is '*at the heart of the sale of, trafficking in and other forms of exploitation of children*'.¹⁸⁷ These risks exist throughout the journey to Europe but also when unaccompanied minors move from one European country to another, for example in order to reunite with relatives or acquaintances.¹⁸⁸ Upon arrival in their destination country, many unaccompanied minors have acquired debts with '*exploiters who take away their documents and use threats or violence to subdue them into labour exploitation*'.¹⁸⁹ Traffickers also use the threat of reporting to the migration authorities, knowing that their victims who reside in country illegally fear deportation and to not trust authorities.¹⁹⁰

2.5. Combining the perspectives: international protection and other forms of protection for unaccompanied victims of child trafficking

States collecting data on victims of THB among asylum seekers reported an increase in the numbers in the past years.¹⁹¹ Also for states, which do not have data available, it is

¹⁸⁵ Forin and Healy, p. 15.

¹⁸⁶ Forin and Healy, p. 15; A/72/164, p. 8; UNICEF and IOM, pp. 16, 45; UNODC, 2016, pp. 60-62.

¹⁸⁷ A/72/164, 2017 p. 7.

¹⁸⁸ Ibid, pp. 6-7;

¹⁸⁹ Ibid, p. 8; see also UNODC, 2016, p. 60.

¹⁹⁰ UNODC, 2016, p. 60.

¹⁹¹ GRETA, 2021, p. 39.

estimated that a certain relevance of victims of THB among asylum seekers exists.¹⁹² For example in Austria, GRETA found that the number of victims of THB granted asylum based on the grounds of membership to a particular social group (mostly Nigerian women) has increased over the last years.¹⁹³ In regard to child trafficking, GRETA emphasised recently that – due to the increased number of unaccompanied children arriving in Europe – the obligation to protect vulnerable children is nowadays even more urgent.¹⁹⁴

Victims or potential victims of child trafficking may seek international protection in different scenarios, such as:

- a child was trafficked from one country to the country in which he or she could escape and then applies for international protection, or
- a victim of child trafficking has fled abroad seeking international protection from traffickers in his or her country of origin, or
- a victim of child trafficking is instructed by the trafficker to apply for international protection, or
- a child fears to become a victim of child trafficking and seeks international protection abroad.¹⁹⁵

While not all victims of THB are refugees according to the Refugee Convention, some may fulfil the elements of the refugee definition (as defined in Art. 1A Refugee Convention). **UNHCR’s Guidelines on International Protection No. 7**¹⁹⁶ set out when the Refugee Convention applies to victims or potential victims of trafficking. UNHCR

¹⁹² See for Austria for example Reyhani, pp. 23-24.

¹⁹³ GRETA, 2021, p. 48; GRETA Group of Experts on Action against Trafficking in Human Beings, Evaluation Report Austria, Third Evaluation Round, Access to justice and effective remedies for trafficking in human beings, Strasbourg, Council of Europe, 10 June 2020, p. 50, available under <https://rm.coe.int/greta-2020-03-fgr-aut-en/16809eb4fd> (accessed 10 July 2021).

¹⁹⁴ GRETA, 2021, p. 49.

¹⁹⁵ Inter-Agency Coordination Group against Trafficking in Persons (ICAT), Trafficking in Persons and Refugee Status, Issue 03, 09/2017, p. 1, available under <https://icat.un.org/sites/default/files/publications/icat-ib-03-v.2.pdf> (accessed 13 June 2021); IOM, p. 13.

¹⁹⁶ UNHCR, Guidelines on International Protection No. 7: The Application of Art 1A (2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked, 7 April 2006, available under <https://www.unhcr.org/publications/legal/443b626b2/guidelines-international-protection-7-application-article-1a2-1951-convention.html> (accessed 20 July 2021).

emphasised that **trafficking – as violation of a range of fundamental rights – may constitute persecution.**¹⁹⁷ The biggest difficulty, however, is often to link the well-founded fear of persecution to one or more of the Convention grounds (race, religion, nationality, membership of a particular social group or political opinion).¹⁹⁸ Furthermore, since trafficking emanates from non-state actors, it is necessary to examine whether the authorities of the country of origin are able and willing to protect the victim or potential victim upon return.¹⁹⁹ Regarding child trafficking, UNHCR emphasises that the risk of being re-trafficked as well as the impact of reprisals by members of the trafficking network as well as social exclusion needs to be assessed in a child-sensitive manner. For example, a *‘girl who has been trafficked for sexual exploitation may end up being rejected by her family and become a social outcast in her community.’*²⁰⁰ *A boy who has been sent away his parents in the hope and expectation that he will study, work abroad and send remittances back to his family likewise may become excluded from his family if they learn that he has been trafficked into forced labour.’*²⁰¹

If a victim of THB does not qualify as refugee, international protection may be granted through the **non-refoulement principle** or **subsidiary protection.**²⁰² Furthermore, Anti-Trafficking instruments provide **special (temporary) residence permits for victims of human trafficking**, which guarantee permanent (or temporary) protection,²⁰³ as well as a so-called **‘recovery and reflection period’**. In the case of children, the principle of the best interest of the child should be primary consideration at all times.²⁰⁴

¹⁹⁷ UNHCR, 2019, p. 152.

¹⁹⁸ UNHCR, 2006, p. 11.

¹⁹⁹ UNHCR, 2006, p. 9.

²⁰⁰ This affects, for example, especially girls from Nigeria who are sexually exploited in Europe after performing a ‘religious or spiritual ritual’ (so called ‘juju ritual’).

²⁰¹ UNHCR, 2019, pp. 152-153.

²⁰² See further M. Nowak and J. Planitzer, Part I: Trafficking in Human Beings Amounting to Torture and other Forms of Ill-treatment – Legal Analysis, Vienna, OSCE/Office of the Special Representative and Co-ordinator for Trafficking in Human Beings, 2013, pp. 30-31; ICAT, Trafficking in Children, Issue 06, 07/2018, p. 1.

²⁰³ Also the EU Directive includes a provision on a reflection period for victims of THB but – other the CoE Anti-Trafficking Convention – does not state a minimum length, see Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject to an action to facilitate illegal immigration, who cooperate with the competent authorities, Art. 6.

²⁰⁴ ICAT, 2018, p. 3; GRETA Group of Experts on Action against Trafficking in Human Beings, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in

On **European level**, Article 13 of the CoE Anti-Trafficking Convention provides a **recovery and reflection period of at least 30 days to victims of THB** during which, for example, expulsion orders cannot be enforced. According to Article 16 (7), a child may not be returned until a best interest of the child assessment is conducted. Regarding the **special residence permit**, State Parties of the CoE Anti-Trafficking Convention have three possibilities: they can issue a residence permit in case of co-operation; or due to the personal situation; or on both grounds.²⁰⁵ For child victims of THB, Article 14(2) of the CoE Anti-Trafficking Convention provides an unconditional residence permit if it is in the best interest of the child which would ‘take precedence over’ the requirements of personal situation or co-operation with authorities.²⁰⁶

On **EU level**, the EU Anti-Trafficking Directive does not contain any provisions on residence permits. However, the **Council Directive 2004/81/EC of 29 April 2004**²⁰⁷ regulates that residence permits for victims of human trafficking may be bound to their co-operation with the competent authorities in criminal proceedings.

In literature, this ‘co-operation approach’ was criticised as contradiction to the human rights-based approach of the CoE Anti-Trafficking Convention²⁰⁸ which would allow to deduce an obligation to an unconditional residence permit.²⁰⁹ In this context, the OSCE emphasised that chances of self-identification increase with trust in the assistance system and recommended that any provisions to assistance, including residence permits, should not be conditional on the willingness to co-operate in legal proceedings.²¹⁰

Human Beings by Austria, Second Evaluation Round, Strasbourg, Council of Europe, 12 October 2015, p. 36, available under <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680630cb4> (accessed 15 May 2021).

²⁰⁵ Article 14 CoE Anti-Trafficking Convention; see J. Planitzer, ‘Article 14 – Residence permit’, in Planitzer, J. and Sax, H., (eds.), *A Commentary on the Council of Europe Convention on Action against Trafficking in Human Beings*, Cheltenham and Northampton, Edward Elgar Publishing, 2020, pp. 201-215.

²⁰⁶ Planitzer, para. 14.20, 14.35; Council of Europe, Explanatory Report to the CoE Convention against Trafficking in Human Beings, Warsaw, 16 May 2005, CETS no. 197, para. 186, available under <https://rm.coe.int/168008371d> (accessed 29 June 2021).

²⁰⁷ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject to an action to facilitate illegal immigration, who cooperate with the competent authorities, Art. 6 and 8.

²⁰⁸ Piotrowicz, p. 43.

²⁰⁹ Planitzer, para. 14.20.

²¹⁰ OSCE, p. 37.

Ultimately, I would like to emphasise that states are obliged to ensure that the rights of (potential) child victims of THB are protected, including having access to information, effective and fair asylum procedures and other forms of protection.²¹¹ Furthermore, GRETA emphasised that victims of THB seeking asylum must be provided with specialised support, including access to specialised shelters and accommodation separated from the immigration system.²¹² However, victims of THB, especially women and children, often face challenges in gaining information and access to asylum procedures and fear stigmatisation, deportation and reprisals by their traffickers.²¹³ Often, the identification of child victims of THB among unaccompanied minors is poor,²¹⁴ even though early identification is essential in order to take appropriate measures, to prevent risks of re-trafficking²¹⁵ and to avoid irreversible decisions such as expulsions or forced removals of victims of THB.²¹⁶ Furthermore, referral and long-term or permanent protection are still major challenges in many countries.²¹⁷ Often, victims are accommodated in inappropriate facilities exposing them to the risk of being re-trafficked.²¹⁸ This is, according to ICMPD, particularly problematic for specific vulnerable groups, such as unaccompanied minors.²¹⁹

3. Unaccompanied minors in Austria

3.1. National legal framework

In Austria, the relevant provisions regarding unaccompanied minors are laid down in the Asylum Act²²⁰ (*Asylgesetz*), the Asylum Procedures Act²²¹ (*BFA-Verfahrensgesetz*), the Aliens' Police Act²²² (*Fremdenpolizeigesetz*), the Settlement and Residency Act

²¹¹ GRETA '2021, p. 48.

²¹² GRETA, 2021, p. 41.

²¹³ ICAT 2018, p. 2.

²¹⁴ GRETA, 2021, p. 58.

²¹⁵ GRETA, 2016, p. 36; OSCE, p. 34.

²¹⁶ OSCE p. 37.

²¹⁷ ICAT, 2018, p. 2; Bhabha, p. 157.

²¹⁸ ICAT, 2018, p. 2; OSCE, 2017, p. 35.

²¹⁹ Forin and Healy, p. 6.

²²⁰ *Asylgesetz*, BGBl I Nr. 100/2005. The English version of the Asylum Act is available under https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2005_1_100/ERV_2005_1_100.pdf.

²²¹ *BFA-Verfahrensgesetz*, BGBl I Nr. 87/2012.

²²² *Fremdenpolizeigesetz*, BGBl I Nr. 100/2005.

(‘*Niederlassungs- und Aufenthaltsgesetz*’) and the Basic Welfare Support Agreement²²³ (‘*Vereinbarung zur die Grundversorgung zwischen Bund und Länder*’).

3.1.1. Asylum and other forms of international protection in Austria

a) Asylum, subsidiary protection and other residence permits for asylum-seeking unaccompanied minors in Austria

In Austria, different status for (asylum-seeking or non-asylum-seeking) foreigners exist. For people (including unaccompanied minors) seeking international protection the following titles are to be considered:

- Asylum status (Art. 3 Asylum Act);
- Subsidiary protection status (Art. 8 Asylum Act);
- Residence permits for reasons of Art. 8 ECHR (Art. 55 Asylum Act);
- Special Protection Residency Permit (Art. 57 Asylum Act).²²⁴

Regarding **asylum status**, the Austrian law is based on the refugee definition of the Refugee Convention: The applicant shall be granted asylum status if it is **credible that he or she would be at risk of persecution as defines in Art. 1A of the Refugee Convention** (provided that Austria is responsible for the application and the applicant is not ineligible for asylum status according to Art. 6 Asylum Act).

If asylum status is not granted or has been withdrawn, the applicant shall be granted **subsidiary protection** according to Art. 8 Asylum Act if his or her ‘*rejection at the border, removal or deportation to his or her country of origin would constitute a real risk of violation of Art. 2 [right to life] or 3 [prohibition of torture] ECHR or of Protocol No. 6 [abolition of death penalty] or No. 13 [abolition of death penalty in all circumstances] to the Convention or would represent for the alien as a civilian a serious threat to his life or person as a result of arbitrary violence in connection with an international or internal conflict.*’

²²³ Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde, BGBl I 80/2004.

²²⁴ Koppenberg, p. 50.

While asylum status is granted indefinitely, subsidiary protection is valid for one year and can be extended for two years each time (Art. 8 para. 4 Asylum Act).

If neither asylum status nor subsidiary protection is granted, the **Federal Office for Immigration and Asylum (*Bundesamt für Fremdenwesen und Asyl*, short: *BFA*)** reviews ex officio or upon request of the applicant whether the conditions for a **residence permit for reasons of Art. 8 ECHR** (preservation of private and family life) according to Art. 55 Asylum Act or for a **special protection residence permit** according to Art. 57 Asylum Act are met. According to the latter provision, victims of THB who are not persecuted in their country of origin and therefore have no grounds for asylum, can be granted a special protection residence permit provided that criminal proceedings have been initiated or civil claims have been asserted (Art. 58 Asylum Act). This permit is limited to one year and can be extended on a yearly basis provided the criteria are still fulfilled.²²⁵ If no criminal proceedings have been initiated or no civil law claims have been asserted, the application shall be rejected (Art. 57 para. 3 Asylum Act). The cooperation of the victim with the responsible authorities is not an explicit condition for the permit.²²⁶ However, in practice, criminal prosecution in Austria requires the testimony of the victim.²²⁷ Persons with the special protection residence permit can – if the criteria are fulfilled – change to a different residence permit (so called ‘Rot-weiß-rot Karte plus’) which provides access to the job market²²⁸ which is, however, a challenge for most victims.²²⁹ Despite Article 14(2) CoE Anti-Trafficking Convention, according to which State Parties should issue a residence permit to child victims of THB if it is in the best interest of the child,²³⁰ a special provision for a residence permit for child victims of THB does not exist in Austria.

b) Overview of the asylum procedure

The asylum procedure in Austria consists of two phases: the **admission procedure**, in which the authority determines whether Austria is responsible for the application, and the

²²⁵ Art. 54 para 2 and Art. 59 Asylum Act.

²²⁶ Reyhani, p. 53.

²²⁷ The hearing can be conducted in form of a contradictory hearing according to Art. 165 Criminal Code.

²²⁸ Reyhani, p. 54.

²²⁹ LEFÖ Interventionsstelle für Betroffene von Frauenhandel, Tätigkeitsbericht 2019, p. 6.

²³⁰ Planitzer, para. 14.20, 14.35; Council of Europe, CETS no. 197, para. 186.

actual **asylum procedure**, in which the criteria for asylum (subsidiary protection) are assessed.

The BFA is responsible for applications for international protection in the first instance. Appeals can be lodged before the Federal Administrative Court (*Bundesverwaltungsgericht*).²³¹

Generally, the asylum procedures for unaccompanied minors and adult applicants are identical. However, some special procedures for minor asylum seekers are in place, including the submission of the application for international protection, interviews and the responsibility for an application:

- Unaccompanied minors who apply for international protection are taken to a reception centre (Traiskirchen or Reichenau an der Rax)²³² where they are provided with a legal advisor. If an unaccompanied minor is below the age of 14, the application is considered as submitted when it is confirmed by the legal advisor.²³³
- Upon the submission, an interrogation concerning the identity of the applicant is conducted. Unaccompanied minors below the age of 14 may only be interrogated when their legal advisor is present.²³⁴ Interviews by the BFA may only be conducted in the presence of the legal advisor regardless the age of the unaccompanied minor.²³⁵
- According to Art. 8 Dublin III regulation,²³⁶ the EU Member State, in which a family member, sibling or relative of the unaccompanied minor is legally present, is responsible provided that this is in the best interest of the child. In absence of a family member, sibling or relative the Member State is responsible in which the

²³¹ Art. 3 and 7 of the Asylum Procedures Act (BFA-VG).

²³² BMI, Anfragebeantwortung 3337/AB betreffend unbegleitete minderjährige Asylsuchende in Bundesbetreuung, 11 November 2020, p. 9.

²³³ Art. 13 para. 3 and 6 Asylum Procedures Act.

²³⁴ Art. 13 para. 6 Asylum Procedures Act.

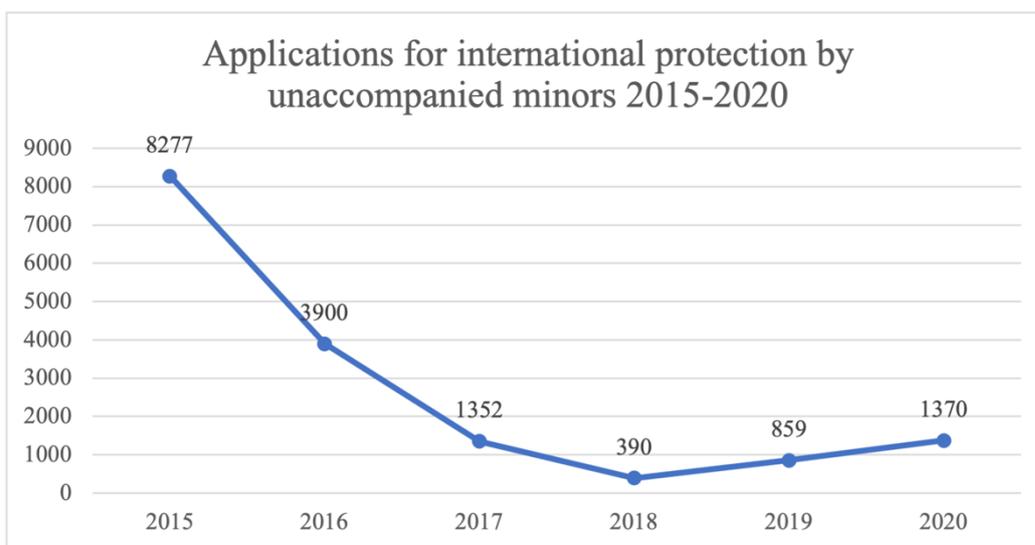
²³⁵ Art. 19 para. 5 Asylum Act.

²³⁶ Regulation No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Dublin III Regulation), Art. 8.

minor has lodged his or her application for international protection. If an unaccompanied minor has lodged an application for international protection in more than one Member State, the Member State in which the minor is present is responsible for his or her application.²³⁷

Art. 24 Asylum Act regulates the discontinuation of the proceedings without a substantive decision in case the applicant has evaded the procedure or voluntarily leaves the federal territory. This provision applies to all asylum seekers, including unaccompanied minors.²³⁸

According to the annual asylum statistics issued by the Ministry for Interior Affairs, 16.148 unaccompanied minors applied for international protection in Austria between 2015-2020. As the following graph shows, the number of applications decreased significantly after 2015.²³⁹

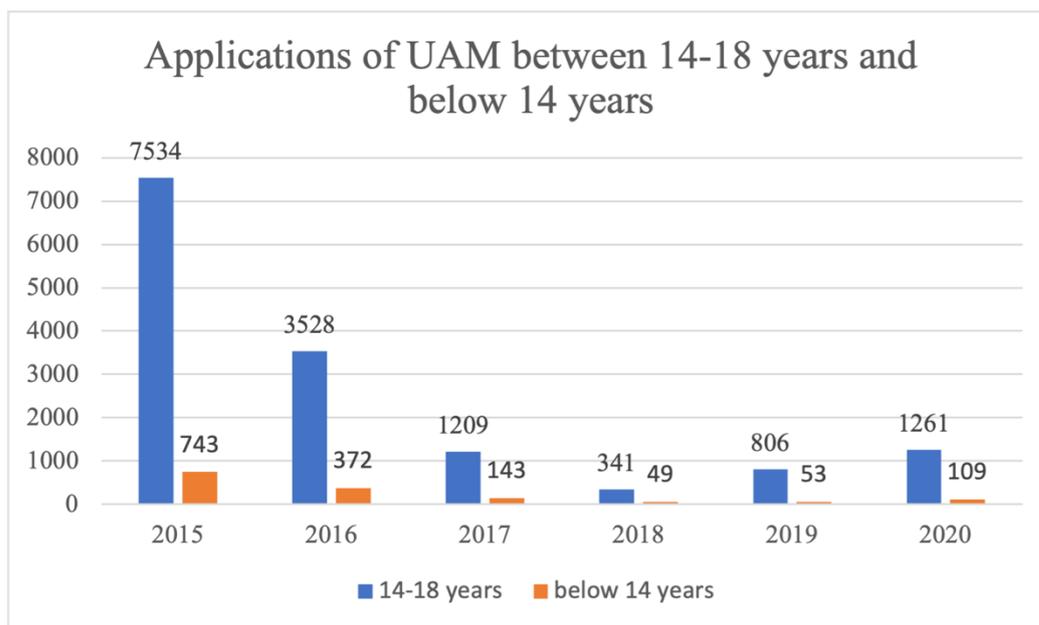


²³⁷ European Court of Human Rights, *MA and others vs. Secretary of State for the Home Department*, C-648/11, 6 June 2013, para. 60.

²³⁸ BMI, *Anfragebeantwortung 38/AB betreffend Asylverfahren minderjähriger Asylsuchender in Österreich*, 16 December 2019, p. 9.

²³⁹ The data was taken from the annual asylum statistics (*Asylstatistik*) from 2015-2020 published yearly by the Austrian Ministry of Interior Affairs (*Bundesministerium für Inneres*). The statistics are available (in German) under <https://www.bmi.gv.at/301/Statistiken/> (accessed 25 May 2021). The numbers vary from those in the responses to parliamentary requests due to subsequent corrections.

The majority of applicants is between 14 and 18 years, as illustrated in the following graph:²⁴⁰



3.1.2. Reception conditions

a) Accommodation and care

The responsibility for the accommodation and care of unaccompanied minors is split between the federal state (Ministry for Interior Affairs) and the provinces as regulated in the Basic Welfare Support Agreement.²⁴¹ The federal state and the provinces may delegate their responsibilities.²⁴² For example, on federal level, basic welfare support has been delegated to the **Federal Agency for Reception and Support Services (*Bundesagentur für Betreuungs- und Unterstützungsleistungen*, short: ‘*BBU*’)**, In Vienna, the basic welfare support has been transferred to the ‘*Fonds Soziales Wien*’, an institution supervised by the City of Vienna.²⁴³

²⁴⁰ The data was taken from the annual asylum statistics (Asylstatistik) from 2015-2020 published yearly by the Austrian Ministry of Interior Affairs (Bundesministerium für Inneres). The statistics are available (in German) under <https://www.bmi.gv.at/301/Statistiken/> (accessed 25 May 2021).

²⁴¹ Vereinbarung zwischen dem Bund und den Ländern gemäß Art. 15a B-VG über gemeinsame Maßnahmen zur vorübergehenden Grundversorgung für hilfs- und schutzbedürftige Fremde, BGBl I 80/2004.

²⁴² Art. 3 para. 5 and Art. 4 para. 3 Basic Welfare Support Agreement.

²⁴³ Koppenberg, p. 56.

The accommodation placement is different for unaccompanied minors below 14 year and unaccompanied minors who are 14 years or older:

- Generally, unaccompanied minors who are 14 years or older are accommodated in reception facilities of the federal state (*‘Bundesgrundversorgung’*) located in Traiskirchen and Reichenau an der Rax during the admission procedure.²⁴⁴ After their admission to the asylum proceedings, the responsibility for accommodation and care is passed over to one of the *Länder* (*‘Landes-Grundversorgung’*). In most *Länder*, unaccompanied minors are accommodated in basic welfare facilities for unaccompanied minors rather than in facilities of the Children and Youth Welfare Service. Austria-wide standards for these special basic welfare facilities do not exist.²⁴⁵
- Unaccompanied minors below the age of 14 years are accommodated in facilities of the Children and Youth Welfare Service in the *Länder*.

However, Lower Austria and (partly) Burgenland regularly accommodate unaccompanied minors below the age of 14 years in federal reception facilities, mainly in Traiskirchen.²⁴⁶ For example: on 1 January 2020, 4 of the 35 unaccompanied minors were under the age of 14 years; on 31 December 2020, 17 of the 181 unaccompanied minors in Traiskirchen were under the age of 14 years; on 15 January 2021, 12 of the 155 unaccompanied minors were under the age of 14 years.²⁴⁷

In the past years, the number of unaccompanied minors accommodated in federal reception centres has decreased significantly. At its peak, 2.063 unaccompanied minors were accommodated in federal reception facilities in August 2015. In January 2016, the number has decreased to 1.151 unaccompanied minors, in January 2017 to 170 unaccompanied minors.²⁴⁸ On 1 January 2021, 236 unaccompanied minors were accommodated in federal reception facilities of which 181 were in Traiskirchen and 55

²⁴⁴ BMI, 3337/AB, p. 10.

²⁴⁵ Kindeswohlkommission, Bericht der unabhängigen Kommission für den Schutz der Kinderrechte und des Kindeswohls im Asyl- und Fremdenrecht, Kurzfassung, 13 July 2021, para. 62, (in German) available under <https://www.bmj.gv.at/themen/Kindeswohlkommission.html> (accessed on 13 July 2021).

²⁴⁶ Kindeswohlkommission, para. 51.

²⁴⁷ BMI, 4983/AB, p. 9.

²⁴⁸ BMI, 13245/AB, p. 2.

in Reichenau.²⁴⁹ With a capacity of 1.810 persons,²⁵⁰ Traiskirchen is the largest reception centre in Austria accommodating unaccompanied minors, families as well as adult women and adult men. Compared to Traiskirchen, the centre in Reichenau is significantly smaller with a total capacity of 70 people.²⁵¹

As a transfer to a reception facility of the provinces indicates the admission of the asylum procedure in Austria, unaccompanied minors are generally looking forward to their transfer. Unlike adults, unaccompanied minors do not lose basic welfare support if they reject the transfer to a certain province. Family links and personal reasons are taken into account when assigning a place in a provincial reception facility. However, in general nobody can choose where he or she is transferred to.²⁵²

According to the Minister for Interior Affairs, vulnerabilities and increased supervision needs are identified during an initial interview and are taken into consideration.²⁵³ Special federal reception facilities for vulnerable groups (e.g. victims of THB) do, however, not exist (apart from Drehscheibe and LEFÖ, see chapter 4.1.1.).

The basic welfare support includes various services, including accommodation, food, health insurance, clothing and pocket money.²⁵⁴ Unaccompanied minors are provided with special benefits, including care and supervision, information, counselling and social support, German courses²⁵⁵ as well as (if necessary) socio-pedagogical care and psychological support.²⁵⁶ Care and supervision are provided by facility staff members.²⁵⁷ The care should comprise an adequately structured daily routine (education, leisure activities); the clarification of questions regarding age, identity, origin and residence of family members; the clarification of future perspectives; if relevant the facilitation of

²⁴⁹ BMI, 4983/AB, p. 9.

²⁵⁰ BMI, AB 5038/AB, p. 2.

²⁵¹ Ibid.

²⁵² Interview with Stephanie Sladek, Stv. Geschäftsbereichsleitung GVS, BBU, Vienna, 10 June 2021.

²⁵³ BMI, Anfragebeantwortung AB 5038/AB betreffend Aufnahmebedingungen von Asylwerber_innen 2020, 17 March 2021, pp. 4-5.

²⁵⁴ Art. 6 Basic Welfare Support Agreement.

²⁵⁵ Art. 9 Basic Welfare Support Agreement.

²⁵⁶ Art. 7 Basic Welfare Support Agreement.

²⁵⁷ Heilemann, p. 7; Koppenberg, pp. 51-52.

family reunification; and the development of an integration plan and preparation measures with regard to schooling, vocational training and employment.²⁵⁸

In Traiskirchen, where the majority of unaccompanied minors is accommodated during the admission procedure, three school classes (so called ‘bridge classes’) consisting of 20-25 pupils take place.²⁵⁹ In Reichenau, German classes and workshops are conducted. Due to the COVID-19 pandemic, schooling has been limited.²⁶⁰

Every unaccompanied minor is allocated a main care contact person (in German: *Bezugsbetreuer*in*) who the unaccompanied minor can contact in all matters.²⁶¹ In Traiskirchen, a photo of the main care contact person responsible can be found on the doors to the rooms and a special team for unaccompanied minors exist.²⁶² Main care contact persons come from various professional and academic backgrounds. Translators and psychological support are provided as necessary. Care givers are required to be present 24/7.²⁶³

Various stakeholders have criticised that for basic welfare support facilities lower standards are in place compared to facilities of the Children and Youth Welfare Services creating a disadvantage for unaccompanied minors who are accommodated in the former. Therefore, stakeholders have requested to apply the Children and Youth Welfare Services standards to all facilities in which unaccompanied minors are accommodated.²⁶⁴

In its recent country report on Austria, the CRC Committee has expressed serious concerns on the fact that *‘unaccompanied child refugees over the age of 14 years are not offered the same support as Austrian children and the daily fee for care is lower than for*

²⁵⁸ Heilemann, p. 7.

²⁵⁹ BMI, Anfragebeantwortung 4983/AB betreffend Unterbringung und Asylverfahren minderjähriger Asylsuchender in Österreich, 11 March 2020, pp. 15-17.

²⁶⁰ Ibid.

²⁶¹ BMI, Anfragebeantwortung, 13245/AB betreffend betreffend minderjährige und unbegleitete minderjährige Flüchtlinge in Einrichtungen des Bundes und der Länder, 8 November 2017, p. 6.

²⁶² Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021.

²⁶³ BMI, 3337/AB, pp. 9-11.

²⁶⁴ Kindeswohlkommission, para. 140; UNHCR Österreich, Vorschläge für ein verbessertes Obsorgesystem für unbegleitete Kinder und Jugendliche in Österreich, Wien, UNHCR Österreich, 2019, pp. 10, 14; E., Raithelhuber, ‘Es braucht eine effizientes und effektives Obsorgesystem ab Tag ein’, Ein Gespräch zwischen Stephanie Sladek vom UNHCR-Länderbüro Österreich und Eberhard Raithelhuber, *Österreichisches Jahrbuch für Soziale Arbeit*, vol. 2, 2020, p. 108, 113; Koppenberg, p. 63; Nowak/Sax/Weichselbaum, p. 23.

*Austrian children, leading to larger groups, lower quality of care and a lack of monitoring by child and youth welfare services in such institutions’.*²⁶⁵

b) Legal representation

All unaccompanied minors are provided with a legal advisor in the admission and asylum procedure. During the admission procedure, the legal advisor of the unaccompanied minors is by law also his or her legal representative before the BFA and the Federal Administrative Court. During the admission procedure, unaccompanied minors in federal basic welfare support are provided with a legal advisor provided by BBU.

Legal advisors provide unaccompanied minors with information regarding the admission and asylum procedure. During the admission procedure, the consultation primarily concerns the admission and the initial interrogation protocol and the asylum proceedings in general terms. Usually, other elements of the child’s story including red flags are not discussed in detail until the asylum procedure is initiated, therefore it is more difficult to identify red flags during this initial phase.²⁶⁶ In Traiskirchen, at the time the interview was conducted, legal advisors are present at the reception facility three times a week. Unaccompanied minors are invited to meet the legal advisors upon their arrival and are invited to a counselling in advance of every procedure-related summon (e.g. for an age assessment).²⁶⁷

After admission and allocation to a province, the Children and Youth Welfare Service is responsible for the legal representation in the asylum procedure.²⁶⁸

The legal representation as provided in the Asylum Procedures Act is limited to the admission and asylum procedure. In all other matters, the guardian is responsible for the legal representation of unaccompanied minors. If a guardian is not appointed (see chapter 3.1.3.), legal representation outside of the asylum procedure is not ensured.²⁶⁹ This is problematic because there are various matters where a legal

²⁶⁵ CRC Committee, CRC/C/AUT/CO/5-6, para. 28 lit. e.

²⁶⁶ Interview with Beatrice Pesce, Legal Advisor, BBU, Traiskirchen, 9 July 2021.

²⁶⁷ Interview with Beatrice Pesce, Legal Advisor, BBU, Traiskirche, 9 July 2021.

²⁶⁸ Art. 10 para. 3 and 6, Art. 49 Asylum Procedure Act, see also Heilemann, p. 5.

²⁶⁹ Heilemann, p. 5; Nowak/Sax/Weichselbaum, pp. 12-13.

representative is needed such as medical treatments and stays at hospitals which require the approval of a parent or guardian, the conclusion of cell phone contracts or gym memberships or the handling of administrative penalties (for example because travelling in public transport without a ticket or penalties due to the COVID-19 restrictions). Furthermore, without a guardian who is responsible for the full legal representation, an unaccompanied minor is not able to apply for legal aid for a lawyer representing him or her in front of the Constitutional Court or the Supreme Administrative Court, since the legal representation of the legal advisor does not include this application and the minor is not allowed to do this him- or herself.

3.1.3. Guardianship

Guardianship is regulated separately from asylum or basic welfare support. The relevant provisions can be found in the General Civil Code²⁷⁰ which apply for all children (Austrian citizens as well as refugee and stateless children).²⁷¹

If a child, whose parents are unknown, is found within the Austria territory the Children and Youth Welfare Service (*Kinder- und Jugendhilfeträger*) of the province in which the child has his or her (usual) residence is by law responsible for the guardianship of the child.²⁷² Even though this provision should also apply for unaccompanied minors,²⁷³ in practice, the guardianship is not transferred automatically upon arrival or identification.²⁷⁴

Furthermore, differences in the treatment of unaccompanied minors below 14 years and unaccompanied minors who are 14 years or older exist: **Unaccompanied minors below the age of 14 are (in seven of the nine *Länder*) taken to a facility of the Children and Youth Welfare Service and a guardian is (in most cases) appointed immediately upon arrival. Those who are 14 years or older are taken to a federal reception centre and a guardian is generally not appointed until the admission procedures is**

²⁷⁰ Allgemeines Bürgerliches Gesetzbuch (Austrian General Civil Code), JGS 946/1811.

²⁷¹ A. Cohen and W. Tschugguel, § 207 ABGB, in A. Kletecka and M. Schauer (eds.), *ABGB-ON^{1.04}*, Manz, 2019, para. 6.

²⁷² Art. 207 and 212 General Civil Code.

²⁷³ Raithelhuber, p. 104; Nowak/Sax/Weichselbaum, p. 10; Cohen and Tschugguel, § 207 ABGB para. 6; see also Austrian Supreme Court (OGH) 7 Ob 299/05v, 19.10.2005.

²⁷⁴ Raithelhuber, p. 104; UNHCR Austria, 2019, p. 5; Nowak/Sax/Weichselbaum, p. 10.

completed and the child is transferred to provincial basic care. This also applies to unaccompanied minors under the age of 14 years who are accommodated in Traiskirchen. For these children, persons are appointed as so called ‘remuneration parents’ (*‘Remuneranten-Eltern’*) who accompany the children for example to school classes or meals but who are not guardians.²⁷⁵

The different treatment between Austrian children and unaccompanied minors on one side and between unaccompanied minors below 14 years and older on the other side is not based on the law and has been criticised by various stakeholders including UNHCR Austria, IOM Austria, UNICEF Austria and the *Kindeswohlkommission*.²⁷⁶ Recently, also the CRC Committee expressed concerns about the delays in the appointment of guardians for mature unaccompanied minors and recommended Austria to ensure that child welfare and protection authorities are actively involved in all cases concerning unaccompanied children and that a guardian is appointed to all unaccompanied minors without a delay upon their arrival.²⁷⁷

The guardianship is assigned by court to the Children and Youth Welfare Service if no relatives or any other eligible person can be found. The Children and Youth Welfare Service has to request the assignment within eight days (Art. 211 para. 1 General Civil Code). In practice, there is often a delay of several weeks or months until a guardian is assigned.²⁷⁸ In some provinces, the authorities wait six months arguing that according to the jurisdiction a residence is established after this time period.²⁷⁹ Further, age assessments and funding plays a role in the delayed appointments.

Until a guardian is appointed, the Children and Youth Welfare Services can take over (partial) guardianship measures in the area of care and education in case of imminent

²⁷⁵ Kindeswohlkommission, para. 52.

²⁷⁶ Kindeswohlkommission, para. 52, UNHCR Austria, 2019, p. 5; UNHCR Österreich, *Obsorge ab Tag 1: UNHCR, IOM und UNICEF rufen Österreich auf, Maßnahmen für unbegleitete Kinder und Jugendliche zu verstärken*, press release, 25 February 2020, (in German) available under <https://www.unhcr.org/dach/at/40191-obsorge-ab-tag-1-unhcr-iom-und-unicef-rufen-oesterreich-auf-massnahmen-fuer-unbegleitete-kinder-und-jugendliche-zu-verstaerken.html> (accessed 14 May 2021).

²⁷⁷ CRC Committee, CRC/C/AUT/CO/5-6, p. 10.

²⁷⁸ Raithelhuber, p. 104; Koppenberg, p. 39; H., Fronck and M., Rothkappel, *Implementing the Core Standards for guardians of separated children in Europe – Country Assessment: Austria*, Defence for Children – ECPAT The Netherlands, 2013, p. 16; FRA, 2010, p. 51; UNHCR Austria, 2019, pp. 4, 7.

²⁷⁹ Raithelhuber, p. 104; Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

danger (Art. 211 para. 1 General Civil Code). Nevertheless, legal representation outside the asylum procedure, other guardianship duties including everyday matters and other legal matters are not ensured until a guardian is appointed by court decision.²⁸⁰ This is problematic, for example, when an age assessment is conducted, since there is no guardian ensuring that a child sensitive approach and child specific procedural safeguards are applied.

The responsibilities of guardians include the three elements (1) education and care, (2) asset management and (3) legal representation.²⁸¹ According to Art. 138 General Civil Code, the best interest of the child must be the guiding principle in all actions regarding the child. In practice, the Children and Youth Welfare Services often outsource guardianship duties.²⁸² For example in Vienna, education and care (including doctor's appointments, leisure activities and registration for schools) is transferred to the accommodation facility while social workers from regional offices (*Regionalstellen für Soziale Arbeit*) are responsible for the application and coordination of the guardianship. The application is made immediately after the arrival of the child.²⁸³

3.1.4. Age assessments

Age assessments are conducted when the authorities doubt that an asylum seeker is a child. The assessments are generally conducted early in the admission procedure but may also be conducted at a later stage of the proceedings.²⁸⁴

Age assessments may have serious consequences for unaccompanied minors. If the assessments concludes that they are 18 years or older, they will no longer be regarded as a child and will no longer benefit from extended protection (e.g. regarding accommodation, care and legal representation as described above).²⁸⁵ GRETA stressed that children may be placed in accommodation which adults with potentially heightened

²⁸⁰ Heilemann, p. 5; Nowak/Sax/Weichselbaum, p. 12-13.

²⁸¹ Art. 160-169 General Civil Code.

²⁸² Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

²⁸³ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

²⁸⁴ Koppenberg, p. 42.

²⁸⁵ Koppenberg, p. 42; FRA, 2010, p. 53; Lukits, D., *Unbegleitete minderjährige Flüchtlinge im Asylverfahren*, Master Thesis, Universität Wien, 2012, pp. 23, 25.

risks of trafficking or re-trafficking due to an erroneous assessment.²⁸⁶ Further, the specific provisions for minors in the Dublin III regulation do not apply for person aged 18 or older which may result in Austria not being responsible for the application (for example when the person already applied for international protection in another member state).

Scientific research has shown that age assessment through medical examination is not always reliable.²⁸⁷ Various stakeholders therefore demand a holistic and multidisciplinary approach taking into account physical appearance and psychological maturity.²⁸⁸

In Austria, a **carpal x-ray** is conducted as ‘pre-selected measure’²⁸⁹ if the minority is at doubt. In case the result of the x-ray is not clear, a ‘**multifactorial examination method**’ based on three individual medical examinations (physical, dental and x-ray) is initiated.²⁹⁰ The examination through x-ray cannot be enforced by the authorities, its rejection may however have a negative impact on the credibility of the applicant.²⁹¹ If there is still doubt about the age after the examination, the person is regarded as a child.²⁹² Statistics on the average duration of age assessment procedures are not available.

In 2020, 360 out of the 609 ordered age assessments were conducted and in 211 cases the assessed person was declared as 18 years or older. 227 a multifactorial examination through a court-certified medical expert were initiated, 131 were conducted and 54 persons were declared as 18 years or older.²⁹³

Between January and October 2019, 240 out of the 477 ordered carpal x-rays were conducted and 164 persons were declared as 18 years or older. In the same year, 183

²⁸⁶ GRETA, 2016, p. 37.

²⁸⁷ FRA, 2010. P. 54.

²⁸⁸ UNHCR, 2019, p. 163; European Asylum Support Office (EASO), Practical Guide on age assessment, European Asylum Support Office, 2018, p. 38; UNHCR, 1997, p. 8; Separated Children in Europe Programme, Statement of Good Practice, March 2010, p. 25; GRETA, 2016, p. 36; CRC Committee, CRC/GC/2005/6, 1 September 2005, p. 11.

²⁸⁹ GRETA, 2015, p. 29.

²⁹⁰ Art. 13 para. 3 Asylum Procedures Act and Art. 2 para. 25 Asylum Act; BMI, 13245/AB, p. 3.

²⁹¹ Koppenberg, p. 43.

²⁹² Art. 13 para 3 Asylum Procedures Act.

²⁹³ BMI, 4983/AB pp. 13-14.

multifactorial examinations were ordered, 116 were conducted and 49 persons were declared as 18 years or older.²⁹⁴

In 2017, 1355 carpal x-rays were ordered. In 867 cases no clear result could be obtained, and a multifactorial examination was ordered which led in 249 cases to a declaration of 18 years or older.²⁹⁵ In 2016, the age assessment of 919 persons resulted in a minimum age of 18 years, In 2015, in 832 cases the assessed person was declared to be 18 years or older.²⁹⁶

Recently, the **CRC Committee expressed serious concerns** that the Austrian age assessment procedure *‘does not always respect the dignity and the best interests of the child and, despite possible inaccuracy, it is not possible to appeal the outcome of the procedure separately’*²⁹⁷ **urging Austria ‘to conduct age-assessment procedures in the least invasive way possible, respecting the legal principle of the benefit of the doubt; to undertake a comprehensive assessment of the physical and psychological development of the child; and to ensure that the outcome of such assessments can be challenged separately by the affected party.’**²⁹⁸

3.2. Unaccompanied minors going missing

3.2.1. The phenomenon in the Austrian context

In Austria, data about unaccompanied minors including their country of origin, gender and age can be found in annual asylum statistics issued by the Ministry for Interior Affairs. Numbers of unaccompanied minors who are accommodated in basic welfare facilities at certain dates can be found in responses to parliamentary requests.²⁹⁹ Furthermore, the numbers of applications for international protection and of decisions concerning unaccompanied minors can be found in responses to parliamentary requests (see also chapter 3.1.1.b) and in the report of the *Kindeswohlkommission* which was published in June 2021.³⁰⁰ However, official numbers of how many unaccompanied

²⁹⁴ BMI, 38/AB, pp. 14-15.

²⁹⁵ BMI, 1240/AB, pp. 4-5.

²⁹⁶ BMI, 11241/AB, pp. 2-3.

²⁹⁷ CRC Committee, CRC/C/AUT/CO/5-6, para. 39 (c).

²⁹⁸ Ibid, para, 40 (c).

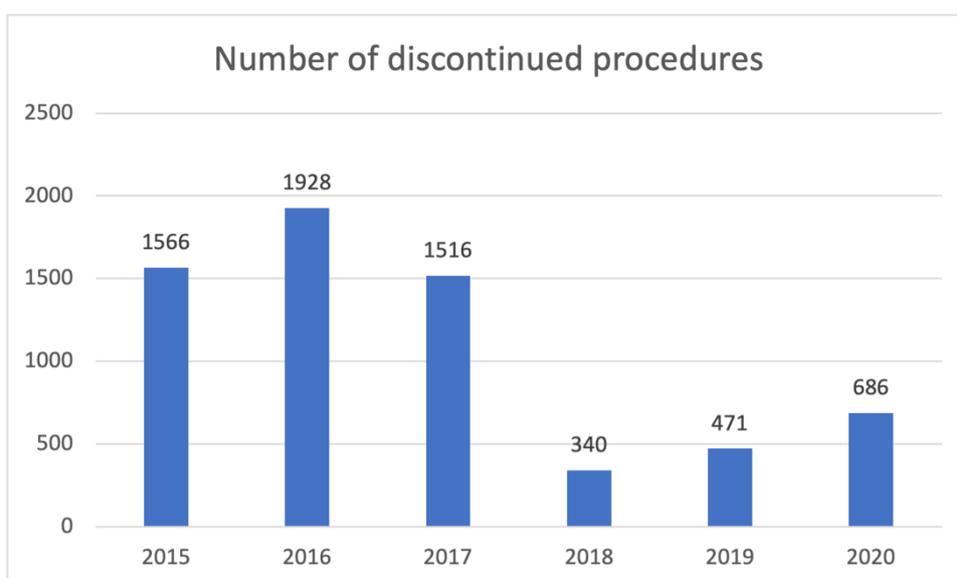
²⁹⁹ BMI, 10205/AB, p. 2.

³⁰⁰ Kindeswohlkommission, pp. 5-6.

minors are currently present in Austria do not exist, neither do numbers of missing unaccompanied minors.³⁰¹ Nevertheless, there is no doubt that the phenomenon of unaccompanied minors going missing exists in Austria.³⁰²

An indicator is, for example, the **number of discontinued asylum procedures according to Art. 24 Asylum Act** which is applied when an unaccompanied minor has evaded the procedure or voluntarily leaves the federal territory.³⁰³ In other words: If an unaccompanied minor goes missing, the asylum procedure is discontinued.

The numbers of discontinued procedures can be found in responses to parliamentary requests issued by the Ministry of Interior Affairs. **Between 2015-2020 a total of 6507 (40 % of the number of applications in this time period)³⁰⁴ procedures were discontinued according to Art. 24 Asylum Act** as illustrated in the following graph:³⁰⁵



³⁰¹ BMI, 13245/AB, p. 5.

³⁰² Kindeswohlkommission, para. 107, 155; Koppenberg, pp. 83-85; Forin and Healy, pp. 77-78; Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁰³ Kindeswohlkommission, para. 107; Heilemann, p. 3.

³⁰⁴ As illustrated above in chapter 3.1.1. lit. b, 16.148 applications for international protection were filed between 2015-2020.

³⁰⁵ 2020: BMI, 4983/AB; 2019 (from January until October): BMI, 38/AB; 2016-2018: BMI, 1078/AB; 2015: BMI, 8635/AB.

In 2020, in 15 cases of the 686 discontinued procedures the applicant was under the age of 14.³⁰⁶ For the previous years, data on the age is not available.

Besides the numbers of discontinued procedures, other **indicators can be found in responses to parliamentary requests** which allow to calculate an (even higher) approximate number of unaccompanied minors who went missing during their accommodation in a federal reception facility.

In 2020, 1.467 unaccompanied minors applied for international protection.³⁰⁷ If one subtracts the 252 unaccompanied minors who were transferred to provinces, the 265 who were declared as 18 years or older through an age assessment, the 2 unaccompanied minors which were transferred to another EU state according to the Dublin III regulation, the 184³⁰⁸ unaccompanied minors who are accommodated at a federal reception facility and the 3 who departed voluntarily, the **whereabouts of 761 unaccompanied minors (52 % of the 1.467 applicants) remain unknown.**³⁰⁹ Unfortunately, the question how many went missing, remained unanswered in the response to the parliamentary request.

The response further indicates that a significant number of unaccompanied minors go missing from federal reception facilities between the admission to the asylum procedure and the transfer to a province. From 381 who were admitted to the procedure only 252 were transferred. However, the response states that all admitted and transferrable unaccompanied minors have been transferred in 2020.³¹⁰ This indicates that **129 unaccompanied minors (34 % of those who were admitted to the asylum procedure) went missing between the admission to the asylum procedure and the transfer to a province.**

³⁰⁶ BMI, 4983/AB.

³⁰⁷ The annual asylum statistics calculate 1.370 applications by unaccompanied minors. However, in this calculation I use the number from the response to the parliamentary request (BMI , 4983/AB) since the response also provides the other relevant numbers for this calculation.

³⁰⁸ Since 52 unaccompanied minors were already in a federal reception facility on 1 January 2020, I subtracted this number from the 236 unaccompanied minors who were present in the federal reception facilities on 31 December 2020 which results in 184 unaccompanied minors being in a reception facility who applied for international protection in 2020.

³⁰⁹ The data is taken from the response to a parliamentary request, BMI, 4983/AB.

³¹⁰ While 381 of the 1.467 applicants were admitted to the asylum procedure, only 252 were actually transferred to a province. The response to the parliamentary request states that all admitted and transferrable unaccompanied minors were transferred which indicated that 129 went missing. BMI, 4983/AB, p. 8.

In 2019, 845 unaccompanied minors applied for international protection between January and October of which 115 were transferred to the provinces, 213 were declared as 18 years or above through an age assessment and 69 were at a federal reception facility (on 9 November 2019). The number transfers according to the Dublin III regulation is not available and it further not known how many of the 69 who are present at the federal reception facilities have applied for international protection in 2019 or before. However, this leaves **approximately 448 unaccompanied minors (53 % of the 845 applicants) whose whereabouts are unknown.**³¹¹

These numbers are only an estimation since not all variables are available. For example, the number of unaccompanied minors who turn 18 naturally (not by age assessment) as well as those who disappear after their asylum procedure is finished (especially those who received a negative decision) are not included in the calculation. Nevertheless, the calculation is quite accurate.³¹²

Calculations for previous years cannot be conducted due to lack of relevant data (e.g. for 2015-2018 the numbers of transfers to provinces are not available).

Recently, the investigative journalism collective Lost in Europe reported that 18.292 unaccompanied minors went missing in the EU between 2018-2020. According to this investigation, 207 unaccompanied minors went missing in Austria in this time period.³¹³ Compared to the numbers resulting from the mentioned responses to parliamentary requests this number seems low. It is also not clear how Lost in Europe collected the data. However, the report drew the attention to the topic. A few days after it was published, it was discussed on a news broadcast in the main Austrian TV channel. The Ministry of Interior Affairs was not available for an interview, however they stated that many unaccompanied minors were separated by smugglers and disappear in order to reunite with their family in another country or they lied about their age and head to another country out of fear of a negative decisions. Lisa Wolfsegger, expert for unaccompanied

³¹¹ The data is taken from the response to a parliamentary request, BMI, 38/AB.

³¹² Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³¹³ Tagesschau, Verschwunden in Europa, 18.04.2021, (in German) available under <https://www.tagesschau.de/investigativ/rbb/fluechtlinge-kinder-verschwunden-101.html> (accessed 20 April 2021). See also the website of Lost in Europe under <https://lostineurope.eu/file/no-numbers-file> (accessed 20 April 2021).

minors from the NGO Asylkoordination, warned in her interview that we do not know what has happened to these children – all assumptions from the government are simply speculations.³¹⁴

3.2.2. Reporting cases of missing unaccompanied minors

In 2017, a response to a parliamentary request revealed that **3.863 minor non-EU citizens were reported as missing between 1 June 2015 and 31 August 2017**. At the time of the response, 3.348 could be found while 515 remained missing. Information on how many of these missing children are unaccompanied minors is not available. More recent numbers of missing non-EU minors are not available.

According to G. Tatzgern, Brigadier General, Criminal Intelligence Service Austria (BKA), the **Austrian missing person database always contains several hundred missing unaccompanied minors**.³¹⁵ However, since fingerprints of unaccompanied minors under the age of 14 years are not taken, the missing minor is not recognized if he or she appears somewhere else under a different name. In other cases, minors often disappear before fingerprints are taken. If fingerprints are taken and a missing minor appears in another country, the fingerprints and the missing person record are only rarely consolidated. Therefore, the missing person database is not updated, and many remain recorded as missing even though they appeared in Austria in another EU country.³¹⁶

The above-mentioned response to a parliamentary request stated that a missing person report is filed if there is a serious suspicion that something has happened to the child or if other reasons require a report.³¹⁷ However, the response does not state whether the disappearance of an unaccompanied minor as such is considered as reason to file a report. According to G. Tatzgern, *‘if an unaccompanied minor goes missing, a missing person report must be filed without delay when the minor cannot be contacted and his or her*

³¹⁴ ‘ZIB Nacht‘ [news broadcast], 19 April 2020, ORF, available under <https://tvthek.orf.at/profile/ZIB-Nacht/13890328/ZIB-Nacht/14089385> (accessed 20 April 2021).

³¹⁵ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

³¹⁶ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

³¹⁷ BMI, 13245/AB, p. 5.

*whereabouts are unclear because one must assume that he or she is in distress, needs help or has become a victim of a crime.*³¹⁸

According to a recent response to a parliamentary request, the BBU files a missing person report if an unaccompanied minor under the age of 14 years goes missing. When the minor is 14 years or older, the BBU inform the guardian who is in charge for further arrangements. However, during the admission procedure and the transfer to a province, a guardian is not appointed for most unaccompanied minors (especially those over 14 years).

Interview partners confirmed that, according to their information, the local Children and Youth Welfare Service³¹⁹ is notified if an unaccompanied minor goes missing,³²⁰ irrespective whether a guardian is appointed or not.³²¹ In Traiskirchen, for example, the care takers check every day at 10 pm whether all unaccompanied minors are present. If someone is missing for 48 hours the local Child and Youth Welfare Service is notified and he or she is signed off basic welfare support. If a missing unaccompanied minor is under the age of 14 years or if there is suspicion for child trafficking or other threats (for example when an unaccompanied minor goes missing leaving all his or her stuff behind), the police and the local Child and Youth Welfare Service is notified immediately by BBU. Otherwise, the local Children and Youth Welfare Service is in charge for reporting the case to the police.³²²

It is feared that in many cases, in which the missing unaccompanied minor is above 14 years and there is no specific suspicion for child trafficking or other threats, the child is only signed off from basic welfare support but nothing else is done by the local Children and Youth Welfare Service.³²³ One of my interview partners reported,

³¹⁸ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021 (author's translation from German to English).

³¹⁹ The local administration district office ('Bezirkshauptmannschaft') in Baden is locally responsible for Traiskirchen and the district administration office in Neunkirchen is locally responsible for Reichenau an der Rax.

³²⁰ Interview with Sarah Mirzaei, UNHRC, Vienna, 4 May 2021.

³²¹ Interview with Stephanie Sladek, Stv. Geschäftsbereichsleitung GVS, BBU, Vienna, 10 June 2021.

³²² Interview with Stephanie Sladek, Stv. Geschäftsbereichsleitung GVS, BBU, Vienna, 10 June 2021.

³²³ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Kindeswohlkommission, para. 108.

for example, that an unaccompanied minor, who repeatedly said that he wanted to continue his journey to another country where he has relatives, was one day picked up by a car from the reception facility. It was estimated that he was picked up by a relative, but it was never further investigated or confirmed. This is, in my opinion extremely problematic, because I in my research on missing unaccompanied minors and child trafficking in general in Europe, I have come upon different cases where traffickers picked up victims of child trafficking from reception centres or pretended to be a relative.³²⁴

Furthermore, I found it very concerning that my request for an interview with the district administration office in Baden (*'BH Baden'*) which is the local Children and Youth Welfare Service for Traiskirchen was rejected on the grounds that the office is not responsible for unaccompanied minors who are accommodated in the federal reception facility in Traiskirchen. This affirms in my opinion that the district administration office in Baden does not feel responsible for unaccompanied minors in Traiskirchen and affirms the fear, which was expressed by several interview partners, that the district administration office does not arrange any further steps if the BBU reports cases of missing unaccompanied minors (in cases where the police is not notified directly). According to different interview partners, this is linked to the high number of accommodated unaccompanied minors in Traiskirchen overloading the resources of the district administration office in Baden.

In the basic welfare support and Children and Youth Welfare Service facilities in the *Länder*, generally a closer contact between the minors and the care takers exists since the number of minors accommodated there is significantly smaller. Different interview partners reported that care takers or sponsors of unaccompanied minors in provinces are more likely to search for missing unaccompanied minors and, generally, missing person

³²⁴ See for example S. Terlingen, 'Vietnamese children disappeared from protected shelters. And our government know', Argos, 11 March 2020, available under <https://www.vpro.nl/argos/lees/nieuws/2020/vietnamese-children-dissapeared-from-protected-shelters-and-our-government-knew.html?employees?fbclid=IwAR1MO8NCLr3CVEFuYwArXUPVGU7ktaw6O6oQBSEv1yB1rH6XioXndg18KQs> (accessed 25 April 2021); Documentary 'Handelsware Kind – die Mafia der Menschenhändler', January 2021, available under https://www.youtube.com/watch?v=5uDox77_2No (accessed 25 April 2021).

reports are filed if the whereabouts of an unaccompanied minors are unknown.³²⁵ For example, my interview partner from the Children and Youth Welfare Service in Vienna ensured that in Vienna, all cases of unaccompanied minors going missing are reported to the police.³²⁶ Also, K. Hirschl-Bachner confirmed that for all cases of unaccompanied minors who go missing from Drehscheibe a missing person report is filed with the police.³²⁷

If a missing person report is filed, the police are in charge for searching missing unaccompanied minors. An alert is made in the national search system and the Schengen information system (SIS).³²⁸ However, an interview partner expressed her concern that, according to her impression, unaccompanied minors are not searched with the same effort as Austrian children or children whose parents are present in the country.

3.2.3. Unaccompanied minors going missing from federal reception facilities vs. from facilities in the provinces (*‘Länder’*)

As discussed in chapter 3.2.1., a significant number of unaccompanied minors goes missing during their accommodation in federal reception facilities. It is estimated that the majority disappears during the admission procedure, a smaller number between the time of admission and transfer to a province. Different interview partners reported that, according to their information, unaccompanied minors who were supposed to be transferred to another province than Vienna are more likely to go missing before their transfer.³²⁹

The phenomenon of unaccompanied minors going missing also exists among those who are in basic welfare support of a province (*‘Landes-Grundversorgung’*). This number is, however, significantly lower than the number of disappearances from federal reception facilities. For example, according to my interview partner from the Children and Youth Welfare Service in Vienna, only two unaccompanied minors went missing in Vienna in

³²⁵ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³²⁶ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³²⁷ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

³²⁸ BMI, 4983/AB, pp. 6-7.

³²⁹ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

2021 (reference date: 11 June 2021).³³⁰ The responses of the *Länder* to the questionnaire of the *Kindeswohlkommission* also show that the number of disappearances is quite low compared to federal reception facilities.³³¹

Different interview partners stated that the main difference compared to children going missing from federal reception facilities is that in the provinces, unaccompanied minors are in general accommodated in small facilities, are provided with closer supervision and care, and generally a relation of trust with the care takers exist. If unaccompanied minors decide to disappear from provincial facilities, they sometimes inform the care takers, stay in touch and notify them after their arrival in the destination country.³³² In these cases, even though the journey is, of course, dangerous, at least somebody knows where they are going and whether they arrived at their destination.³³³ K. Hirschl-Bachner confirmed that several children who went missing from Drehscheibe reappeared, informed the staff about their arrival in another destination country or were picked up by the staff at the German border after being identified.³³⁴

3.3. Relevant circumstances due to which unaccompanied minors go missing

3.3.1. Overview

Unaccompanied minors disappear from federal reception facilities due to different circumstances which are often interrelated.³³⁵ In an analysis of the interviews, the following circumstances were identified as relevant: lack of an adequate guardian, lack of a bond of trust, rumours and lack of information, the conditions in the reception facilities, the long duration of the procedure, fear of outcome of the procedure or an age assessment, relatives in another country, an instruction to continue the journey to a

³³⁰ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³³¹ Kindeswohlkommission, Langfassung, para. 818 and annex pp. 96-99.

³³² Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³³³ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³³⁴ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

³³⁵ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Stephanie Sladek, Stv. Geschäftsbereichsleitung GVS, BBU, Vienna, 10 June 2021.

different destination country, country of origin related circumstances, smugglers as well as child trafficking.

Most unaccompanied minors going missing from provincial facilities disappear after receiving a negative decision in their asylum procedure.³³⁶ However, some of the mentioned circumstances – especially relatives in another country or continuation of the journey to another destination country (for example due to the hope of better opportunities or an instruction by parents/smugglers) – may also be relevant for unaccompanied minors going missing from basic welfare support facilities in the provinces (*Länder*). However, **the focus on the following subchapters is on unaccompanied minors who are accommodated in federal reception centres (and therefore are in most cases 14 years or older).**

In the following subchapters, I will discuss the relevant circumstances and provide some examples of cases which my interview partner reported to me.

3.3.2. Lack of adequate guardian

‘The most relevant circumstance is the lack of a guardian upon day one of arrival creating a gap in which different things can happen.’³³⁷

Lack of an adequate guardian was mentioned by the majority of my interview partners as one of the most relevant circumstances because of which unaccompanied minors go missing from federal reception facilities.

As discussed above in chapter 3.1.3., a guardian is not appointed for unaccompanied minors accommodated in federal reception facilities until their admission to the asylum procedure and their transfer to a province (*Land*) is conducted which often takes several weeks.³³⁸ This practice was not only criticised by my interview partners, but recently also

³³⁶ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³³⁷ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021 (author’s translation from German to English).

³³⁸ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

by the CRC Committee.³³⁹ After the transfer, regional differences regarding the duration of the assignment of a guardian exist.³⁴⁰

In some cases, unaccompanied minors are accommodated in federal reception facilities even longer, sometimes during their whole asylum procedure.³⁴¹ L. Wolfsegger reported, for example, that one unaccompanied minor has been in Traiskirchen for more than 2 years and still no guardian has been appointed.³⁴²

In Traiskirchen, every unaccompanied minor is allocated to a main care contact person (*Bezugsbetreuer*in*) who the minor can contact in all matters. In practice, the perceptions of unaccompanied minors about their main care contact persons vary. While some are in closer contact with their main care contact person, others have less interaction with the person responsible for them.³⁴³ Furthermore, main care contact persons are not guardians or legal representatives and are not responsible for care and education³⁴⁴ (or any other areas of guardianship).

Without a guardian, unaccompanied minors are often left on their own. There is, for example, often nobody clarifying whether the minor has family members in another EU country, whether an application for asylum is the best option or what other opportunities exist.³⁴⁵ There is (except legal advisors) nobody explaining the procedures, including the Dublin III regulation and age assessments,³⁴⁶ nobody the minor can go to in case of any questions or concerns.³⁴⁷ Without a guardian, there is nobody who accompanies the minor

³³⁹ CRC Committee, CRC/C/AUT/CO/5-6, para. 39 lit. b.

³⁴⁰ UNHCR Austria, 2019, p. 4; Nowak/Sax/Weichselbaum, pp. 9-10; Koppenberg, p. 39; Fronck and Rothkappel, p. 16; A., Winkler, 'Qualitative Analyse zur Betreuung und Integration von Opfern des Kinderhandels – Evaluierungsbericht Österreich', in H. Sax, (ed.), *Kinderhandel - Strukturen und Maßnahmen zur Unterstützung betroffener Kinder in Österreich und im EU-Vergleich*, Vienna, Neuer Wissenschaftlicher Verlag, 2014, pp. 70-71; FRA, 2015, p. 47.

³⁴¹ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁴² Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁴³ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021.

³⁴⁴ Kindeswohlkommission, para. 49.

³⁴⁵ Raithelhuber, p. 107.

³⁴⁶ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁴⁷ Heilemann, p. 4; Koppenberg, p. 40.

to important appointments outside of the asylum procedure such as medical examinations.³⁴⁸

Besides the delay in the appointment of a guardian, also the quality of the guardianship matters. My interview partners stated that the appointment of a guardian alone is ‘*only a document issued by court*’³⁴⁹ which does not guarantee that a bond of trust is established, and that the child is provided with adequate care and supervision.³⁵⁰ Therefore, not only a delayed appointment of a guardian but also the appointment of an inadequate guardian is a relevant circumstance because of which unaccompanied minors go missing.

In practice, sometimes uncles, brothers or other relatives are appointed as guardians, often without any assessment of the circumstances.³⁵¹ Even though this might be in the best interest of the child, it could also bear dangers if the authorities do not assess whether the person is able to properly care for the child and whether the person is actually a relative and not a trafficker or any other person potentially harming, abusing or exploiting the child.

3.3.3. Lack of bond of trust

Another crucial circumstance which was mentioned by several interview partners, and which is very closely linked to the lack of an adequate guardian, is the lack of a bond of trust.³⁵²

Generally, a bond of trust can exist with different persons, such as guardians, care takers in reception facilities or in accommodation facilities in the provinces (*Länder*), sponsors or legal representatives.

³⁴⁸ Interview with Sarah Mirzaei, UNHCR, Vienna, 4 May 2021.

³⁴⁹ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁵⁰ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

³⁵¹ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁵² Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021; Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

In Traiskirchen, due to the high number of asylum seekers accommodated, a bond of trust between the unaccompanied minors and the social workers does often not exist.³⁵³

Legal advisors in Traiskirchen try to establish a bond of trust with unaccompanied minors as much as possible. Unaccompanied minors who are in Traiskirchen for a longer period of time usually have a better relationship to legal advisors than unaccompanied minors who are accommodated there for short period of time. Furthermore, unaccompanied minors with documents or relatives in Austria are more likely to attend legal counselling.³⁵⁴ However, unaccompanied minors who intend to leave, usually do not inform legal advisors in Traiskirchen about their plans.³⁵⁵

If a bond of trust does not exist, unaccompanied minors are more likely to believe their peers or (mis)information they get on the internet than information they receive from authorities, social workers, legal representatives or guardians.³⁵⁶

3.3.4. Rumours, misinformation and lack of information

*'An unaccompanied minor said that he wanted to continue his journey to the Netherlands because he will receive asylum status there and his family will be able to come, while in Austria he would only get subsidiary protection.'*³⁵⁷ The minor went missing and eventually appeared in the Netherlands.³⁵⁸ This is one example of how rumours about the asylum procedure, family reunification and better opportunities in another country can play a major role in the phenomenon of unaccompanied minors going missing. Besides such rumours, also lack of relevant information as well as misinformation were mentioned by several interview partners as relevant circumstances because of which unaccompanied minors go missing.

Due to the lack of an adequate guardian, unaccompanied minors are often not provided with necessary information.³⁵⁹ **Combined with rumours, this lack of information leads**

³⁵³ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁵⁴ Interview with Beatrice Pesce, Legal Advisor, BBU, 9 July 2021.

³⁵⁵ Interview with Beatrice Pesce, Legal Advisor, BBU, 9 July 2021.

³⁵⁶ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁵⁷ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021 (author's translation from German to English).

³⁵⁸ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁵⁹ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

to fear, uncertainty and lack of perspectives which causes unaccompanied minors to leave in order to find better opportunities somewhere else.³⁶⁰ Furthermore, lack of information regarding family reunification may lead unaccompanied minors to set off on their own.³⁶¹

Even when information is provided, it is often not done in a child-friendly and trustful way. As example, I would like to highlight the following case: An unaccompanied minor from Afghanistan arrived in Austria and applied for asylum. He received an official letter which informed him that his fingerprints were already registered in Romania. Unaware of the special provisions for unaccompanied minors in the Dublin III regulation, he feared a deportation to Romania. An acquaintance in Vienna, who worked as translator for legal counsellors and therefore knew that unaccompanied minors do not have to go back to the EU Member State in which they were first registered, provided to the unaccompanied minor with this crucial information and could convince him to stay in Austria.³⁶² Otherwise, the unaccompanied minor might have disappeared in order to avoid a deportation to Romania.

Unaccompanied minors are generally well connected, most have access to the internet and social media.³⁶³ They share information within their networks and doublecheck information the received with their peers. Many unaccompanied minors consider information coming from a peer group more credible than information they receive from the authorities.³⁶⁴ This is dangerous when unaccompanied minors trust rumours or misinformation from peers rather than information from the authorities because the rumours and misinformation are often creating false expectations and fear. Therefore, rumours are also problematic when information is provided, but it is not done in a child-friendly and trustful way.

Rumours, which my interview partners have heard are, for example, that in other EU countries unaccompanied minors receive asylum status whereas in Austria they would

³⁶⁰ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁶¹ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁶² L. Wolfsegger, Sicherheit für Kinderflüchtlinge, asyl aktuell, 2019, no. 4, pp. 23-25, (in German) available under <https://www.asyl.at/files/383/07-obsorge.pdf> (accessed 5 May 2021).

³⁶³ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

³⁶⁴ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

only get subsidiary protection, in other EU countries the procedures are much quicker or in other EU countries family reunification is conducted much easier and quicker.³⁶⁵

While according to different interview partners rumours spread by smugglers also play a relevant role,³⁶⁶ it is, according to G. Tatzgern, nowadays harder for smugglers to spread rumours ‘because unaccompanied minors can easily double-check whether this is true.’³⁶⁷

3.3.5. Accommodation and care conditions

As described in chapter 3.1.2. lit. a, the reception conditions for unaccompanied minors generally vary depending on their age.

According to several interview partners, the **conditions in reception centres have improved over the past five years.**³⁶⁸ However, the **reception centres cannot be compared with facilities of the Children and Youth Welfare Services in the provinces (*Länder*)**, where, for example five or six unaccompanied minors are accommodated in a shared apartment.³⁶⁹

According to L. Wolfsegger, the reception centres in Traiskirchen and Reichenau are not adequate for children because of the high number of people accommodated there, poor education and inadequate care. **Especially Traiskirchen, with a high number of adult men accommodated there, is not a place for children.**³⁷⁰ According to K. Schmidt-Dengler, ‘*Traiskirchen cannot be described as a ‘happy place’ (in German: ‘Wohlfühlort’) for unaccompanied minors.*’³⁷¹ The conditions in the reception centres cause frustration among unaccompanied minors,³⁷² especially when they are accommodated there for several weeks or months.

³⁶⁵ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁶⁶ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021.

³⁶⁷ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

³⁶⁸ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Stephanie Sladek, Stv. Geschäftsbereichsleitung GVS, BBU, Vienna, 10 June 2021.

³⁶⁹ Interview with Stephanie Sladek, Stv. Geschäftsbereichsleitung GVS, BBU, Vienna, 10 June 2021.

³⁷⁰ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁷¹ Author’s translation, Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁷² Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

Ultimately, the **COVID-19 pandemic** has had an impact for unaccompanied minors.³⁷³ For example, schooling and leisure activities were limited in Traiskirchen and Reichenau which contributed to frustration and hopelessness.

3.3.6. Long duration of procedures/long waiting periods

Another relevant circumstance because of which unaccompanied minors go missing are **long waiting periods respectively the long duration of the procedures which create frustration and impatience.**³⁷⁴ My interview partners provided the following examples:

- Often, minors are extremely frustrated if they are not able to receive asylum status quickly because they are under a high pressure from their family who want to come to Austria through family reunification.³⁷⁵ In these situations, some unaccompanied minors often choose to continue their journey on their own to another country where they hope that the procedures will be conducted faster.
- If relatives are present in another EU country, unaccompanied minors often choose to set off on their own (respectively with the help of smugglers) due to the long duration and the complexity of the official procedure.³⁷⁶
- Criminal networks are aware of the situation and take advantage of unaccompanied minors who are stuck in Traiskirchen and are grateful for any opportunity offered to them (for example to earn some extra money).³⁷⁷
- Long waiting periods are, for example, caused by age assessments, which often take several weeks or months, or by quarantine measures due to COVID-19.³⁷⁸
- Ultimately, the duration of the stay in the federal reception facilities plays a relevant role.³⁷⁹ The average length of stay in federal reception facilities is –

³⁷³ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with Stephanie Sladek, Stv. Geschäftsbereichsleitung GVS, BBU, Vienna, 10 June 2021.

³⁷⁴ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021; Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

³⁷⁵ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁷⁶ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁷⁷ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

³⁷⁸ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021.

³⁷⁹ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

according to a response to a recent parliamentary request – 35 days for unaccompanied minors age 14 and above and 38 days for unaccompanied minors below the age of 14 years (reporting date: 15 January 2021).³⁸⁰ In 2019, unaccompanied minors were on average accommodated in federal reception facilities for 62 days.³⁸¹ Since many unaccompanied minors go missing within a few days, it can be assumed that the average duration for those staying in the facilities is even longer.³⁸² The duration of the accommodation in a federal reception facility is generally linked to the duration of the admission procedure and therefore relies very much on the BFA as authority deciding on the admission of an applicant. It was, however, reported that in some cases, unaccompanied minors stay in Traiskirchen for the duration of the whole asylum procedure.³⁸³

3.3.7. Fear of outcome of asylum procedure or age assessment

Fear of a negative decision in the asylum procedure play a relevant role. For example, some unaccompanied minors are sent by their parents and are under a high pressure to get asylum and initiate family reunification quickly. **Because of the fear of a negative outcome of the procedures, often combined with rumours, unaccompanied minors might set off to another EU country in which they hope to have better opportunities.**³⁸⁴

In some cases, unaccompanied minors go missing before they receive their (final) decision. K. Schmidt-Dengler reported that in a few cases, the minor was granted asylum or subsidiary protection status after he or she left and it was possible to contact the minor who then came back to Austria.³⁸⁵

In other cases, unaccompanied minors go missing after receiving their (final) decision. According to L. Wolfsegger, negative decisions in the asylum procedure and the **fear of**

³⁸⁰ BMI, 4983/AB, pp. 6-7.

³⁸¹ BMI, 38/AB, p. 12.

³⁸² Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁸³ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁸⁴ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁸⁵ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

a deportation play a major role in why unaccompanied minors go missing from facilities in provinces (*Länder*).³⁸⁶

Besides the fear of a negative outcome of the admission or asylum procedure, also **age assessments** play a relevant role. The outcome of an age assessment might, for example, determine whether the minor is deported to another country or special safeguards are applied.

According to several interview partners, age assessments are generally conducted for most of the unaccompanied minors over the age of 14 years, in some cases also when the child has documents (such as birth certificates) according to which he or she is a minor.³⁸⁷

Since many are afraid of the outcome and the consequences of the age assessment or are not provided with relevant information in a child friendly way, age assessments are one of the circumstances because of which unaccompanied minors go missing.³⁸⁸

3.3.8. Relatives or peers in another country

As already mentioned above, relatives or peers in another EU country play a relevant role.³⁸⁹ Unaccompanied minors who want to **reunite with their relatives** might set off on their own or with the help of smugglers due to the long duration and complexity of the legal ways to reunite with relatives, including, for example, genetic testing.³⁹⁰

G. Tatzgern reported that in such cases, *‘smugglers pick up unaccompanied minors and bring them to family members in another EU country. Smugglers are not always organised groups, sometimes members of the community take care of such a transfer.’*³⁹¹

³⁸⁶ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁸⁷ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁸⁸ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁸⁹ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021; Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

³⁹⁰ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁹¹ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021 (author’s translation from German to English).

A. Winkler emphasised that also in these cases the lack of an adequate guardian plays a major role. If there was adequate care, it would more likely be possible to manage family reunification in legal ways.³⁹²

3.3.9. Instruction to continue the journey to a different destination country

As already mentioned above, some unaccompanied minors set off on their own in order to reach another country for different reasons, such as family members or the hope of better opportunities. Often, unaccompanied minors do not take this decision on their own but are rather instructed (either by their parents or by smugglers) to continue their journey to another country.³⁹³ Especially Syrian children are often instructed by their parents to go to a certain country where they believe that it is easier to get asylum status and easier for the family to come and reunite with the child.³⁹⁴ In most cases, the family has an agreement with the smuggler and the children follow the instruction of the adults.³⁹⁵ In these cases, unaccompanied minors are under extremely high pressure.³⁹⁶

However, it was emphasised that if Austria is not the destination country, unaccompanied minors do usually not apply for international protection in Austria.³⁹⁷ In these cases it is often clear from the beginning that Austria is just a stopover for a few days, until the journey continues to another EU country.³⁹⁸ In other cases, Austria was originally the destination country, but due to different circumstances unaccompanied minors might decide to continue their journey to another EU country.³⁹⁹

3.3.10. Country of origin related circumstances

Furthermore, the country of origin plays a relevant role. Unaccompanied minors, for example from Syria, who tend to be well organised, usually have documents and often relatives in Austria or in other EU countries, are less likely to go missing than

³⁹² Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

³⁹³ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

³⁹⁴ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁹⁵ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁹⁶ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

³⁹⁷ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

³⁹⁸ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

³⁹⁹ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021.

unaccompanied minors from other countries of origin (e.g. Bangladesh, Pakistan or Northern African countries), who often do not have any documents, have weaker flight reasons and are more likely to believe rumours.⁴⁰⁰

3.3.11. Smugglers

Several interview partners, particularly G. Tatzgern, emphasised that *‘smugglers play a major role in the phenomenon of unaccompanied minors going missing.’*⁴⁰¹

*‘For example, smugglers often separate children from adults during the journey to prevent the family from travelling without the assistance of the smuggler and to ensure that the family depends on and pays the smuggler. In another scenario, THB plays a role. For example, when during the journey smugglers start to use children for different jobs or activities.’*⁴⁰²

Furthermore, **paying back debts to smugglers** can play a role in cases of unaccompanied minors going missing.⁴⁰³ Often, smuggling costs are agreed upon prior to the journey and the money given to a fiduciary who pays the smuggler after arrival in certain stopovers and/or the destination country. According to G. Tatzgern, this deposition of money is *‘the last life assurance’* since the smuggler only gets paid when the smuggled person arrives alive in the chosen destination. If the money is given to the smuggler in advance, the fate of the smuggled person relies on the driver.⁴⁰⁴ Often the smuggling costs increase during the journey, for example, because of closed borders and other changes in the route. In these cases, the smuggled person either has to pay or (if they do not have the money) to work off the debts or to give the full *‘life assurance’* to the smuggler which puts them into a very dangerous situation.⁴⁰⁵

⁴⁰⁰ Interview with Beatrice Pesce, Legal Advisor, BBU, Trairkichen, 9 July 2021.

⁴⁰¹ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021 (author’s translation from German to English).

⁴⁰² Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021 (author’s translation from German to English).

⁴⁰³ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021; Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁰⁴ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁰⁵ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

K. Hirschl-Bachner reported, that she heard of cases in which unaccompanied minors had to engage in prostitution or non-child-friendly work in Greece or Turkey in order to continue their journey. **These risks have increased due to the fact that many were stuck due to COVID-19 related travel restrictions.**⁴⁰⁶

3.3.12. Child trafficking

According to several interview partners, **it is possible that THB plays a role in the phenomenon of unaccompanied minors going missing.**⁴⁰⁷

A. Winkler has heard of numerous cases in which child trafficking could have been suspected, for example when unaccompanied minors suddenly have expensive clothes or cell phones. There is, however, a lack of evidence and identified cases.⁴⁰⁸

In the next chapter, child trafficking in the Austrian context and trafficking risks of unaccompanied minors are analysed in order to provide a deeper insight of the role which child trafficking might play in the phenomenon of unaccompanied minors going missing.

4. Missing unaccompanied minors and child trafficking in Austria

4.1. Legal, institutional and policy framework

4.1.1. Overview

The Austrian law adapted the definition of human trafficking as stated in the Palermo Protocol in its **Art. 104a Criminal Code.**⁴⁰⁹ This provision criminalizes trafficking in human beings and – like the Palermo Protocol – differs between trafficking in adults and trafficking in children. While trafficking in adult human beings consists of three elements (action, means, purpose), child trafficking requires only the two elements of action and purpose (see chapter 2.4.2.). Art. 104a Criminal Code explicitly names sexual exploitation, removal of organs, labour exploitation, exploitation of begging and

⁴⁰⁶ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁰⁷ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with an employee from LEFÖ-IBF Intervention Centre for Trafficked Women, Vienna, 17 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁰⁸ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁴⁰⁹ Strafgesetzbuch (Criminal Code), BGBl Nr. 60/1974.

exploitation for criminal activities as forms of exploitation in the context of trafficking (Art. 104a para. 3 Criminal Code). The Austrian law further criminalises the following acts linked to trafficking: cross-border prostitution (Art. 219 Criminal Code), the solicitation of children for sexual purposes (Art. 208a Criminal Code), child pornography (Art. 215a Criminal Code), slavery (Art.104 Criminal Code), procurement (Art. 219 Criminal Code), the ‘exploitation of a foreigner’ (Art. 116 Aliens’ Police Act⁴¹⁰) and illegal employment of (minor) foreigners (Art. 28c Alien Employment Act⁴¹¹).⁴¹²

The **Criminal Procedures Code**⁴¹³ includes provisions for victims (including victims of THB) guaranteeing safeguards such as the right to information, access to the files, adequate treatment and access to free-of-charge psychosocial and legal assistance including representation by a lawyer. While the law does not foresee a reflection and recovery period, a reflection period of 30 days is implemented by a decree by the Ministry for Interior Affairs.⁴¹⁴ Further, the non-punishment principle for victims of THB is not explicitly regulated, rather the general provision on exculpatory emergency according to Art. 10 Criminal Code applies. Victims of THB can claim compensation (either in a criminal or civil law procedure or according to the victims of crime act⁴¹⁵). However, in praxis, victims of THB rarely have access to compensation.⁴¹⁶

In 2016, the **Joint Operational Office (JOO) Central Service for Combating People Smuggling and Human Trafficking** was established within the Federal Criminal Intelligence Service. The Office and its units in the provinces are responsible for investigating human trafficking cases.⁴¹⁷ Since 2010, the Office operates a hotline for reporting presumed cases of trafficking in human beings and self-reporting. The office also conducts seminars, for example for employees of the Federal Agency for Reception and Support Services (BBU).⁴¹⁸

⁴¹⁰ Fremdenpolizeigesetz, BGBl I Nr. 100/2005.

⁴¹¹ Ausländerbeschäftigungsgesetz, BGBl I Nr. 218/1975.

⁴¹² Reyhami, pp. 11-12.

⁴¹³ §§ 65 ff Strafprozessordnung (Criminal Procedures Code), BGBl. Nr. 631/1975.

⁴¹⁴ Sax, 2014, p. 25; Winkler, p. 51; Nowak/Sax/Weichselbaum, p. 4.

⁴¹⁵ Verbrechensofpergesetz, (Victims of Crime Act), BGBl Nr. 288/1972).

⁴¹⁶ GRETA, 2020, p. 5; Sax, 2014, p. 28.

⁴¹⁷ GRETA, 2020, p. 11.

⁴¹⁸ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

In order to coordinate and intensify anti-trafficking measures in Austria, the government set up the **Task Force in Combating Human Trafficking** in 2004. The Task Force is in charge of elaborating **National Action Plans on Combating Human Trafficking** and of monitoring their implementation.⁴¹⁹ The fifth National Plan (2018-2020) has an enhanced focus on preventing and combating trafficking of refugees and asylum seekers, particularly unaccompanied children, including capacity building in receptions centres.⁴²⁰

The Task Force established a **Working Group on Child Trafficking** (*‘Arbeitsgruppe Kinderhandel’*) which is composed of representatives of different ministries, provincial governments, NGOs, UNHCR and IOM.⁴²¹ The tasks of the Working Group are set out National Action Plans. Combating child trafficking, including preventative measures, is one of the main objectives of the latest National Action Plan with a special focus on unaccompanied children as a potential risk group for trafficking.⁴²² In 2016, **practical guidelines for key stakeholders on identifying and working with potential victims of child trafficking** were adopted, which constitute a **National Referral Mechanism**.⁴²³ The guidelines include indicators of potential cases of child trafficking⁴²⁴ as well as recommended actions in different (not exhaustive) scenarios for police, Child and Youth Welfare Services, asylum and immigration authorities, the healthcare sector as well as detention/prison authorities.⁴²⁵ However, the guidelines have hardly any significance in practice, as the responses of the *Länder* to the questionnaire of the *Kindeswohlkommission* have shown – except *Tyrol*, none of the nine *Länder* has referred to this document when asked which standardised procedure exists and who is informed if child trafficking is suspected during the asylum procedure.⁴²⁶ In 2017, the national office

⁴¹⁹ See <https://www.bmeia.gv.at/en/european-foreign-policy/human-rights/combating-trafficking-in-human-beings/> (accessed 20 July 2021).

⁴²⁰ GRETA, 2021, p. 40.

⁴²¹ Arbeitsgruppe Kinderhandel, pp. 6-7.

⁴²² GRETA, 2020, p. 52.

⁴²³ Task Force Menschenhandel, National Referral Mechanism on Identifying and Working with Potential Victims of Child Trafficking, information and practical guidelines, 2016, (in German and English) available under <https://www.frauen-familien-jugend.bka.gv.at/jugend/kinderrechte/kinderhandel.html> (accessed 20 July 2021).

⁴²⁴ Ibid, p. 13.

⁴²⁵ Ibid, pp. 14-23.

⁴²⁶ Kindeswohlkommission, Langfassung, pp. 135-138.

of IOM published a brochure on the identification of victims of THB among asylum seekers.⁴²⁷

4.1.2. Discussions around the establishment of a federal safehouse for victims of child trafficking

While support and assistance, including legal representation and housing, for female victims of THB aged 15 years and above is provided by the NGO LEFÖ and male victims of THB are assisted by MEN VIA, the **Children and Youth Welfare Services of the Länder are responsible for implementing assistance measures for child victims of THB, including accommodation and care.** At the moment, inconsistent standards exist in the *Länder*.⁴²⁸

In Vienna, the ‘**Drehscheibe**’ centre provides accommodation and social-pedogeological support of both, unaccompanied minors and child victims of trafficking. Even though Drehscheibe is geographically limited to Vienna and has limited means and capacity, it has become a centre for child victims of THB from all over Austria in the past years.⁴²⁹ However, a transfer is not always easy and raises questions of responsibility and costs.⁴³⁰ Furthermore, Drehscheibe does not have a security concept which a safe house would require (such as a secret address).⁴³¹

The **establishment of special institution for children affected by THB** is demanded by various stakeholders. Recently, the *Kindeswohlkommission* stressed that due to the lack of a federal safehouse for children affected by THB, **‘risks linked to going missing – dependency on traffickers, risks of becoming a victim of criminal groups, exploitation or child trafficking – are not adequately addressed.’**⁴³² Also my interview partners

⁴²⁷ International Organisation for Migration (IOM), Menschenhandel – Erkennung von Betroffenen im Asylverfahren, Vienna, IOM Landesbüro für Österreich, April 2017.

⁴²⁸ Sax, 2014, p. 24; Winkler, pp. 70-71.

⁴²⁹ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴³⁰ Nowak/Sax/Weichselbaum, p. 4.

⁴³¹ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁴³² Author’s translation, Kindeswohlkommission, para. 155.

emphasised that it is crucial for the protection of children affected by THB to have an institution which is responsible for all children affected by child trafficking in Austria.⁴³³

In the past years, the establishment of such a federal safehouse has been discussed in the **Working Group on Child Trafficking**⁴³⁴ and is included in the latest **Action Plan against Human Trafficking**⁴³⁵ but has not been established at the moment. In the third evaluation report, GRETA recommended the Austrian authorities to *'finalise and put into practice as a matter of priority the country-wide concept for protection and support of child victims of trafficking'*.⁴³⁶ According to G. Tatzgern, the major problem is funding.⁴³⁷

In this context, I would like to emphasise that detention is not a form of child protection but rather exposes children to various risks, causes irreversible harm⁴³⁸ and violates fundamental rights of children.⁴³⁹ Therefore, detention of unaccompanied minors is not an option.⁴⁴⁰

4.2. Child trafficking in the Austrian context in general

In the recent country report on Austria, GRETA stated that *'Austria continues to be a country of destination and transit for trafficked persons originating mainly from Eastern Europe, Africa and Asia. The most frequent form of exploitation remains sexual exploitation, followed by labour exploitation, domestic servitude and forced begging, which often involves children.'*⁴⁴¹ According to different interview partners, the exploitation of children takes place in both, Austria and other countries to where child

⁴³³ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021. All interview partners supported the idea of the establishment of such a safehouse.

⁴³⁴ Arbeitsgruppe Kinderhandel, p. 14.

⁴³⁵ Taskforce zur Bekämpfung des Menschenhandels, Nationaler Aktionsplan zur Bekämpfung des Menschenhandels für die Jahre 2018-2020, BMEIA, 2018, (in German) available under https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Menschenrechte/Nationaler_Aktionsplan_2018-2020.pdf (accessed 21 July 2021).

⁴³⁶ GRETA, 2020, p. 61.

⁴³⁷ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴³⁸ M. Nowak, United Nations global study on children deprived of liberty, November 2019, pp. 467-478, 481, available under <https://omnibook.com/global-study-2019/liberty/page-001.html> (accessed 2 July 2021).

⁴³⁹ Nowak/Sax/Weichselbaum, pp. 16-18.

⁴⁴⁰ Nowak, p. 481.

⁴⁴¹ GRETA, 2020, pp. 5 and 9.

victims of THB are transferred.⁴⁴² **Austria is, therefore, a country of destination and transit for trafficked children.**

The number of identified cases of child trafficking in Austria is, however, quite low. The Austrian Criminal Intelligence Service (BKA) publishes each year a status report on THB in Austria. The 2020 report states that *‘[t]he number of child victims of trafficking in human beings and cross-border prostitution amounts to a total of 10 victims. Among them were six male and four female victims. The minors came from Bulgaria, Hungary and Nigeria and were exploited sexually, by begging and by committing criminal acts.’*⁴⁴³ Regarding child trafficking, the report states that *“[t]wo cases (4 percent) were registered in the form of child trafficking. These were the attempted sale of a minor and a planned marriage.”*⁴⁴⁴ It is, in my opinion, not clear whether these two cases are included in the number of ten victims or if the total number of victims of child trafficking and cross-border prostitution is 12.

According to the 2019 report, *‘14 child victims of trafficking were identified. In the investigation procedures, eight female victims of sexual exploitation, five male and female victims of exploitation by committing crimes, and one male victim in exploitation by begging were identified.’*⁴⁴⁵ The report for 2018 is not available. According to the recent evaluation report by GRETA, the number of child victims of trafficking amounted to 16 in 2018.⁴⁴⁶ According to the BKA report for 2017, the number of child victims of trafficking and cross-border prostitution was 7. The specified that *‘[i]n the completed investigation procedures, four female victims of sexual exploitation (Hungary: 15 and 17 years; Nigeria: 16 and 17 years), one female victim of exploitation by committing crimes*

⁴⁴² Interview with an employee from LEFÖ-IBF Intervention Centre for Trafficked Women, Vienna, 17 May 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁴³ Author’s translation, Criminal Intelligence Service Austria, Status Report Smuggling and Trafficking in Human Beings 2020, Vienna, 2021, p. 27, (in German) available under https://www.bundeskriminalamt.at/304/files/Schlepperei_Menschenhandel_2020.pdf (accessed 17 May 2021).

⁴⁴⁴ Ibid, p. 29.

⁴⁴⁵ Author’s translation, Criminal Intelligence Service Austria, Status Report Smuggling and Trafficking in Human Beings 2019, Vienna, 2020, p. 24, (in German) available under https://www.bundeskriminalamt.at/304/files/Jahresbericht_Schlepperei_undMenschenhandel_2019.pdf (accessed 17 May 2021).

⁴⁴⁶ GRETA, 2020, p. 9.

*(Bosnia: 13 years) and one male victim of exploitation by committing crimes and begging (Nigeria: 17 years) were recognized.*⁴⁴⁷

An employee from LEFÖ Intervention Centre for Trafficked Women reported that LEFÖ cared for 11 girls (between 15-17 years) in 2018 and in 2019 for 7 girls.⁴⁴⁸ Compared to the 2020 status report, according to which only 4 female victims of TBH were identified as mentioned above, LEFÖ cared in 2020 for 8 girls between the age of 15-17 years⁴⁴⁹ which indicated that the number of children affected of THB is higher as recorded in the annual status reports.

According to A. Winkler, the annual number of identified victims of child trafficking in Austria, including the girls of whom LEFÖ takes care, is at maximum between 20-30. In the official statistics, children have never been 20 % of the total victims of THB in Austria. Thereby, the number of child victims is significantly low compared to the average in the EU which indicates that many victims are not being identified.⁴⁵⁰

It can be assumed that a **certain dark figure among children affected of THB exists**⁴⁵¹ due to different reasons, such as:

- The number of victims in the annual smuggling and trafficking status reports do not include the total number of identified victims since they include only the number of victims who contributed to criminal proceedings. For example, if in a police record, ten victims are recorded and the public prosecutor only uses the statements of 5 victims in the criminal proceeding, only 5 victims are recorded in

⁴⁴⁷ Author's translation, Criminal Intelligence Service Austria, Status Report Trafficking in Human Beings and Cross-border Prostitution 2017, p. 10, (in German) available under https://www.bundeskriminalamt.at/303/files/Menschenhandel_17.pdf (accessed 17 May 2021).

⁴⁴⁸ Interview with an employee from LEFÖ-IBF Intervention Centre for Trafficked Women, Vienna, 17 May 2021.

⁴⁴⁹ Interview with an employee from LEFÖ-IBF Intervention Centre for Trafficked Women, Vienna, 17 May 2021.

⁴⁵⁰ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁴⁵¹ Interview with an employee from LEFÖ-IBF Intervention Centre for Trafficked Women, Vienna, 17 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

the annual smuggling and trafficking report.⁴⁵² Therefore, the number of identified victims is higher than the number in the reports.⁴⁵³

- Many victims of THB are not aware that there are being exploited and therefore do look for help or they do not go to the police due to the fear of negative consequences, which is especially the case if victims are third country nationals.⁴⁵⁴
- For many victims, their situation must be unbearable in order for them to try to get out of the situation. Many traffickers know this and therefore ensure that the victims are relatively well off, for example by allowing girls some money to go shopping. Therefore, the victims are not aware that they are being exploited and it is also not so obvious for third parties.⁴⁵⁵
- Many child victims of trafficking do not have identification documents or use various identities and are therefore hard to grasp for the police.⁴⁵⁶
- Furthermore, children are often instructed by their exploiters how to act towards to authorities.⁴⁵⁷
- Especially when family members are among the perpetrators, children tend to not talk about their situation.⁴⁵⁸
- Many children are threatened by the perpetrators with harmful consequences if they cooperate with the police.⁴⁵⁹
- Ultimately, due to their heightened dependency on adults, child victims of THB are less likely to come out compared to adult victims.⁴⁶⁰

Experience has shown that the number of identified victims increases when specialised staff is appointed.⁴⁶¹ However, the *Länder* often use the low numbers of identified victims

⁴⁵² Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁵³ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁵⁴ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁵⁵ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁵⁶ Author's translation, Criminal Intelligence Service Austria, 2020, p. 27.

⁴⁵⁷ Author's translation, *ibid.*

⁴⁵⁸ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁴⁵⁹ Author's translation, Criminal Intelligence Service Austria, 2020, p. 27.

⁴⁶⁰ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁶¹ Arbeitsgruppe Kinderhandel, p. 14.

of child trafficking in the official statistics in order to justify why they are not taking measures against child trafficking.⁴⁶²

According to my interview partners, **sexual exploitation and exploitation of criminal activities are the most common forms of exploitation of children in Austria**. Begging has decreased in the past years. Cases of labour exploitation are rarely known. Organ removal does not play a role.⁴⁶³

4.3. Child trafficking of unaccompanied minors in the Austrian context

The numbers mentioned in the previous chapter concern child victims of THB in general, including unaccompanied minors and all other children. For example, in the 2020 status report, the identified child victims came from the EU countries Hungary and Bulgaria as well as from Nigeria,⁴⁶⁴ however, it does not state whether the Nigerian victims applied for international protection and are therefore unaccompanied minors as defined in this thesis.⁴⁶⁵ Unfortunately, no statistics on the number of affected unaccompanied minors exist. In a response to a parliamentary request in 2019, the Ministry of Interior Affairs was not aware of any cases of child trafficking affecting missing unaccompanied minors.⁴⁶⁶ LEFÖ does not have an evaluation on how many unaccompanied minors were among the girls referred to them in the past years.⁴⁶⁷

G. Tatzgern stated that only a small number of unaccompanied minors is affected by child trafficking in Austria and he therefore does not regard Austria as destination country for child trafficking with unaccompanied minors.⁴⁶⁸ He reported that until 2-3 years ago, the Criminal Intelligence Service (BKA) attempted to evaluate the annual criminal statistic in order to understand how many unaccompanied foreign minors (refugees and other

⁴⁶² Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁴⁶³ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁴⁶⁴ Author's translation, Criminal Intelligence Service Austria, Status Report Smuggling and Trafficking in Human Beings 2020, Vienna, 2021, p. 27, (in German) available under https://www.bundeskriminalamt.at/304/files/Schlepperei_Menschenhandel_2020.pdf (accessed 17 May 2021).

⁴⁶⁵ See the definition in chapter 2.1.

⁴⁶⁶ BMI, 38/AB, p. 10.

⁴⁶⁷ Interview with an employee from LEFÖ-IBF Intervention Centre for Trafficked Women, Vienna, 17 May 2021.

⁴⁶⁸ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

foreigners) are affected by exploitation for committing criminal offences (drug dealing and theft/pick-pocketing). Except of a few individual cases (which were recorded in the human trafficking report) no indicators for THB could be found in the evaluation of the files.⁴⁶⁹

The Working Group on Child Trafficking stressed that the **identification of child victims of THB among unaccompanied minors is a challenge**.⁴⁷⁰ GRETA expressed concerns about the identification of child victims of trafficking as well the identification of victims among asylum seekers in the first and second evaluation report on Austria.⁴⁷¹ Furthermore, the CRC Committee recommended Austria recently to ‘*increase identification of child victims of sexual exploitation and trafficking, particular children in vulnerable situations such as unaccompanied asylum-seeking, refugee or migrant children.*’⁴⁷² Even though trainings on the identification of victims of THB have been conducted for various stakeholders working with unaccompanied minors, many are lagging behind due to repeated changes in the staff.⁴⁷³ According to A. Winkler, the phenomenon of child trafficking with unaccompanied minors has existed in Austria at least since 2015, however, stakeholders are often left in the dark.⁴⁷⁴

In my opinion, the reasons I mentioned in the previous chapter for the existence of a dark figure of child victims of THB also applies to unaccompanied minors affected by THB. As explained above, the annual smuggling and trafficking reports do not include the total number of identified victims of THB. Furthermore, it is very likely that many victims among unaccompanied minors are not identified because many are not aware that they are being exploited or they do not ask for help because of fear of negative consequences, especially when they reside in the country without a residence permit, if they do not have any documents or if they are dependent on the trafficker. Therefore, it can be estimated that **many unaccompanied minors who are victims of THB are not identified as such.**

⁴⁶⁹ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁷⁰ Arbeitsgruppe Kinderhandel, pp. 14-15.

⁴⁷¹ GRETA, 2015, pp. 23, 25, 28.

⁴⁷² CRC Committee, CRC/C/AUT/CO/5-6, p. 11.

⁴⁷³ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁷⁴ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

Indicators for the existence of unaccompanied minors affected by child trafficking and exploitation in Austria can further be found in the findings of a **study conducted by ICMPD** in 2018. ICMPD found that, even though most of the identified victims of sexual exploitation are adult women, also **unaccompanied minors are affected, especially from male minors from Afghanistan** ‘*who were abused as bacha bazi in their countries of origin and then again by the same perpetrators in Austria.*’⁴⁷⁵ ICMPD further found anecdotal evidence indicating ‘*that young men and boys are involved in drug dealing*’ and ‘*children below the age of criminal responsibility are targeted for this.*’⁴⁷⁶

According to a **study published by the European Commission in 2015**, it was noted that ‘*traffickers let children stay overnight in shelters while in daytime they need to continue pickpocketing or begging*’.⁴⁷⁷ Katie Klaffenböck has heard about this but does not know whether it is true.⁴⁷⁸ Other interview partners have not heard of such cases but, on the other side, assumed that it would be possible, especially since traffickers need a place where their victims can stay while at the same time eliminating the risk to be detected as illegal resident.⁴⁷⁹ According to Gerald Tatzgern, these cases affected children from EU countries (mainly from Bulgaria and Romania) but not unaccompanied minors.⁴⁸⁰ Gerald Tatzgern heard of cases in which young women (over 18 years) were picked up from reception centres in order to engage in prostitution.⁴⁸¹

Legal advisors of unaccompanied minors informed UNHCR Austria about cases of exploitation of unaccompanied minors in form of begging and drug dealing. In these cases, it was very challenging to identify and reach the children.⁴⁸²

According to different interview partners, **exploitation in form of prostitution and committing criminal offences (such as pick-pocketing and shoplifting)**⁴⁸³ are the two most common forms of exploitation of (female and male) unaccompanied minors

⁴⁷⁵ Forin and Healy, p. 66.

⁴⁷⁶ Forin and Healy, pp. 68-69.

⁴⁷⁷ European Commission, 2015, p. 21.

⁴⁷⁸ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁴⁷⁹ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁴⁸⁰ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁸¹ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁸² Interview with Sarah Mirzaei, UNHCR, Vienna, 4 May 2021.

⁴⁸³ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

while begging has decreased in the past years.⁴⁸⁴ K. Hirschl-Bachner emphasised that especially girls and boys ages 15 years and above are affected by prostitution. Furthermore, **unaccompanied minors have to work in the drug business in order to pay back debts**. Cases have been reported in which the minors ask the care givers in Traiskirchen how they can get to certain locations which are known for drug dealing.⁴⁸⁵

G. Tatzgern emphasised that Roma children (who are EU citizens and not unaccompanied minors) are mainly exploited for committing criminal offences. Only a few individual cases may affect unaccompanied minors in which the minor is forced to commit a criminal offence by the person he or she is dependent on. In a few cases, unaccompanied minors were caught dealing with drugs, however, it was not clear whether they were exploited.⁴⁸⁶ In general, G. Tatzgern is not aware of any gangs using unaccompanied minors from, for example, Syria, Afghanistan, Iraq, and other countries. Furthermore, Afghan boys who are sexually exploited are in most cases already 18 or almost 18 years old. Other child victims of sexual exploitation which G. Tatzgern is aware of, affect rather EU citizens, especially children from minority groups (for example from Bulgaria), than unaccompanied minors. G. Tatzgern does not know whether unaccompanied minors are exploited for child pornography. Exploitation for begging mainly affects EU citizens. Gerald Tatzgern is not aware of any minors from Syria, Afghanistan, Morocco or other third countries who are begging.

It is commonly known that African (in most cases Nigerian) girls are trafficked for sexual exploitation within Europe.⁴⁸⁷ In some cases, they are brought to Austria from Italy and are exploited by the same person or group as previously in Italy.⁴⁸⁸

⁴⁸⁴ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021; Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021.

⁴⁸⁵ Interview with Stephanie Sladek, Stv. Geschäftsbereichsleitung GVS, BBU, Vienna, 10 June 2021.

⁴⁸⁶ Also, Astrid Winkler stressed that in many cases it is not clear whether the minor is exploited or whether he or she makes actually a certain amount of money through drug dealing. Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁴⁸⁷ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021; Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁴⁸⁸ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

K. Schmidt-Dengler reported once two African boys were forced to drug dealing and a suspicion of child trafficking existed. However, the authorities did not take the case seriously.⁴⁸⁹

In some cases, the circumstances are not clear. For example, K. Schmidt-Dengler reported that MA11 represents several unaccompanied minors in drug related criminal procedures, however the children do not tell whether they were forced by traffickers.⁴⁹⁰ Furthermore, K. Schmidt-Dengler referred to the following case: A 15-year-old unaccompanied girl was married to a 29-year-old man who lived in Vienna. The girl stated that her husband paid thousands of euros to the family, however, it was not clear whether this was for smuggling or other costs (e.g. forced marriage). The case was reported from the reception facility to the Children and Youth Welfare Service. It was feared that the girl would go missing since wanted to move to the husband and rejected her transfer to another province but after conversations with the Children and Youth Welfare Service and other stakeholders, the girl agreed to the transfer to Lower Austria.⁴⁹¹

Traffickers are often in touch with victims or potential victims of THB already before their arrival in Austria, for example by making them false promises regarding job and educational opportunities. This may also apply in cases of child trafficking. Once the (potential) victims arrives in Austria, they find themselves in a completely different situation as expected.⁴⁹² In some cases, traffickers force victims of THB to apply for international protection and continue to exploit them, for example in form of labour exploitation. This can also happen to children.⁴⁹³

It is estimated that situations of dependency and exploitation already exist before unaccompanied minors arrive in Austria.⁴⁹⁴ However, recruitment might also take place in Austria.⁴⁹⁵ In the next chapter, I will discuss the trafficking risks of unaccompanied

⁴⁸⁹ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

⁴⁹⁰ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

⁴⁹¹ Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021.

⁴⁹² Interview with an employee from LEFÖ-IBF Intervention Centre for Trafficked Women, Vienna, 17 May 2021.

⁴⁹³ Interview with an employee from LEFÖ-IBF Intervention Centre for Trafficked Women, Vienna, 17 May 2021.

⁴⁹⁴ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁹⁵ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

minors in general as well as the increased risk of missing unaccompanied minors more specifically.

4.4. Trafficking risks of unaccompanied minors

Unaccompanied minors are among the most vulnerable and are often not aware of the risks they are exposed to.⁴⁹⁶ Often the **interrelation of smuggling and trafficking** plays a major role.⁴⁹⁷ In order to finance smuggling costs, especially additional costs arising during the journey, unaccompanied minors are under a very high risk of becoming a victim of child trafficking.⁴⁹⁸ Furthermore, the **accommodation conditions** play a major role. As GRETA expressed, the children's vulnerability to THB *'is increased when too much time is taken to refer them to special facilities or when they are accommodated together with unrelated adults in first reception facilities.'*⁴⁹⁹ Furthermore, the **lack of a guardians** makes unaccompanied minors vulnerable to trafficking.⁵⁰⁰

According to K. Hirschl-Bachner it can be assumed that **children who are not accommodated in a facility of the Children and Youth Welfare Service are at a higher risk of becoming a victim of THB.**⁵⁰¹ Different interview partners stated that **in the reception facilities, unaccompanied minors are exposed to exploitation and THB.** Due to the high number of people accommodated (especially in Traiskirchen) and lack of adequate care, traffickers can easily recruit unaccompanied minors without being noticed.⁵⁰² Even though the access to the reception facilities is restricted, it would be possible for traffickers to recruit unaccompanied minors outside the facility.⁵⁰³

Furthermore, some cases have been reported in which unaccompanied minors who were admitted to the asylum procedure and were supposed to be transferred to a province other

⁴⁹⁶ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁹⁷ See chapter 2.4.2. b) and chapter 3.3.11.

⁴⁹⁸ Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021; Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁴⁹⁹ GRETA, 2021, pp. 49-50.

⁵⁰⁰ GRETA, 2021, p. 51.

⁵⁰¹ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁵⁰² Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

⁵⁰³ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

than Vienna went missing before their transfer.⁵⁰⁴ While different circumstances (such as the community, the desire to live in the city or the hope to have better opportunities in Vienna) may play a role, it is also speculated that human traffickers might be involved. This has, however, not been investigated yet.⁵⁰⁵ My interview partners have not heard of any concrete cases.

Missing unaccompanied minors are, in general, a vulnerable group and more likely to be exposed to various risks including abuse, (physical or psychological) violence, exploitation and child trafficking.⁵⁰⁶ Outside of the child protection system missing unaccompanied minors are an easy target for criminals.⁵⁰⁷ **The risk of becoming a victim of THB increases, no matter whether the minor decides to go missing on their own or whether traffickers are already involved.**⁵⁰⁸

The concrete risks which missing unaccompanied minors are exposed to vary according to the circumstances they find themselves in.⁵⁰⁹ **Dependency to anyone increases the risk of being exploited.** Due to their irregular status, missing unaccompanied minors are at risk to trust a person not acting in the best interest of the child or recruiting the minor for exploitative purposes.⁵¹⁰

Unaccompanied minors are at high risk of being recruited for drug dealing, especially once they get into certain communities. Often, criminals take advantage of the fact that young unaccompanied minors are below the age of criminal responsibility.⁵¹¹

The disappearance might also be an indicator for an already existing exploitation of the child. For example, an unaccompanied minor is taken to Drehscheibe because he or she was caught begging or doing other criminal activities. Within a few days, the minor is missing. In these cases, it is very likely that the minor went back to the perpetrator. It

⁵⁰⁴ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021; Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

⁵⁰⁵ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

⁵⁰⁶ Interview with Sarah Mirzaei, UNHCR, Vienna, 4 May 2021.

⁵⁰⁷ Forin and Healy, pp. 77-78.

⁵⁰⁸ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁵⁰⁹ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁵¹⁰ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021; Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021.

⁵¹¹ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

is very difficult to retrieve children from this situation, especially when the exploiters are family members.⁵¹²

4.5. Risk prevention

The following considerations based on the findings of this master thesis contribute to prevent unaccompanied minors from going missing and – as a linked risk to going missing – from the risk of becoming a victim of child trafficking:

As GRETA emphasised, an important measure to prevent children from going missing *‘is the timely appointment of a legal guardian’* as well as *‘adequate training and supervision of guardians.’*⁵¹³ It is crucial that there is a clear regulation determining who is responsible for an unaccompanied minor at all times ensuring that there are no gaps. **Guardianship upon day one of arrival** should be provided by law as demanded by various stakeholders on different levels including UNHCR, IOM and UNICEF (and the *Kindeswohlkommission*) **in order to establish trust from the beginning** and therefore prevent unaccompanied minors from going missing.⁵¹⁴ The appointment of a guardian as of day one **may minimize the risk that unaccompanied minors set off to other EU-member states on their own** (for example to reunite with family members) **as well as the risks associated with THB.**⁵¹⁵ **A trusted guardian can further contribute to identifying risks and vulnerabilities and assist in identifying victims of THB.**⁵¹⁶

The appointment of a guardian alone does not guarantee that a bond of trust is established, and that the child is provided with adequate care and supervision.⁵¹⁷ Direct and regular contact to the minor would allow the guardian to better understand the child’s needs and sorrows allowing to better assess if and why he or she is at risk of going missing.⁵¹⁸ Therefore, the **quality of guardianship and the establishment of a bond of trust to the guardian play an important role.**

⁵¹² Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁵¹³ GRETA, 2021, p. 51.

⁵¹⁴ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021; Interview with Sarah Mirzaei, UNHCR, Vienna, 4 May 2021.

⁵¹⁵ Interview with Sarah Mirzaei, UNHCR Austria, Vienna, 4 May 2021.

⁵¹⁶ European Commission, 2015, p. 52.

⁵¹⁷ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁵¹⁸ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

Furthermore, information on relevant topics (such as family reunification, the Dublin III regulation, the admission and asylum procedure including its duration) is crucial. In order to provide information, it is necessary to **assess the individual situation, risks and vulnerabilities (including risks of going missing and child trafficking) and the best interest of the child** (which should be the primary consideration). Therefore, a clearing should be conducted upon arrival of the child. Care and supervision should respond to the findings of this clearing.

Unaccompanied minors should not only be provided with **information in a child-friendly way**, but it is also necessary to establish trust that the information given by authorities and guardians is correct.⁵¹⁹ Therefore, the **establishment of a bond of trust to the person providing information (e.g. legal advisor or guardian)** is crucial. Since a bond of trust cannot be established within a short amount of time, it is **crucial that a guardian is appointed immediately upon arrival**.

Furthermore, the safe and appropriate accommodation plays a crucial role in preventing unaccompanied minors from going missing and from risks of child trafficking.⁵²⁰ **Accommodation in small facilities and foster families contribute to establishing a bond of trust between the unaccompanied minor and the care takers which contributes to preventing unaccompanied minors from going missing.**⁵²¹ Therefore, all children should be promptly referred to the Children and Youth Welfare Service upon arrival or initial identification.⁵²²

Regarding the accommodation and protection of victims of child trafficking, all interview partners, which I asked about the **establishment of a safehouse for (potential) victims of child trafficking**, supported the idea.⁵²³ A federal safe house should have, for example,

⁵¹⁹ Interview with Lisa Wolfsegger, Asylkoordination, Vienna, 11 May 2021.

⁵²⁰ GRETA, 2021, p. 49.

⁵²¹ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁵²² GRETA, 2021, p. 49.

⁵²³ Interview with an employee from LEFÖ Intervention Centre for Trafficked Women, Vienna, 17 May 2021; Interview with Katharina Schmidt-Dengler, MA 11, Vienna, 11 June 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021; Interview with Gerald Tatzgern, BKA, Vienna 18 May 2021; Interview with Sarah Mirzaei, UNHCR, Vienna, 4 May 2021.

the following qualities: close supervision and care,⁵²⁴ qualified and gender-balanced staff;⁵²⁵ an adequate security concept (detention is, however, is not an option⁵²⁶); availability of translators.⁵²⁷

Ultimately, **sensibilisation and specialised trainings** for persons working with unaccompanied minors are crucial in order to **improve identification of victims of THB among unaccompanied minors**.⁵²⁸ As GRETA stressed, the *'identification of child victims of THB requires specialised training to ensure that where a child is unable to explicitly articulate a concrete fear of persecution, including trafficking, such risks are recognised, and protection provided without delay.'*⁵²⁹

Based on the findings of this master thesis, I developed recommendations for risk prevention which can be found in chapter 5.2.

5. Conclusions

5.1. Summary of findings

The phenomenon of unaccompanied minors going missing exists in Austria without a doubt. An indicator is, for example, the number of discontinued asylum procedures according to Art. 24 Asylum Act. **Between 2015-2020, a total of 6507 procedures (40 % of the applications) were discontinued.** Furthermore, responses the parliamentary requests allow to calculate an approximate number of missing unaccompanied minors. According to this calculation, **over 50 % of the applicants went missing in 2019 and 2020** (see chapter 3.2.1).

The **majority go missing from federal reception facilities** (Traiskirchen and Reichenau an der Rax)⁵³⁰ in which unaccompanied minors who are 14 years or above are generally

⁵²⁴ Interview with an employee from LEFÖ Intervention Centre for Trafficked Women, Vienna, 17 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁵²⁵ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁵²⁶ Interview with an employee from LEFÖ Intervention Centre for Trafficked Women, Vienna, 17 May 2021; Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁵²⁷ Interview with Katie Klaffenböck, IOM, Vienna, 18 May 2021.

⁵²⁸ Interview with Astrid Winkler, ECPAT Austria, Vienna, 25 June 2021; Interview with an employee from LEFÖ Intervention Centre for Trafficked Women, Vienna, 17 May 2021.

⁵²⁹ GRETA, 2021, p. 50.

⁵³⁰ See chapter 3.2.3.

accommodated during their admission procedure, sometimes during the whole asylum procedure. However, in some cases also unaccompanied minors below the age of 14 years are accommodated in federal reception facilities.⁵³¹

There are **reasonable concerns that cases of missing unaccompanied minors from federal reception facilities are not reported to the police by the responsible district administration office** and investigations are not initiated (see chapter 3.2.2.).

Unaccompanied minors go missing because of different circumstances which are often interrelated. The relevant circumstances which I identified are the following:

- **Lack of an adequate guardian** due to which unaccompanied minors are left on their own (see chapter 3.3.2.);
- **Lack of a bond of trust**, e.g. due to the high number of accommodated children (and adults) in a facility or the limited time in a facility (see chapter 3.3.3.);
- **Rumours and misinformation** (spread by peers or smugglers) **and lack of correct information**, for example when information is not provided in a child-friendly manner (see chapter 3.3.4.);
- **Accommodation in large facilities**, e.g. leading to inadequate care and supervision (see chapter 3.2.5);
- **Long duration of (admission, asylum, age assessment and family reunification) procedures respectively long waiting periods**, e.g. for the transfer to a *Land* or due to COVID-19 (see chapter 3.2.6);
- **Fear of outcome of the (admission or asylum) procedure or an age assessment** (see chapter 3.2.7.) which is often combined with rumours, misinformation or lack of information;
- **Relatives in another EU country** (see chapter 3.2.8.) often linked to long duration of family reunification procedures, rumours or lack of information;

⁵³¹ On 1 January 2020, 4 of the 35 unaccompanied minors were under the age of 14 years; on 31 December 2020, 17 of the 181 unaccompanied minors in Traiskirchen were under the age of 14 years; on 15 January 2021, 12 of the 155 unaccompanied minors were under the age of 14 years; see chapter 3.1.2. lit. a.

- **Instructions to continue the journey to a certain destination country** by parents or smugglers (see chapter 3.2.9.) often linked to rumours and misinformation, fear of outcome of procedures or long duration of procedures;
- **Country of origin related circumstances**, such as lack of documents, which is often linked to rumours (see chapter 3.2.10.);
- **Smugglers**, e.g. separating family members or forcing unaccompanied minors to pay back debts for smuggling costs (see chapter 3.2.11.);
- **Child trafficking** (see chapter 3.2.12.).

While due to some of these circumstances (such as instructions, smugglers, child trafficking) unaccompanied minors might go missing unwillingly, other circumstances cause unaccompanied minors to set off to another country on their own by choice. The latter have in common that they create **fear, uncertainty, frustration, impatience and lack of hope** among unaccompanied minors who then might believe that they have better chances in another EU country. However, **no matter why an unaccompanied minor goes missing, he or she is exposed to various risks including dependency, exploitation and child trafficking. The fact that a child goes missing can also be an indicator an already existing situation of exploitation or child trafficking.** Therefore, all cases of unaccompanied minors going missing must be taken seriously.

Even though the official number of child victims of THB in Austria is fairly low, it can be estimated that a certain dark figure exists due poor identification (see chapter 4.2. and 4.3.).

The lack of an adequate guardian, accommodation in large reception facilities, the interrelation of smuggling and THB as well as dependency to anyone lead to vulnerability to THB. Vulnerability increases when unaccompanied minors go missing as they are outside of the child protection system, no matter whether the child decided to leave on their own or was forced/instructed to do so. **Child trafficking is, therefore, a risk very closely linked to going missing.**

The appointment of a guardian upon arrival, the establishment of a bond of trust, an assessment of the child's situation (including risks and vulnerabilities) based on the best interest of the child, swift accommodation in a child-friendly care facility

and information provided in a trustful and child-friendly way are crucial for the prevention of unaccompanied minors from going missing as well as from child trafficking risks (see chapter 4.5.). Furthermore, the establishment of a federal safehouse for children affected by THB, as discussed in the Working Group on Child Trafficking, is a measure of utmost importance for the protection of all children, including unaccompanied minors.

5.2. Recommendations

- 1. Unaccompanied minors should be regarded and treated as children first and foremost.**
- 2. An adequate guardian should be appointed for all unaccompanied minors regardless their age upon their arrival in Austria without delay, at best within a few days.**

Best practice example: In Belgium and in Germany, the appointment of a guardian for unaccompanied minors takes place upon arrival.⁵³² In the Netherlands a guardian is appointed within two to three days.⁵³³

- 2.1. Clear regulations should ensure that guardianship for unaccompanied minors is designed uniformly preventing regional differences.
- 2.2. Guardians should be adequately trained and supervised in order to ensure that he or she is able to represent the best interest of the child.
- 2.3. The guardian should prepare with the unaccompanied minor for his or her interview and be present at interviews and legal counselling (like it is currently for unaccompanied minors below the age of 14 years).
- 2.4. It should be ensured that guardians are in direct and regular contact with minors allowing them to better understand the child's needs and sorrows, to better assess if and why he or she is at risk of going missing and to establish a bond of trust.
- 2.5. In the appointment process, gender and cultural aspects should be considered contributing to the establishment of a bond of trust.

⁵³² Kindeswohlkommission, para. 118.

⁵³³ GRETA, 2021, p. 51.

2.6. If an unaccompanied minor is instructed by his or her parents to continue the journey to another country (for example because of hope of better opportunities), the guardian could get in touch with the parents to take away the pressure from the child, provided this is in the best interest of the child and the child agrees. This should, however, never harm the child, for example by having a negative impact on his or her asylum procedure.

2.7. If a relative is appointed as guardian, it should be ensured that the appointment is in the best interest of the child. At a minimum, it should be assessed whether he or she is capable of representing the best interest of the child and whether there is a conflict of interest. It must especially be ensured that this person is not a threat to the well-being of the child including that he or she is not a human trafficker claiming to be a relative. If the relative is able and willing to provide day-to-day care, but unable to represent the child's best interest in other areas, '*a guardian should be appointed to cover these gaps.*'⁵³⁴

3. If an unaccompanied minor arrives, an assessment of his or her situation including the determination of the best interest of the child should be undertaken without delay.

3.1. This clearing should include, at a minimum, the child's views, the family environment (including the possibility of family reunification), vulnerabilities or risks which the minor is (potentially) exposed to and an assessment whether an application for international protection is the best option (and, if not, what other options exist). The clearing should also involve an assessment whether the child is at risk of trafficking or re-trafficking.

3.2. Clear guidelines based on relevant child rights standards (first and foremost the CRC) for this clearing should be developed.

3.3. Based on this clearing and the determination of the best interest of the child, '*personalised care and assistance should be provided*'.⁵³⁵ In case of any change of accommodation placement or guardian, it should be ensured that personalised care and assistance remain as consistent as possible.

⁵³⁴ FRA, 2015, p. 37.

⁵³⁵ FRA, 2015, p. 34.

- 3.4. Best practice example: In Sweden, the migration authority published guidelines for referees on a best interest of the child determination consisting of seven steps, including an development of perspectives, an assessment of consequences and a determination of the best interest of the child. This determination must be conducted on documented in all cases concerning children.⁵³⁶
- 4. Unaccompanied minors should not be accommodated in federal reception facilities together with adults. Rather, unaccompanied minors should be placed in appropriate childcare facilities of the Children and Youth Welfare Services in the *Länder* upon arrival, regardless their age.**
- 4.1. A permanent accommodation should be found at the earliest possible stage. Depending on the child's individual needs, he or she should be placed in a small facility, shared apartment or a foster family.
- Best practice example: 'In the Netherlands, unaccompanied children under 15 years of age are placed in foster families and those who are older, in small reception centres or in protected shelters if they are considered vulnerable to trafficking.'*⁵³⁷
- 4.2. If unaccompanied minors are accommodated in federal reception facilities, it should be ensured that this is only a temporary placement for the shortest time possible. A maximum duration of two or three weeks should be regulated by law. If an age assessment is conducted as a matter of last resort, it should be ensured that the duration does not exceed the designated time, otherwise the result of the age assessment should not be awaited.
- 4.3. If an unaccompanied minor is transferred from a federal reception facility to a facility in a *Land*, the child should be provided with information on his or her new home. If time allows, the child should be given the chance to (virtually) meet and greet the social workers of his or her new home.

⁵³⁶ Kindeswohlkommission, para. 122.

⁵³⁷ GRETA, 2021, pp. 49-50.

*Best practice example: For every child who leaves to Drehscheibe to another accommodation facility, a meeting with the new team and a farewell-party is organised for the child.*⁵³⁸

4.4. In all facilities in which unaccompanied minors are accommodated, including federal reception facilities, the Children and Youth Welfare Service standards should be applied. It should be ensured that enough staff and resources are available to provide adequate supervision and care, and to establish a bond of trust between the social workers and the minors.

4.5. Detention of unaccompanied minors in reception facilities or in other accommodation facilities is not an option.

4.6. Age assessments should not be conducted as routine but only as a matter of last resort in case of serious doubts and should be conducted in the least invasive way and by applying a multidisciplinary approach rather than sole scientific methods.

*Best practice example: In Ireland, Slovenia and the UK, age assessment are conducted by non-medical methods only.*⁵³⁹

4.7. The child must be given the benefit of the doubt and available documents (e.g. birth certificates) should be considered as genuine.

4.8. If an age assessment is conducted as a matter of last resort, the procedure, its duration and consequences should be explained in a child-sensitive way.

4.9. Before and during an age assessment, any person claiming to be under 18 years should be treated as a child. A guardian should be appointed upon arrival and the person should be provided with child-friendly care and adequate accommodation placement.

5. It should be ensured that every unaccompanied minor is actively provided with information, especially regarding the admission and the asylum procedure, the Dublin III regulation, age assessments, family reunification as well as child trafficking in a child-friendly and trustful way.

⁵³⁸ Interview with Karin Hirschl-Bachner, Drehscheibe, Vienna, 12 July 2021.

⁵³⁹ Kindeswohlkommission, para. 121.

Best practice example: *Legal advisors in Traiskirchen try to build a bond of trust with unaccompanied minors from the beginning on. They invite unaccompanied minors to consultations and actively offer further legal counselling. If vulnerabilities are identified, the child is informed about his or her rights and is referred to organisations which can provide further assistance. Information sheets with the times of open consultations are hung up in the centre.*⁵⁴⁰

- 5.1. Unaccompanied minors should be provided with correct information about the duration of the procedures since incorrect or incomplete information lead to incredibility and lack of trust.
 - 5.2. Since many unaccompanied minors rather believe their peers than officials, it should be ensured that the child trusts the person who provides information.
 - 5.3. In addition to information sheets, explanatory videos could be created in different languages on various topics.
 - 5.4. It should be ensured that unaccompanied minors are provided with information on who they can contact in case of emergency or imminent threat, for example their guardian, the police, an ambulance or the ‘116000 Hotline for missing children’ as well as the ‘147 Hotline *Rat auf Draht*’.
- 6. The identification of child victims of THB, especially children in vulnerable situations such as unaccompanied minors, should be increased.**
- 6.1. Trainings on the identification of victims of child trafficking and sensibilisation for trafficking indicators should be provided to all stakeholders working with unaccompanied minors, including all staff in facilities in which unaccompanied minors are accommodated. At a minimum, information material including indicators for child trafficking should be handed to everyone working with unaccompanied minors and be made visible in all offices (e.g. by hanging up information papers).
 - 6.2. It should further be ensured that all stakeholders working with unaccompanied minors are aware of the NRM for child victims of THB and are provided with training on how to implement NRM.

⁵⁴⁰ Interview with Beatrice Pesce, Legal Advisor, BBU, Traiskirchen, 9 July 2021.

7. **Every case of an unaccompanied minors going missing should be taken seriously and considered as potential threat to the well-being of the child. Every case should be reported to the police and investigated.**
8. **Data on unaccompanied minors who go missing should be collected.**
 - 8.1. At a minimum, this should include: age (over or under 14 years), country of origin, migration status (including whether he or she went missing during or after the admission to the asylum procedure), whether the minor went missing from a federal reception centre or from a facility of a *Land* and his or her length of stay in this facility, and whether there is suspicion for child trafficking including, if possible, the type of exploitation.
9. **A federal safehouse for all children including unaccompanied minors affected by THB should be established.**
 - 9.1. Children from all nine *Länder* should have the same access to the safehouse.
 - 9.2. Any placement in the safehouse should be in accordance with international standards on the rights of the child, especially follow the child's best interests and the right to personal liberty.
 - 9.3. The safehouse should offer children long-term perspectives preventing re-trafficking.
 - 9.4. The federal safehouse should have the following qualities:⁵⁴¹
 - **Swift and non-bureaucratic reception:** In order to avoid that (potential) victims of child trafficking are waiting for their reception putting them at risk, a swift reception should be ensured.
 - **Welcoming into a safe space:** It should be ensured that it is clear for the child that the safehouse is not a detention centre but a safe space for them where they feel welcomed.
 - **Close supervision and adequate care:** Close supervision and care should be provided based on the individual needs of the child. If in the best interest of the child, the parents should be included. The care should include support in getting

⁵⁴¹ The following qualities are based on discussions with my interview partners, the findings of this master thesis, my own considerations and the concept of LEFÖ, which is described in LEFÖ Interventionsstelle für Betroffene von Frauenhandel, Tätigkeitsbericht 2019, p. 3, available under https://lefoe.at/wp-content/uploads/2021/05/LEFÖ-IBF-TB_2019.pdf (accessed 21 July 2021).

out of the exploitative situation offering them alternatives, perspectives, education and – if in the best interest of the child – supporting the return to the country of origin.

- **Enough staff in order to engage with every child as much as needed:** There should be enough social workers in order to ensure that close supervision and care (based in the child's individual needs) is ensured at all times and that the staff members are able to establish a bond of trust to the children. Preferably, every child is allocated to one social worker who the child can talk to at any time. A second social worker should be appointed as substitute in case the main social worker is, for example, on leave or not available due to other reasons.
- **Mid- to long-term stay and preparation for a life outside the safehouse:** In order to prevent re-victimisation (as much as possible) children should be accommodated in the safehouse for at least several months to a few years. After-care should be provided as necessary.
- **Professional, multidisciplinary and gender-balanced staff from different cultural backgrounds:** The staff working in the safehouse should be adequately trained. Gender-balance, different cultural and professional backgrounds (including social workers, pedagogical, medical, psychological and legal professionals) among the staff members should be ensured.
- **Adequate security concept:** It should be ensured that address is secret, that perpetrators are not able to contact children via telephone or the internet and that the children are aware of (individual and general) security rules.
- **No detention:** Detention is not a concept for protection and therefore not an option.
- **Availability of translators:** Translators in the native language of the child should be available at all times.
- **Children and Youth Welfare standards:** The safehouse should be imbedded in the Children and Youth Welfare Service and a **child-friendly ambience** should be created. The safehouse should be separated from the from the immigration system.

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Abstract (Deutsch)

Schätzungen zufolge sind in den letzten Jahren mehrere zehntausend unbegleitete minderjährige Flüchtlinge (UMF) in der EU verschwunden. In zahlreichen Berichten, Studien und in der Fachliteratur wird anerkannt, dass UMF besonders vulnerable für Ausbeutung und Menschenhandel sind. Wenn sie untertauchen, steigen diese Risiken erheblich. Das Phänomen des Verschwindens von UMF gibt es auch in Österreich. Die meisten verschwinden aus den Erstaufnahmeeinrichtungen, in denen UMF ab 14 Jahren in der Regel während des Aufnahmeverfahrens, in manchen Fällen während des gesamten Asylverfahrens, untergebracht sind. Diese Masterarbeit identifiziert die Umstände, aufgrund derer unbegleitete minderjährige Flüchtlinge verschwinden bzw. untertauchen, sowie die Risiken, denen (vermisste) UMF in Bezug auf Kinderhandel in Österreich ausgesetzt sind. Basierend auf den Erkenntnissen der Arbeit werden Präventionsmaßnahmen entwickelt. Ein besonderer Fokus liegt dabei auf den laufenden Debatten zur Obsorge ab Tag 1 sowie der Gründung einer bundesweit zugänglichen Schutzeinrichtung für (potentielle) Opfer von Kinderhandel.

Abstract (English)

It is estimated that over the past few years, tens of thousands of unaccompanied minors went missing in the EU. Numerous reports, studies and literature recognised that unaccompanied minors are particularly vulnerable to exploitation and THB. When off the authorities' radar, the risk of being exploited and abused increases significantly. The phenomenon of unaccompanied minors going missing also exists in Austria. The majority go missing from federal reception facilities in which unaccompanied minors who are 14 years or above are generally accommodated during their admission procedure, sometimes during the whole asylum procedure. This master thesis identifies the circumstances because of which unaccompanied minors go missing and the risks which (missing) unaccompanied minors face regarding child trafficking in Austria. Based on the findings of this thesis risk prevention measures are developed. A special focus is thereby put on the ongoing debates on guardianship upon arrival as well as the establishment of federal safehouse for (potential) victims of child trafficking.