

## Fulfilling the Rights of Young Refugees in Europe and at Its Borders

Veröffentlichungsversion / Published Version

Stellungnahme / comment

*Diese Arbeit wurde durch das Bundesministerium für Familie, Senioren, Frauen und Jugend (BMFSFJ) gefördert. / This work has been funded by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth (BMFSFJ).*

### Empfohlene Zitierung / Suggested Citation:

Bundesjugendkuratorium. (2023). *Fulfilling the Rights of Young Refugees in Europe and at Its Borders*. (Publikationen des Bundesjugendkuratoriums der 20. Legislaturperiode). München. <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-96510-6>

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## APPEAL BY THE FEDERAL YOUTH ADVISORY BOARD

18.09.2023

### FULFILLING THE RIGHTS OF YOUNG REFUGEES IN EUROPE AND AT ITS BORDERS

With this appeal, we ask you to advocate for the realization of the rights of young refugees in the current discussions of EU refugee policy. Appropriate structures and procedures based on due process are needed to ensure compliance with the UN Convention on the Rights of the Child, additional UN conventions (such as the Convention on the Rights of Persons with Disabilities), and a range of international agreements on the rights of migrants and refugees that guarantee rights including rights to protection, legal certainty, freedom from discrimination in childhood and youth, and future prospects for young people. Transparent, independent, and regular monitoring of the fulfilment of these rights must also be ensured.

It is true that the discussions of current European proposals for regulating asylum and access to asylum procedures at the external borders of the EU have seen several governments highlight that this ongoing process intends to strengthen, especially, the rights of children and young people, to regulate the safeguarding of these

rights, and to ensure that they are reinforced by structures and procedures. Emphasis has also been placed on the fundamental inapplicability of the proposed procedures to those refugees who travel as unaccompanied minors.

- But the question of how the rights of all children and young people will be safeguarded nevertheless remains unresolved. How the rights of child and youth refugees could be at all feasibly fulfilled in the border procedures and at the border locations where people are staying is not discernible from what has become known about the proposals thus far.

This is the context underlying the **fundamental test criteria**<sup>1</sup> detailed below for **safeguarding the rights of children and young people** that future Europe-wide regulations must consider.

- All procedures must be designed in a manner that safeguards and practically upholds the rights of children and young people provided for in international agreements. Guarant-

<sup>1</sup> Some of the criteria specified here, such as procedural representation, are also mentioned in general terms in drafts of the new European regulations with reference to the UN Convention on the Rights of the Child. But the formulations in these drafts lack specificity and, most importantly, the drafts lack realistic strategies for ensuring the delivery of

these criteria – independently, in ways that are sensitive to the needs of children and young people, and under the conditions that must be assumed.

teeing independent legal protection for children and young people is of fundamental importance here. Organizational safeguards must exist to ensure that children and young people receive independent legal advice and representation.

Children, and especially young people, must not be subjected to age assessments that involve degrading treatment. The age assessment procedures in use have been criticized for years and cannot be regarded as providing a basis for determining, for example, that a given individual is an adult.

- Children and young people must not be subjected to age assessments by decision-making authorities or organizations appointed by such authorities without independent legal representation.

Children and young people have a right to parents. They must not be indirectly compelled to leave their parents behind and continue their refugee journeys alone because protection is only afforded to refugees who are unaccompanied minors. Children and young people must be protected together with their parents.

- Accommodation and services delivery at the EU border can hardly be provided in ways that are appropriate for children and young people. The size of facilities, the constant fluctuation of the refugee occupants of these facilities, the coercive context of the stay, the (observable) involuntary returns and, last but not least, the threatening prospect of one's own family being repatriated are background conditions that effectively preclude the upholding of minimum standards for child-friendly and youth-friendly accommodation and services. Stays at the border should, therefore, be as brief as possible.

Children and young people often experience violence, sexualized assaults, and abuse during their refugee journeys. Due to their vulnerable position and the asymmetrical power relationships that exist between adults and children, special protection from violence, assaults, and abuses of power must be provided for children and young people.

The protection of children and young people from violence and sexualized assaults must be categorically ensured by creating transparent

organizational structures, ombudsperson procedures, safe and protected spaces, and child-friendly/youth-friendly points of contact – with options to avail of services anonymously – that children and young people who have experienced violence can turn to at any time (not just in immediate emergency situations), using their own languages, wherever they are staying – especially at border locations.

The right of children and young people to be heard must be fulfilled in all procedures and at every location in the EU where children and young people are present (see Article 12 of the UN Convention on the Rights of the Child).

- Children and young people must be informed about their situation in their own first language. Conditions must be created that allow them to express their needs and to understand and participate in relevant procedures using their own first language.

Age-appropriate and accessible counselling locations, procedures, and infrastructure must be provided so that all children and young people receive the opportunity to discuss their situation and the next steps to be taken. Children and young people are also entitled to bodily integrity, well-being, and health support.

- It must be ensured that child and youth refugees receive age-appropriate nutrition, medical care, and social care. They also need spaces where they can talk to other children and young people about their needs and spend time together as young people.

We see the key points detailed here as essential minimum standards to which the **ongoing development of European refugee policy** must adhere. This policy must seek to fulfil the rights of children and young people at Europe's borders and on their refugee journeys in Europe. Only when differentiated and transparent agreements have been reached on procedures and structures for fulfilling rights in the states of the EU – and, in this context, also on relevant organizational, financial, human resources, and professional accountability structures – will we be able to speak of and monitor the safeguarding of the rights of children and young people.

## THE FEDERAL YOUTH ADVISORY BOARD

The Federal Youth Advisory Board (FYAB; in German: Bundesjugendkuratorium/BJK) is an expert panel commissioned by the Federal Government. It advises the Federal Government on fundamental issues of child and youth services and cross-cutting issues in child and youth policy. FYAB is composed of up to 15 experts from the spheres of politics, administration, associations and research. Its members are appointed by the Federal Minister for Family Affairs, Senior Citizens, Women and Youth for the duration of the current legislative period.

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DESIGN: Schlereth Design

URN: urn:nbn:de:0168-ssoar-96510-6

PRODUCED WITH SUPPORT FROM:



Federal Ministry for  
Family Affairs, Senior Citizens,  
Women and Youth