



Deutscher Verein  
für öffentliche  
und private Fürsorge e.V.



## **Aliens Law and Child and Youth Services**

**Do they share a common mandate for child protection?**

**Documentation of the Specialist Conference,  
in Hanover, 17-18 September 2009**

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## Outline of the Specialist Conference

### Hosted by:

International Social Service in the German Association for Public and Private Welfare

### Conducted by:

Ulrike Schwarz	Lawyer, International Social Service German Branch
Anne Tamm	Intercultural pedagogue, International Social Service German Branch

### Lecturers:

Ulrike Schwarz	Lawyer, International Social Service
Anne Tamm	Intercultural pedagogue, International Social Service
Volker Bohlen	Director, Public Order Office, county of Friesland
Bodo Weirauch	Director, Child and Youth Care Services, Youth Welfare Office Dortmund

### Contents

The conference was focusing on the areas where aliens law and the law on child and youth services intersect. In particular, it addressed the uncertainties which the staff members of foreigners authorities and youth welfare offices are facing with regard to their protection mandate in cases which are legally unclear or controversial. Together with the participants of the conference, cooperation schemes were to be developed.

### Participants:

Because of the structure of the conference, with practical exercises and interaction, the number of participants was limited to 30 persons. Most of the participants were working in the field of child and youth services (youth welfare offices, youth care facilities, agencies for unaccompanied minor refugees); the smaller part of participants were from foreigners authorities / public order authorities.

The proportion was about  $\frac{3}{4}$  of participants from child and youth services, and  $\frac{1}{4}$  of participants from foreigners/public order authorities.

It is worth mentioning that in many cases, representatives from youth welfare offices and those from foreigners authorities had been travelling together if they both came from the same town.

### Interests of the participants:

- questions concerning aliens law
- questions concerning entitlement to youth welfare provisions (youth welfare office)
- general as well as specific questions concerning unaccompanied minor refugees (youth welfare office)
- rights/obligations concerning unaccompanied minor refugees (foreigners authority)
- uncertainties about deportation issues (youth welfare office)
- „Keeping one's eyes and ears open in both directions“ – intersection youth welfare office/foreigners authority

## **About International Social Service German Branch, Department VII of the German Association for Public and Private Welfare (organizer)**

*A 9-year-old boy is seized near the airport. Because of his language, it is assumed that he comes from Iraq. He says that he is on his way to the U.K. to join his relatives. International Social Service is asked for assistance by the Youth Welfare Office to clarify whether the relatives in the U.K. are able to take the child into their care.*

„Internationaler Sozialdienst“ is the German Branch of International Social Service (ISS), a non-commercial worldwide network. ISS German Branch acts as an intermediary between social authorities and family courts in Germany and those abroad. By means of its network, ISS builds bridges, across national boundaries, between people and the different social systems, in order to ensure protection of those in need worldwide. In addition to individual casework, ISS German Branch provides counselling and advice to local authorities, agencies as well as individuals.

Most of the cooperation partners of ISS in the other countries are part of the respective social and/or child welfare systems of the relevant countries.

The General Secretariat of the organization is in Geneva, where ISS was founded in 1924, following the migratory movements in the aftermath of World War I. The work of ISS supplemented the emergency aid at that time; it began after the people's basic needs had been met and they needed documents or proof of identity, or reunification of family members who had been separated during migration.

After World War II, the fields of work and the organization were growing. Now ISS was asked for assistance in numerous other cases with an international dimension. Today ISS provides service in cases relating to

- international custody proceedings if e.g. one of the parents lives abroad
- visitation from or with a relative who lives abroad
- child abduction by one of the parents
- risk to the welfare of a child abroad
- migration-specific problems, ranging from family reunification and onward migration to the tracing of family members in the country of origin
- vulnerable adults in need of protection.

The counseling provided and the handling of any type of cases is always focusing on the person who is in need of protection (the child, the incapable adult), his or her interests and wellbeing.

ISS provides service in many countries, ranging from A (e.g. Algeria), T (e.g. Turkey) to Z (Zambia). As the cooperation partners of ISS in those countries are local social services/child protection agencies etc., it is assured that they are familiar with cultural characteristics, the language etc., which makes it easier to get access e.g. to the parent who abducted the child.

The other side of the coin is that the efficiency of the network depends on whether the relevant country has a stable social system to provide such services. If no such stable system exists (e.g. in Iran, Iraq, Haiti), it is difficult for ISS to provide efficient service.

ISS has its own national branches working exclusively for ISS, as well as so-called correspondents. Correspondents are organizations or institutions which fulfill tasks of ISS as part of their usual work (e.g. the Red Cross, university projects, state agencies etc.).

ISS German Branch is part of the German Association for Public and Private Welfare in Berlin. It is composed of an interdisciplinary team of legal and social work professionals and ethnologists. The working languages of the ISS network are English and French and, more and more often, also Spanish.

**1<sup>st</sup> Day, 17th September 2009**  
**Residence Law vs. Child and Youth Services?**

# Residence Law vs. Child and Youth Services? – Differences and Commonalities

Ulrike Schwarz and Anne Tamm

## I. The Actors

### Foreigners Authority

Hello, I'm from the Foreigners Authority.

My job is to grant residence permits and the right of "tolerated stay" ("Duldung") and I make decisions on people's entry, departure or stay in this country.

**My work is based** on the Residence Act (AufenthG) and all the other acts of administrative law. From time to time, also criminal law is involved.

### Who does what?

#### Foreigners Authority

Residence Act (AufenthG)  
Regulatory law  
Society  
Safety of society  
(terrorism, criminals,  
immigration into the social systems)

Well-being of society



### Child and Youth Services

Hello, I'm from the Youth Welfare Office.

I give counselling to families facing problem situations, make decisions on direct help for children and families, protect children against neglect or abuse, and have a lot of other duties concerning child protection, e.g. I often have to appear at the family court.

**My work is based** on the Social Code Book VIII (Child and Youth Services Act/SGB VIII) and the German Civil Code. But other books of the Social Code are involved as well.

#### Child and Youth Services

Child and Youth Services Act (SGB VIII)  
Benefits Regulation Law  
The individual  
Personal safety  
(Section 8a: the State's duty to protect  
children, Section 42: the child's removal  
from the family)

Well-being of the individual

## Benefits Regulation Law vs. Regulatory Law

### Section 1 Residence Act (AufenthG)

*(1) This Act serves to control and restrict the influx of foreigners into the Federal Republic of Germany. It enables and organises immigration with due regard to the capacities for admission and integration and the interests of the Federal Republic of Germany in terms of its economy and labour market. (...) To this end, it regulates the entry, stay and economic activity of foreigners and the integration of foreigners.*

### Section 2 SGB VIII (Child and Youth Services Act)

*(1) Child and youth services are provisions and other tasks supporting young persons and families.*

### Foreigners Authority

I'm a regulatory authority.

I'm protecting.

I'm serving the protection of society and its values, such as democracy, the rule of law, etc.

I'm protecting the State and society against costs and criminal offences.  
I assess the facts and circumstances from the aspect of whether or not they will benefit society and the State.

In doing so, I have to comply with the Basic Law and the fundamental rights laid down in it, which are based on the human rights.

### Child and Youth Services

In the course of the last decades, I've developed from an authority which controls and interferes with children and youths into a service provider.

I'm giving.

I provide assistance for children and families. Those children and families have a right to these provisions.

Some people call me a socialisation help because I offer preventive socio-educational provisions, and I'm part of the educational system.

I offer a wide range of services, such as youth work/social work for youths, day care centres, socio-educational provisions for children and youths, assistance for emotionally handicapped children and youths, as well as assistance for young adults.

Nevertheless, I have to meet the requirement of economic viability.

### Individual vs. Society

#### **Section 55 Residence Act (AufenthG)**

*(1) A foreigner may be expelled if his or her stay is detrimental to public safety and law and order or other substantial interests of the Federal Republic of Germany.*

#### **Section 1 SGB VIII (Child and Youth Services Act)**

*(1) Every young person has a right to assistance in his or her development and to an appropriate upbringing so that he or she can become a responsible and socially skilled personality.*

### Foreigners Authority

From my point of view, the one who can claim rights is Society.

I have the statutory mandate to protect society – which is something abstract.

Therefore, whenever I have to decide on a residence permission, I check whether it would

### Child and Youth Services

From my point of view, the one who can claim rights is the individual.

I have the statutory mandate to protect and assist the individual, i.e. the individual child/ adolescent, or parent. I perform part of the State's function as a watchdog over families.

From my point of view, the needs of the applicant or the person in need are in the

endanger the community in any way, and then I put it in proportion to the need of the applicant. From my point of view, the “community” side of the scale is filled anyway, whereas the “individual person” side of the scale needs to be filled with life by that individual person.

centre of attention. They outweigh the needs of society – in fact, it is my statutory mandate to shape society according to the interests of youth and family, i.e. I have the duty to create a child- and family-friendly environment.

The child is in the centre of attention and the best interests of the child are paramount in all decisions I have to make.

This refers not only to the provisions mentioned above, but the best interests of the individual, the child, are the basis for all my other duties as a public authority, such as child protection and guardianship.

My work is based on the assumption that it is best for a child to grow up with his or her own family. Therefore, in order to be able to support the individual child, I often have to support the whole family.

The relevant laws on which my work is based empower the individual person with rights. The guidelines for my work are:

The relevant laws on which my work is based provide the guidelines for the decisions I have to make in the interest of society:

IS  
= Rule

HAS  
HAVE

SHALL  
= Rule; exceptions to this rule are allowed only in well-founded exceptional cases.

= I cannot refuse to grant assistance unless the applicant does not meet the requirements.

CAN  
= Rule which may be extended if there are good reasons

MAY  
= Exception to the rule – must be well-founded.

## II. Intersection: Best interests of the child

### **EC Council Directives:**

„When examining an application, the Member States shall have due regard to the best interests of minor children.“ **(family reunification)**

„The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.“ **(reception)**

„The „best interests of the child“ should be a primary consideration of Member States when implementing this Directive.“ **(qualification)**

„The best interests of the child shall be a primary consideration for Member States when implementing this Article.“ **(procedures)**

„Member States shall take due account of the best interests of the child when applying this Directive. They shall ensure that the procedure is appropriate to the age and maturity of the child. (...)“ **(protection of victims)**

### **Section 3 SGB VIII (Child and Youth Services Act)**

(3) Child and youth services shall (...)

3. protect children and young persons from harm to their welfare.

### **Section 8a SGB VIII (Child and Youth Services Act)**

(1) If the Youth Welfare Office has credible information indicating a risk to the welfare of a child or adolescent, it must assess the risk in cooperation with specialist personnel.

### **Section 27 SGB VIII (Child and Youth Services Act)**

(1) (...) the person who has the right of care and custody shall be entitled to help (socio-educational provision for children with problems) if that person is unable to ensure proper education and upbringing for the good of the child or young person (...)

## **Foreigners Authority**

The notion of „best interests of the child“ is new to me.

It found its way into my work as a result of the major changes in residence law. The European Community provided a multitude of directives for the Member States which they have to comply with in their national residence laws. That happened in 2007.

The EC Directives stipulate that the best interests of the child shall be a primary consideration in procedures on residence permission. Although the “best interests of the child” are explicitly mentioned in the Residence Act only once, I have the duty to take account of the best interests of the

## **Child and Youth Services**

I see myself as an expert for the best interests of the child. My job is to fill that notion with life.

All the aspects of the best interests of the child can never be laid down in any legislation. It is a vague legal term which has to be filled with life in each individual case.

The best interests of the child are the basic foundation of my work. Any decisions I make every day are based on determining what will be in the best interests of the child.

A provision which is in the best interests of a particular child may sometimes not be the

child when interpreting the Residence Act. This is laid down in my “General Administrative Rules on the Residence Act”. Moreover, I have the obligation to interpret all the laws in accordance with the EC Directives, and in compliance with them, and thus to meet the relevant obligations of the Federal Republic of Germany.

My problem is that I have no experience regarding the “best interests of the child” – what does it mean?

According to my administrative rules, I have to turn to the Youth Welfare Office for an answer.

best solution in case of another child. In order to determine the best interests of the child, the individual case has to be assessed (e.g. parent-child relationships, parent-parent relationship, family constellation, the social setting, developmental-psychological situation, school situation, etc.).

Besides, the definition of the best interests of the child is changing, not just with regard to cases but historically. New findings in sociology and psychology can have an impact on it – also in this regard, we have the professional competence required.

I am pleased to share my knowledge with other public authorities if it serves the best interests of the child.

Besides, I would like to point out that the best interests of the child have gained momentum thanks to the 1989 UN Convention on the Rights of the Child. As our work is focusing on the individual, the child, we are trying to take account of the child’s rights.

→ Article 3 of the Convention: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

## Intersection: Best Interests of the Child: Children joining their parent/s/family

### **Section 32 AufenthG (Residence Act) Subsequent immigration of children**

(...)  
(4) A minor, unmarried child of a foreigner may otherwise be granted a residence permit if necessary in order to prevent special hardship on account of the circumstances pertaining to the individual case concerned. The **child's wellbeing** and the family situation are to be taken into consideration in this connection.

### **General Administrative Regulation on Section 32 AufenthG**

(...) In this case (...) as discretionary decision, subsequent immigration of a child to join his or her non-custodial parent is admissible if the other parent agrees to it or if the other parent’s consent (...) is dispensable and if, after in-depth evaluation of the implications of the child’s immigration, it is affirmed that the **child’s wellbeing** is assured. (...) The child’s immigration (...) and the child’s removal from his or her existing personal relationships must definitively serve the **best interests of the child**. (...) The decisive factors are the personal and social relationships of the child to both parents, which must be evaluated in

*the individual case concerned, and their respective social environments (...) **In case of doubt, the Foreigners Authority should ask the Youth Welfare Office for an assessment.***

### Foreigners Authority

I have to decide on an application for subsequent immigration of a 12-year-old child to join his non-custodial father. The child's mother in the home country cannot be located; the grandparents, who have been caring for the child until now, suffer from illness.

According to my systematics, I CAN approve the application for immigration if it serves the best interests of the child.

But: What are the "best interests of the child"?

### Child and Youth Services

I can help the Foreigners Authority in this case. I can fill the vague legal term of „best interests of the child“ with meaning.

E.g. I look at the present living-circumstances of the father – whether his housing circumstances, his family situation, his financial situation, are suitable for caring for the child. I look if there has been an affectionate bonding between father and child up to now, which alternative options there would be for the child in his home country, who else could be caring for the child, which affectionate bondings he has with particular persons there, if a change of school would cause problems for him, etc. At last, I can assess whether his migration to Germany would be in the best interests of the child.

### Intersection: Best interests of the child: Humanitarian permission to stay

#### **Section 25 AufenthG (Residence Act)** (...)

5) (...) A foreigner who is enforceably required to leave the Federal territory may be granted a residence permit if his or her departure is impossible in fact or in law and the obstacle to deportation is not likely to be removed in the foreseeable future. The residence permit should be issued if deportation has been suspended for 18 months. A residence permit may only be granted if the foreigner is prevented from leaving the Federal territory through no fault of his or her own.  
(...)

#### **Section 42 SGB VIII (Child and Youth Services Act)**

(1) The youth welfare office has the right and the obligation to take a child or youth into its custody when (...)  
2. there is an imminent danger to the well-being of the child or youth which requires his or her reception into care.

#### **Section 1666 BGB (German Civil Code)**

(1) Where the physical, mental or psychological best interests of the child (...) are endangered (...), the family court must take the measures necessary to avert the danger. (...)  
(3) The court measures in accordance with subsection (1) include in particular (...)  
6. part or complete removal of parental custody.

### Foreigners Authority

### Child and Youth Services

I have to decide on an application from a legal guardian for a residence permission for two little children, for so-called humanitarian reasons. Their mother's asylum application was rejected. The children were taken into care by the youth welfare office. I had ordered the family to leave the Federal territory.

According to my systematics, I CAN approve the application if there are valid grounds.

In this case, the Foreigners Authority does not need me for carrying out its duty, but I need the Foreigners Authority.

I had removed the children from their mother's care to protect them because they had been mistreated by their mother and presented severe developmental disorders. Now the family is ordered to leave Germany, but for the children it would be fatal if they were expelled from Germany together with their mother. In my function as legal guardian for the children, I have checked if there are other extended family members in their home country who would take the children, but there is no-one who would be able to do so.

Therefore, I ask the Foreigners Authority to grant the children a residence title on humanitarian grounds. This is the only possibility for me to meet my obligation to ensure the children's safety. To this end, I provide a comprehensive statement of the reasons, including a case history and the outcome of my enquiries abroad.

### III. Subsequent Discussion: Collision between Residence Law and the Best Interests of the Child

#### Best Interests of the Child and Discretionary Expulsion

##### **Section 55 AufenthG (Residence Act)**

(...)

(2) A foreigner may be expelled in accordance with sub-section 1 in particular if he or she (...)

7. receives an educational allowance for persons outside of his or her own family or an allowance for young adults in accordance with Book Eight of the Social Code; this shall not apply for a minor whose parents or parent possessing the sole right of care and custody is lawfully resident in the Federal territory.

##### **Section 6 SGB VIII (Child and Youth Services Act)**

(...)

(2) Foreigners are not entitled to the provisions laid down in this Book unless they have their habitual residence in Germany lawfully or because of their "tolerated stay" according to aliens law. Sub-section 1 sentence 1 remains unaffected.

Apart from the intersection concerning the "best interests of the child", there is also the possibility of collision between residence law and the best interests of the child. Prior to the Conference, the organizers had chosen, from various telephone enquiries, the particular constellation of "discretionary expulsion because of receipt of child and youth welfare provisions". International Social Service German Branch has no cases where discretionary expulsion took place because of receipt of provisions under the Child and Youth Services Act. Enquiries with the participants have shown that they, too, did not know of any cases of

expulsion exclusively resulting from receipt of child and youth welfare provisions. The representatives of Foreigners Authorities who attended the Conference made it clear that receipt of provisions is practically never used as justification for expulsion. It may occasionally be just another contributing factor, but not the sole reason.

### **Legal capacity of minors in matters relating to residence law**

Now as before, the legal capacity of minors in matters relating to residence law causes problems. Although minors who are 16 or 17 years of age have legal capacity only in matters concerning residence law, many of them are not covered by the provisions of child and youth services. From among the participants, it was reported that not all of the competent authorities deem it necessary for 16-17 year-olds to be taken into care. Moreover, although they have no legal capacity outside the realm of residence law, it is not always considered necessary to appoint a guardian for them. Sometimes a curator is appointed for specific matters.

### **Minors in custody pending deportation**

From among the representatives of child and youth services, the question was raised what they can do if an adolescent is or has to be taken into custody pending deportation. They stated that it is not possible to take them into care while they are in custody pending deportation.

The way of dealing with custody pending deportation for minors is very different throughout the Federal Republic of Germany. – According to the foreigners authorities participating in the conference, the theoretical possibility of custody pending deportation for minors still exists, but they almost never make use of it.

As a solution in such cases, it was suggested by participants that the youth welfare office should contact the foreigners authority and the Federal Police in order to clarify the facts and circumstances. As a next step, an interview with the young person can be requested. If this does not lead to success, the youth welfare office and the appointed guardian, if applicable, can possibly lodge an appeal.

In Frankfurt on the Main, in cases of unaccompanied minors, the Federal Police notifies the Youth Welfare Office about any newly arrived minor who travelled alone. At Frankfurt Airport, the Federal Police no longer takes minors in custody pending deportation.

**Addendum:** Since 1<sup>st</sup> September 2009, the ordering of custody pending deportation for adolescents is governed by Book 7 of the “Law on Proceedings in Family Matters and in Matters of Non-Contentious Jurisdiction” (FamFG).



## Excursion: EU Citizens and Residence

Ulrike Schwarz

EU Member States	Year of Accession	Capital
Belgium	1957	Brussels
Bulgaria	2007	Sofia
Denmark	1973	Copenhagen
Germany	1957/1990	Berlin
Estonia	2004	Tallinn
Finland	1995	Helsinki
France	1957	Paris
Greece	1981	Athens
Ireland	1973	Dublin
Italy	1957	Rome
Latvia	2004	Riga
Lithuania	2004	Vilnius
Luxembourg	1957	Luxembourg
Malta	2004	Valletta
Netherlands	1957	Amsterdam
Austria	1995	Vienna
Poland	2004	Warsaw
Portugal	1986	Lisbon
Romania	2007	Bucharest
Sweden	1995	Stockholm
Slovak Republic	2004	Bratislava
Slovenia	2004	Ljubljana
Spain	1986	Madrid
Czech Republic	2004	Prague
Hungary	2004	Budapest
United Kingdom	1973	London
Cyprus	2004	Nicosia

### Applicable laws: Freedom of Movement Act/EU (FreizügigkG/EU) and Residence Act (AufenthG)

For citizens of the Member States of the European Union, a special law was made in 2004 which regulates their entry and residence.

The “Act on the General Freedom of Movement for EU Citizens” (abbreviated: the Freedom of Movement Act/EU) applies and has to be given priority when questions relating to residence law for EU citizens are concerned.

In specific cases, however, the Residence Act applies to EU citizens as well (cf. § 11 FreizügigG/EU), especially with regard to the legal capacity of minors who are 16 years of age or older, as well as departure and its enforcement and the prohibition to re-enter the country after deportation.

Moreover, the Residence Act always has to be applied when it gives a EU citizen a possibly better legal position than the Freedom of Movement Act/EU. For example, the Residence Act provides for residence on humanitarian grounds, from which a better legal position can be derived in some individual cases.

### **The right to tourism**

Every citizen of a Member State of the European Union has a right to enter another Member State of the EU and to stay there for three months as a tourist. Between most of the EU States, there are no border controls anymore; the State takes no notice of people crossing the border. Only Romania, Bulgaria, the U.K., Ireland, Cyprus and, under certain preconditions, the State of Denmark still make border controls. But also for these States, the rule is that every EU citizen can enter or leave the country for tourist purposes.

### **The right to permanent residence**

#### ***Section 2 Freedom of Movement Act (FreizügigG/EU)***

- 1) EU citizens entitled to freedom of movement and their dependents shall have the right to enter and reside in the Federal territory pursuant to this Act.*
- 2) (...) The following persons are entitled to freedom of movement:*
  - 1. (...) who wish to reside (...) as employees or for the purposes of seeking employment or carrying out vocational training (...)*
  - 2. (...) who are entitled to pursue an independent economic activity (self-employed) (...)*
  - 3. (...) who wish to render services (...) provided that they are entitled to provide them,*
  - 4. (...) recipients of services*

Permanent residence in another EU Member State has to be distinguished from entry to the country as a tourist. Permanent residence is possible only if certain preconditions are met. As a rule of thumb:

An EU citizen is not allowed to stay in another EU Member State permanently unless he or she is economically beneficial to that State or, otherwise, he or she won't be a financial burden to that State.

This precondition is met whenever an EU citizen

- is working or seeking employment, thus paying or wanting to pay into the social system.
- is a self-employed person
- is a service provider (e.g. a mobile nursing service with registered office in a neighbouring country which offers its services across borders), or a recipient of such services (e.g. a cure in a spa in the neighbouring country).

or

- is not a gainfully employed person but has adequate health insurance coverage

AND

- has adequate means of subsistence.

For permanent residence of EU citizens, there are two types of certificate which have to be issued ex officio. They are issued for dependents of the EU citizen as well, regardless of their nationality:

*The ordinary Certificate confirming the right of residence under Community Law:*

- a limited residence title. It is basically equivalent to the Residence Permit according to the Residence Act, apart from the fact that no conditions can be imposed.

*The Certificate on Permanent Residence:*

- an unlimited residence title which is issued after five years. It is equivalent to the Settlement Permit according to the Residence Act.

#### **Restrictions of residence for those States which acceded to the EU since 2004**

##### **Section 284 SGB III (Social Code Book III)**

*(1) Nationals of the States of (...) the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic, which acceded to the European Union (...) are not allowed to exercise gainful employment unless they have been given approval by the Federal Employment Agency. (...) This applies to nationals of (...) the Republic of Bulgaria and of Romania (...)*

##### **Section 13 FreizügigG/EU (Freedom of Movement Act)**

*Insofar as divergent provisions are applicable in accordance with (...) on the accession to the European Union of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic (...), this Act shall apply if the employment has been approved by the Federal Employment Agency in accordance with Section 284 (1) of Book Three of the Social Code.*

EU citizens from the „new“ Member States are not allowed to work in Germany unless they have an approval from the Federal Employment Agency. Without this approval, citizens from these countries cannot get a permanent residence status in Germany unless they are self-employed or can prove that they have adequate health insurance coverage and adequate means of subsistence.

## Expulsion of EU Citizens

**Vollzug des Aufenthaltsgesetzes (AufenthG)  
Feststellung des Nichtbestandes des Rechts auf Einreise und Aufenthalt,  
Ausreiseaufforderung und Abschiebungsandrohung**

Sehr geehrter [REDACTED]  
hinsichtlich Ihres weiteren Aufenthaltes in der Bundesrepublik Deutschland ergeht folgende

**E n t s c h e i d u n g :**

1. Es wird hiermit festgestellt, dass bei Ihnen keine Freizügigkeit besteht.
2. Sie werden aufgefordert die Bundesrepublik Deutschland innerhalb eines Monats nach Zustellung dieser Entscheidung zu verlassen.
3. Für den Fall nicht fristgerechter Ausreise drohen wir Ihnen bereits jetzt die zwangsweise Abschiebung auf eigene Kosten in das Vereinigte Königreich Großbritannien und Nordirland an. Sie werden darauf hingewiesen, dass Sie in jedes andere Land abgeschoben werden können, in das Sie einreisen dürfen oder das zu Ihrer Rückübernahme verpflichtet ist.
4. Der Sofortvollzug dieser Entscheidung wird angeordnet.

**Translation:**

**Enforcement under the Residence Act (AufenthG)  
Ascertainment of non-entitlement to entry into and residence in this country,  
Order of Departure and Deportation Warning**

Dear ...,

with reference to your further residence in the Federal Republic of Germany, we made the following

**D e c i s i o n :**

1. It is ascertained that you have no freedom of movement.
  2. You are requested to leave the Federal Republic of Germany within one month from the announcement of this order.
  3. In case of failure to leave the country within this deadline, we warn you already now that your deportation to the United Kingdom of Great Britain and Northern Ireland will be enforced and you will be liable for the costs. Please be informed that you can be deported to any other country which you are allowed to enter, or which has the obligation to receive you.
  4. Immediate enforcement of this decision is ordered.
- 

EU citizens, like other foreign nationals, can be expelled from Germany if they raise costs to the State. If they are expelled to another EU Member State, it must be established first that they have no right to freedom of movement. The expulsion is enforced according to the rules of the Residence Act, i.e. temporary suspension of deportation (“tolerated stay/Duldung”) can be granted for an EU citizen as well.

In the case illustrated above, an adult British citizen is required to leave the Federal territory because he received social assistance.

## EU Citizens and Child and Youth Services

### **Section 6 SGB VIII (Child and Youth Services Act)**

(...)

- 1) (2) *Foreign nationals are not entitled to the provisions laid down in this Act unless they have their habitual residence in Germany lawfully or because of a temporary suspension of deportation according to aliens law.*

(...)

EU citizens can be entitled to child and youth services as well. The precondition is that they have their habitual residence in Germany or that a temporary suspension of deportation (“Duldung”) has been granted, if they are not entitled to freedom of movement. Here, too, “ordinary” residence law applies: The residence status of children under the age of 16 years depends on the residence status of their parents..

Staying in Germany as a tourist, however, usually is NOT sufficient for being entitled to child and youth services. An exception to this rule is made for cases where there is an imminent danger to the well-being of a child which requires the child’s reception into care.

## Workgroups: Residence Law and Child and Youth Services

The participants were divided into four workgroups. Two workgroups were given one and the same case: one group was to deal with the case from the point of view of the youth welfare office, the other one was to deal with it from the point of view of the foreigners authority.

The solutions found were subsequently “discussed” in a role play: “foreigners authority group” vs. “youth welfare office group”.

The workgroups were set up in such a way that each group included participants from foreigners authorities as well as from youth welfare authorities.

### Explanatory note:

The workgroups were aimed at promoting exchange of experience among the participants. There were a lot of discussions, both within the workgroups and in the plenary meetings. Only excerpts of the discussions can be quoted here:

#### **Case Example 1**

*A boy is picked up by police at night and is received into care by the emergency service for children and youths. The Youth Welfare Office is notified about it. The boy, Pavel, aged 17, stems from the Czech Republic. Investigations are made and it is established that his family has been living in Germany for a long time and that Pavel migrated to Germany to join them five years ago. Since his arrival in Germany, he has never attended any school. He is not covered by health insurance. His physical and mental development is delayed. In the course of interviews with the Youth Welfare Office, Pavel states that he is not willing and not able to return to his family. Shortly after his parents have been contacted, they leave Germany and their whereabouts are unknown. In view of the overall circumstances, parental custody is withdrawn and a guardian is appointed for the boy. Child and youth services are granted by the Youth Welfare Office and Pavel makes good progress – it is planned for him to complete school and possibly start a vocational training. The Youth Welfare Office wants Pavel to be allowed to stay in Germany until he has completed his vocational training.*

### Youth Welfare Office

#### **Question to the „Youth Welfare Office Group“:**

What does the Youth Welfare Office do? Which aspects relating to youth welfare law have to be considered?

#### **Task for the „Youth Welfare Office Group“:**

The Youth Welfare Office wants to grant child and youth services – even after the boy has reached majority – and in order to be able to plan successfully and on a long-term basis, they need to be sure that Pavel can stay in Germany.

Which arguments can the Youth Welfare Office bring forward vis-à-vis the Foreigners Authority? Choose a group speaker who will subsequently meet the speaker of the “Foreigners Authority Group” to work towards a solution.

### Foreigners Authority

#### **Question to the „Foreigners Authority Group“:**

Which aspects have to be considered by the Foreigners Authority with regard to the stay of Pavel in Germany? Which aspects relating to aliens law have to be taken into account?

### **Task for the „Foreigners Authority Group“:**

The Youth Welfare Office wants Pavel to be allowed to stay in Germany until he has completed his vocational training. Therefore, the social worker has made an appointment with the person in charge at the Foreigners Authority.

Would you be able to agree to the stay of Pavel in Germany and, if so, according to which rules? How would you justify your decision vis-à-vis the Youth Welfare Office?

Choose a group speaker who will subsequently meet the speaker of the “Youth Welfare Office Group” to work towards a solution.

### **Possible solution**

Neither the foreigners authorities nor the youth welfare offices had an unanimous point of view how to deal with the EU citizen in this case.

It was suggested to give Pavel a permanent residence status according to EU legislation. The precondition is that he has been living in Germany for five years. Problems might be caused by the fact that it will be difficult to prove that he has resided lawfully and continuously in Germany for five years, which is a precondition for permanent residence laid down in Section 4a of the Freedom of Movement Act (FreizügigG/EU).

From the foreigners authorities, it was suggested that a residence permit might be granted on the basis of a specific purpose of residence pursuant to Section 7 of the Residence Act (AufenthG). However, there was no consensus among the foreigners authorities if the facts and circumstances of this case would be considered by foreigners authorities as sufficient for substantiating a specific purpose of residence.

### **Case Example 2**

*The Mohamad family migrated from Algeria to Germany in 1990. The family's asylum application was rejected because of false statements. The family was granted temporary suspension of deportation because they had no identity papers. In 1994, Samira was born. At the beginning of 2005, the family was granted a residence permit on humanitarian grounds pursuant to Section 25 (5). Later in 2005, the Youth Welfare Office took action and removed Samira from the family because she was mistreated by her parents. Samira was afraid of her parents and did not want to return to them. Legal custody was withdrawn from the parents and the Youth Welfare Office was appointed as guardian. Samira was placed in a child and youth care facility.*

*Samira presented severe behavior disorders. She often played truant, consumed drugs, and it was unlikely that she would complete her school.*

*A few weeks ago, Samira was missing from the child and youth care facility. After a few days, the care persons received a phone call from her father. He told them that the whole family had returned to Algeria. He said that they had no future prospects in Germany because they would not find a job. At last the Algerian Embassy had issued passports for them. They had taken Samira with them. The father said that this was better for her, as she now lives with the family of an uncle so that she would not be too much estranged from her family. Besides, it would be easier in Algeria to control her. He did not allow Samira to speak to the care persons directly. Shortly afterwards, Samira's 17-year-old boyfriend contacted the Youth Welfare Office. He stated that Samira was to be married to a 60-year-old man in Algeria. He stated that Samira wanted to return to Germany. However, her residence permit had expired a week ago; she had not had a chance to apply for extension before her departure from Germany.*

## **Youth Welfare Office**

### **Question to the „Youth Welfare Office Group“:**

What does the Youth Welfare Office do? Which aspects relating to youth welfare law have to be considered? What do you think would be the Foreigners Authority's attitude towards a re-entry of Samira to Germany? Which aspects relating to aliens law have to be considered?

### **Task for the „Youth Welfare Office Group“:**

The Youth Welfare Office and the guardian decide that Samira should return to Germany. They make an appointment with the Foreigners Authority in order to obtain their preliminary approval for a residence title for Samira.

Which arguments can the Youth Welfare Office bring forward in order to obtain a residence title for Samira? Choose a group speaker who will subsequently meet the speaker of the "Foreigners Authority Group" in order to work towards a solution.

## **Foreigners Authority**

### **Question to the „Foreigners Authority Group“:**

What would be the Foreigners Authority's attitude towards a re-entry of Samira to Germany? Which aspects relating to aliens law have to be considered?

### **Task for the „Foreigners Authority Group“:**

The Youth Welfare Office wants Samira to re-enter Germany. Therefore, the social worker has made an appointment with the person in charge at the Foreigners Authority.

Would you agree to Samira's re-entry to Germany? How would you justify your decision vis-à-vis the Youth Welfare Office? Why, in your opinion, does the Youth Welfare Office want Samira to re-enter Germany?

Choose a group speaker who will subsequently meet the speaker of the "Youth Welfare Office Group" in order to work towards a solution.

## **Possible solution**

At this point, primarily the practical problems of return have been discussed – how can it be done logistically? How can we find her? The Foreigners Authority would agree to give its preliminary approval – though only verbally for the time being – because of danger to the welfare of the child in view of mistreatment of the child in the past and her abduction to Algeria. The Youth Welfare Office will have to contact the German Embassy to issue a visa and discuss the further course of action.

**2<sup>nd</sup> Day, 18th September 2009**  
**Practical Cooperation between Youth Welfare Authorities and**  
**Foreigners Authorities**

## Presentation of a Foreigners Authority and a Youth Welfare Office – where and how can they collaborate?

Volker Bohlen and Bodo Weirauch

Volker Bohlen, director of the Public Order Office of the Landkreis (county) of Friesland, and Bodo Weirauch, director of Child and Youth Care Services of the Youth Welfare Office Dortmund, presented the structure and responsibilities of their authorities, identified intersections between the two authorities as well as their expectations towards improved collaboration..

<b>Presentation of Cooperation from the perspective of a Public Order Office (Friesland)</b>	<b>Presentation of Cooperation from the perspective of a Youth Welfare Office (Dortmund)</b>
<p><b>Structure:</b> Not just a public order office but an integration authority as well (in the county of Friesland, there is no high percentage of foreign nationals, but a high percentage of refugees)</p> <p><b>Responsibilities:</b></p> <ul style="list-style-type: none"> <li>• Decision-making about the residence of foreign nationals</li> <li>• Integration of foreign nationals</li> </ul> <p><b>(Legal) basis:</b> Aspects to be considered in working in the field of aliens law:</p> <ul style="list-style-type: none"> <li>• Residence Act/Freedom of Movement Act</li> <li>• Courts; European jurisdiction</li> <li>• Human Rights Conventions</li> <li>• Interpreting vague legal terms</li> <li>• Functional supervision, depending on the Land (here: Ministry of the Interior)</li> <li>• Politics</li> <li>• Supporting associations</li> <li>• the public, media</li> </ul> <p><b>Decision-making competencies:</b></p> <ul style="list-style-type: none"> <li>• Laws (Residence Act, Freedom of Movement Act)</li> </ul>	<p><b>Structure:</b> 5 Divisions: 51/1 Administration 51/2 Educational and economic assistance (Social Services, legal guardianships, UMRs → <b>contact with FA</b>) 51/3 Day care for children 51/4 Youth work, youth services 51/5 Child guidance, counselling</p> <p><b>Responsibilities of Division 51/2:</b></p> <ul style="list-style-type: none"> <li>• Counselling and advice</li> <li>• Child protection</li> <li>• Socio-educational provisions</li> <li>• Maintenance advance payment</li> <li>• Involvement in juvenile and family court proceedings</li> </ul> <p><b>(Legal) basis:</b></p> <ul style="list-style-type: none"> <li>• Child and Youth Services Act (SGB VIII)</li> <li>• Civil Code (BGB)</li> <li>• Youth Courts Law (JGG)</li> </ul> <p><b>Decision-making competencies:</b></p> <ul style="list-style-type: none"> <li>• legal framework (family court, guardian ad litem, guardians)</li> </ul>

- Administrative rules
- Jurisdiction
- Scope of professional action: Discretion, which is, however, determined by administrative rules, on the one hand, and jurisdiction, on the other hand.

**Intersections:**

- Residence on humanitarian grounds

Youth welfare measure and condition of fixed abode

If a youth welfare measure is taken by the foreigners authority of another area of responsibility, approval is needed from the receiving foreigners authority. In most cases it refuses. However, the YWO can prevent refusal of the approval, in view of the best interests of the child. If danger to the child is substantiated, the receiving foreigners authority cannot refuse to give its approval without adequate justification.

- Temporary suspension of deportation („tolerated stay/Duldung“) and child and youth services

Obligation of residence.

Granting child and youth services for minors with a „Duldung“ is even more complicated because they are not allowed to leave their accommodation area without permission, i.e. they cannot even make use of “non-residential” provisions. It is possible, however, to apply for a second “Duldung”.

If the minor has relatives residing in a nearby district, the minor’s residence can be legalised: residence on humanitarian grounds for a child in the same district (the obligation of fixed abode is removed – family will not be separated).

- Subsequent migration of dependents

Assessment of the *father-child contact*: in case of rejected asylum applicants, if the father has no child custody – residence permission?

Question about “care and assistance community”; social and family bonding has to be proved. (YWO’s investigations

- Scope of professional action: Negotiation processes

**Intersections:**

- UMRs

Problem of implementation of SGB VIII (new obligation to receive the child into care), continuous contact with the FA

Local competence of the YWO for UMRs:

- (1) reception into care; placement of the child does not change competence of YWO;
- (2) legal representation: official guardianship (at the place where the child is staying, not the place where the child was received into care);
- (3) socio-educational provision: asylum application yes/no (initial competence of the YWO of the place where the minor was staying before the provision started); if yes – possible change of competence (if another local authority is competent for the aliens law proceedings); if no – no change of local competence

- Individual cases

hardly any problems in cooperation

- as a result of the Freedom of Movement Act (Bulgarian and Romanian citizens):

Problems with regard to control (non-registered minors, prostitution etc.) – cooperation urgently necessary

are problematic because they imply a violation of confidence).

- **Deportation:**  
Framework resolution in Friesland – no minors to be taken into *custody pending deportation*;  
in case of separation from guardian:  
checking in the country: if residence of the family; assessment of which steps should be taken by evaluating the implications.

**Demands on cooperation:**

- Training for YWOs in the field of aliens law
- Exchange on individual cases (in workshops)
- Involvement of FAs in *Case Plan Discussions*
- for *intercountry adoptions*: involving the FA at an earlier stage; YWO should refer parents to FA
- YWO should control school attendance better

**Problem areas:**

- huge number of migrants
- competence even outside the local municipality
- laws which are not fully compatible with each other
- unresolved political questions for YWO and FA
- Problem of determination of age:  
Solution Dortmund – own discretion

**Demands on cooperation:**

- acceptance of SGB VIII as a Federal law
- talking before acting

## Practical Exercise „Cooperation Agreement“ - Results

### The participants were given the following tasks:

You have decided to sit down together as representatives of the Youth Welfare Office and the Foreigners Authority because you want to improve cooperation between the two authorities. Now you have decided to set up a **Cooperation Agreement in writing**.

Develop a first draft agreement. The draft should include the following issues:

1. Preamble (purpose of the agreement, aims, and legal foundations)
2. Scope of application (target groups, case constellations, basic topics)
3. Areas of responsibility (responsible authorities)
4. Procedure (what should be the way of proceeding, time schedule, etc. to ensure cooperation?)
5. Professionals involved (which persons work together on which cases/fields of work?)
6. Term of agreement/duration

### Results (in detail and without comments)

#### Workgroup 1 „Joining forces for the best interests of the child“

##### 1. Preamble

Improvement of cooperation for the protection and wellbeing of minors on the basis of the German Civil Code / aliens law /Child and Youth Services Act

##### 2. Scope of application

Danger to the welfare of children / reception into care / UMR/ relocation / termination of residence / EU citizens with children

##### 3. Areas of responsibility

FA: entry into Germany/stay, residence obligation, termination of residence

YWO: assessment of danger to the welfare of the child, initiation of reception into care and socio-educational provisions, organisation of legal representation

##### 4. Procedure

Frequent exchange (binding, biannually), reciprocal trainings/visits/internships, contacting each other on individual cases before initiating any measures, joint case discussions

##### 5. Professionals involved

Frequently: representatives appointed for each

Individual cases: responsible case manager/staff member of Foreigners Authority/guardians/central contact person/client

##### 6. Duration

One year – automatic extension

#### Workgroup 2

##### 1. Preamble

Improvement of cooperation, of the way of proceeding/understanding and mutual acceptance

##### 2. Scope of application

Target groups: children and youths/young adults

Case categories: a) UMRs b) danger to the welfare of children c) intercountry adoption d) exchange of information; data protection

##### 3. Areas of responsibility

remains the same

##### 4. Procedure

„Jour fix“/training programmes/obligation to deliver an opinion at short notice (for the YWO in a timely manner)

### **5. Professionals involved**

Contact person with decision-making power; responsible persons/professionals

### **6. Duration**

One year – drawing the balance; evaluation to decide on continuation and/or improvement

## **Workgroup 3**

### **1. Preamble**

Protection of the child/minor

Cooperation because of competition of laws with common intersections

Uniform implications

Acceptance and tolerance

Child and Youth Services Act/Residence Act/Freedom of Movement Act/Civil Code

Professional exchange of information

### **2. Scope of application**

Children, adolescents, families with migration background/UMRs/intercountry adoption/danger to the welfare of children/opinions from the YWO (upon request from the FA) if it wouldn't be a "breach of confidence" according to Section 65 Child and Youth Services Act/custody pending deportation/parents separated from their children (warrant for arrest against the parents)

### **3. Areas of responsibility**

Legal regulations/ for unclear cases: common exchange (at short notice)/ at least one responsible person for each authority, plus management (structure of the authority)/ subsequently, there will be mutual invitations for discussions for a general exchange of information

### **4. Procedure**

Information on the case is anonymised and distributed with questions/mutual advice among colleagues

### **5. Professionals involved**

Persons with management function

### **6. Duration**

One year – evaluation of the experience gained/further agreements

## **Workgroup 4**

### **1. Preamble**

Best interests of the child/efficiency

Legal basis: excerpts from the General Administrative Rules on the Residence Act of the Federal Government dated July 2009 (Section 81 Child and Youth Services Act)

### **2. Scope of application**

UMRs/Sections 86/87 of the Residence Act as legal basis/families with minor children (with or without residence permission)/subsequent migration of dependents

### **3. Areas of responsibility**

Different mandates, depending on the legal basis of each institution/ What they have in common: the best interests of the child

### **4. Procedure**

biannual meetings/ case-related and action-related – exchange of information at short notice

### **5. Professionals involved**

FA collaborates with the guardian (and with the Social Services, if required)

### **6. Duration**

initially for one year

## Presentation of Successful and Failed Schemes of Cooperation between Foreigners Authorities and Youth Welfare Offices

Anne Tamm

### 1. General situation of cooperation in German municipalities and counties – results of a telephone research by ISS German Branch with 12 youth welfare offices and 6 foreigners authorities

- cooperation mostly concerning case-specific questions (UMRs, residence father, offenders, family reunion/subsequent migration of dependents, need for assistance)
- general questions other than casework: less frequently
- written cooperation agreements: practically non-existent
- cooperation is initiated by youth welfare offices as well as by foreigners authorities
- between specific persons
- for many youth welfare offices, relevant problems are of secondary importance
- personal acquaintance and short distance seem to facilitate cooperation
- specific responsibility/competence of a staff member is a driving force in cooperation
- different from one municipality to another (sometimes even from one part of town to another)

### 2. Would written cooperation agreements help to improve cooperation? – Results from a telephone research by ISS German Branch with 12 youth welfare offices and 6 foreigners authorities

Opinions on cooperation agreements differ widely.

Pro	Contra
<ul style="list-style-type: none"> <li>• more surety</li> <li>• prevents misunderstandings</li> <li>• clearer communication</li> <li>• guarantees that the YWO will always be involved</li> <li>• formalisation might be helpful in cities where cooperation at personal level does not work</li> </ul>	<ul style="list-style-type: none"> <li>• one's own interests might recede into the shadow (becoming the "assistant" of the other one)</li> <li>• the fear that a cooperation agreement would make the outcome worse (less room for negotiation)</li> <li>• more work for the YWO</li> </ul>

### 3. Successful and failed cooperations

#### Successful cooperation: Saxony-Anhalt

**Target group:** Unaccompanied minor refugees

**Cooperation partners:** Ministry of the Interior of the Land of Saxony-Anhalt, Ministry of Health and Social Affairs of Saxony-Anhalt, integration officer, Land Youth Welfare Office, municipalities (YWO of the city of Magdeburg et al.), voluntary welfare agencies (Caritas, Refugium e.V.)

**Origin of cooperation:** In 1998, when the guardianship association „Refugium e.V.“ was founded, an advisory board was set up for the association (Advisory Board for Unaccompanied Minor Refugees). The management of the Advisory Board is performed by the Ministry of Health and Social Affairs. The a.m. cooperation partners are members of the Advisory Board.

**Form of cooperation:** The Advisory Board meets once or twice a year. It performs the functions of co-ordination, advice, control, and conceptional/legal development of the work with UMRs in Saxony-Anhalt. The Advisory Board deals with problems and developments in the field of UMRs. For this purpose, workgroups are formed. E.g. there was a workgroup which elaborated a joint decree of the Ministry of the Interior and the Ministry of Social Affairs on unaccompanied foreign minors in Saxony-Anhalt on 14.08.2009 (“Gem. RdErl.” dated 14.8.2009 – 42.3-48004/45-51491). Another workgroup has developed a manual for youth welfare offices (2002: Ministry of Social Affairs, Commissioner of Foreigners, Ministry of the Interior, Land Youth Welfare Office, YWO Magdeburg, YWO of the county of Halberstadt, Caritas). The manual is currently being revised.

**Outcome of cooperation:** Results of cooperation laid down in writing (circular decree, manual). Questions of who is competent for which areas concerning UMRs have been clarified.

### **Successful cooperation: Frankfurt am Main**

**Target group:** Staff members of youth welfare offices and foreigners authorities

**Cooperation partners:** Foreigners Authority, Youth Welfare Office, Social Services Department, Office for Multicultural Affairs, voluntary agencies of migration social work.

**Origin of cooperation:** organised for the first time in 1987 by the Municipal Administration of Frankfurt am Main in cooperation with the Evangelical Academy of Arnoldshain and voluntary agencies of migration social work.

**Form of cooperation:** Between 1987 and 2004, annual Further Education Seminars for the Frankfurt municipal staff at Arnoldshain, the so-called Arnoldshain Intercultural Talks. Duration: 3 days. About 100 participants.

**Outcome of cooperation:** Guidance for a change of perspective for the staff members during the seminars. Improvement of climate in the cooperation relationships between voluntary agencies, youth welfare and foreigners authorities. Mutually polarizing enemy stereotypes were reduced, to the benefit of a more objective way of dealing with problems.

### **Successful cooperation: B-UMF – BAMF**

**Target group:** Unaccompanied minor refugees

**Cooperation partners:** Federal Professional Association for Unaccompanied Minor Refugees (B-UMF); Policy Department of the Federal Office for Migration and Refugees (BAMF)

**Origin of cooperation:** Cooperation was sought by both of them 2-3 years ago. Has developed further throughout the years. Was initiated by the commitment of individuals.

**Form of cooperation:** Regular meetings in which general issues (new developments, improvement of hearings etc.) as well as individual cases are being discussed.

**Outcome of cooperation:** Understanding on the part of BAMF for the requests of B-UMF. Hearings were made more child-appropriate by means of training seminars offered by B-UMF for the staff members of BAMF.

### **Failed cooperation: Frankfurt am Main**

**Target group:** Children and parents with foreign nationality whose residence is to be terminated.

**Cooperation partners:** Foreigners Authority and Youth Welfare Office of Frankfurt am Main (for conception of the cooperation: Evangelical Regional Association, Association of Binational Families and Partnerships (iaf e.V.), International Social Service (ISD), lawyers, Youth Welfare Office and Social Services Department (ASD), Fachstelle Kinderschutz und Koordination von Hilfen (KuK), Besonderer Sozialdienst (BSD), Commissioner for Data Protection of Hesse, Foreigners Authority)

**Origin of cooperation:** Conference „For the Welfare of the Child. Children and Adolescents between the Poles of Family Law and the Aliens Act” in October 1997 within the framework of the annual Further Education Seminar “Arnoldshain Intercultural Talks”. Several workshop members were interested in meeting again after the conference in a study group to look where there are problems (“Continuation of Arnoldshain”). In the course of the discussions, it became clear that it would be helpful for the YWO and the FA if clear structures were created in order to deal with uncertainties in practice (particularly with regard to expulsion of children and the aspect of the best interests of the child established in legal practice). As a result, a practice guide (so-called guideline) was developed on how the two authorities can cooperate.

**Form of cooperation:** In the jointly elaborated guideline it was laid down that in cases in which the residence of a child or a parent was to be terminated, the Foreigners Authority, within the framework of its discretionary decision, should obtain an assessment on aspects of the best interests of the child. The following procedure was agreed: At first, the Foreigners Authority notifies the person concerned in writing about the planned expulsion; subsequently, the Foreigners Authority notifies the Youth Welfare Office in writing and asks for an opinion. The Youth Welfare Office takes up contact with the persons concerned and provides an assessment (contents: any aspects which have to be considered in an evaluation of the best interests of a child. At that time: parent-child relationship, modalities and implications of contacts, custody regulation, relationship between the parents, as well as the right of access, the child’s integration, the child’s developmental-psychological situation, the child’s school situation or vocational training, and an assessment of the situation in the other country, if required). The assessment has to be forwarded to the Foreigners Authority within six weeks, at the latest (except if a deadline extension has been applied for). The Foreigners Authority informs the Youth Welfare Office about its decision in writing.

**Problems with cooperation:** The guideline has never been signed..

#### 4. Discussion

##### Is it really desirable to have a cooperation agreement?

- What matters is the process as such, not the written agreement (FA/YWO)
- If there are a small number of cases, a formulated cooperation guideline is not necessary (FA/YWO)
- Meetings without any specific purpose as well as clear lines of cooperation – clear arrangements help prevent disturbances. / Cooperation guidelines, however, would cause additional workload and therefore be a problem (YWO)
- Necessary because there is in fact no contact with the Youth Welfare Office (FA)
- Pro cooperation agreement: possibility of gaining security and continuous contacts – Contra: new requirements in addition to the many requirements which already exist (one can never keep everything in mind) (YWO)
- There are clear boundaries to the possibility of cooperation because there are different mandates (YWO)
- Training seminars and responsible contact persons in every institution, because co-operation sometimes doesn’t work and cooperation at personal level sometimes is pointless (YWO).

## **A Look Beyond the Borders – How Things Are Going in Other States**

Anne Tamm

### **Examples, based on information from the ISS Network:**

- I. Spain – Cooperation at the highest level
- II. Netherlands – NIDOS (cooperation for UMRs)
- III. United Kingdom – Public commitment of the Border Agency to the welfare of the child
- IV. Switzerland – Facilitating cooperation with the help of the UN Convention on the Rights of the Child

## **Spain – Cooperation at the Highest Level**

### **1. Some figures and facts**

In January 2009, 5.6 million foreigners were living in Spain, i.e. a proportion of 12% of the total population (in comparison: in Germany at the end of 2008, there were 7.2 million (6.7 million according to the AZR), i.e. a proportion of 8.8% of the total population). 2.27 million of them, i.e. 45% of foreign nationals in Spain, were citizens of other EU States (comparison: Germany: 2.3 million out of 6.7 million, i.e. 35% of foreign nationals). The main countries of origin of foreigners in Spain are: Romania, Morocco, Ecuador, U.K., Columbia, Bolivia, Germany – so what happens in Spain in the field of child and youth services is getting more and more interesting for Germany because more and more German families are living there.

Spain is divided into 17 autonomous communities/regions and two autonomous cities (Ceuta and Melilla on the North African mainland, which are well-known in the context of refugees because they are the gateway to Europe).

### **2. Competent authorities**

The Central Government is competent to pass laws concerning immigration (Ministry of Labour and Immigration). Since 1996, the Central Government (Ministry of Health and Social Affairs) also has to set up the major guidelines for child and youth services (organization, resources, procedures), but the regional governments are competent to pass laws concerning minors and child and youth services. Therefore, nationwide co-ordination in the field of child and youth services often is difficult.

In controversial individual cases, there is basically no cooperation between the two authorities. The decision is always up to the Immigration Authority.

### **3. *Observatorio Infancia***

However, there are workgroups which have been initiated by the State in order to improve the situation of children. The panel is called *Observatorio Infancia* (Observatory for Children) and comes under the authority of the Ministry of Health and Social Affairs. It has a president, two vice presidents (representative of the Ministry of Health and Social Affairs and of the regions) and about 28 representatives of different ministries (including the Ministry of the Interior, the Ministry of Justice), of the general directorates (including director generals for integration and for migration), of the civil society organisations (including UNICEF, Caritas, Red Cross), as well as of the 17 regions and two autonomous cities. Within this panel, there are different subgroups, e.g. on the issue of child abuse, foster families and adoption, children and the media, etc.

One of the subgroups is focusing on foreign minors and their integration. The group is directed by the General Immigration Directorate of the Ministry of Labour and Immigration and consists of representatives of all the regions, of the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Justice, and the Ministry of Health and Social Affairs, as well as the platform of children's organisations (equivalent to the German National Coalition), Caritas, Red Cross, and others. The group has developed recommendations, e.g. on the handling of UMRs and the problem of establishing their age.

### **4. Assessment from the German perspective**

For Germany, it would be worth considering if such panels could be developed at national level or Länder (federal states) level (approaches already existing: elaboration of the practice guide on UMRs, NAP).

## **Netherlands – NIDOS (Cooperation for UMRs)**

### **1. Some figures**

In 2009, about 3.3 million people of foreign origin were living in the Netherlands, i.e. 21% of the total population (statistics in the Netherlands distinguish between „allochtoon“ and „autochtoon“ – allochtoons are any persons who or whose parents were not born in the Netherlands). In 2008, about 15,000 people applied for asylum, 5% of whom were unaccompanied minor refugees (about 750 children and adolescents).

### **2. Competent authorities**

In the Netherlands, child and youth services are the responsibility of so-called youth protection councils (*Raad voor de Kinderbescherming*) in cooperation with the offices of youth care/advice and contact points for child abuse (BJZ/AMK, *Bureau Jeugdzorg/Advies-en Meldpunt Kindermishandeling*).

In the Netherlands, decisions on asylum and residence titles are made by the so-called IND (*Immigratie- en Naturalisatiedienst*). Part of the functions of IND is carried out by the Royal Military Police, with whom usually the first asylum application is filed at the border/airport.

The accommodation of asylum seekers is arranged by the COA (*Centraal Orgaan opvang asielzoekers* – Central Agency for the Reception of Asylum Seekers): The COA is an agency which is financially supported by the Ministry of Justice and performs the Government's task of providing accommodation for asylum seekers. They also run initial reception centres in Schiphol and in the border towns to Germany and Belgium.

The youth protection councils as well as the IND come under the authority of the Ministry of Justice.

In the Netherlands, immigration authorities, youth protection councils and a guardianship organisation are collaborating in the field of UMRs.

### **3. Guardianship organisation Nidos**

The guardianship organization “Nidos“ was founded in 1940. Initially it was a guardianship association for children with Dutch nationality only. During the 1970s, Nidos assumed guardianship for Vietnamese boat people and since the end of the 1980s, it became the guardianship association for UMRs. Nidos was officially recognized by the Ministry of Justice as a guardianship organization for refugees. Moreover, Nidos has specialized on UMRs and refugee children. Nidos assumes guardianship for UMRs and in many cases provides for their placement or makes sure that their accommodation will be suitable for the child or young person. Besides, Nidos assumes so-called “family guardianships” for refugee families, which is basically the equivalent of a “socio-educational family aide” in Germany. At the end of 2007, Nidos took on guardianship of 2150 children and adolescents.

UMRs arriving in the Netherlands can file an asylum application on their own if they are 12 years or older. As soon as the application has been filed, Nidos is notified by the IND (foreigners authority). An initial interview takes place to find out if there is a person nearby who has custody for the child. Otherwise, Nidos is appointed as guardian. COA maintains different forms of living for UMRs aged between 13 and 17 years. For the first three months, UMRs aged between 13 and 17 are placed in children's groups near the reception centre. Subsequently, they are assigned to different forms of living: Foster families by mediation of

Nidos, children's group homes organised by COA and run by voluntary agencies (for 13-15-year-olds), or small groups (15-18 year-olds) or an UMRs Campus organized by COA. The guardian from Nidos consults with the care persons of the initial children's group which form of living would be most suitable for the child when the first three months are over. Ultimately it is up to the guardian to decide where the child or young person should be placed.

Children under the age of 12 cannot apply for asylum on their own. Nidos is immediately appointed as guardian for them and files their asylum application. Children under the age of 12 are immediately placed by Nidos with foster families.

In mid-June 2005, Nidos was asked by the Ministry of Justice to take on guardianship for children who are separated from their parents at the airport because their parents have been arrested because of a criminal offence, as well as for children who have committed an offence. Nidos was requested to ensure the children's guardianship and placement. The **project of "Temporary guardianship of Schiphol"** was developed. Thanks to the good cooperation between the military police, the youth protection council, the juvenile court, and Nidos, guardians can be appointed for children concerned within two hours. The youth protection council is notified about the case by the military police by telephone and then the juvenile court, also by telephone, orders temporary guardianship to be exercised by Nidos (usually for 6-12 weeks). Children of "human traffickers" are placed with special foster families whose address is kept secret. Within the framework of these guardianships, a meeting takes place every two months in which Nidos, the Youth Protection Council of Haarlem and the military police take part. The cooperation is good and "low threshold". Any less successful cases are discussed in order to make sure that it will work better next time.

Since 2007, Nidos has its own place at the Initial Reception Centre of Schiphol. The staff members on the spot can quickly arrange for guardianship for children seeking asylum. At the same time, they identify "high risk" minors, i.e. minors who were victims of human trafficking or who might get involved in criminal activities and therefore might run away. Since 2007, those minors are placed in a special supervised institution. They are, above all, girls from Nigeria, China, Guinea, Congo, Sierra Leone, as well as boys from India.

An agreement has been made between COA and Nidos in which the areas of responsibility and critical issues are clarified.

Nidos wants to set up a European network of guardianship associations in order to ensure the exchange of information in Europe. They describe this cooperation pattern in the Netherlands as exemplary.

#### **4. Assessment from the German perspective**

The example proves that cooperation in the field of UMRs is possible. One factor in its success may be that all those organizations come under the authority of the Ministry of Justice, which is interested in this development. Of course, this very fact causes some problems as well, which cannot be specified in detail at this point. Because the Ministry of Justice, of course, is also interested in reducing the number of immigrants.

Would such a form of cooperation be practicable in Germany? What is the situation at Frankfurt Airport? What role could be played by the Federal Association for Unaccompanied Minor Refugees (B-UMF)?

## **United Kingdom - Public commitment of the Border Agency to the welfare of the child**

### **1. Some figures**

In June 2008, 4.1 million foreign nationals were living in the United Kingdom (about 6.6% of the total population).

### **2. Competent authorities**

The competent authority for residence permits and asylum applications in the U.K. is the *UK Border Agency*, which comes under the authority of the *Home Office*. The competent authorities in the field of child and youth services are the *Children's Services* at local level (under the authority of the *Department for Children, Schools and Families*).

### **3. UK Border Agency “Code of Practice for Keeping Children Safe from Harm”**

In 2008, the UK Border Agency published a *Code of Practice*, which came into force in January 2009 under the title: “Code of Practice for keeping children safe from harm”. All the staff have to comply with it. According to the Code of Practice, the best interests of the child must be a primary consideration for the staff in all their work. In the introduction, it says that “the Government believes it is important that the law and policy relating to asylum and immigration, and the law and policy relating to the welfare of children, should be in step with each other; whilst retaining the distinct functions and decision making roles of the agencies concerned. Ultimately, this can only be beneficial to children.”

The UK Border Agency states that with this Practice Code, they aim to implement international conventions relating to children, e.g. the UN Convention on the Rights of the Child.

Moreover, the Code of Practice says the following:

“The UK Border Agency must also act according to the following principles:

Every child does matter, as much if they are subject to immigration control as if they are British citizens;

The best interests of the child will be a primary consideration (although not necessarily the only consideration) when making decisions about his or her future.”

The UK Border Agency will seek to ensure that children

- are treated in a way that safeguards them, promotes their welfare and promotes their upbringing by their parents.
- receive full advice, guidance and support about any applications they make or about any contact they have with government agencies.
- are seen first, foremost and fully as children rather than simply as migrants subject to immigration control, or as adjuncts to a principle applicant.”

“Consistent with its main functions, the UK Border Agency will take positive steps to keep children safe from harm by incorporating the following key principles into its work: (...) Identifying children whose circumstances mean they may be at risk of harm when they come into contact with the immigration system; and

Referring such children to the appropriate agency or agencies and working together effectively with that agency or agencies.”

According to the Code of Practice, a referral will be made to the Children' Services in the following circumstances:

- when they show any signs of mistreatment or neglect;
- when a child appears to have no adult to care for them;
- when a private fostering arrangement has been identified;
- when a child is a potential victim of trafficking;
- when a child is identified as having gone missing.

The Code of Practice gives detailed instructions on how to make the referrals.

The staff of the UK Border Agency must complete specific training, developed in partnership with organizations that have a formal role in protecting children, on how to keep children safe from harm.

#### **4. Assessment from the German perspective**

In the opinion of the British Branch of International Social Service, theory and reality are two different things. However, the Code of Practice is new, and this at least gives us reason to hope that immigration authorities have become more aware of child protection and that improved cooperation between the two actors will be possible. For Germany, it would certainly be desirable if the Ministry of the Interior would publicly promote the consideration of the best interests of the child to be a primary consideration when making its decisions.

## **Switzerland – Facilitate Cooperation with the help of the UN Convention on the Rights of the Child**

### **1. Some figures and facts**

At the end of 2007, about 1.7 million foreigners were living in Switzerland, which is 22.1% of the total population. About 60% of them are Europeans. The primary countries of origin are Italy, Germany, Serbia and Montenegro, Portugal, France, and Turkey.

### **2. Competent authorities**

The appropriate authority in Switzerland dealing with residence matters and asylum applications is the Federal Office for Migration, which comes under the authority of the Department of Justice and Police. The “Fremdenpolizei” (Immigration Police) carries out the functions of the Federal Office for Migration in the municipalities or cantons.

The competent authorities for child protection are the Social Services and Guardianship Authorities of the municipalities and cantons.

There is no formal cooperation between youth welfare authorities and the Immigration Police. They are cooperating, however, in individual cases, e.g. when the Immigration Police requests information from the legal guardian about family members abroad, or a guardian or youth protection authority requests a residence permit for a child from the Immigration Police, etc.

The experience of ISS Switzerland has shown that there is a rapprochement between the two authorities, especially in the cantons of Geneva and Vaud in the Western part of Switzerland. They seem to understand each other’s standpoints, whereas in the German-speaking part of Switzerland they are more or less on a collision course. In the Western part of Switzerland, Immigration Police sometimes grant residence permissions in order to ensure the best interests of the child, but sometimes they are “whistled back” by the superior authority, the Federal Office for Migration.

There is no cooperation between the two authorities in Switzerland because aliens law – including the decisions made by the Immigration Police – is superior to child and youth welfare law, i.e. the decisions made by child and youth welfare authorities.

### **3. The Child Rights Information Network (CRIN), Switzerland**

However, the Child Rights Information Network, the equivalent of the National Coalition in Germany which supervises the implementation of the Child Rights Convention, is of the opinion that this hierarchy should be vice versa. Article 3 of the UN Convention on the Rights of the Child states clearly that the best interests of the child shall always be a primary consideration. In their annual report this year, they again stated this opinion to the UN Child Rights Committee in Geneva. Now the Child Rights Information Network requests that an “ombuds service” specialized on children’s rights should be set up, which should be equipped with sufficient powers. Youth welfare authorities and immigration police should be able to turn to this service in controversial cases.

### **4. Assessment from the German perspective**

An idea which might be interesting for Germany as well? Germany, just like Switzerland, has no ombuds person for children. In 20 other European countries, however, it does exist.

## List of Abbreviations

<b>Allg. VwV</b>	General Administrative Regulation on the Residence Act dated 26.10.2009
<b>ASD</b>	Allgemeiner Sozialer Dienst/ Social Services; department within the youth welfare office
<b>AufenthG</b>	Aufenthaltsgesetz (Residence Act) in the version of 22.12.2008
<b>AusIR</b>	Aliens law
<b>AZR</b>	Ausländerzentralregister (Central Register of Foreigners)
<b>BAMF</b>	Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees)
<b>BGB</b>	Bürgerliches Gesetzbuch (German Civil Code), Book IV, Sections 1297 et seq. (on family law)
<b>B-UMF</b>	Bundesfachverband Unbegleitete Minderjährige Flüchtlinge (Federal Professional Association for Unaccompanied Minor Refugees)
<b>COA</b>	Centraal Orgaan opvang asielzoekers (Central Agency for the Reception of Asylum Seekers) (Netherlands)
<b>EC</b>	European Community
<b>EU</b>	European Union
<b>FA</b>	Foreigners Authority (Ausländerbehörde)
<b>FreizügigkeitsG/EU</b>	Gesetz über die allgemeine Freizügigkeit von Unionsbürgern (Act on the General Freedom of Movement for EU Citizens) in the version of 26.02.2008
<b>HZE</b>	Hilfe zur Erziehung (statutory socio-educational provision for children, according to sections 27 et seq. Child and Youth Services Act)
<b>IND</b>	Immigratie- en Naturalisatiedienst (Foreigners Authority in the Netherlands)
<b>ION</b>	Inobhutnahme (reception into care)
<b>ISD</b>	Internationaler Sozialdienst (International Social Service German Branch)
<b>ISS</b>	International Social Service
<b>JGG</b>	Jugendgerichtsgesetz (Youth Courts Law)
<b>MI</b>	Ministry of the Interior

<b>MS</b>	Ministry for Social Affairs
<b>NAP</b>	National Action Plan for a child-appropriate Germany 2005-2010
<b>SGB III</b>	Sozialgesetzbuch III (Social Code Book III) – employment support measures, in the version of 16.07.2009
<b>SGB VIII</b>	Sozialgesetzbuch VIII (Social Code Book VIII) – Child and Youth Services Act in the version of 06.07.2009
<b>SPFH</b>	Sozialpäd. Familienhilfe (socio-educational family aide)
<b>UMRs</b>	Unaccompanied minor refugees
<b>UN-CRC</b>	United Nations Convention on the Rights of the Child in the version of 20.11.1989
<b>YWO</b>	Youth Welfare Office (Jugendamt)