



Closing a Protection Gap

Core standards for guardians of separated children

'We guardians have to know everything. We have to be physicians. We have to be lawyers. We have to be social workers and we have to be administration specialists. Everything, that occurs between birth and death occurs in our profession.'

German report 2010-2011

Bundesfachverband UMF
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This publication has been produced with the financial support of the Daphne III Programme of the European Commission. The contents of this publication are the sole responsibility of the author and can in no way be taken to reflect the views of the European Commission.



STRUCTURE

1. INTRODUCTION	4
2. BACKGROUND INFORMATION: EMBEDDING GUARDIANSHIP IN GERMANY	5
2.1. LITERATURE REVIEW	5
2.1.1. <i>Separated children</i>	5
2.1.2. <i>Literature on guardianship in Germany</i>	6
2.2. LEGAL FRAMEWORK: INTERPRETABLE FOUNDATION	8
2.2.1. <i>The emergence of a fragmented system of guardianship</i>	8
2.2.2. <i>Current legal foundations</i>	9
2.2.3. <i>The organization of youth welfare</i>	11
2.4. THE GERMAN RUG RAG OF GUARDIANSHIP	12
2.4.1. <i>Independent guardianship</i>	12
2.4.1.1. <i>Voluntary guardianship</i>	12
2.4.1.2. <i>Professional guardianship</i>	13
2.4.2. <i>Associational guardianship</i>	14
2.4.4. <i>Public guardianship</i>	14
2.4.5. <i>Curatorship</i>	15
3. LIVED GUARDIANSHIP: OBSERVATIONS BASED ON PRACTICES AND EXPERIENCES ENCOUNTERED AT FOUR LOCATIONS IN GERMANY	16
3.1. METHODOLOGY AND RESEARCH DESIGN	16
3.1.1. <i>Sampling</i>	16
3.1.2. <i>The Research Method</i>	16
3.1.3. <i>Interviewees</i>	17
3.1.4. <i>Analysis</i>	19
3.1.5. <i>National Advisory Council</i>	19
3.1.6. <i>Ethical considerations</i>	20
3.2. ‘THE’ GERMAN GUARDIAN	20
3.2.1. <i>Profession</i>	20
3.2.2. <i>Work experience as guardian</i>	21
3.2.3. <i>Caseload</i>	21
3.3. GUARDIAN AND YOUTH	22
3.3.1. <i>The guardian: a mysterious institution</i>	22
3.3.2. <i>Personal custody</i>	23
3.3.3. <i>The procedure of appointment</i>	28
3.3.4. <i>The first meeting</i>	29
3.3.5. <i>After the first meeting</i>	31
3.3.6. <i>The end of guardianship</i>	36
3.3.7. <i>Summary</i>	37
3.4. THE CONTEXTUALIZED GUARDIAN	37
3.4.1. <i>Guardian and social workers</i>	38
3.4.2. <i>Familial and communal bonds</i>	41
3.5. THE INGREDIENTS OF A ‘GOOD’ GUARDIAN	42
3.5.1. <i>The youths’ recipe</i>	42
3.5.2. <i>The guardians’ recipe</i>	44
4. CONCLUSION	45
5. RECOMMENDATIONS FOR GUARDIANS OF SEPARATED CHILDREN	48

6. Bibliography	52
7. Appendix	54

1. INTRODUCTION

What would you do if you were a guardian?

With the kid? Everything that my guardian did I would do as well. Because I have this experience. Just like a mother, you know? I don't have parents here, she was my mother and my father. Both. I would do it just like she did. So I would go to the doctor with her, I would go to the authorities with her, see if she has a problem, I will always be there for her - but guardian I don't want to be! I don't wanna be a guardian, what a hassle, man!

(18-year old Nigerian, Munich)

Guardianship – a hassle? Generally, these two words do not stand next to each other in German publications on the topic. Guardianship is rather a responsible task, a central institution in the system of Youth Welfare. The pivotal role the guardian plays, in fact, holds a manifold of functions and responsibilities, often stretching further than is initially recognised. The great variety of challenges that need to be met by the guardian show the stressful aspect of the role and as such it is perceived by the interviewee quoted above.

To get a better image of the diverse challenges that guardians of separated children are facing, one needs to dig deeper into the tasks that are required of these individuals. At times it is not only unclear to laymen, but also to wards or professionals working in the field: What is a guardian? What does he do?¹

This question will run through great parts of this report. A thorough understanding of guardianship and its intrinsic tasks is necessary to draw conclusions about *how* the guardian has to carry out his job in order to do it well. The information that this report is based on has been gained first and foremost through interviews with separated children and guardians. The insights given by the interviewees make it possible to describe what guardianship for separated children in Germany currently looks like in practice. The empirical approach allows for pointing out both existing flaws and best practices. Based on the findings, recommendations will be elaborated that intend to aid guardians in their work.

The report is structured as follows: before exploring the accounts of the interviewees, the reader is provided with background information on guardianship in Germany. The existing literature on separated children and guardianship in Germany will be described (cp. 2.1.). By analysing the relatively sparse research that has been done on the topic, the need for the report at hand will become clear. After that, the legal foundations of guardianship will be looked at (cp. 2.2.). The tasks of the guardian as described within the legislation will be reviewed. This is pivotal to understand the current shape of the German system of guardianship. Subsequently, the organization of German Youth Welfare and the different types of guardianship will be explained (cp. 2.3./2.4.). The information on these structural conditions will help the reader to fully comprehend the conclusions drawn from the interviews.

Equipped with this background information on guardianship in Germany, the information gained in the interviews will be analysed in Chapter 3. Before starting the analysis, the methodology that has been applied will be explained (cp. 3.1.). Thereafter, the tasks of the guardian as described by youths and guardians themselves will be listed (cp. 3.2.). Having in mind which tasks are mentioned in the legislation, overlaps and divergences between theory and practice will start to show. In the following section 3.3., information about 'the' German guardian will be given: Do guardians in Germany have a specific educational background?

¹ Throughout the report the 'he' is used for reasons of readability; it is not meant to be gender-specific. Exceptions will be made only if referring to a female interviewee.

Do they frequently change their job or are they constantly present in the youths' lives? What is the current average number of wards assigned to a single guardian?

In a rather extensive sub-chapter (cp. 3.4.), the relationship between youth and guardian will be looked at. Bearing in mind that the job of the guardian is modelled on parental care, it is curious to see how the relationship between guardian and ward actually develops. The section will furthermore help to identify necessary requirements of guardians. In the next sub-chapter (cp. 3.5.), the guardian will be set in context. Guardianship does not exist independently from other actors in the field but is much more closely interweaved with, say, Social Services or pedagogic personnel at the housing institutions. The collaboration with actors of the German system of Youth Welfare, but also with the youth's relatives has significant repercussions on the work of the guardian. Chapter 3 closes by portraying what youths and guardian perceive as a 'good' guardian. The accounts of youths and guardians will be portrayed separately to highlight differing emphases.

The insights that have been gained throughout the report will be summarized in the conclusion. Based on the empirical findings, relevant literature and discussion with the National Advisory Council, the report is eventually responsive to the ultimate goal of this project: recommendations for the work of guardians of separated children.

2. BACKGROUND INFORMATION: EMBEDDING GUARDIANSHIP IN GERMANY

2.1. LITERATURE REVIEW

2.1.1. Separated children

The rather specific group of separated children is represented relatively poorly amongst German publications on migration. In 2003, the German Youth Institute published a study on the state of affairs regarding research on young refugees (DJI, 2003). It identified large gaps of knowledge regarding young refugees living in Germany. The need for empirical research that produces reliable and retraceable information is being emphasized. Further, the report stresses the importance of involving the perspective of the youths and their subjective perception of their situation. It names the following topics as issues that would require further investigation concerning both accompanied and unaccompanied minors living in Germany:

- the asylum procedure including return and illegality;
- the living circumstances and their effects on the individuals;
- the family situation, possibly with a focus on the changing roles that ensue from the new context for the family members;
- strategies of dealing with traumatization;
- and education.

Guardianship is occasionally mentioned throughout the report, yet it plays a marginal role and is not made out as one of the major issues that would deserve a closer look.

Even though the German Youth Institute criticizes the rudimentary information regarding young refugees, it has to be pointed out that especially the German refugee children lobby has produced a number of works on separated children in the last decade. *B-UMF e.V.* (*Bundesfachverband unbegleitete minderjährige Flüchtlinge e.V.*) has for example published guidelines to support professionals in their work with separated children (B-UMF e.V., 2009), articles on a number of topics such as the much-discussed issue of age assessment (Berthold and Espenhorst, 2010b) or an empirical study on former child soldiers (Zito 2009). The organization provides the public with documentations of conferences and workshops that are organized on a regular basis. In 2008, the B-UMF e.V. held a symposium on guardianship for

unaccompanied minors. The documentation reproduces the contributions of the speakers and is up to now one of the few publications that deal with this particular subject (B-UMF e.V., 2008). The documentation of a symposium in 2009 includes the contribution of Wolfgang Rütting (Rütting, 2009), who examines how quality in the work of guardians for separated children can be guaranteed. He goes into a number of requirements for guardians that refer to the relationship between guardian and youth (e.g. empathy, capacity to reflect on their own action, readiness to take on responsibility). Yet, he does not lose sight of the broader context of the guardian's work and stresses the importance of cooperation with colleagues and authorities. Considering both the relationship between guardian and youth and the cooperation with third parties, Rütting stresses that the guardian needs to be clear about his own role arguing that the guardian should orientate his entire action in the interest of the child.

Another publication dedicates itself to the reception procedure that separated children go through after arrival (Riedelsheimer und Wiesinger, 2004). Guardianship finds mention in a brief chapter. The section mainly deals with the appointment of the guardian, the tasks of the guardian and the cooperation between guardian and Youth Welfare Office. The chapter remains very closely tied to the description of legal regulations. Also the works by Peter (2004) and Jordan (2000) are characterized by explicit explanations of the legal framework and its implications. However, parts of Jordan's study is based on empirical findings, given that some of the information provided derives from questionnaires that have been sent to a number of housing institutions. Yet, the questionnaires have been filled out by social workers instead of the children themselves. Consequently, the empirical data rather reflects the perception of the social workers than of the youths.

In a similar vein, the book published by Dieckhoff (2010) thoroughly treats the legal foundations that apply to unaccompanied minors before going into physical/psychological problems and relevant pedagogical concepts. Another more recent work is a report written by a guardian who has many years of experience in the field (Gerhard, 2010). She covers a broad range of topics that are crucial elements of her work. The report closes with a detailed description of the deportation of one of her wards and highlights the role a guardian can play in such a situation.

In 2009, the research group of the Federal Office for Migration and Refugees published a report that dealt exclusively with the situation of unaccompanied minors in Germany (Parusel, 2009). It treats various aspects that influence the lives of unaccompanied minors in Germany. The report touches upon topics such as entering the country, the distribution within Germany, asylum procedure, integration and return to their country of origin. However, regarding guardianship, it deals with selected points only. Next to portraying the appointment of the guardian and his or her role at the beginning of the youth's stay in Germany, it actually acknowledges the importance of voluntary guardians to complement the work of guardians who are employed at the youth welfare office. It even presents the alternative of voluntary guardianship as a means to boost integration.

2.1.2. Literature on guardianship in Germany

The issue of guardianship in general is notably absent in German (academic) literature. One of the few scholars who have worked intensely on the topic is Helga Oberloskamp, recently publishing the third edition of her elaborate work on guardianship and tutelage in Germany (Oberloskamp, 2010). The book is directed at professionals such as social workers, family court judges and administration specialists or the like with the intention to be responsive to the technical and legal questions that arise in the daily work of these practitioners.

The *Ministry for Family, the Elderly, Women and Youth* has financed the only study on public guardianship that included empirical work in various cities in Germany (Hansbauer *et al.*, 2004). The study draws a meticulous picture of the structural conditions of guardianship, the

education of guardians in Germany and their work experience. It scrutinizes the guardians' interpretation of their own role, their work routines and the collaboration of guardian and social services. It also informs about the living conditions of the wards, the relationship between ward and guardian and the wards' perception of guardianship. The specific group of unaccompanied minors, however, is basically not included in the study. Public guardianship is the central focus, failing to bring in alternative forms.

A number of actors in North Rhine-Westphalia have instigated and pushed ahead the debate surrounding guardianship. They have produced a number of short publications and statements on (public) guardianship in Germany.

In 1999, a community organization in the federal state of North Rhine-Westphalia (Landschaftsverband Westfalen-Lippe) in cooperation with a nongovernmental organization (Kinder haben Rechte e.V.) identified guardianship as an aspect of youth welfare that is often neglected (cp. Landschaftsverband Westfalen-Lippe, 1999). As a result the organizations became active and elaborated guidelines for guardians employed at the youth welfare office (ibid.). The goal was to rethink local structures, to reconceptualize the role of the guardian and to increase or guarantee a high quality of work.² However, it also stresses that there are numerous interpretations of the task of the guardian and that it depends very much on the structures existent at the municipality how guardianship is actually carried out. Three years later, guidelines were published that dedicate themselves to the question how children and youths can participate or can be involved with the guardian in all matters of importance in their lives (Landschaftsverband Rheinland/Landschaftsverband Westfalen-Lippe, 2002). Shortly after, a report was published on a pilot project that wanted to test these guidelines developed in 1999 (Landschaftsverband Westfalen-Lippe, 2003). It came to the conclusion that in the long run the structures that currently exist at youth welfare offices need to be changed in order for the guardian to do 'good' work.

The structural challenges surrounding guardianship started to be discussed on a higher level in 2006. The coalition agreement of 2005 between the governing parties SPD, CDU and CSU had determined that it was necessary to deal with issues that have the potential to threaten the best interest of the child.³ Overstrained and overwrought guardians who could not take satisfactory care of their wards became one of the issues to be discussed. A work group of the Department of Justice formed in 2006. The group published its final report in 2009 (Arbeitsgruppe 'Familiengerichtliche Maßnahmen bei Gefährdung des Kindeswohls - § 1666 BGB', 2009). In a quite comprehensive chapter, guardianship and its current challenges are dealt with. The study group calls on the legislator to reform the existing legislation. By the end of 2009, the Department of Justice elaborated a draft of the new legislation (Bundesministerium der Justiz, 2009), the improvement of the personal contact between guardian and ward being the main aim. The draft therefore suggests determining by law the kind of contact that is desired. It proposes that guardian and ward should meet once a month at the home of the youth. The draft additionally would like to impose that a guardian should have no more than 50 wards, which would mean that the caseload is at least halved. Further innovations are that the youth shall be heard before the appointment of the guardian and that the guardian is obliged to report to the court about his work.⁴

The intention to reform the outdated guardianship legislation has generally been perceived very positively. The attempt of reducing the number of wards per guardian has largely been

² A revised version of the guidelines was published in 2005 (Bundesarbeitsgemeinschaft der Landesjugendämter, 2005).

³ Maud Zitelmann published a work that treats the complex issue of the 'best interest of the child' (2001).

⁴ Up to now this task is often taken over by social workers.

welcomed. Yet, several organizations published critical statements regarding the draft. The *German Institute for Youth Human Services and Family Law (DIJuF) e.V.*⁵ claims that the draft neglects the actual working conditions of guardians (DIJuF e.V., 2010). First of all, the organization asks to reconsider the number of 50 wards per guardian. Taking into account the manifold tasks of the guardians, the number is still set too high. Also, *DIJuF e.V.* requests to examine if reducing the number of wards would shift responsibilities to other departments of the youth welfare office. Moreover, the number of wards differs considerably between youth welfare offices, wherefore a limit seems to make little sense. *DIJuF e.V.* criticizes the rigid parameter regarding the frequency and location of meetings. It stresses the necessity for the guardian to be available when needed most, instead of monthly meetings that might be more of a hassle for both youth and guardian. The *Arbeitsgemeinschaft für die Kinder- und Jugendhilfe* has similar doubts (AGJ, 2010). Besides, it demands to extend voluntary, associational and professional guardianship. It also stresses that sufficient financial means in the municipality are necessary for the successful implementation of the reform. Also the organization *Kinderrechtekommission des deutschen Familiengerichtstags e.V.* (2010) expresses its basic approval of the draft. Yet, like the other two organizations, it still sees the necessity to give the draft further thought on the aspects mentioned above.

The inclusion of the specific group of separated children into the debate surrounding the reform of guardianship has up till now been rather sparse. The study at hand can therefore be taken as a point of departure to justify demands that intend to change structural conditions regarding guardianship for unaccompanied minors. Furthermore, the report will close a gap: it is the first empirical study on guardianship for separated children in Germany and concludes with recommendations regarding the specific work of this group of professionals.

2.2. LEGAL FRAMEWORK: INTERPRETABLE FOUNDATION

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

2.2.1. *The emergence of a fragmented system of guardianship*

For centuries, legal practice regarding guardianship had constantly been in need of being adapted to changing societal conditions. Until the 19th century, mostly relatives took over guardianship for orphans.⁶ Guardians generally held both legal representation and the responsibility of care/education. Only at a later point the question about the share of responsibilities between state institutions and other actors emerged (cp. Hansbauer 2004: 21): growing industrialisation paired with rising internal migration, poverty and loosened social

⁵ The DIJuF was founded in 1906 as ‚Archiv deutscher Berufsvormünder e.V.‘ (Archive of German guardians). It considerably influenced the development of guardianship in Germany.

⁶ There is a lack of clarity regarding the job title of female guardians: is it ‚Vormünderin‘ or ‚Vormünderin‘? This uncertainty can be lead back to the fact that formerly male relatives took over guardianship, wherefore the female form was not used.

structures made the recruitment of voluntary guardians, especially relatives, unreliable (cp. ibid: 29). The state became more involved in the care of orphans. In order to strengthen the position of relatives and to make the recruitment of family members as easy as possible, the Civil Code stresses the preferential appointment of voluntary guardians. Advocates of voluntary guardianship still frequently refer to this regulation – even though voluntary guardianship today differs considerably from voluntary guardianship in 1900.

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

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

2.2.2. Current legal foundations

The Civil Code establishes the cornerstones of guardianship. Children and youths have to be appointed a guardian if they are not under parental care or if their parents are not authorized to represent them (cp. § 1773 BGB). The **Civil Code** roughly lists the tasks of the guardian. The description of tasks remains rather sketchy and vague, wherefore divergent readings are of no surprise. The following regulation is often cited to explain the function of the guardian:

‘The guardian has the right and the duty to care for person and fortune of the ward, especially to represent the ward.’⁷ (§ 1793 (1) BGB).

The legislator attempts to be somewhat more concrete by stating that

‘personal custody comprises in particular the duty and the right to care for, to educate, to supervise the child and to determine the place of residence of the child’ (§ 1631 (1) BGB).^{8, 9}

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

⁷ Translation of the author

⁸ The ‘place of residence’ does not refer to the residence status of the separated child but to type and location of accommodation.

⁹ Translation of the author

The Civil Code assumes that there are three different types of guardians (cp. Oberloskamp 2010: 11):

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

It will become apparent below that non-ambiguous boundaries are hard to be found anywhere in the German context of guardianship. The same applies to this seemingly clear tripartition: Oberloskamp identifies six forms of the ‘independent guardian’, two of the ‘associational guardian’ and four of the ‘public guardian’ (cp. *ibid*:11/12). The fact that the type of associational guardianship as included in this study is not part of Oberloskamp’s listing shows that there are even more than these twelve forms.

The Civil Code also determines a ranking order regarding the appointment of the guardian. From the different types of guardianship, preference is given to the voluntary guardian. The Youth Welfare Office can recommend volunteers to the Court. Alternatively, potential volunteers themselves can approach the Court. The law provides that associations can be appointed if no suitable voluntary guardian is available (cp. § 1791a BGB). The Youth Welfare Office in turn shall only be appointed if no association or volunteer is available (cp. § 1791b BGB). The professional guardian (who has not been mentioned so far) finds himself in the weakest position. He shall only be appointed if the Court assumes that he is more suitable in a specific case than Youth Welfare Office, association or volunteer. It is often criticized, however, that in most cases it is acted upon the assumption that no volunteers are available and therefore the check does not take place.

The corner stones of guardianship as established by the German Civil Code (BGB) are complemented by the Youth Welfare Act (SGB VIII), the Family Act (FamFG) and the Asylum Proceedings Act.

Thanks to the efforts of the non-governmental organizations, the German Youth Welfare Act now explicitly includes the specific group of separated children:

‘The Youth Welfare Office is authorized and obligated to take over custodial care if [...] an alien child or an alien youth comes to Germany unaccompanied and if neither the person having the care and custody of the child nor the legal guardian sojourn in Germany. [In this case] the appointment of a guardian needs to be arranged instantaneously.’¹⁰ (cp. § 42 SGB VIII)

One important pillar of the guardian’s work is the so-called ‘helper’s conference’ that is supposed to take place every six months (cp. § 36 Abs. 2 SGB VIII). Youth, guardian, social services and social workers get together and discuss the youth’s advancement and how help can be improved. The Youth Welfare Act decides that the guardian continuously needs to be involved in the assistance that is given to the youth (cp. § 36 Abs. 1 SGB VIII). He must be informed and advised regarding the kind and range of help, with the possible consequences, which may arise for the youth needing to be explained. This delineation of tasks insinuates that the guardian’s role is situated somewhere outside of the immediate circle of helpers

¹⁰ Translation of the author

surrounding the youth. The law thus assumes that he is monitoring and supervising the Youth Welfare his ward receives.

A recent legislation (FamFG) constitutes that youths over the age of 14 need to be heard by the Family Court regarding his or her wishes concerning the person selected to be the guardian (cp. § 159 FamFG). The realization of this prescription has as yet been irregular throughout Germany.¹¹ The person appointed guardian, herein is required to report to the Family Court regularly about the child's wellbeing. Frequently, however, the report is actually written by the Social Service of the Youth Welfare Office and merely countersigned by the guardian.

Germany has created another legal foundation that considerably influences the work of guardians: the Asylum Proceedings Act (AsylVerfG). The Act determines that 16- and 17-year-olds are 'capable of acting' in their asylum proceedings, meaning their representation through a guardian in asylum proceedings is not granted; the 16- and 17-year-olds, however, can explicitly authorize their guardians to represent them in their proceedings.

2.2.3. The organization of youth welfare

Just like the German administrative system in general, German youth welfare is not centrally organized. As a consequence, youth welfare can differ significantly from federal state to federal state and even from municipality to municipality. The subdivision has a considerable influence on the organization of guardianship for separated children. For a better understanding it is necessary to briefly go into Germany's administrative system in general and the organization of youth welfare in particular.

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

The Youth Welfare Act (SGB VIII) applies throughout Germany. However, a broad range of competences regarding Youth Welfare is transferred to Youth Welfare authorities on the Federal State and Communal level. Each Federal State establishes one Central Youth Welfare Office. The Central Youth Welfare Office takes charge of instigating and advancing the activities of the Communal Youth Welfare Offices and supports them in the realization of their tasks (cp. § 82 SGB VIII). Generally though, Communal Youth Welfare Offices are quite independent in their action – just like the Central Youth Welfare Offices are relatively independent from the Federal Republic of Germany. Furthermore, both Central and Communal Youth Welfare Offices have sovereignty over staff, internal organization and finances. Consequently they have developed different ways of dealing with their tasks. Despite the fact that the responsibility of Youth Welfare is ultimately in the hands of public authorities, they give a share of their tasks to non-state organizations (cp. §76 SGB VIII), which leads to a further fragmentation of the system.

The heterogeneous organization of Youth Welfare Offices results in a heterogeneous organization of guardianship. Regarding this specific service of Youth Welfare, the

¹¹ The participation of the child does not limit itself to the selection of the guardian. The child/youth should also be involved in the choice of his accommodation according to his/her stage of development. Children/youths need to be informed about this right (cp. §5 and §8 SGB VIII; § 1626 (2) BGB).

complexity is furthermore deepened by the existence of different types of guardianship, which will be examined below.

2.4. THE GERMAN RUG RAG OF GUARDIANSHIP

As mentioned before, there are three types of guardianship for separated children in Germany – each of them knowing several subtypes. Due to the fact that it is not possible in the scope of this study to include all the existing types, the focus will be set on four that are most relevant in our context. It should be kept in mind that the public guardians represent different types of public guardianship. Nonetheless they will be grouped in one category. The report will focus on the four bold types:

1. Independent guardian:
 - a. **Voluntary guardian**
 - b. **Professional guardian**
2. **Associational guardian**
3. **Public guardian**

The chapter furthermore goes briefly into **curatorship**, which can be used as a supplement to guardianship.

2.4.1. *Independent guardianship*

2.4.1.1. *Voluntary guardianship*

There is the possibility for interested private persons of society to become a *voluntary guardian* of a separated child on an unremunerated basis. Occasionally relatives of the youths endeavour to be their guardian; however, this happens relatively rarely due to limited knowledge of German and a lack of familiarity with the working of German authorities. It is more common that organizations that specialize in voluntary guardianship recruit volunteers and counsel them regarding their function as guardian. Mostly, a volunteer becomes guardian for one youth at a time, which makes more individualized care possible.

From the cities where interviews were conducted, only in Berlin voluntary guardians had become a well-rooted pillar of the system of guardianship for separated children. The project ‘Akinda’ informs interested individuals about voluntary guardianship and supports them with words and deeds. Next to guardians who are supported by ‘Akinda’, lawyers increasingly take over voluntary guardianship in Berlin. They, however, concentrate first and foremost on the support of the youths in aspects relating to the youths’ residence status. The youths generally find out about voluntary guardians through other unaccompanied minors, their social workers from the housing institutions or organisations that counsel refugees. With the help of the professionals, the change from public to voluntary guardianship is pushed on. Occasionally, the change of guardians is time-consuming due to slow processes at the courts. Therefore the actors involved think twice if it makes sense to put much energy into the change – especially in the case of youths who are close to turning 18.

Some interviewees eye voluntary guardianship critically. One point of criticism is the assumed lack of expert knowledge that is necessary to deal successfully with this clientele, particularly regarding asylum proceedings. Advocates of voluntary guardianship immediately refute this criticism by stating that professionals also have to acquire much knowledge when they first start. Social workers at housing institutions sometimes mentioned that they find it

exhausting to work with voluntary guardians. Some of them consider voluntary guardians to be overly committed. Others, however, do not associate voluntary guardians with unnecessary quarrels about responsibilities, but much more appreciate that there is someone who is wholeheartedly involved and who has an eye on the social worker's work.

In Munich, the Youth Welfare Office tried several years ago to establish a project of voluntary guardianship. First of all, they found it difficult to find the 'right youths'. They made the experience that it is especially unpleasant if youths are 'too demanding' and volunteers do not get the gratefulness they expected. Besides, it required a high amount of work to counsel the volunteers so that they eventually found it to be more profitable if they took over guardianship themselves.

Yet, there are many advantages of voluntary guardianship. First, the guardian is likely to be much more available than a public guardian who has numerous wards to care for. Second, voluntary guardians can mobilize their social network in favour of their wards, for example regarding internships or apprenticeship training positions. Third, if wanted by youth and guardian, the guardian is able to take the youth out on leisure time activities or family reunions.

2.4.1.2 Professional guardianship

Professional guardianship is another form of independent guardianship. Just like voluntary guardians, professional guardians are detached from public authorities such as the Youth Welfare Office or incorporated associations. The great difference is that professional guardians are paid for their work. According to the B-UMF e.V., there are currently between 15-20 people in Germany who decided to become self-employed and to work as professional guardians for separated children. Courts can choose professional guardians if he/she is more appropriate than a guardian from an association or the Youth Welfare Office and if no voluntary guardian is available (cp. BGB § 1887). Occasionally the courts responsible refuse to appoint interested individuals.

In the area of Nuremberg/Fürth, professional guardianship has come to be a part of the system of guardianship. There are currently fourteen professional guardians. In the city of Fürth, the County Youth Welfare Office (*Kreisjugendamt*) makes the necessary suggestion to the Court and guardianship for separated children is almost exclusively taken over by professional guardians. In Nuremberg, however, the situation is slightly more complicated. First of all, a public guardian is appointed. Only if no voluntary guardian is available and the case is especially complex, a professional guardian might be appointed. This, again, shows the dependency of professional guardians on the responsible family court.

As soon as professional guardians get appointed guardian for a youth, they have the entitlement to receive payment. They have to file an application for compensation by the court in order to be paid. All their work has to be documented to demand payment for their activities. Normally, the first compensation can be requested three months after appointment. Professional guardian and court might have a different understanding of what is part of the work as guardian. The court might insist that a guardian is supposed to merely assume legal representation, whereas the guardian might consider pedagogical care to be an aspect of guardianship that is just as important. Such a clash of opinion can entail that certain activities of the guardian are not compensated. It should be considered taking legal action in these cases to establish a broadened understanding of the tasks of (professional) guardians.

Despite the dependency on the Court, professional guardianship also has one considerable advantage over public guardianship: professional guardians can decide themselves how many wards they want to take care of. This has the positive effect that they can devote more time to each ward. Being independent of a public authority and standard operation procedures, professional guardians might be able to decide more freely where to lay the focus in their work or which activities to integrate. It should nevertheless not be forgotten, that it is a

considerable gain for the professional guardian to be well connected with other institutions such as authorities, lawyers or organizations that offer language courses. It is important especially for guardians who are new to the field to make sure to have the possibility to ask questions and to obtain information.

2.4.2. *Associational guardianship*

Incorporated associations can be appointed guardian (*Vereinsvormund*). Here we will translate the term *Vereinsvormund* as *associational guardian*. As a precondition for associational guardianship, the Central Youth Welfare Office of the respective Federal State has to give permission to the association to work in the field of guardianship. Requirements are that the association has a sufficient number of employees, who it supervises, trains and insures adequately (cp. Oberloskamp 2010: 22). Members or employees are consigned to take over guardianship. Just like professional guardians, they have the possibility to set limits regarding the number of wards. In principle, the Youth Welfare Offices finance associations who employ guardians. Occasionally courts co-finance associations. In October 2010, however, this way of financing was blocked and associations therefore strongly depended on the financing of the Youth Welfare Offices. The subsidy, though, covers at the most 80%. Consequently, associations need to bring in own resources. Funding is thus one of the main reasons why there are so few associational guardians in Germany.

According to Oberloskamp (cp. 2010: 12), there are two variations of associational guardianship: first, non-professional members of the association take over guardianship. They cooperate with professional employees of the association. Second, professional employees officially take over guardianship but are supported in their tasks by volunteers.

In Munich, a third variation exists: professional employees of the association work as guardians. There are currently two incorporated associations that form part of the system of guardianship for separated children – one of them being the first organization that offered this type of guardianship for separated children in Germany. As described above, the law determines that guardians from incorporated associations take priority over public guardians. When youths arrive, the two associations are therefore contacted first. Only if they do not have capacities, public guardians are appointed – which entices the public guardian that has been interviewed to joke that she occasionally feels like the ‘garbage bin’. In comparison to public guardians, associations set the maximum numbers of wards per guardian much lower. In Munich, a full-time associational guardian is in charge of 40 youths. Again, this makes it possible to deal more intensely with their wards and to not just focus on the most necessary issues. There might be time to have the youths stop by with their report card or to chat when they come to the office.

2.4.3. *Public guardianship*

In most of the cases, an employee of the Youth Welfare Office takes over guardianship (*Amtsvormund*). Due to the fact that he is employed at a public authority, this type will be called *public guardian* throughout this report. The image of public guardians in Germany is not necessarily the best. After the death of a two-year-old in 2006 who was under care of a public guardian, a heated debate surrounding public guardianship developed. The most central criticism is that public guardians have too many wards to take adequate care of each child or youth. Numbers can range between 100 and 200 wards per guardian or above (cp. DIJuF e.V., 2010²).

It has been mentioned above that it is seen critically by some that the public guardian is employed by the Youth Welfare Office. Critics fear that the required distance between guardian and social services and therefore the partiality that is expected of the guardian cannot be granted. However, practices differ greatly between the local Youth Welfare Offices: while responsibilities of the guardian are closely interweaved with the departments of social

services in some cases, there is a separation in others. In Munich and Berlin a separation of the department of guardianship and the department of social services has been underlined by situating them in different parts of the city. In Frankfurt and Gießen, on the contrary, both departments are in the same building. In Gießen, one public guardian even works in both departments.

Public guardianship differs regarding the specialization of guardians: in Berlin, three public guardians work exclusively with separated children. Unless a change to private guardianship is instigated, the public guardian remains in charge until the youth comes of age. Also in Frankfurt and Gießen (Hesse), a total of five guardians focus strongly on unaccompanied minors. In Hesse, separated children are sent to the surroundings of Frankfurt and Gießen after their first couple of months. They are appointed a new guardian. These follow-up guardians generally have not specialized on separated children but mainly work with wards of German nationality. In Munich, there is a team of about sixteen guardians that work both with separated and German children. Changes to another kind of guardianship do generally not occur in Munich.

Both specialization and non-specialization have their advantages and disadvantages. Certainly, separated children are a very particular target group with very particular needs and problems. Especially the issues related to the youths' residence status and traumatization are of great importance and ask for knowledge and sensitization in these areas. Guardians who only sporadically work with separated children might not have sufficient knowledge regarding these topics. However, separated children make up a relatively small share of wards of German guardians. If a Youth Welfare Office decides that guardians should work exclusively with separated children, their pool of guardians for this target group becomes naturally rather small. The case in Munich offers the advantage that not everything is put on the shoulders of a small number of guardians. It might be easier to level out unsteady numbers of entry and therefore prevent guardians from being overwrought and youths from complaining about their absent guardians. Besides, the guardians get the chance to choose their wards according to their specific skills, knowledge and affinity.

2.4.5 Curatorship

The law provides another particularity: curatorships (*Pflegschaften*) can be established both for youths who have a guardian and for youths who are still under parental care. Curatorship allows conferring matters that guardians or parents cannot comply with upon professionals (cp. § 1909 BGB). In the case of guardianship, it can be very practical to outsource the issues related to the youth's residence title. Lawyers who have specialized in immigration laws can be appointed curator and act as a substitute for the guardian in a matter that they have not been specifically trained for. Thanks to the curators, the guardians are not in charge of meeting tight deadlines that are part of the asylum procedure.

Currently, curatorship for unaccompanied minors is a relatively rare phenomenon. A system of curatorship for separated children exists in Frankfurt: a curator can support unaccompanied minors in the settling of their residence status. Yet, not every unaccompanied minor arriving in Frankfurt gets appointed a curator. Sixteen- and seventeen-year-olds are regularly excluded because of the 'capacity to act' of this group as determined in Asylum Proceedings Act. In Frankfurt, some judges appoint curators for 16- and 17-year-olds, while others do not. Despite ongoing discussions on the topic, to date no uniform way of dealing with this matter has been adopted. Moreover, the court pays curators; therefore neither the Youth Welfare Office nor the youths themselves have to compensate for the lawyers work.

3. LIVED GUARDIANSHIP: OBSERVATIONS BASED ON PRACTICES AND EXPERIENCES ENCOUNTERED AT FOUR LOCATIONS IN GERMANY

3.1. METHODOLOGY AND RESEARCH DESIGN

The study at hand does not have the intention of being representative. No overall valid picture can be drawn. Exploring the accounts of a relatively small number of respondents at four selected locations in Germany, it rather shows fragments of a highly heterogeneous system. The qualitative approach, however, makes it possible to scrutinize the information provided by the limited sample. This allows the reader to get a deeper understanding of the complexity of the matter.

3.1.1. Sampling

The sampling of respondents called for careful consideration. It has been explained above that two different structures needed to be combined: on the one hand, the decentralized organization of Germany that gives considerable independence in a number of aspects to the *Länder* and – in our case maybe more importantly – the administrative districts/municipalities. On the other hand, the four types of guardianship that are combined differently in different locations.

When it came to sampling, we thus decided to combine dissimilarities between federal states and differences between the four types of guardianship in the most fruitful way: by choosing Berlin, Munich, and Hesse¹², it was possible to cover systems that combine public with voluntary guardianship, associational guardianship and curatorship. In order to include another type of guardianship that is of relevance in the context of separated children, an interview with a professional guardian in Nuremberg was conducted.

3.1.2. The Research Method

Data was gained by conducting semi-structured interviews. Before starting interviewing, the question list that had been worked out by the project coordinators was adjusted to the German context. The questions of the question list were not asked in a strict order but rather served as points of orientation.

The interviews took place at different locations: interviews with most guardians were carried out at their offices. Only the meetings with the voluntary guardians stepped out of line: while the first interview was conducted at the guardian's university, the interview with a married couple who took over guardianship together was held at their private home. In total three interviews were conducted with two guardians at the same time.¹³ The interviews with the youths took place at their homes, at the office of their housing institution, at their school or in

¹² The federal state of Hesse offers a peculiar shape of public guardianship. We originally wanted to focus on the city of Frankfurt. It soon turned out though, that municipalities were much too interweaved to examine them detached from each other. After their arrival in the cities of Frankfurt or Gießen, youths can be sent to any municipality in the state of Hesse. For that reason, they get appointed a guardian in Frankfurt or Gießen when they first arrive; as soon as they are transferred to another municipality, the change of guardianship is requested.

¹³ At one of these interviews, the head of the Department of Guardianship was present as well.

cafés. Twelve interviews were conducted in German, two in English. For one interview with a Vietnamese youth, a translator was called in.

Except for two interviews with (former) separated children who preferred not to have them recorded, all the interviews with youths and guardians were taped and subsequently transcribed. The interviews with youths lasted between 20 minutes and 1 hour 30 minutes. The differing durations can be lead back to reasons such as language difficulties, their age and the time they had spent in Germany. The interviews with guardians took between 1 hour and 2 hours 30 minutes.

3.1.3. Interviewees

Separated children

Children	Gender	Age	Country of Origin	Living environment	Guardian	Currently living in
G1	Male	18	Vietnam	Small living group	Public	Berlin
G2	Male	17	Afghanistan	Flat share	Voluntary	Berlin
G3	Female	19	Vietnam	Flat share	Voluntary	Berlin
G4	Male	23	Angola	Independent	Voluntary	Berlin
G5	Male	15	Kenya	Small living group	Public	Berlin
G6	Male	22	Cameroon	Independent	Public	Hesse
G7	Male	20	Afghanistan	Independent	Public	Hesse
G8	Female	17	China	Small living group	Public	Hesse
G9	Female	16	Vietnam	Small living group	Public	Hesse
G10	Male	18	Afghanistan	Independent	Public	Hesse
G11	Male	17	Afghanistan	Small living group	Public	Munich
G12	Male	17	Sierra Leone	Small living group	Associational	Munich
G13	Male	17	Afghanistan	Small living group	Associational	Munich
G14	Female	18	Nigeria	Flat share	Public	Munich
G15	Female	16	Afghanistan	Small living group	Public	Munich

Guardians

Guardians	Gender	Work experience	Type of guardianship	Location
GG1	Male	15 years	Public	Berlin
GG2	Male	4 years ¹⁴	Voluntary	Berlin
GG3	Male	11 years	Voluntary	Berlin
GG4	Female	11 years	Voluntary	Berlin
GG5	Female	7 years ¹⁵	Public	Gießen
GG6	Female	8 years	Public	Gießen
GG7	Female	3 1/2 years	Public	Frankfurt

¹⁴ It needs to be kept in mind that voluntary guardians have a disproportionally smaller number of wards than guardians of the other types who are paid for their work.

¹⁵ Before working with separated children, she has been working as a guardian for German children.

GG8	Male	9 years	Public	Frankfurt
GG9	Female	9 years	Public	Munich
GG10	Male	18 years	Associational	Munich
GG11	Female	21 years	Professional	Nuremberg

Curator

Curator	Gender	Work experience	Location
GC1	Male	15 years	Frankfurt

At each location we wanted to interview five youths and at least one guardian of each guardianship type present. To get a more complete picture, we also found it necessary to talk to social workers of at least two housing institutions per location. Thanks to the well-connected network of the *Bundesfachverband unbegleitete minderjährige Flüchtlinge e.V.* and the support of members of the National Advisory Council, it was relatively easy to find out who were the relevant guardians at each of the chosen locations. The professionals were contacted and appointments were arranged. It turned out to be slightly more complicated to recruit separated children or individuals who entered the country as separated children. The techniques of recruitment differed in the three locations. Generally, however, non-probability sampling was applied. Regarding youths, we merely had a rather limited list of criteria we strived to fulfil: we wanted to talk to female and male respondents, to wards of the three main forms of guardianship (public, associational and voluntary) and to both young people under age and of full age. We found it much more important to carefully choose the channels through which the young interviewees were contacted than to find youths who suited a set of predefined criteria. We actively decided to avoid contacting the youths through their guardians, believing they could talk more freely about their experiences if their guardians were not involved in the process of recruitment.

In Berlin, the interviewer approached two youths during leisure time activities for young refugees organized by a non-governmental organization after having consulted with the project manager. The remaining three interviewees were contacted by the social workers of two housing institutions that the interviewer visited. The selection of these youths was basically left to the social workers. Next to the youths, one public guardian and three voluntary guardians were interviewed.

In Munich, one youth was contacted by his social worker. The other four youths were asked if they were willing to be interviewed by the social worker of a school for unaccompanied minors that the interviewer visited. The interviewer selected three of them due to the impression they left during a class she visited. One of them was selected by the school's social worker. Furthermore, one public and one associational guardian were interviewed.

In Hesse, one of the members of the National Advisory Council supported the organization of the interviews with youths. She contacted one housing institution in Frankfurt and one in a little village 50 km away from Frankfurt. The selection of respondents was ultimately made by the social workers of the respective housing institutions. Moreover, four public guardians and one curator were interviewed.

This description shows that the recruitment of young interviewees was to a considerable degree selective. Interviewees chosen by the interviewer were selected due to the impression they left in informal conversations or in class. These youths had in common that they were comparatively outgoing, talkative and reflexive. It is somewhat more difficult to reconstruct why the social workers selected specific youths. Possibly, personal sympathy was involved; yet, that remains a speculation only. However, it was conspicuous that the social workers

mentioned as a central criterion for selection that the youths could ‘say something about their guardian’. This suggests that the guardian is noticeably absent in the lives of many separated children in Germany. These limitations regarding the selection of respondents and their influence on the results shall be kept in mind in the course of this report.

In total, fifteen individuals who entered the country as separated children, eleven guardians and one lawyer were interviewed. The interviews were complemented by eight talks with social workers of housing institutions or reception centres. Eight of the young people were underage, seven were 18 and older. Their age ranged between 15 and 23. The sample included 5 female and 10 male respondents. The interviewees were originally from Afghanistan (6), Vietnam (3), Angola, China, Cameroon, Kenya, Nigeria and Sierra Leone. Twelve of them were still supported by Youth Welfare and therefore living in specific housing institutions. Three of them had their own flats, but were still in touch with their former social workers. Except for two, the young people arrived in Germany at age 15 or 16. Regarding the guardians, six public, three voluntary, one associational and one professional guardian were interviewed.

3.1.4. Analysis

Transcribed interviews and memos became subject to open coding. Codes mainly evolved by paragraphs. Next to the codes that arose from the texts, the data was checked for points of interest that had been identified at the outset of the study. Chapter 3 and its subchapters emerged out of the thematic grouping of codes. By breaking down the data into smaller units, it could be compared for differences and similarities (cp. Babbie 2010: 402). Relevant concepts were identified and paragraphs from the interviews were related to each other. Naturally, the social world is not coherent wherefore contradictions could be observed within the interviews and in between the interviews. These inconsistencies will not be omitted throughout the report, yet the intention will be to trace tendencies. The accounts of youths and guardians were grouped separately so it was possible to compare their perceptions. Furthermore, special attention was paid to differences in the statements of the respondents that could be lead back to the differing types of guardianship and the specific conditions at each location. The brief summaries at each chapter and the conclusion in itself abstract from the detailed description of the responses of the interviewees and aim to identify those matters that should be addressed when formulating the recommendations.

3.1.5. National Advisory Council

The National Advisory Council accompanied and supported the research process. We had the intention to assemble a heterogeneous group to bring in a wide range of experiences and viewpoints. Due to the fact that we also hoped for support in the recruitment of interviewees and, if necessary, further insights into the local systems of guardianship, five out of the seven members of the National Advisory Council came from Berlin, Frankfurt or Munich.

The Council was compiled as follows:

- Thomas Gittrich, KJSW, Munich: guardian for separated children at an incorporated association. German project coordinator of the DAPHNE-project ‘Closing a protection gap – core standards for guardians of separated children’.
- Hassan Ali Djan, Munich: entered Germany as separated child.
- Thomas Berthold, B-UMF e.V., Munich: consultant on the project ‘Quality management of services directed at separated children in Germany’.

- Claudia Schippel, Akinda c/o Xenion e.V., Berlin: voluntary guardian/project manager of a project that recruits private guardians.
- Irmela Wiesinger, Jugendamt Main Taunus Kreis: social services at the Youth Welfare Office, former guardian of separated children.
- Prof. Dr. Peter Hansbauer, FH Münster: execution of a comprehensive empirical study on guardianship in Germany.
- Katrin Löffelhardt, Diakonie Wuppertal: project manager of a project that recruits voluntary guardians.

The Council convened three times. In the first meeting, the legal framework for guardianship was discussed. The tasks of the guardian were debated – especially in contrast to the tasks of social workers employed at housing institutions. The second meeting was used to inform and converse with the Council about the research process and first findings. Moreover, the Council brainstormed on possible standards for the work of guardians. Finally, strategies regarding the dissemination of standards for both target groups – youths and guardians – were debated. The third meeting was used to discuss the first draft of the report.

3.1.6. Ethical considerations

Each project of social research involves ethical considerations. The proposition to not harm the respondents is top priority. Especially research with separated children calls for great consideration of the respondents' experiences and current living situation. Interviews with this specific target group require being sensitive to the topics the youths do not want to talk about. Logically, the youths do not deal with each question in the same way wherefore it is necessary to pay constant attention if questions appear too much of a strain.

The accounts of the interviewees are treated with confidentiality. Interview transcripts were merely given to the respondents themselves if they had the wish to double-check or specify their statements. Throughout the report, no names are mentioned and information on the respondents is kept to a minimum. Only if necessary for the analysis, the nationality, kinds of guardianship or current place of residence of the interviewee are communicated. Quotes from the interviews with guardians are only related to one guardian if it describes the general local situation and not the opinion of the guardian. Due to the fact that there is only a limited number of guardians for separated children, it is not difficult for experts working in the field to identify respondents. Therefore anonymity would not be guaranteed.

If respondents were under the age of 18, their guardian was asked for consent. The project wants to claim that information has been treated with consideration and that the report reflects in the best way possible what the interviewees wanted to say. Analysis has therefore been careful and respondents have been contacted after their interviews to resolve unclarities.

3.2. 'THE' GERMAN GUARDIAN

Because of the immense diversity that exists amongst guardians in Germany, it is impossible to talk about 'the' German guardian. We will nevertheless highlight some tendencies.

3.2.1. Profession

Amongst the eleven guardians that have been interviewed, three streams can be observed regarding their profession/education. Three were administration specialists, three were social (education) workers and two had gone through the more theoretical educational studies/educational theory. Two of the three voluntary guardians had been working in the

public service; the other voluntary guardian was jurist. In relation to the guardians' profession, a striking observation could be made: when asked for the necessary requirements of guardians, the interviewees' answers related to their own working environment. A guardian working exclusively with administration specialists stressed that – next to knowledge about the asylum procedure – being acquainted with administrative processes was important. Guardians working in a surrounding dominated by social (education) workers emphasized that pedagogical education was necessary. Guardians working in a mixed environment of social workers and administrative specialists did not want to give preference to either one but underlined that it did not depend as much on the education as on the personality of the guardian. Voluntary guardians did not find any particular education necessary but rather that one developed his or her knowledge in the relevant areas.

3.2.2. Work experience as guardian

It seems like many guardians remain faithful to their profession for a long time. Four interviewees have been working as guardians for 10 years and more. One holds the profession for 21 years now. The guardian that started her job most recently set off 3 ½ years ago. It was conspicuous that all six public guardians have previously worked in another department of the Youth Welfare Office. Three of them hold the position since it was created at their Youth Welfare Office. The professional guardian had been working as associational guardian for several years and was therefore not new to the field as she became self-employed. The voluntary guardians did not have any particular work experience that qualified them for undertaking this position. It is generally difficult to compare the 'work experience' of voluntary guardians to guardians of the other types, considering that they are not paid and have only a few wards while paid guardians have several hundreds in the course of their career.

3.2.3. Caseload

Public guardians have to deal with the greatest number of wards. In the summer of 2010, the amount of youths that were appointed a guardian was so high that one interviewee admitted that she had lost track of how many wards she has. On average, a full-time guardian in Berlin, Frankfurt and Gießen is in charge of about 100 wards. Considering that the numbers of youths entering Germany has been increasing significantly so far this year, the number of 100 wards is likely to be exceeded in some locations. At the time of this study, a public guardian in Munich had to take care of about 70 youths. The professional and the associational guardian resemble each other in the number of wards. A full-time associational guardian in Munich is in charge of 40 wards. In July 2010, the professional guardian supported around 50 youths; yet, she considers that to be her absolute upper limit and wants to reduce the number. The voluntary guardians that had been interviewed had had a total of 3 and 2 wards respectively.

3.3. GUARDIAN AND YOUTH

3.3.1. *The guardian: a mysterious institution*

The fact that the institution of the guardian and its tasks are only roughly outlined in the law, next to the possibility to implement different kinds of guardianship leads to manifold interpretations of what a guardian is and does. As mentioned above, the law assigns the guardians a rather comprehensive scope of duties, such as the duty and the right to care for, to educate, to supervise the child and to determine the place of residence of the child (cp. § 1631 (1) BGB). In the following chapter, it will be examined how the tasks of the guardian are perceived by the youths, followed by the tasks as described by the guardians themselves.

Most of the youths found it difficult to describe the role of the guardian.

Interviewer: Do you know what a guardian is and what he or she does?

G2: A guardian does, does not, no idea...I just know if I go to the Youth Welfare Office...no idea, father or mother, something like that? I don't know it that well.

Interviewer: Did your guardian ever explain to you what she does? What her tasks are?

G2: Well, she told me, she will take care of me. If I need a signature, she will sign it – if it is good. If it is not, she will not at all. Yes, I'm quite happy with my guardian.¹⁶

Even though the youth finds it hard to grasp what a guardian actually is, this quote contains a number of issues that other youths mentioned as well in their description of the guardian.

Most strikingly, the guardian has repeatedly been described as 'father' or 'mother' by the youths. This is especially interesting since - with the exception of two - all of the guardians that have been interviewed stressed that they made sure not to use the terms 'father' or 'mother' to describe their role. For them, their relationship to the youths is first and foremost professional and they do not want to raise wrong expectations. It seems reasonable to suppose that other actors, such as social workers and interpreters play an important part in keeping this misconception circulating. Youths also explain to each other what they believe a guardian is. Moreover, much of what the youths might want to express by describing their guardian as 'mom' or 'dad' might be lost in translation. In the German context, the terms relate to a unique relationship between two people. In many other cultural contexts, however, they are used to express politeness or trust. They are therefore not only used for one's biological parents but also for other adults that the youths respect and confide in. Using the term does thus not mean that they ascribe parental tasks to their guardians. As one youth explains:

G12: And then he said, he will take my parents place, yes, like my parent, my mother, he will be going to take that place, and yes, if anything, I can come to him. Yes.

Interviewer: Do you feel like he is like a father to you?

G12: ...No, because I don't feel like...because I don't see him often. I always feel like the social workers are that.

The youth already points to another issue that has frequently been mentioned in the interviews: the role of the social workers. This matter will be treated more in detail in Section 3.4.2..

¹⁶ Quotes of interviews conducted in German have been translated by the author.

The youths had difficulties contextualizing their guardian. It remained unclear for many of them who their guardian was working for. The question for their guardian's employer generated, for example, the following answers:

Interpreter of G1: He does not know who she is working for, but he knows more or less that she is the guardian of all Vietnamese here in Germany.

G15: No idea, but right next to *Ostbahnhof* .[author's note: *Ostbahnhof* =metro stop]

G12: In my mind I think the United Nations or so...but I don't know, maybe...I don't know.

However, it has to be stressed that the German system of guardianship is highly complex and difficult to comprehend. The confusion about their guardian's workplace should therefore not be read as a demand to better inform the youths about their guardian's employer, but merely as an example of the hard-to-grasp institution of the guardian.

The guardians themselves find it a challenge to break down their job into plain terms for the youths. In their description, they generally use key words from the legal texts. They tend to explain that as long as a person is under 18, a legal representative is needed who can sign contracts and documents, help to make important decisions and who holds the representation of interests for the youths. As mentioned above, two of the guardians that have been interviewed compare their role to those of parents – probably in the hope that the youths can relate the abstract explanation to something they know. One guardian tries to clarify the meaning of 'legal representation' by adding:

GG11: 'I'm like your Mom, just that you can't live with me, I don't clean for you, I don't cook for you, you don't get money from me and you've got 49 brothers and sisters.'

Due to the fact that most guardians try to avoid relating themselves to the father/mother-role, they tend to use more abstract descriptions.

None of the youths' nor the guardians' definitions of the guardian were completely identical. The youths mainly base the description on their own experiences with the guardian, the guardians on their interpretation of the legal texts. The father'/ 'mother'-role and the responsibility of personal custody respectively seem to be attended by fulfilling the tasks that will be described below.

3.3.2. *Personal custody*

The quote of G2 cited above precisely points at the wide-ranging task of the guardian as identified by the law – 'taking care' of the youth. In the accounts of the youths the definition of personal custody, however, remains just as vague as in the laws. As in the case of G2, is for most youths a key aspect of personal custody that the guardian needs to voice his approval regarding all kinds of issues by signing the respective documents. Both youths and guardians frequently cite the gym contract as an example where the guardian needs to give his approval. It will be shown below, however, that there are more existential issues where the guardian's signature is needed.

'Helper's conferences'

Most youths remember the guardian from the *Helper's Conferences*. The Youth Welfare Act determines that these meetings are supposed to take place every six months. Generally, the youth, social services, social workers and the guardian convene to discuss the youth's

development and needs. Sometimes, however, guardians are not present at the meetings – either because they decided not to take part or because they have not been informed about the conference.

In relation to the ‘helper’s conferences’, again, a heterogeneous perception of the guardian prevails. It depends on the role the guardians claim for themselves. While some youths describe their guardian as interested in their lives and eager to make suggestions, others portray their guardian as inconspicuous and rather passive. The following two quotes exemplify the differing experiences:

G8: [The ‘helper’s conference’] takes place every six months. We talk for example about school, health, leisure time [...] They ask questions, but most of the time we just talk. It’s not just that they ask questions and you have to answer only about these topics... Then we talk for example about health, then we talk, how is it going? I don’t know, how to say... For example, school, they say this and that school is better, I don’t know... It’s not just answers, but normal talking. Very laid-back.

Thus, this youth enjoys that these meetings with her guardian do not give her the feeling of a formal interview. Rather, the atmosphere is casual, she is not forced to talk about things she does not want to talk about and suggestions are given to her regarding, for example, her education. The following quote, however, illustrates another experience:

G7: I also had a guardian. [...] I didn’t see my guardian much, only if there was a meeting with the Youth Welfare Office, then the guardian came as well. And then we talked: are you happy here? How’s school? They always asked stuff like that. Which profession do you want to learn? Then the guardian was there, but nothing more than that. [...] I only saw him once a month, and then just for an hour, and I only knew he’s my guardian. ‘Hallo, hallo’, and not much after that. And he also didn’t ask much, ‘yes, you have to do that, that’s good’. There was another woman from the Youth Welfare Office, she always asked much and I answered. For example about my professional training, where I want to work, is it very stressful at work or not, do you get days off, do you get your money on time. She asked everything. But the guardian didn’t ask anything.

Consequently, the guardians apparently choose to play different roles in the helper’s conference.

Residence status

Most young interviewees living in Berlin and Munich immediately associated the guardian with their asylum proceedings. The exceptions were two Vietnamese youths. This does not surprise much, bearing in mind that Vietnamese youths stand poor chances in obtaining a secure residence status. Therefore the work of the guardians is likely to differ for this target group. Most of the other youths consider the settling of the residence issue to be the intrinsic task of the guardian:

Interviewer: Did she [your guardian – author’s note] explain to you what her job is?

G15: She told me if I have problems with the Federal Office of Migration and Refugees, she can do. And the other things, school, accommodation or other things, my social worker can do.

In Munich, the guardians that have been interviewed file an asylum claim for the great majority of their wards, even though he is not necessarily involved in the asylum procedure of 16- and 17-year-olds. Most 16-year-olds have already filed an asylum claim when their guardian is being appointed. Youths under 16 are generally accompanied to the hearing.

In Berlin, the three non-Vietnamese youths that have been interviewed, related their guardian to the settling of their residence status. Two of them had a voluntary guardian and the third interviewee was awaiting the change from public to voluntary guardian. This is necessary to mention, considering that the public guardian interviewed stated that in most cases he considers the prospects of success too limited to file a claim for asylum for youths under 16.¹⁷ He estimated that he submits an application for asylum for 2-3% of the under-16-year-olds. Two of the voluntary guardians that have been interviewed were quite involved in the asylum proceedings of their wards; however, they did not see it as such a central feature as the young interviewees did. For them, the vital aspect of guardianship is the interpersonal relationship between youth and guardian and not the settling of the residence status.

In Frankfurt and surroundings the situation presented itself differently. Compared to Berlin and Munich, the guardian was remarkably absent in the youths' accounts regarding their residence status. Taking into consideration the specific local system, the explanation seems obvious: the lawyer/curator who many youths get appointed is in charge of accompanying the youth in their asylum procedure. As a consequence, for most under-16-year-olds and some 16- and 17-year-olds living in Hesse, the role of the guardian is reduced to consult with the lawyer about recent developments in the asylum proceedings. If time is available they might have encouraging talks with the youths regarding their migration status or the like. If no lawyer supports the youth, the guardians might become active. Guardians in Hesse currently appear especially overwrought, wherefore they choose carefully which youths need to be accompanied to the hearing. It is another particularity of Hesse that a great number of youths enter Germany via the airport. And, like one guardian describes, 'at the airport we're basically never involved in asylum proceedings'. It is eye-catching that in Hesse the issue of 'Dublin II cases' was much more discussed in the interviews with guardians than in Munich or Berlin. The reasons for that, however, have not become clear. 'Dublin II cases' require much communication with the Federal Office for Migration and Refugees. The guardians demand to be informed about all the steps that are planned. In Gießen, the guardians ascribe it to their insistent presence and requests for information that one youth was not sent back to another European country.

Consequently, due to the more frequent support of lawyers in Hesse, the asylum procedure plays another role in their work than in the work of guardians in Berlin or Munich.

The guardian's presence in the hearing can be a highly valuable backing for the youth. Guardians can try to influence the interview by asking specific questions that help to clarify the accounts of the youths. They can further make an effort to sensitize for child-specific reasons for flight. The youths seem to appreciate their guardian's company in the hearing. One youth describes the stressful situation of the hearing as follows:

G13: [During my first weeks in Germany], I was very scared. Okay, you have to go to the Federal Office [of Migration and Refugees], I did not have a clue and in Afghanistan I never went by myself with an official person. But here, after one or two weeks or three weeks I had to go to the Federal Office, an interpreter comes, an official person comes, and you just don't know...Okay, 'you've done that and you've done that. Why not that way? Why didn't you do it that way?' And...and...if it is like that, my head gets completely empty and I don't know what I did.[...] It's like a maths exam: I know that 100:10 is 10, but in the exam I forget.

In this situation, a guardian can be a great support:

G13: If they say, tomorrow you have to go to the Federal Office, you don't sleep well at night, [...] but if someone comes with you, someone who's older, when I think, I said something

¹⁷ 16- and 17-year-olds generally have already filed their claim for asylum.

wrong, he can correct it. [...] When I had spoken to my guardian I had a good feeling, so...I've got someone, I'm not alone.

In summary, even though not outlined in current guardianship legislation, being involved in the youth's asylum proceedings is an important aspect of personal custody for separated children. It becomes especially important if the youths are not supported by lawyers. The youths generally highly appreciate the guardian's support in this matter, which is that important to their future. Yet, IF the youth is accompanied to the hearing depends on the local circumstances (e.g. is a lawyer involved?) and the working conditions related to the different types of guardianship (e.g. public guardians have a higher caseload than associational guardians and have therefore less time to accompany their wards to hearings).

Accommodation

Even though the law might establish that it is the guardian's duty to determine the youth's place of residence (cp. § 1631 (1) BGB), it has in principle become the task of the Youth Welfare Office to organize accommodation for the youths. One guardian describes her role regarding accommodation as follows:

GG5: 'We public guardians come into play if our colleagues picked a place for the youth that the youth doesn't want to go to. In this case it happens that the youths approach us and ask us for help. [...] But generally we're quite d'accord with the choice [of the Social Services.]'

The accounts of the youths reflected this practice. Youths that wanted to be housed differently associated their guardian with the issue of accommodation. They informed their guardian about their current housing situation and asked for support in the change of accommodation. Guardians dealt with the requests differently – depending on the gravity of the situation and if another kind of accommodation is available. Momentarily, the scarcity of free spots constitutes a serious problem at all four locations wherefore it is difficult to meet the requests of the youths.

Voluntary guardians might take the responsibility to take care of the youth's accommodation a bit more literally. Two interviewees actually subscribed to a housing association, which made it easier for them to find a suitable flat for their ward. Once the new apartment was found, they helped the youth move.

Health

Youths who had severe physical or psychological health problems linked the guardian to this area of responsibility. However, what the guardian actually does when one of his wards is seriously ill differs from guardian to guardian and from situation to situation: one girl explains that she needed her guardian's signature to get surgery. Another girl, in turn, stressed how important it was for her that her guardian called and visited her to see how she was as she was committed to a mental hospital. The guardians do not seem to see themselves as primarily responsible for accompanying the youths to their appointments with physicians. It rather depends on the availability of social workers.

Interviewer: That means you accompany the youth to appointments if there's no social worker available?

GG9: Yes, if they say they can't come because they're understaffed. Or because the physician insists that the guardian has to be present. Some hospitals are a bit strict on that. But most of the time we manage things in a way that we don't have to go. We ask them to fax us the declaration of consent so we can sign it. [...] Sometimes that doesn't work and then you just have to go.

Personal custody regarding health issues is thus fulfilled in cooperation with social workers. Most of the times, the role of the guardian is restricted to giving his consent; occasionally he accompanies the youth to his or her appointment.

Education

Nearly all of the young interviewees set a high value to go to school and to get good schooling.¹⁸ Collectively, they showed a remarkably high level of motivation. Certainly, it should be kept in mind that it might be lead back to the non-probability sampling and that a selection had taken place prior to the interviews. That might have had the effect that determined and motivated youths were more likely to be chosen.

Education is mentioned in the law as one of the tasks of the guardian. Yet, the youths do not seem to see an immediate link between their education and their guardian. Only one youth remembered that his guardian told him in their first meeting that ‘he will help me to have school’. Two youths, in contrast, said that their guardian had told them that in the issue of school they should contact their social worker at the housing institution or another advisory centre. The others recalled that school was regularly a subject of discussion in meetings and that their guardian asked if they were happy with their school. One young adult with a voluntary guardian stressed that his guardian played an important role in keeping him motivated. Still, they did not ascribe them a more active role.

One young Afghan whose guardian is a lawyer and helped him to get a secure residence status, saw the following connection between his guardian and his education:

G2: I went to [my guardian] and then they gave me a residence permit. I was so happy as I came home. Because, I wanted, first of all, to go to school, to get my A-levels, to do all that, because my teacher had told me, if I have exceptional leave to remain, if I don’t have a normal passport, I can’t continue with school. And I was so happy that I could go to school. Because of the residence permit. That was a great surprise.

The youths thus related their guardian with school in a rather abstract way. More concrete issues such as finding an adequate school or helping them with their homework is much more associated with the social workers.

The guardians, in contrast, all mention the youth’s education as one of their main tasks. What might be perceived as occasional talks about education by the youths is an important base of work for the guardians. By means of these meetings, the guardians ‘plan the educational career’ of their wards, as one guardian said. Talking to the youth they try to find out if the ward needs tutoring, has a problem with a teacher, suffers from poor concentration or is being mobbed. Again, however, there was no uniform way of fulfilling this task.

Once more, it depends much on the cooperation with social workers. Most of the guardians leave the direct contact with schools to the social workers of the housing institutions. Only the voluntary guardians mentioned that they repeatedly went to school meetings.

The vague allocation of tasks to either social workers or guardians leads to quarrels about responsibilities. One voluntary guardian illustrates these disputes by criticizing that he was not informed by the responsible social worker as his ward dropped out of school.

GG2: ‘For me that is clearly a typical case where the guardian has to decide. HOW one goes to school, IF one goes to school and WHERE one goes to school. And in my opinion she [the social worker – author’s note] exceeded her authority and thought, okay, then you just don’t go to school.’

¹⁸ One youth was on drug withdrawal and could not go to school at the time of the interview.

Other guardians might welcome if social workers take some load off their shoulders and instigate, for example, a change of schools.

Thus, youths did not necessarily associate the issue of education directly with their guardian. Still, depending on his commitment, the guardian *can* play an important role 'behind the scenes' by monitoring if the youth is supplied with what he/she needs regarding education.

Leisure time

If personal custody is interpreted in a comprehensive way, one might think that it also includes leisure time activities. This, however, was strongly rejected by all public guardians. Due to their high workload they see themselves incapable of organizing leisure time activities for their wards. They might pass by an open day at the youths' housing institution, but more time-consuming events, such as a daily outing, are not feasible. The associational guardian does not take his wards on regular activities. Yet, the association organizes short trips within Germany for guardians and youths once a year so they can get to know the respective other in a non-office situation. The professional guardian organizes parties, takes the youths to a Restaurant or once in a while meets former wards in the evening to have a chat and talk about their problems. Even though there are numerous forms of voluntary guardianship, voluntary guardians are much more likely than other types to organize leisure time activities with their wards. One youth with a voluntary guardian mentioned that her guardian worked with her on her German skills and took her on excursions. One voluntary guardian accompanied his wards several times per week to their soccer practice, after which the youths would visit their guardians at their home residence. Furthermore, the leisure time should be a topic during the *helper's conferences*. Yet, as several times before, it depends very much on the guardian if and how he decides to involve himself in the issue and to search for the best possible solution for the youth.

3.3.3. The procedure of appointment

In Bavaria and Hesse, the Youth Welfare Office makes a proposal to the Family Court about who should become guardian of a newly arrived youth. In Berlin, the *Senatsverwaltung für Bildung, Wissenschaft und Forschung* (Senate Administration) comes forward with a proposal. At the locations that have been included in this study, this proposal is made in the first couple of days after arrival. In Berlin, Frankfurt and Gießen, a public guardian is suggested before another type of guardianship is considered. In Munich, an associational guardian is proposed if the association reported available capacities to the Youth Welfare Office. If it did not, a public guardian is appointed. The same applies to the professional guardian in Fürth.

According to the guardians, it depends on the respective Family Court how long it takes until they are actually appointed. In Frankfurt, the system seems to work most smoothly. For youths that arrive at the airport, a guardian can be appointed the same day that the Youth Welfare Office reported the youth's presence to the Court. Youths that did not enter the country via the airport have to wait 1-2 weeks until they get a guardian.¹⁹ In Gießen, the appointment takes between two weeks and two months. This is an improvement to earlier times, when the appointment occasionally took several months. In Munich, associational and public guardians reported slightly different experiences: while the former spoke of about four weeks, the latter said it takes about two months. Also in Berlin normally one or two months pass until the guardian is appointed. The change from public to voluntary guardian at times

¹⁹ One explanation for the smooth functioning in Frankfurt could be that the guardianship that is requested is temporary only (*vorläufige Amtspflegschaft*).

requires a lot of patience. One voluntary guardian had to wait eight months before he finally held the certificate of appointment in his hands. The exact reasons for these local differences regarding the duration of appointment would require further investigation.

3.3.4. The first meeting

It was conspicuous that the way the first meeting between guardian and youth is planned seems to be strongly related to the guardian's caseload. The guardians with the greatest number of wards (public guardians in Berlin, Frankfurt and Gießen) remained a bit vague about their first meeting with the youths. Generally, if and when they meet the youth depends on a number of factors. They frequently get to know their new ward in the 'helper's conference' that is organized by the social services. The public guardian in Berlin puts the first encounter with his ward off if he is informed that the change to voluntary guardianship has been instigated. He may also wait until he has a couple of youths who speak the same language. Next to language reasons, he justifies his hesitant approach with the conviction that

GG1: most youths arrive traumatized [...] into a completely new surrounding, and there it is said that they first have to arrive. I always discuss with the social workers when they can...when it is possible to talk to them, when they are able to confide in me. And a lot of time passes by before that happens. Especially [African youths] frequently have private guardians, so I wait 1-2 months to see if they get a private guardian, because then I step back.

On the other hand, if he is informed that a youth does not go to school or if he gets mail from the Department of the Public Prosecution, he makes an effort to meet the youths. The first meeting between youth and guardian might take place one month after the youth's arrival. Still, the public guardian mentioned that one year might pass before guardian and youth get to know each other. This is reflected by the fact that one of the young interviewees in Berlin with a public guardian was still waiting for his first meeting with his guardian at the time of his interview. He had been in Germany for eight months as the interview was conducted. Another youth who has now a voluntary guardian does not remember his earlier public guardian at all:

Interviewer: So did you have a public guardian first?

G2: A...public guardian? Ms. [name of his current voluntary guardian] is a public guardian or something like that? No, she's not a public guardian. Voluntary guardian.

Interviewer: Exactly.

G2: Yes, I didn't have one. I didn't know anything, I didn't know anything! That's why. I sure had one, or I sure had none. I think, I didn't have one. I don't know. I didn't have one at all, I think so.

The first meetings between voluntary guardian and youth in Berlin generally are at the youth's housing institution together with the youth's social worker. This allows potential guardian and youth to get a first impression of each other. One private guardian appreciates this way of getting to know each other:

GG2: The [first meeting] is organized by Akinda in a way that you meet the youth together with the social worker at the living group. I prefer that and I'm still cautious with meeting the youth completely on my own.

Interviewer: Why?

GG2: Well, I made the experience that that causes more awkwardness and it's simply easier if there are other youths or the respective social worker.

A public guardian in Frankfurt describes the situation regarding the first meeting with the youths as follows:

GG7: Well, you can work it out yourself, if we get 200 new youths this year and there are 220 working days, then I would be on the run every day. That's not doable. Especially with the unaccompanied minors that come from countries of asylum, I only get to know those who are in a crisis, who are ill, who need a declaration of consent, important surgery [...] And those that go to apply for asylum and don't have a lawyer. I can't know all the refugees and wards in person.

However, the guardian stresses that the social services meet with the youths promptly after arrival and inform them about the possibility to contact their guardian. The guardian in Frankfurt who works as a 'follow-up' guardian tries to meet his new wards within the first two or three weeks. Yet, he mentions that it depends on his workload and also on how far away they live from Frankfurt if he finds time to meet them.

One of the guardians in Gießen finds herself in the exceptional position that she works both as guardian and personnel of the social services. Therefore she frequently meets the youths as staff member of the social services before she gets appointed guardian. The other public guardian in Gießen goes to meetings at the youths' first housing institution or writes them a letter to inform them about her appointment as guardian. Still, the two stress:

GG6: At the moment there is simply such an immense number of youths that it is hardly possible to get to know anyone.

GG5: Except for the more problematic cases.

GG6: There are many pleasant youths, where everything goes well. Or it's like that, in the beginning it's very problematic so you are in touch a lot and then it suddenly starts to go well and you're hardly in touch with them. Then they settled in their surrounding and don't need that much contact anymore.

Amongst the interviewees in Munich, it seems to be somewhat more normal to personally meet new wards. The public guardian that has been interviewed generally sends out invitations to the housing institutions of the youths. The meeting then takes place at her office; present are usually the youth, an interpreter, and at times a relative.

GG9: Whenever there's a new youth, then I invite them by default for a first meeting, as quick as possible, to clarify what a guardian does, why he's got a guardian, one just tries to get to know each other.

Also the associational guardian invites his new wards and an interpreter to his office so they can get to know each other. The first meeting is used to explain

GG10: [...] which are our areas of responsibility [...] and I explain that I'm in principle on his side, that I'm his representative, that it is important to me to have a certain openness...I ask a couple of questions that seem necessary to me, about how he is doing, where he's living at, I tell him what I know, what I don't know, in most cases I don't know anything at this first meeting, but I got three pieces of paper, with the names of the parents on them, there is also written if the parents are alive or dead. [...] And I offer them to simply ask me things.

Thus, the first meetings differ from each other. While public guardians with a caseload of about 100 wards are inclined to meet the youths during the *helper's conferences* or if there are acute problems coming up, the guardians with a smaller number of wards tend to organize an extra meeting where youth and guardian can get to know each other.

3.3.5. After the first meeting

Frequency of meetings

If the youths do not have any acute troubles (such as questions about their residence status and health problems), the guardians meet the youths generally at the ‘helper’s conference’. Some guardians also stop by the youths’ housing institutions. The youths furthermore mentioned that they contact their guardians if they need a signature or if they want to open an account with a bank. For most guardians it is a very rare event to meet their wards in a café or another non-working environment. Solely amongst voluntary guardians it is more common to meet in a café or restaurant. It seems like the youths who had these experiences enjoyed the informal atmosphere. One interviewee with a voluntary guardian distinguished between more formal meetings, thus the ‘helper’s conference’, and more informal meetings, where they went to a restaurant or had ice cream and discussed the current situation of the youth.

The guardians resembled each other in the fact that they stated that after the first meeting with their ward it differs a lot from youth to youth how the relationship develops. One public guardian explains:

Interviewer: So how often do you see the youths?

GG8: That differs a lot. Less frequently those where everything goes well. I see them once every six months. But there are very few where everything goes well. There are youths that I see twice a week. Especially North African youths I see very often. The housing institutions want to have a talk about house rules. Most of them are street children that are confronted with fixed rules and structures for the first time, which are of course way to tight for them. To be at home at nine o’clock, that’s when they were out on the street in Marocco. And of course there are going to be conflicts. [...] These conflicts are also related to the composition of the group – they are not exclusively living in homes specialized in separated children. There’s frequently the need for conversation.

Even though the guardians agree that the number of meetings depends primarily on the specific problems of the youth, there is apparently another factor that influences the frequency of meetings: a correlation seems to exist between the maximum time that elapses between the meetings and the type of guardianship. Public guardians might see their wards only once or twice per year. The associational guardian, however, stated that he sees his wards at the latest every 2-3 months, normally though he meets them about once a month. Also the professional guardian mentions three months as the limit of non-contact. It is difficult to make a general statement about the case of voluntary guardians. It is both possible that they meet 3 times a week or every other month. One voluntary guardian describes it as follows:

GG2: It’s difficult to say, with my last ward I tried, maybe not weekly, but at least to be in touch over the phone with the social worker. That for sure. And with the youths it’s like that, that the social worker – which I thought was really good – had established certain rituals, for example meetings with the youths at their flat share Tuesday afternoon, to discuss what’s pending. And I oftentimes tried to go to these meetings – independently from other appointments that came up, as with the Youth Welfare Office.

The frequency of meetings thus ranges from once a year to three times a week. To all appearances the number of meetings is generally decreasing the longer the youth has been in Germany.

How to get in touch with the guardian

It was an important question in the interviews how the youths could get in touch with their guardians. What are the channels they use to contact their guardian? And how available and easy to reach are the guardians? It became obvious that the respective social workers at the housing institutions are an important link between guardian and youth since they frequently are the ones who establish contact. One youth explained that

G12: 'I will come to the office here [at the housing institution (author's note)], and then after they will call [the guardian] and he will give me time.'

Only three youths reported that they themselves called their guardian. Considering which kind of guardian these youths had, this leads to the possibly unexpected conclusion that it does not necessarily depend on the type of guardianship. One of these youths that contacted his guardian directly had a public, the next one an associational and the last one a voluntary guardian. It seems to be more likely that the paths the youths choose depend more on variables such as their own personality (e.g. do they mind speaking to their guardian on the phone in broken German?); the information and if contact details were given to the youths in the very first meeting; or the relationship between youth and social worker or youth and guardian.

The guardian's professional distance

This section intends to portray tendencies concerning the kind of relationship that develops between child/youth and guardian. It seems therefore important to have a look at the topics that are discussed at meetings between ward and guardian. In Section 3.1., the scope of personal custody regarding separated children has been examined. The most central aspects of personal custody that guardians are being responsive to were explored: residence status, accommodation, health, and leisure time. Naturally, these are also central issues in the conversations between youth and guardian. We will now study two of these subjects – residence status and leisure time – from a slightly different perspective. This time, we will not go into the guardian's cooperation with other actors (e.g. consultation between guardian and lawyer about the youth's asylum procedure), but rather focus on the communication that takes place between youth and guardian.

Section 3.1. focused on procedural aspects of securing the youth's residence status (e.g. when is an asylum claim filed? Do guardians accompany their wards to hearings?). Here, in contrast, we are more interested in the following question: when ward and guardian talk about the youth's residence status, what do they talk about?

Again, it appears reasonable to relate the differing answers of the guardians to their caseload. In the case of the guardians with the greatest numbers of wards, a great part of the talks on the youth's residence status seems to be done in the very first meeting. They revolve to a large extent round the issues of travel route, the reasons for flight, the living conditions in the country of origin, in short: information that is asked in the hearings. Mistrust from part of the guardian regarding the credibility of the youth's story can be assumed to influence the conversation considerably. For the guardians with the greatest workload, the work related to the youths' residence status actually much more involves being in touch with other actors, such as lawyers or the Federal Office for Migration and Refugees, than to talk about it with the youths. One of the guardians mentioned that more conversations would be necessary. Yet, as he says, 'you would simply need much more time and that's what we just don't have'.

The four guardians with a caseload of 40-70 wards stressed the importance of being available for questions the youths have regarding their residence status. In the interviews, they emphasized that the fears and emotional distress related to an insecure residence status might lead to psychological diseases and have to be taken very seriously. One guardian describes

that she sometimes deliberates about whether to give the youths negative information or not. She tries 'to bring in reality in small drops, so they don't have a break down later on'. Occasionally she therefore consciously chooses not to forward negative information if the final decision has not been made yet.

GG9: Lately, there have been two cases of Afghan guys who received a notice of rejection and, for example, I didn't tell these young men for the time being that the notice of rejection came, but I filed suit. Because for the youths nothing changes. Both of them weren't psychologically well, so I thought why should I tell them, it doesn't change anything and otherwise they will just always have this rejection in mind.

The voluntary guardians that have been interviewed displayed considerable cautiousness when it came to talking about the youth's residence status and issues related to it, such as flight route, family or the youth's situation in the country of origin. One of the interviewees was not involved in the asylum proceedings at all, because his ward had a lawyer who supported him. The interviewees preferred not to dig deep into the youth's past and start a conversation on it but agreed that they would be more than willing to talk with their wards about it if they had the wish to do so.

Thus, it suggests itself that conversations related to the youth's residence status basically cover what is asked in the hearings at the Federal Office for Migration and Refugees. It would need much further investigation to draw watertight conclusions about how these conversations are lead by the guardian. However, from the accounts of the interviewees that have been outlined above, we can infer that guardians differ in how intensely they go into the youths' past and how responsive they are to their wards' fears and questions. The two most obvious explanations for these differences are, firstly, that some guardians are more limited in their time than others. Secondly, guardians appear differently sensitive and sensitized regarding the fears that might arise in relation to the youths' residence status. Both time and sensitivity/sensitization will have an influence on the relationship between youth and guardian, wherefore guardians should be have with sufficient funds of both.

Since we are interested in the relationship that develops between youth and guardian, we want to find out how much they know about each other. This paragraph will serve the purpose to explore if youth and guardian talk about how and with whom the youth spends his/her free time. It will also explore if and how the guardian influences the youth's spare time.

The young interviewees did not associate their guardian with the issue of leisure time. Only one girl mentioned that 'spare time' is one of the topics that are discussed at the helper's conference. To the question if he talked with his guardian about his friends, one youth replied:

G2: She doesn't have time for that. If I meet her, I talk to her for 10 or 5 minutes, then I go back home. I prepare everything if I have something that needs to be signed. I go there by bus, she signs it.

For the guardians in Hesse who are responsible for the youths during their first couple of months in Germany, it certainly is no top-of-the-list priority to get to know the youths by learning about them and their social environment or their interests (apart from the fact that the youths just arrived and their new social environment first has to develop). They have more urgent concerns, which explains why the topic did not really come up during their interviews. In Munich, both public and associational guardian brought up the topic of the youths' spare time. While the public guardian referred to it more as one aspect of the helper's conference, the associational guardian also described it as an issue that needs to be taken care of in between the *helper's conferences* in close cooperation with the social workers at the housing institution. He instanced as an example the case that a youth needs to be registered at a soccer

club and that social workers and guardian have to arrange who takes care of it. It is likely that in other locations guardians do not get very involved in this issue and the social workers settle the issue without having consulted the guardian. The associational guardian, however, finds it important to not just give his signature but to actively take part in the process of deliberating pro's and con's. He explains it as follows:

GG10: The question is, which soccer club does he go to, what makes sense. This is a process of discussion. [...] If one lives in [district 1], but has a friend who's in a soccer club in [district 2], then the question is what is more important and what makes sense for this youth. Does it make sense that he's integrated in [district 1] with the youths of the district since he is going to live there for a while or does it make sense for the youth, because he has incredible difficulties to get involved with anyone, that he goes to the same club as the only friend that he found in three years – despite the long journey and the fact that he will be late for dinner in his housing institution?

The examples regarding the leisure time of the youths show – again – that guardians handle the matter differently. This apparently depends on a number of variables, such as caseload and therefore pressure of work, if guardianship is temporary or follow-up, the personality of the guardian or the cooperation with social workers.

If one is interested in the two-sided relationship of guardian and youth, the question of how well the guardian knows the youth is logically followed by the question of how well the youth knows the guardian. What does the guardian reveal about him- or herself?

One guardian put it in a nutshell: nothin'. Even though not all guardians described themselves that close-mouthed and might, for example, answer questions about their own children, they all drew a clear line between their private and their professional life. Only the couple of voluntary guardians made the line permeable by inviting their wards to their house and taking them to family parties. One guardian brought in the useful distinction of 'private' and 'personal'.

GG10: I think [the relationship between youth and guardian – author's note] becomes personal, but not private. It is important to me that he knows I put my heart and soul in my job as guardian and I can get upset, but then it gets back to normal.[...] There is a personal relationship, but I wouldn't take any youth home. That would never occur to me. I'm quite clear on that. [...] The question is, where does 'the private' start. [...] Anyone can know, if he asks me, that I have two children. [...] But I would not divulge every conflict that I have with my children.

The relationship between guardian and youth consequently remains on a more professional level. Furthermore, the fact that youths have the possibility to complain about their guardian to an official body exemplifies that the relationship between youth and guardian is designed to be more professional than private. Youths have the possibility to appeal to the guardian's superior, the Youth Welfare Office or the Family Court. Only one guardian reported that his wards actually relatively quickly approach the Family Court if they are unhappy with his work, even though this tendency decreased lately.

When asked if they would like or would have liked to be in touch more frequently with their guardian, none of the youths voiced an enthusiastic 'yes, definitely'. Especially in consideration of the fact that the high caseload and the limited availability is often criticized by guardians and social workers alike, that might appear surprising, since the criticism suggests that more frequent meetings are desirable. So how can the little interest from the youths be explained? Once again, one of the reasons might be our specific sample that has been arranged partly by social workers who chose youths who had a 'good guardian'. If youths had a 'good' guardian, it is understandable that they did not feel the urge to see their

guardian more often. They had especially committed guardians who they lauded for being there for them whenever they were needed. The next group of youths did not request more contact with their guardian because their guardian had been a relatively distant figure. They generally were on rather good terms with their social workers (which in turn influenced the sampling). If youths had a good relationship to their social workers, they were supported by their social workers in many aspects and more involvement of the guardian was not necessary. Besides, the youths generally established contact with their guardians via their social workers. This means they might not even notice if a guardian is hard to reach.²⁰

It seems reasonable to suppose that the youths furthermore did not answer the question in the affirmative due to the only roughly defined tasks of the guardian and a lack of comparisons. If it is unclear what a guardian is there for, the demand of a more intense relationship with their guardian might feel like thinking the unthinkable. Besides, if the youths saw that guardianship could also be more intense than what they themselves experience, they might wish to be more frequently in touch with their guardian. That means, youths might place different demands on guardianship if they had other youths in their surrounding who had a more intense relationship with their guardian. For the time being, however, the interviewees wanted their guardians to be available when they needed them but did not voice that they wanted to see their guardians more regularly.

Bi-cultural relationship

Especially public, associational and professional guardians, who work with separated children on a daily basis, are day after day in touch with individuals from a broad range of countries of origin. The following section will examine how these diverse backgrounds are considered in the guardians' work.

First of all, guardians and youth do not speak the same mother tongue. Therefore the work with the youths naturally enough involves the cooperation with interpreters. For public, associational and professional guardians it is a standard procedure to get an interpreter if necessary.²¹ Guardians generally recur to a pool of interpreters. Occasionally, the role of the interpreter goes beyond translating: they can explain to the youths what the person opposite is there for, convey a positive image of the guardian and therefore reduce any fears and doubts. They can feed the guardian with background information on the country of origin or explain aspects of the youths' behaviour. At times, the affirmation or disbelief of the interpreter can influence considerably if the guardian considers the youth's story plausible or not.

The youths do not always find it easy to work with interpreters. Yet, if they reported difficulties in relation to the interpreters it was regarding the hearing at the Federal Office of Migration and Refugees and not to the meetings with their guardian. Some African youths who speak a very rare language might have to do all the interviews in English and could not express themselves in their mother tongue. It was noticeable that especially Afghan youths reported that in their hearings they often got Iranian interpreters not sufficiently familiar with the situation in Afghanistan. Even more serious is the feeling of the youths that the interpreter did not interpret correctly what they had said. In relation to the communication between youth and guardian, one youth described that the need for an interpreter impedes a trustful conversation that goes beyond the problems that need to be discussed. The comments regarding voluntary guardians slightly differed. On the one hand, one youth strongly criticized

²⁰ One youth criticized strongly that it was very difficult to get a hold of his guardian and that he always had to wait for 2-3 weeks before he could receive an appointment. Long waiting periods were very nerve-wrecking for him, especially if he had urgent questions about his asylum proceedings.

²¹ This is valid at the locations that have been included in this study. Shockingly, though, there are still locations in Germany where youths staying at the same facility serve as interpreters for newly arrived youths.

that he himself had to bring a friend who could serve as interpreter in the meeting with his guardian. Especially if such a sensitive issue like the asylum proceeding is being discussed, this can be particularly tricky. On the other hand, volunteers can respond to language difficulties in another way than public, professional or associational guardians: they might support the youths in their process of learning German and can be a valuable supplement to the youth's German class.

Furthermore, the guardians remained vague on how they obtain information on the situation in or cultural specificities of the youths' country of origin. The guardians addressed the issue of cultural differences non-uniformly, which can lead one to assume that they are differently sensitized to it. One guardian states:

GG2: Pffffff...of course there are language problems once in a while, but that eases off. After that it basically doesn't matter which environment they're from, right? That was MY experience, that the problems that come up are not related to their cultural background or their identity. It's basically always the same problems, such as going to school, right? Typical problems.

It seems like the guardian does not go much into the youth's particular biography to search for explanations and consequently solutions for the youth's reluctance to go to school. Others, however, find it important to learn about the youths' cultural backgrounds and to question one's own presumptions in order to put their work into a more realistic context. They might also change their behaviour depending on where the youth is from. One guardian, for example, describes:

GG7: What I do with Iraqi youths is that I'm very authoritarian, which I'm normally not, personally. Because one knows they are from a very authoritarian system where grown-ups don't negotiate much with youths or speak with them pedagogically, because they understand it immediately as an offer of negotiation if you start talking something over. Sometimes you just have to say 'enough'. Or sometimes they come with some note, 'call there', then I say 'just leave it here, I'll call them if I have time for it, I'll call you.' Otherwise they get the feeling I'm their secretary who's always following their demand and then you have to present yourself authoritarian.

Consequently, the cooperation with qualified interpreters is not always guaranteed. Besides, the consideration of cultural differences between youth and guardian is characterized by its heterogeneity.

3.3.6. The end of guardianship

Guardians mostly answered that guardianship ends when the youth turns 18. The majority of the guardians try to organize a final meeting. If financial funds are available, the youth receives a small present. In practice, however, there are more possible ends of guardianship.

First of all, youths might disappear. In this case, however, it is only possible to end guardianship if the whereabouts of the youth become known and/or a new guardian is appointed. Second, guardianship might be transferred to another guardian. As already mentioned above, amongst the locations that we focussed on in this study, this is especially the case in Berlin, Nuremberg and Hesse. In Berlin, public guardianship is brought to an end if a voluntary guardian is appointed. In Nuremberg, a professional guardian might replace a public guardian. In Hesse, follow-up guardians substitute temporary guardians. Third, some judges at the Family Court decide that guardianship can last until the youth turns 21 due to the fact that in some countries of origin this is the legal age.

Coming of age does not always mean that the relationship between youth and guardian must end. It depends on what their relationship and their sympathy for each other were like. In

some cases they continue to stay in touch. Out of the seven young interviewees who had already come of age, two were still in touch with their guardian. Even though the frequency of meetings had decreased, the two men held their former guardians in high regard and met them once in a while. One of them says:

G6: He has done so much for me. He was almost like a father. I'm still in touch with him. If I need anything or if I need some advice, I can always go there. He always finds time for me. [...] Just three weeks ago I met him [...] to talk...²²

The others were basically not in touch with their guardian anymore. Yet, one young woman was very happy to know that her guardian still asks her social worker about her wellbeing. After the interview, another young woman mentioned that she might ask her former social worker for her guardian's number to get back in touch with her.

3.3.7. Summary

In summary, it can be observed that local and structural conditions entail that the relationship between guardian and youth is designed and lived out in different ways: The appointment of the guardian lasts between one day and two months. For some guardians it is part of their work routine to meet each ward when they first get appointed; others might not manage to meet their new wards before an acute problem comes up or a 'helper's conference' is being scheduled. After the first meeting has taken place, youths might see their guardian three times a week or once times a year. In most cases, the youths' social workers arrange the meetings between youth and guardian; only some contact their guardian directly. In the meetings, guardians cater differently to the issue of the youth's residence status: while some concentrate on talking through the topics that will come up during the hearing, others try to be available if the youths have any concerns and want to talk about their fears. For some guardians, the youths' leisure time is comparatively unimportant. Other guardians, however, actually get involved themselves in the youths' leisure time by inviting them over to their house or taking them to family parties. The youths more or less agreed that it was not that important to them to spend more time with their guardians. Still, it has to be kept in mind that they all have very different starting points and that the frequency of their meetings with guardians differs. Also, the guardians' consideration of and sensitivity towards the youths' differing cultural backgrounds varies. Last but not least, also the end of guardianship is heterogeneous. It can end at the age of 18 or 21, when a youth appointed a new guardian or when a youth disappears.

3.4. THE CONTEXTUALIZED GUARDIAN

The success of guardianship depends only until a certain point on the person of the guardian. For example, the caseload determines the intensity and time that the guardian can devote to each ward. The Alien's Law establishes how the guardian has to deal with under- and over-16-year-olds. The considerable increase of youths arriving to Germany leads to a shortage of accommodation, which means that the guardian is constrained in his duty to provide the youth with adequate housing. Overstrained courts might delay the appointment of the guardian. These aspects are important to keep in mind, but they have been touched on above. Here we will rather give attention to the guardian's cooperation with third parties, such as social workers and the community/family. Due to the fact that this will portray even more precisely

²² Considering that public guardians are frequently criticized and described as very distant, it should be mentioned here that his former guardian was a public guardian.

the work of the guardian, it will provide us with important information in view of the ultimate aim of this study: to formulate standards for the work of guardians.

3.4.1. Guardian and social workers

When exploring the cooperation with social workers, three areas of collaboration should be considered: the cooperation with social workers at the reception centres, with the Youth Welfare Office and with social workers at the housing institutions.

Social workers at reception centres

The kind of contact that exists between reception centres and guardians differs from city to city. In Gießen, for example, where the Youth Welfare Office has its own department for separated children who are going through the reception procedure, the collaboration is logically very close. This is also made possible by the early appointment of the guardian. In Berlin, for example, where the appointment rarely happens while the youth is staying at the reception facility, contact is limited.

One important pillar in the cooperation between reception centre and guardian is a report that the reception centre is supposed to write for every youth. The way that personal custody is subsequently organized rests to a great extent upon this report. One guardian explained that he bases his decision about when to meet the youths for the first time on this report about their development. One of the guardians in Munich observed that the reports they receive for the 16- and 17-year-olds are much less detailed than the ones for the under-16-year-olds.²³ It can become very complicated and time-consuming to gather the necessary information that is not contained in the reports. Thus, the cooperation with the reception centres influences the work of the guardian when they first are appointed. The better the quality of the reports, the easier it is for guardians to efficiently go about the personal custody of the ward.

The Youth Welfare Office

All the guardians agreed that the Social Services of the Youth Welfare Office are, next to the social workers at the housing institutions, the institution that they most frequently are in touch with. It goes without saying that public guardians who are working next door to the Social Services (or who are working both as guardian and for Social Services) experience another kind of exchange than, say, voluntary guardians. A public guardian describes:

GG7: We have a very standardized task sharing regarding the newly arrived youths. The Social Service is responsible for accommodation, first meetings with the youths, the elaboration of the plan of who to proceed. It's obvious that we work very close together with the colleagues of the Social Services and that they consult us about their course of action they confer with us. [...] Besides that, we're in the same house. Social services and public guardianship. We might not sit next to each other, but of course conversations develop in passing, on the hallway, if we have reunions together, and then we settle basic questions, who does what, who takes over which task.

Even though the Youth Welfare Office in Frankfurt defined the responsibilities of Social Services and guardian, the division of tasks remains unclear for outsiders. That the distinction between public guardian and social services still becomes blurred in Hesse shows an example

²³ At the time of the study, the reception procedure for over- and under-16-year-olds in Munich was not uniform. They were housed in differing accommodations.

from another Youth Welfare Office in Hesse: one staff member of the social services informed that the report the guardian is supposed to write for the Court is generally actually written by the social services. The guardian adds, if anything, one sentence.

Due to the fact that responsibilities are time and again renegotiated, both youths and other actors often have difficulties distinguishing especially between public guardians and social services. The lawyer that has been interviewed explained:

GC1: Here in Frankfurt I don't perceive them as different, I only know one of them are the Social Services, the other one is the guardian, but the tasks that they cope with overlap.

One girl expresses her confusion about the differences between guardian and social services as follows:

Interviewer: Do you know if your social worker has ever called [your guardian] for you?

G8: Yes, many times. I think she calls my Youth Welfare office, Mr. [...]. Not my guardian. But guardian too. For example, the gastroscopy, or I was in the hospital, then he has to sign or something like that. And other things she calls my Youth Welfare Office. I think. But I don't really know.

A guardian portrays the situation like that:

GG1: Well, what happens quite often is that youths mix up the roles of Youth Welfare Office and guardian. That they think that I'm basically the cost bearer. [...]

Interviewer: How do you explain the difference to the youths?

GG1: Well, I tell them that I'm not a cash point and that I don't have a bank account, but that he gets his money from the Youth Welfare Office and if he has any problems with it, he has to sort it out with the Youth Welfare Office. And that it is more of my task to take care of legal questions.

Those guardians that are not as immediately in touch with the Youth Welfare Office (public guardians who work in another part of the city, associational guardians, professional guardians and voluntary guardians) are in contact with social services via telephone, mail or meet them at the *helper's conferences*. One public guardian even reported that he regularly sues the Youth Welfare Office if they reject to grant one of his wards youth welfare benefits. He thus finds himself in the awkward situation of taking legal action against his own employer.

The accounts of the youths showed that all kinds of constellations regarding the triangle youth–Youth Welfare Office–guardian are imaginable. While some contact their responsible social worker at the Youth Welfare directly with their concerns and requests instead of their guardian, others find the Youth Welfare Office intimidating and turn to their guardian before meetings to calm them down.

These examples/explanations underline that no uniform handling exists but that responsibilities are negotiated from case to case. As a staff member of the Youth Welfare Office said, 'the gaps are being filled'. The guardian is supposed to monitor the care that his wards receive. It is the purpose of this report to suggest standards for the work of guardians to make sure that the gaps are really being filled. A clearer description of tasks might help to reach that goal.

Social workers at the housing institutions

Due to the fact that the social workers at the housing institutions are the ones that are most frequently in touch with the youths, it is natural that they are a central contact person for the guardians. They inform the guardian in bi-yearly reports about the development of the youth.

Besides, they are most of the time the ones who contact the guardian if the unscheduled need for a meeting arises. The majority of guardians and social workers reported that, just as in the case of the Youth Welfare Office, the question of who does exactly what is frequently renegotiated. In some cities, such as in Frankfurt, it has been attempted to define the areas of responsibility of social worker and guardian. The guardians have elaborated a brief document that is continuously expanded and made more precise. It entitles the social workers of the housing institution to represent the guardian in the 'matters of everyday life'. It asks to construe these issues extensively – as long as they appear 'reasonable'. A list of situations where the entitlement applies is given.²⁴ 'Decisions of substantial importance' are excluded. Both this comprehensive list of responsibilities and the information given by the social workers suggests that the aspect of care that forms part of personal custody is basically entirely transferred to the social workers. Because of this wide-ranging shift of responsibility, it does not surprise much that in principle the social workers themselves suggest that they are much more important to the youths than the guardians. Several youths confirmed that they feel much closer to their social worker than to their guardian.

G7: I really have to say, Ms. [name of the social worker] helped me with everything. She helped me so much. I can never forget in my life. Really, I started from zero and this woman completely...until now she helps me. [...] Because of her I made it through my apprenticeship, if she wasn't there, everything would have been much more difficult. [...] She's the best woman.

Even though the great majority of young interviewees had a close relationship to their social workers, it has to be noted that, naturally, it is not always like that. One girl, for example, described that she did not have much sympathy for her social worker. She explained that she confided much more in her guardian who she regularly turned to. Some youths perceived the guardian as a valuable alternative:

G13: If I have problems or if I'm sad, I can go to my guardian. But in my case, because I have Ms. [...], my social worker, she's always closer to me, so I go to her. But if I'm not that friendly with my social worker, then I go to my guardian.

Also some guardians mentioned the interdependence of the relationship between youth and guardian or between youth and social worker on the respective other.

GG10: It sometimes depends somewhat on what the harmony between youth and guardian, thus the purely emotional, is like and on the other side between social worker and youth. And if it is very close between guardian and youth and it is just somewhat more difficult between youth and social worker, then [the youth] is simply here more often. The exchange between guardian and social worker is in both cases important. And also that it is clear that there's no competition. And if it is easier for the youth to tell ME and not the social worker that he has night mares, then it doesn't hurt no one.

Yet, not just guardians feel the repercussions of the youth's housing on their work, also the social workers mentioned that their workload alternates, depending on whether the guardian is a public, associational or voluntary guardian.²⁵ In Munich, for example, social workers observed that they are more needed if a youth has a public guardian than if he has an associational guardian. It was curious that the comments on the cooperation with voluntary guardians differed quite a lot. Some social workers felt overly controlled and found it much

²⁴ See appendix.

²⁵ None of the social workers had experiences with professional guardians wherefore they are here left aside.

more exhausting to work with voluntary guardians than with public guardians. Others, however, highly appreciate the work of voluntary guardians because they are more available and might help out when it comes to accompanying the youth to the doctor or the Alien's Department.

Another aspect that can influence the cooperation between social workers and (public) guardian is the simple fact that housing institutions have to keep their economic efficiency in mind and need to make sure that they are 'fully booked'. Consistent exchange and good relations with guardians are thus important for the social workers. Otherwise guardians might decide that it is better not to house wards at a particular organization anymore.

Summing it up, the kind of accommodation next to the interpersonal relation between social worker and youth thus influences the work of the guardian.

3.4.2. *Familial and communal bonds*

Despite the fact that the guardians work with *unaccompanied* minors, it does not mean that no familiar person of the youth is within reach. It merely implies that the person(s) who is/are responsible for personal custody are not present. One social worker of a Youth Welfare Office opines that more than half of the separated children have relatives in Germany. The views on the involvement of relatives differ: while some criticize that it is still frequently (deliberately) neglected that relatives might want to have a say in the care of the youths, others opine that relatives actually deliberately avoid being involved because they fear additional costs. The consideration of the presence of fellow countrymen is also important for another reason: it should not be forgotten that being in touch with the other members of the 'diaspora' might make Youth Welfare a tightrope walk for the youths as they have to balance between the German and the native 'webs of meanings'. Differing views on education and a successful transition into adulthood might locate the youths in between two poles. This is certainly an important aspect to be considered; yet, the interviews with the youths had another focus and a non-speculative exploration of this matter would require further investigation. Some guardians, however, touched on the issue of cooperation with relatives and fellow countrymen. The matters they brought up will be outlined below.

By and large, guardians tend to consider the cooperation with relatives to be problematic. Transferring guardianship to a relative is most of the time not seriously pursued. The guardians explain that this intention is generally discarded rather quickly because the relatives do not speak German well enough or are not familiar with German authorities. Besides, they report that relatives promptly lose interest once they comprehend how much work and responsibility is tied to being a guardian. The public guardian in Berlin reported that he noticed that relatives frequently want to adopt Bangladeshi, Indian and Pakistani youths. He himself has a critical attitude towards the adoptions, but the last instance to decide on it is the court.

Moreover, some guardians actually like that in their work with separated children they mostly do not have to deal with the families of their wards:

GG5: As bad as everything always is, we have the great advantage that when these youths come and they are alone then it is really horrible for them, but it makes it easier for us. There's no grandma, no aunt that constantly calls here, "the father has done that today, the mother has done that, you have to have a look!". [...] Or abuse within the family, that worried me a lot [when she was working as a guardian for German children – author's note]. [...] So in that sense it's easier. But then there are other things that the other guardians don't have to deal with.

The guardians often feel like the cooperation with relatives involves pressure and the demand to become more active. Especially the residence title of the youth is an issue of great concern

for the relatives and they want to make sure that the guardian tried everything possible. Sometimes, though, they ‘attribute power to the guardian that we don’t have’, one guardian explained.

Being in contact with relatives or members of the community might not only make guardians feel pressured but also the youths themselves. One Afghan girl who feels very lonely in Germany clarifies why she prefers not to meet other Afghans:

G15: I can’t go with Afghan people. Everyone asks, “why are you here? Why do you come here? Why are you alone?” I can’t tell them. Because Afghan people think differently. Say, yes I’m here alone and then they think something else. I don’t want to tell. If I go for example with an Afghan woman, then her first question is, why are you here. Why are you alone? Are you alone or with your family or something else? I don’t want to tell, ok? I don’t want others to think badly about me. To think badly about me. I’m so sad here.

The matters mentioned so far point at difficulties that might arise because of the youth’s relatives or fellow countrymen. It should not be forgotten, however, that closer cooperation between Youth Welfare and kinsmen holds the potential of making personal custody more adequate for the youth. A better understanding of the youth’s background can be gained. Cooperation could help to deal in a more effective manner with the fact that the youth might find him in between two contrary perceptions on education and coming of age.

3.5. THE INGREDIENTS OF A ‘GOOD’ GUARDIAN

The description of the guardian and his work should suffice to make a good portion of the institution’s mysteriousness disappear. Still, the second question that was asked in the introduction remains puzzling and could do with some more dissection: we might know now what a guardian is. But what is a ‘good’ guardian? What are the qualities that separate the wheat from the chaff? ‘Good question, next question’ was the answer of one guardian. Nevertheless, all the interviewees had something to say about it. They named a range of ‘ingredients’, none of the issues of concern of the respondents being identical. In this chapter we will thus fuse all the suggestions together and bake the ‘perfect’ guardian.

The choice to give each statement of the interviewees the same weighting seems a very reasonable approach to sketch out ‘good’, thus ‘quality’ work – basically, because a universally valid definition of ‘quality’ is missing. We generally speak of ‘quality’, if certain pre-established goals are reached or standards fulfilled. In the case of guardians of separated children, no such agreed-upon guidelines are given. Actions cannot be judged by specified assessment criteria. One could think of several ways of how to define quality guardian work. Does a guardian do good work if he complies with international treaties? Or if he orientates his work on the ‘best interest of the child’ (after he identified what the ‘best interest of the child’ is)? And is it not more likely that, from a child’s point of view, a guardian does ‘good’ work if the child’s wishes are fulfilled (even though that might collide with the ‘best interest of the child’)? In the special case of separated children, a guardian might also be said to have done ‘good’ work if he obtained a secure residence status for his ward. This, however, is often not within his power. Thus, for lack of assessment criteria, we will now summarize all the requests made by the interviewees. They will then contribute to the project’s ultimate aim to formulate the standards that are currently missing.

3.5.1. The youths’ recipe

The youths mentioned some very down-to-earth aspects that make a guardian a good guardian in their opinion. Basic rules of kind, respectful and considerate communication are very important to most of them.²⁶

It was crucial to the youths that the guardians were *friendly*. *Jokes* help to break the ice. If meetings are only serious and about problems, they are likely to be perceived as very tiring. If the guardian manages to find a way to communicate in a more relaxed manner, the youth is more likely to open up and care can be optimized. The way the guardian leads the conversation is consequently very relevant and its importance goes beyond the specific situation of the meeting.

One aspect that is vital for the relationship between youth and guardian is if the youth manages to *trust* his/her guardian.

G6: It took a while before I trusted anyone. The first person that I trusted was my guardian. Yes, he was the first one. The social workers came later.

Interviewer: Why did you trust your guardian?

G6: I just felt good with him, he...he understood me so quickly. There were questions that I didn't want to answer, that I didn't want to talk about, the topic, and he just asked very slowly, with time, he just spoke about something else, so sometimes I even forgot about my asylum.

It is very important to establish a trustful relationship. Yet, it seems impossible to put down in words how it is done. In the case of this youth, it was closely related to the guardian's sensitive approach to the youth's past. It is frequently mentioned by professionals that separated children have more difficulties than other youths of the same age to trust their guardian. This is related to deceptions and breaches of confidence they might have experienced, be it in their countries of origin, on their journey or during their first days in Germany as they were in touch with a number of authorities.

Besides, the youths appreciated the guardian's *reliability*:

G14: When I have a problem [my guardian] is always there for me. She's always there. I can say, she's the best social worker. She was the best social worker. My best guardian. If I call her, she's always there, you understand? She doesn't say I don't have time, I'm busy, she looks for a day, ok, I come this week, I come today or tomorrow. Because that's important, that a guardian is always there for me.

The guardian's reliability, thus knowing that the guardian will be there for the youth, is closely related to his/her *availability*. In case a guardian is occupied, one youth suggests the following:

G13: Some guardians just say, I don't have time. And some [youths] say, I have tried for one month but I could not make an appointment with my guardian. "I don't have time" and stuff like that. Then I think if a guardian is very busy, then Youth Welfare has to organize a substitute guardian.

A guardian can also *take away or reduce fears* by being there as support for the youth:

G14: She comes, she visits me and asks, "how are you now? Bad, not good? You have to say the truth. Don't be afraid of anyone, I'm your support. Don't be afraid."

This quote already hints at another issue that was mentioned by the youths: that their guardian *asks* how they are and shows that he *cares* about them. The interviewees appreciated if they

²⁶ For reasons of readability we will speak of ,them' even though the aspect might have been mentioned by only one youth.

noticed that their guardian was involved and interested in their lives. They observed if their guardian just sat there during the ‘helper’s conference’ or if he gave them advice and suggestions.

As put forward in the beginning of this paragraph, the youths’ remarks on the ‘good guardian’ circle around the guardian’s style of communication with them. They bring up the importance of being friendly, creating a relaxed atmosphere by making jokes, being reliable and available, being attentive to their fears and asking about their wellbeing.

3.5.2. *The guardians’ recipe*

The guardians’ understanding of who is a ‘good’ representative of their profession covered a broader range of aspects. Bringing all the statements of the guardians together, ‘good’ work is related to his/her expert knowledge and a number of personal qualities.

As described above (cp. Section 3.3.), it is problematic to stipulate that all guardians should have the same formation. Asking the guardians for their opinion on a ‘good’ guardian, it became even clearer that it is tricky to assume that demanding one particular *formation* can increase quality. One reason for this conclusion is that, as yet, no study course exists that would impart precisely the knowledge that a guardian needs for his work. Rather, ‘you have to know everything. You have to be a doctor, a lawyer, a social education worker and an administration specialist’, one guardian said. Another guardian rendered the necessary legal knowledge more precisely by explaining that acquaintance with the right of residence, the criminal law relating to young offenders, and the regulations of youth welfare are necessary. A third one complemented that a guardian needs an understanding of the youth’s countries of origin and the capability to make out problems that have to be lead back to the different cultural backgrounds of youth and guardian. Some guardians did not want to make it a condition of employment, but they pointed out that experiences such as having children of their own or having worked as a social worker stood them in good stead for their current job.

The guardians furthermore gathered a number of guiding principles that would make a guardian’s work ‘good’ work. One of the principles that were mentioned corresponds with the task description of the legal texts: Some guardians repeated that a ‘good’ guardian has to be *partial* with his wards. Yet, most of them broached the difficulties that partiality brings along at one point or the other during the interview. For example, when is one being partial, when overly permissive? How should the guardian deal with the ‘best interest’ of the child vs. the ‘wish’ of the child? Besides, one guardian pointed out that a ‘good’ guardian should not accept decisions of authorities if they are disadvantageous for the youth. The possibility to *fight against rulings* should be seized. It was brought up by another guardian that it should be a main principle of the guardian’s work to *know the youths* or at least make an effort to get to know them. He especially put this in relation to knowing their problems. As last point to this certainly not exclusive list of principles should be added, that some opined that a ‘good’ guardian gives his wards *moral support*.²⁷

Next to the demands regarding knowledge and principles for their work, the guardians made out a number of requirements that are linked to the person of the professional. Having a *stable personality* was named as one prerequisite for the work of the guardian. When asked what they would recommend to a new colleague, the guardians’ advice was simple: don’t panic. The must of a stable personality is assumed to help dealing with confrontations and accusations. A doubting character might also make it difficult to distinguish when the youth has a problem with the person of the guardian or with the whole system that he finds himself in.

²⁷ See Rütting (2009: 75) for more principles.

The guardians listed aspects that were similar to the expectations the youths have of a ‘good’ guardian and referred to the communication between youth and guardian. Generally, the interviewees would like professionals who are working as guardians to have a *keen sense for their fellow human beings*. Moreover, they consider it important to be *open* towards all kinds of concerns that the youths want to contact them about. That includes *taking seriously what might appear trivial* to the guardian. As a simple but vital characteristic of the guardian they named the ability to *listen*. They further brought in the key word *empathy* and consequently the capacity to put oneself in the position of the youth. Last but not least, a ‘good’ guardian should not expect too much thankfulness from his wards.

The interviewees also had suggestions regarding the guardians’ way of working. In order to cope at least roughly with the often-immense workload, the guardians should know how to *manage their time well* and to be *organized*. Considering that their work brings along unexpected developments and the need to be available when a youth is in crisis, the guardian additionally needs a healthy portion of *calmness*. The ability to deal with unanticipated situations in a *flexible* way is furthermore indispensable. One interviewee furthermore stressed that a guardian should not have difficulties *making decisions*. It has also been suggested that the guardian should not have inhibitions about *asking his colleagues* or other experts for help if he is at his wits’ end.

In summary, the guardians’ ideas of a ‘good’ guardian revolved around different axes: the guardians’ formation and expert knowledge; respecting certain principles of work; the way of communicating with the ward and the abilities it needs to manage one’s workload successfully.

4. CONCLUSION

The introduction of this report asked for the intrinsic tasks of guardians of separated children. It did not only raise the question *what* guardians actually do, but also *how* guardians need to carry out their job in order to do it well. In order to gain insights into both flaws and best practices, the report set out to provide the reader with a thorough understanding of the system of guardianship for separated children in Germany.

Comparing legally prescribed and actually performed tasks rendered the current shape of the institution more precisely. It has been a central conclusion that there is no uniform way of how guardians assume their tasks. The Civil Code establishes that the guardian has to care for the ‘person and the fortune of the ward’ (§ 1793 (1) BGB). Personal custody comprehends ‘the duty and the right to care for, to educate, to supervise the child and to determine the place of residence of the child’ (§ 1631 (1) BGB). The fact that the duties are only roughly outlined is one reason why guardians respond to them differently. In addition, there are three forms of guardianship: individual, associational and public guardianship. Each offers the guardian different possibilities of how to exercise ‘personal custody’. A crucial distinguishing feature of the different types of guardianship is the caseload. The number of wards directly influences how guardians can attend to their tasks. Overwrought guardians – in practice mostly public guardians – easily feel impelled to focus on the most urgent matters only and to transfer tasks to third parties. They are frequently criticized for not being hard to get a hold of and being absent in the lives of the youths.

How guardians carry out their tasks does not only depend on the type of guardianship. German Youth Welfare is organized to an important extent on the communal level. Municipalities have considerable leeway in establishing a system of guardianship with a personal note. Local systems developed that differ to a greater or lesser extent from each other. One important difference is the cooperation with third parties. Social workers at reception centres write (differently detailed) reports about the youths that are a significant

base for the guardian's work and shape how he organizes personal custody. Pedagogic personnel at the housing institutions are responsible for the matters of everyday life and the youths frequently feel much closer to them than to their guardian. It could be observed that the kind of accommodation and the relationship between social worker and youth influence the relationship between guardian and youth. Youth Welfare Office and guardians regularly renegotiate their tasks, which frequently causes confusion amongst youths and other actors. The proximity between Social Services and guardian differs, but goes at times so far that it is hard to distinguish one from the other. The cooperation with relatives or other members of the youth's community is to date rather limited.

Even though the local division of tasks might work well at certain locations, it can be questioned if this is the case everywhere that all the gaps are always being filled. The results of the project suggest that a clearer task description is necessary. It should be stressed that the guardian has the important task to monitor the kind of help his ward receives and to pull all the strings to provide the youth with what he needs.

Taking care of the youth's *residence status* is one of the tasks that are frequently ascribed to guardianship by both youths and guardians. Yet, the intensity with which guardians attend to this issue depends on factors such as the involvement of lawyers, the youths' country of origin or the guardian's evaluation of the prospects of success of, say, the asylum procedure. Also, if guardians accompany their wards to the hearings at the Federal Ministry of Migration and Refugees is not standardized. This is on the one hand strongly influenced by the 'capacity to act' as established in the Asylum Proceedings Act, on the other hand by the caseload of the guardians and therefore the time they have at hand to go with the youths. The guardians also differently handle taking care of the youths' *accommodation*. Yet, the guardian is basically responsible of monitoring the issue. The search for suitable housing is basically transferred to social workers of the Youth Welfare Office. Guardians might come in if the youth is unsatisfied with his housing. Regarding the youth's *health*, immediate care is transferred to the social workers of the housing institution. Guardians have to give their consent in case of surgery or other important interventions and might accompany their ward to an appointment at the doctor if no social worker is available. The youths did not associate their guardian directly with their *education* – even though this is a very important aspect for most guardians. They discuss the matter in helper's conferences in order to find out if schooling is adequate. From the viewpoint of the youths, the guardian thus works mainly in the background. Furthermore, guardians might see it as their task to monitor the youth's *leisure activities*. Also this topic seems to be of differing importance to the guardians. It has been shown that there is a great heterogeneity of how the guardians respond to the topic of leisure time, which is both influenced by the type of guardianship and the guardian's personality.

Non-uniformity of guardianship also runs through practicalities such as the appointment of the guardian, the first meeting between youth and guardian and the frequency and intensity of meetings after the first reunion. Again, caseload and therefore the guardians' availability play a vital role in all these aspects. Public guardians tend to see their wards less frequently than associational, professional or private guardians. Most youths get in touch with their guardians via their social workers at the housing institutions. Considering that, one can assume that difficulties at the housing institution might not be communicated to the guardian. Also the end of guardianship does not always proceed in the same way: guardianship might end if the youth disappears, gets a new guardian, and turns 18 or 21.

After having explored the task area of the guardian, the focus was shifted to qualities of the guardian that are perceived as positive. We distinguished if statements were made by the youths or by the guardians. Youths stressed the importance of how guardian and youth communicate. They broached the significance of being friendly, creating a relaxed atmosphere by making jokes, being reliable and available (especially in relation to questions regarding their residence status), being attentive to the youths' fears and asking about their

wellbeing. The guardians' accounts of a 'good' guardian revolved around four axes: the guardians' formation and expert knowledge; respecting certain principles of work; the way of communicating with the ward and the abilities it needs to manage one's workload successfully.

Guardianship for separated children is a complex matter. The above mentioned vague legal description of tasks, coexisting systems, varying interpretations of the role by actors in the field and differing needs of the wards make it a challenge to formulate generally valid standards for the guardians' work. To make sure that all these factors are considered adequately, 'experts' with different experiences and viewpoints on the issue have – directly or indirectly – been included in the elaboration of recommendations.

First of all, both youths and guardians interviewed in the course of this project offered fundamental insights regarding the demands that should be placed on guardians. Some questions asked in the interviews were targeted directly on what the interviewees thought are necessary qualifications of the guardian. The answers given were summarized in the subchapter on 'good' guardianship. Yet, notions of a 'good' guardian came up at other parts of the interviews as well. These perceptions were collected and grouped thematically. They hinted at issues such the formation of the guardian, the work routine of the guardian or at structural conditions of guardianship. The recommendations presented below are based on the four main themes that emerged from the interviews. Still, it needs to be kept in mind that transitions from one division to the next are fluid and recommendations could be grouped under different headings.

Second, the National Advisory Council played a crucial role in drafting the recommendations. The different backgrounds of its members made it a competent advisory body. Already before interviews were analysed, the National Advisory Council brainstormed on possible standards which were, at a later point, related to the results of the interviews with youths and guardians. The conclusions were incorporated in the first draft, which was – just like the second draft – discussed with the members of the Council.

Third, after having identified the issues of importance for guardians of separated children in Germany in a first draft, the results were compared with guidelines for guardians developed in 1999 by the *Landschaftsverband Westfalen-Lippe*. Public guardians had elaborated the document to support guardians in their daily work and to increase the quality of guardianship. The guide can be seen as a cornerstone regarding guardianship in Germany, considering that it is still referred to in more recent publications. Comparing the recommendations drafted in the scope of the project at hand side by side with the guidelines of 1999, attention was drawn to matters that still needed to be included.

The recommendations that generated from the interviews, discussions of the National Advisory Council and the guidelines of the *Landschaftsverband Westfalen-Lippe* are to be found below.

5. RECOMMENDATIONS FOR GUARDIANS OF SEPARATED CHILDREN

I. Recommendations derived from the legal texts

The general conditions of guardianship in Germany are marked out by the legal texts. Even though the description is quite broad, several (conclusions about) fundamental responsibilities for guardians of separated children can be drawn from it.

1. The guardian has to comply with the duty of the legal representation of the ward in all relevant areas of the ward's life (cp. § 1793 (1) BGB).
2. The guardian has the right and the duty to care for the person and the fortune of the ward (cp. § 1793 (1) BGB). The personal custody comprises in particular the duty and the right to care for, to educate, to supervise the child and to determine the place of residence of the child (§ 1631 (1) BGB). The guardian is consequently responsible for the child's physical and psychological well being.
3. The child should be involved in all the important decisions concerning its life. The involvement has to correspond with the child's stage of development (cp. BGB § 1626 (2)).
4. The guardian can delegate his/her power of decision regarding issues of the child's everyday life to third parties, such as social workers at the housing institutions (cp. BGB § 1688). Being the ultimate responsible for the personal custody of the child, the guardian therefore has to monitor the issues where he delegated power to third parties.
5. According to §1793 BGB, the guardian is responsible for the child's care. The guardian therefore has to ensure that the separated child is adequately supported and represented in matters concerning the residence status and if applicable the claim for asylum.
6. According to §1793 BGB, the guardian is responsible for the child's care. In the case of separated children, he thus has to ensure that the child gets sufficient support to learn the language of the country of residence.
7. According to §1793 BGB, the guardian is responsible for the child's care. The guardian therefore has to make sure that the child is taken care of in regard of the wards health.
8. According to §1631 BGB, the guardian is the responsible for the child's education. The guardian therefore has to ensure that adequate schooling is found.
9. According to § 1631 BGB, the guardian is responsible for the kind and location of accommodation. The guardian therefore has to examine if accommodation and care that is provided is adequate for the child.
10. The guardian is accountable to the Family Court (cp. § 1839 BGB).
11. The Family Court monitors the work of the guardian (cp. § 1837 BGB).

The guardian has to legally represent the child.

The guardian is in charge of the child's personal custody.

The guardian has to involve the child in decisions regarding the child's life.

The guardian has to ensure that the child receives adequate education, language training, health care, accommodation and support in matters regarding the child's residence status.

II. Recommendations regarding attitudes and qualities of guardians for separated children

The law mandates the guardian to take over personal custody of the separated child (cp. § 1793 (1) BGB; § 1631 (1) BGB). Yet, he does not act independently of the child but rather has to involve it in important decision-making processes (cp. BGB § 1626 (2)). In order to be able to act in the best interest of the child, the guardian has to know and communicate with the child. The way the guardian converses with the child has great repercussions on the success of the guardian's work. To fulfil this task in a sensible manner, the guardian should have certain attitudes regarding the contact with the child. The guardian should

1. Treat the child respectfully.
2. Treat the child with an unprejudiced, open attitude.
3. Make an effort to get to know the child and to create a trustful relationship.
4. Know how to approach young people and how to communicate adequately verbally and non-verbally. The guardian should therefore
 - a. Show interest in the child's life by asking questions without being too obtrusive.
 - b. Be attentive and actively involved by giving constructive suggestions especially during 'helper's conferences'.
 - c. Listen to the child's concerns and take them seriously, even if the matter might seem trivial to himself.
 - d. Not only pay attention to the factual, but also the emotional communication.
5. Be there for the child. The guardian should therefore
 - a. Regularly show his/her presence.
 - b. Be reliable.
 - c. Especially take time when the child has an urgent concern.
6. Be empathetic towards the child and give moral support. Considering that separated children find themselves in a very particular situation, the guardian should
 - a. Make an effort to put himself in the position of the child by keeping its particular experiences in the past and the current living situation in mind.
 - b. Be especially attentive to fears that relate to the child's flight.

Next to these aspects regarding the communication between child and guardian, the guardian should have specific knowledge and certain qualities/abilities to successfully fulfil his tasks. The guardian should

1. Have practical experience and theoretical knowledge on administrative and legal issues²⁸.
2. Have psychological, pedagogical and sociological knowledge.
3. Have intercultural competences.
4. Be acquainted with processes of migration and flight.
5. Have experiences regarding manners and structures in administration and judiciary.
6. Have experience in supporting and counselling children in difficult life situations.
7. Have a stable personality to deal with wearing situations, frustrations and hostility/pressure through third parties.
8. Be well organized and know how to manage his time.
9. Be flexible to adopt strategies and actions to the needs of each child and to be able to handle unanticipated occurrences.
10. Be willing and able to quickly acquire knowledge in areas that the guardian is unfamiliar with.
11. Be aware of cultural differences and be willing to acquire (basic) knowledge on the country of origin of his ward.
12. Be willing and able to cooperate and negotiate with third parties.
13. Be willing and able to make decisions on his own authority and assume responsibility. Important decisions about the person of the child should be discussed with the child. The guardian has to make his actions transparent.
14. The guardian should reflect on his action, his role and his own motivation.
15. The guardian should be aware of his professional and personal limits. He should therefore have the ability to get support or counselling from other professionals.

The guardian has to make sure that the communication with the child is respectful and sensitive.

The guardian should be easily available for the child.

The guardian needs to fulfil certain professional and personal requirements.

III. Recommendations regarding the guardian's work routine

Next to general attitudes and qualities that the guardian should display, the guardian should respect recommendations regarding processes of work. In this way, he can influence the success of the system of care and optimize the personal custody of the child.

1. It is very difficult for the child to understand what a guardian is and what he can contact him for. The guardian should meet each child when he gets appointed and explain in a child-friendly manner what a guardian is. Specific material can be used to explain his role to the child.
2. Social workers at housing institutions often function as link between child and guardian. Especially in the first meeting the guardian should provide the child with his contact details and the information that the child can contact him when necessary.

²⁸ In Germany, that would be esp. BGB, SGB I, VIII and X, FamFG, ZPO, AsylVerfG, AufenthG, administrative law.

3. Hearings at the Federal Office of Migration and Refugees are generally a stressful experience for the child. The guardian should prepare the child and accompany it to the hearing. Alternatively, he should make sure that a competent substitute takes over this task. No distinction shall be made between over- and under-16-year-olds.
4. In order to successfully fulfil the task of personal custody, the guardian should know the other actors who are directly involved in the education of the child. Regarding the collaboration with third parties, the guardian should
 - a. Make sure that responsibilities are clear and that ‘gaps are being filled’. A document should be elaborated that records responsibilities of the Youth Welfare Office and pedagogic personnel of the housing institutions in relation to the guardian.
 - b. Contact the relatives of the youth, inform them about his role and cooperate with them.
 - c. Be partial with the child towards third parties. Yet, the guardian should be capable of discussing issues with the child and not avoid confrontations.
5. The guardian should not avoid confrontations with authorities and fight against rulings that are not in the child’s interest.
6. The guardian has to know the child personally. Taking part in ‘helper’s conferences’ is absolutely necessary. Yet, meetings should also take place beyond the ‘helper’s conferences’.
7. The guardian should be easy to reach for the child. He should be available whenever the child has questions about its residence status. Long waiting times for an appointment are not tolerable.

The guardian has to inform the child about his role.

The guardian has to support the child in securing his/her residence status.

The guardian has to monitor the work of other actors and partially represent the child.

The guardian has to know the child.

IV. Recommendations regarding the structural condition of guardianship

1. The time that passes until a guardian is appointed and can start his work differs greatly between locations. The maximum time that passes between the child’s arrival and the appointment of the guardian should be no more than 10 days.
2. The guardian should take part in a basic training course before he starts work. This course should contain training in legal, pedagogical, psychological and sociological matters. Furthermore, intercultural competences should be dealt with.
3. The caseload of the guardian influences the quality of his work considerably. The number of wards should be reduced to 20-30 for full-time guardians. The following criteria should be considered when determining a guardian’s caseload:
 - a. Complexity regarding the personal story of the child
 - b. Necessary frequency of meetings between guardian and child
 - c. Frequency of contacts to
 - i. The Youth Welfare Office
 - ii. Social workers at the housing institutions
 - iii. Federal Office of Migration and Refugees

- iv. Teachers
- v. Physicians
- vi. Judges and judicial officers
- vii. Others
- d. Frequency of reports
- e. Distance between office of the guardian and accommodation of the child

The prompt appointment of the guardian has to be guaranteed.

The guardian has to be trained before starting his work.

The guardian's caseload has to be adequate and manageable.

6. Bibliography

AGJ, 2010.

Arbeitsgemeinschaft für Kinder- und Jugendhilfe (AGJ). *Referentenentwurf eines Gesetzes zur Änderung des Vormundschaftsrechts. Stellungnahme der Arbeitsgemeinschaft für Kinder- und Jugendhilfe – AGJ.* Berlin: AGJ, 2010.

Arbeitsgruppe 'Familiengerichtliche Maßnahmen bei Gefährdung des Kindeswohls - § 1666 BGB, 2009.

Arbeitsgruppe 'Familiengerichtliche Maßnahmen bei Gefährdung des Kindeswohls - § 1666 BGB. *Abschlussbericht.* Berlin: Bundesministerium der Justiz, 2009. http://www.bmj.de/files/-/3908/Abschlussbericht_Kindeswohl_Juli2009.pdf, (visited on 17.08.2010)

Babbie, 2010.

Babbie, Earl. *The Practice of Social Research.* Belmont: Wadsworth, 2010.

Berthold and Espenhorst, 2010b.

Berthold, Thomas; Espenhorst; Niels. 'Alt aussehen lassen.' *Hinterland* No. 14 (2010): 47-49.

BPB, 2010.

Bundeszentrale für politische Bildung (BPB). *Träger der öffentlichen Verwaltung.* http://www.bpb.de/themen/YHCI2T,0,0,Tr%E4ger_der_%F6ffentlichen_Verwaltung.html, (visited on 21.09.2010).

B-UMF e.V., 2008

B-UMF e.V.. *Machen wir's den Mündeln Recht? Perspektiven und Möglichkeiten der Vormundschaft für unbegleitete minderjährige Flüchtlinge.* München: B-UMF, 2008.

B-UMF e.V., 2009

B-UMF e.V.. *Standards für den Umgang mit unbegleiteten minderjährigen Flüchtlingen. Handlungsleitlinien zur Inobhutnahme gemäß § 42 SGB VIII.* München: B-UMF e.V., 2009. <http://b-umf.de/images/stories/dokumente/handlungsleitfaden-4.auflage-2009.pdf>, (visited on 17.08.2010)

B-UMF e.V., 2010

B-UMF e.V.. *Inobhutnahmen von UMF im Jahr 2009. Eine Auswertung des Bundesfachverband UMF e.V.* 2010. <http://b-umf.de/images/stories/dokumente/inobhutnahmen%202009%20b-umf.pdf>, (visited on 30.09.2010).

Bundesministerium der Justiz, 2009.

Bundesministerium der Justiz. *Referentenentwurf. Gesetz zur Änderung des Vormundschaftsrechts.* Bundesministerium der Justiz: Berlin, 2009.

http://www.dijuf.de/de/foren/vormundschaft/RefE_Aenderung_Vormundschaftsrecht_04_12_2009.pdf, (visited on 17.08.2010).

DIJuF e.V., 2010¹.

Deutsches Institut für Jugendhilfe und Familienrecht (DIJuF) e.V., *Zum Referentenentwurf zum Gesetz zur Änderung des Vormundschaftsrechts vom 04.12.2009*. DIJuF: Heidelberg, 2010.

DIJuF e.V., 2010².

Deutsches Institut für Jugendhilfe und Familienrecht (DIJuF) e.V., *DIJuF Forum Vormundschaftsrecht*. <http://dijuf.de/de/foren/vormundschaft/index.php>, (visited on 12.09.2010).

Dieckhoff, 2010.

Dieckhoff, Petra (ed.). *Kinderflüchtlinge. Theoretische Grundlagen und berufliches Handeln*. Wiesbaden: VS Verlag für Sozialwissenschaften, 2010.

Gerhard, 2010.

Gerhard, Dagmar. „Mama Deutschland“. *Erfahrungen mit berufsmäßig geführten Vormundschaften für unbegleitete minderjährige Flüchtlinge*. Nürnberg: 2010.

Hansbauer, Mutke, Oelerich, 2004.

Hansbauer, Peter; Mutke, Barbara; Oelerich, Gertrud. *Vormundschaft in Deutschland. Trends und Perspektiven*. Opladen: Leske+Budrich, 2004.

Jordan, 2000.

Jordan, Silke. *Fluchtkinder. Allein auf der Flucht*. Karlsruhe: Von Loeper Literaturverlag, 2000.

Kinderrechtekommission des deutschen Familiengerichtstags e.V., 2010.

Kinderrechtekommission des deutschen Familiengerichtstags e.V.. *Stellungnahme zum Referentenentwurf eines Gesetzes zur Änderung der Vormundschaft*. 2010. www.agsp.de/html/a114.html, (visited on 18.08.2010)

Klingelhöfer and Rieker, 2003.

Klingelhöfer, Susanne; Rieker, Peter. *Junge Flüchtlinge in Deutschland. Expertise zu vorliegenden Informationen, zum Forschungsstand und zum Forschungsbedarf*. Halle: Deutsches Jugendinstitut, 2003.

Landschaftsverband Rheinland/Landschaftsverband Westfalen-Lippe, 2002.

Landschaftsverband Rheinland/Landschaftsverband Westfalen-Lippe. *Leitfaden für die Amtsvormünderin und den Amtsvormund zur Beteiligung des von ihnen vertretenen Kindes oder Jugendlichen. Arbeits- und Orientierungshilfe, erarbeitet vom überregionalen Arbeitskreis der Amtsvormünderinnen und Amtsvormünder*. 2002 http://www.arbeitskreis-vormundschaft.de/images/Dokumente/20020401_leitfaden_beteiligungkind.pdf (visited on 15 June 2010).

Landschaftsverband Westfalen-Lippe, 1999.

Landschaftsverband Westfalen-Lippe. *Das Leistungsprofil der Amtsvormünderin und des Amtsvormundes. Arbeits- und Orientierungshilfe*, 1999. http://www.lwl.org/lja-download/datei-download2/LJA/erzhilf/Schaften/1248339642_1/Leistungsprofil_Amtsvormund_Stand_26_04_99.pdf (visited on 15 June 2010).

Landschaftsverband Westfalen-Lippe, 2003.

Landschaftsverband Westfalen-Lippe. *Abschlussbericht zum Modellprojekt. Qualitätsentwicklung im Bereich Vormundschaften und Pflegschaften*, 2003. Münster: Landschaftsverband Westfalen-Lippe.

Marburger, 2010.

Marburger, Horst. *SGB VIII. Kinder- und Jugendhilfe*. Regensburg: Walhalla Fachverlag, 2010.

Meißner, 2010.

Meißner, Andreas. ‚Vormundschaften für unbegleitete minderjährige Flüchtlinge‘, in Petra Dieckhoff (ed.), *Kinderflüchtlinge. Theoretische Grundlagen und berufliches Handeln*. Wiesbaden: VS Verlag für Sozialwissenschaften, 2010.

Oberloskamp, 2010.

Oberloskamp, Helga. *Vormundschaft, Pflegerschaft und Beistandschaft für Minderjährige*. München: Verlag C.H. Beck oHG, 2010.

Parusel, 2009.

Parusel, Bernd. *Unbegleitete minderjährige Migranten in Deutschland. Aufnahme, Rückkehr und Integration*. Nürnberg: Bundesamt für Migration und Flüchtlinge, 2009.

Peter, 2004.

Peter, Erich. *Zusammenfassung der Studie „Das Recht der Flüchtlingskinder“ und Stellungnahme zur Rücknahme des deutschen Ausländervorbehalts zur UN-Kinderrechtskonvention im Spannungsfeld verfassungsrechtlicher Kompetenzzuweisung*. Karlsruhe: Von Loeper Literaturverlag, 2004.

Riedelsheimer and Wiesinger, 2004.

Riedelsheimer, Albert; Wiesinger, Irmela. *Der erste Augenblick entscheidet. Clearingverfahren für unbegleitete minderjährige Flüchtlinge in Deutschland*. Karlsruhe: Von Loeper Literaturverlag, 2004.

Rüting, 2009.

Rüting, Wolfgang. ‚Qualitätssicherung in der Vormundschaftsarbeit mit unbegleiteten minderjährigen Flüchtlingen‘, in B-UMF e.V. (ed.), *Betreuung von unbegleiteten minderjährigen Flüchtlingen in Deutschland. Dokumentation der Fachtagung in Hofgeismar 2009*. München: B-UMF e.V.

Zitelmann, 2001.

Zitelmann, Maud. *Kindeswohl und Kindeswille im Spannungsfeld von Pädagogik und Recht*. Münster: Votum, 2001

Zito, 2009.

Zito, Dima. *Zwischen Angst und Hoffnung. Kindersoldaten als Flüchtlinge in Deutschland*. Ibbenbüren: IVD, 2009

7. Appendix

The Youth Welfare Office in Frankfurt transfers the following competences to the social workers of the housing institutions where the youths are accommodated:

- The actual care, education and supervision
- The conclusion of contracts regarding medical and dental treatment in the scope of regular health examinations
- Basic vaccinations
- The legal representative has to be informed if it is a matter with far-reaching consequences: among other things surgery, life-preserving measures (except cases of immediate danger), long-term medication or radiotherapy, abortion of minors under the age of 16, radiological treatment, psychiatric treatment, accidents or injuries that lead to hospitalization, highly infectious diseases, sexually transmitted diseases;
- The administration of money for clothes and pocket money
- Obtaining documents and passports
- Decisions about the social contact outside of the institution
- The granting of a leave from the institution (overnight stays only with the permission of the legal representative)
- Becoming a member of an organization
- Taking part in educational programmes, if no costs are involved
- Taking part in events that serve practicing one's religion
- Taking part in holiday camps and other leisure time activities, if they are age-based, do not collide with the capacities of the child and if the permission of the Alien's Department has been given (no stays abroad)
- Going swimming is only allowed (at the swimming pool or guarded lakes/beaches), if the institution recorded that the youth swims sufficiently well (at least 15 minutes of free swimming without water wings). Youths who do not know how to swim need to be accompanied by pedagogical specialists who know how to swim. The youth needs to be looked after at any time.
- Youths are not allowed to sauna.