

SEPARATED CHILDREN IN EUROPE PROGRAMME

**THE SITUATION OF SEPARATED CHILDREN IN CENTRAL
EUROPE AND THE BALTIC STATES**

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PART 1. EXECUTIVE SUMMARY

INTRODUCTION

Recent years have seen a steady rise in the numbers of children arriving in European countries who are separated from both parents or their previous legal or customary care giver. The Separated Children in Europe Programme (SCEP) was established by the United Nations High Commissioner for Refugees (UNHCR) and some members of the International Save the Children Alliance in 1997 as a response to this situation. SCEP seeks to improve the circumstances of separated children in Europe through research, policy analysis and advocacy at the national and regional levels.

One of the most important achievements of the SCEP to date has been the development of the Statement of Good Practice. The Statement aims to provide a straightforward account of the policies and practices required to protect the rights of separated children in Europe. Another significant achievement was the establishment of a European network of non-governmental organisations (NGOs) working with children, asylum-seekers and refugees in 28 countries.

With the support of the European network and following the publication of the Statement of Good Practice, the SCEP undertook individual Country Assessments of the policies and practices concerning separated children seeking asylum in all the countries covered by the Programme. Based on the Country Assessments of 16 Western European countries (the 15 European Union Member States and Norway), the report "Separated Children Seeking Asylum in Europe: A Programme for Action" written by Sandy Ruxton was published in 2000. It summarises the extent to which law, policy and practice across Western Europe conforms to the standards set out in the Statement of Good Practice and relevant international instruments and makes recommendations for the development of law, policy and practice at European and national levels.

The present report compares and analyses the main findings of the Country Assessments of eleven countries in Central Europe and the Baltic States. It represents a continuation of the work initiated in "Separated Children Seeking Asylum in Europe: A Programme for Action" and aims to complement it by providing an overview of the situation of separated children in these countries (i.e. Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia). Ideally, both reports should be read in conjunction as the earlier report contains general considerations on policy and practice which are also relevant to the countries of Central Europe and the Baltic States, as well as proposals and recommendations for addressing the issues raised by the situation of separated children throughout Europe.

Among refugees and asylum-seekers, separated children are one of the most vulnerable groups. Under international law, states have the obligation to provide proper protection and care for them. Apart from the 1989 UN Convention on the Rights of the Child (CRC) and the 1951 UN Convention and 1967 Protocol relating to the Status of Refugees, there are also European instruments to draw upon. In particular, many of the provisions of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996 Hague Convention) are applicable. Many of the countries in Central Europe and the

Baltic States are candidates to membership of the European Union. Although the 1997 Resolution on Unaccompanied Minors who are Nationals of Third Countries has no binding force, it sets out an important political commitment by the Member States to realising the rights of separated children, and is relevant to the preparation of proposals for any Community legal instrument.

This report assesses how far the SCEP Statement of Good Practice and relevant international obligations are met in 11 countries of Central Europe and the Baltic States, in relation to specific issues: the definition of a “separated child”, access to the territory, identification, the appointment of a guardian or adviser, registration and documentation, age assessment, freedom from detention, the right to participate, family tracing and contact, family reunification in a European country, interim care, health, education and training, the refugee determination process and durable or long-term solutions.

When appraising the findings of this report or when comparing the situation of separated children in the countries of Central Europe and the Baltic States, two important elements should be taken into consideration: firstly, the relatively small number of cases of separated children claiming asylum in most countries of Central Europe and the Baltic States and, secondly, the fact that legislation regarding asylum is still taking shape in many countries.

SPECIFIC ISSUES

THE DEFINITION OF A "SEPARATED CHILD"

As far as legislation is concerned, all the countries covered in this report define a child as a person under the age of 18 although, under some states’ legislation, children over certain age (usually 14 or 15) have a different legal and penal status. Although none of the countries in this study specifically uses the term “separated child” in its legislation (the more restrictive terms of “unaccompanied child” or “unaccompanied minor” are still the norm), some of the definitions in use are in compliance with the Statement of Good Practice. Some countries’ definitions of an “unaccompanied child” or “unaccompanied minor” also comply with the SGP.

In some countries definitions can vary between the different agencies dealing with the protection of children. In order to avoid potentially negative consequences for the protection of separated children, the development of a common standard should be encouraged.

ACCESS TO THE TERRITORY

Children seeking asylum

The right to seek asylum is enshrined in the legislation of most countries in Central Europe and the Baltic States. In reality, however, asylum-seekers, including separated children, face many obstacles in trying to gain access to safety. Virtually all the countries included in this study have introduced legislation which makes carriers liable to fines and various other penalties if they transport passengers without adequate documents.

There is evidence that, in the majority of cases, separated children seeking asylum enter Europe clandestinely, often without adequate documentation. In most countries in Central Europe and the Baltic States, someone who has entered illegally in order to ask for refugee status will not be prosecuted, but refugee status may be denied if an application is not made immediately on arrival. In practice, children (or adults for that matter) seeking asylum are seldom acquainted with these regulations. They are often the victims of smugglers, do not speak the language and may be travelling without documents or have only forged ones. Consequently, they are often afraid to approach the authorities.

Trafficking in Children

Trafficking in children for the purposes of prostitution, the production of child pornography and other forms of exploitation is a serious problem in Europe. The international criminal organisations involved in trafficking often use established routes transiting through the countries in Central Europe and the Baltic States to bring children to Western Europe. While people who must leave their country for refugee-related reasons do not normally arrive in movements organised by traffickers, it is possible that some separated children seeking asylum may form part of such movements.

There is little information on the numbers of children trafficked to countries in Central Europe and the Baltic States and very few cases have been recorded. Governments in these countries have taken several initiatives to tackle trafficking. These measures, however, have been introduced mainly in the context of crime control and prevention, rather than as specific measures for the protection of children. In keeping with child protection principles, measures against trafficking should pay greater attention to children's best interests.

IDENTIFICATION

Identification of separated children at an early stage is crucial in order to ensure that they receive the protection they are entitled to. From the Country Assessments, it appears that no special procedures to identify separated children as such have been put in place in any of the countries in Central Europe and the Baltic States. This problem is compounded by the fact that, in many cases, separated children who do not apply for asylum are simply deported to their country of origin without investigation. According to some Country Assessments, border immigration authorities seem to purposely avoid the identification of children as separated minors, which would require the performance of the obligations set forth under the law with regard to separated children. When a child is accompanied by an adult, for example, the nature of the relationship between the child and the adult is not subject to further investigation. The child is automatically considered not to be "separated".

It should be pointed out that, in practice, responsible authorities experience considerable difficulty in identifying separated children. Separated children often travel without adequate documentation and, in most cases, in the company of adults who may or may not be relatives or family friends. For the most part, they enter the territories of the countries in question clandestinely, which makes the setting up of any identification procedures very difficult in practice. While the only source of information regarding the identity of separated children are, very often, the children themselves, under these conditions children are often too scared to tell the truth to the authorities.

THE APPOINTMENT OF A GUARDIAN OR ADVISER

The principle that, in the absence of a child's parents or other legitimate care giver, his or her "best interests" should be protected by a guardian or adviser has been incorporated into several international instruments, including the CRC and the 1996 Hague Convention for the Protection of Children (which is not yet in force). The national legislation of most countries in Central Europe and the Baltic States, equally, includes provisions for the appointment of a guardian or adviser to protect the "best interests" of separated children. There are, however, important differences as to the role, duties and responsibilities of guardians and advisers in each country, as well as to the background and qualifications they require. From the Country Assessments it appears that in many countries the function of guardian or adviser is fulfilled by the person or institution representing a separated child claiming asylum (his or her legal representative), although the two functions are in fact different and it is not clear what provisions, if any, are made for separated children who do not claim asylum.

Legislation in most countries does not demand specific qualifications for guardians or advisers. It also appears that there is little or no specific guidance for guardians or advisers as to how to carry out their role. Although they often have expertise in the fields of child welfare, social work or teaching, many guardians or advisers have limited awareness of refugee issues or of the countries from which separated children come.

REGISTRATION AND DOCUMENTATION

Experience in the countries of Central Europe and the Baltic States shows that there is often no unified service to register separated children and that duplication of record-keeping is common. In many cases neither police nor immigration staff possess childcare expertise or training in child interviews. Children are interviewed in the same manner and by the same staff as adults.

Although all countries register asylum applications, including those by separated children, few countries record relevant information about separated children as a particularly vulnerable group and even fewer have adopted the "twin-track" strategy recommended in the Statement of Good Practice (a restricted border interview followed by the taking of a complete social history). In most countries, separated children applying for asylum receive the same treatment as adults.

AGE ASSESSMENT

Separated children frequently arrive in Europe with false documents or no documents at all. The age determination of asylum-seekers who claim to be children is very often contentious. If separated children are incorrectly identified as adults, however, they will not be entitled to the full protection which is accorded to them under international law.

As far as policy and legislation are concerned, there are no established procedures for age assessment in the majority of countries of Central Europe and the Baltic States. In practice,

medical examinations are usually conducted. Wrist and hand X-rays are the most common methods used.

DETENTION

According to the UNHCR Guidelines, “Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children” (paragraph 7.6). The SGP, moreover, states that "separated children should never be detained for reasons related to their immigration status" (paragraph C7).

From the Country Assessments it transpires that all the countries of Central Europe and the Baltic States place restrictions on the freedom of movement of asylum-seekers, including separated children, but not all of these restrictions amount to detention. Practice varies as to where children are held and the conditions they face, but there is some evidence that their special circumstances are sometimes neglected.

THE RIGHT TO PARTICIPATE

With few exceptions, the information in the Country Assessments refers mainly to policy and the law in the different countries and there is little or no information on how children are consulted in practice. Under the legislation of many countries in Central Europe and the Baltic States, the authorities are under obligation to consult children asylum-seekers over certain age and, depending on the child’s age and maturity, to take into account his or her views. Whether this is complied with in most countries could not be assessed due to lack of information on current practice.

FAMILY TRACING AND CONTACT

Despite the centrality of the principle that tracing for a child’s parents and family should begin as soon as possible, many of the countries of Central Europe and the Baltic States lack official regulations or policy in this area. In some countries, moreover, it is not clear which agency holds primary responsibility for tracing, as none is clearly appointed, and co-operation between agencies is often poor. According to the Country Assessments, however, efforts are made in most countries to trace separated children’s families through national or international organisations such as the Red Cross, ICRC, UNHCR, NGOs, etc., or with the help of diplomatic missions and embassies.

FAMILY REUNIFICATION IN A EUROPEAN COUNTRY

Separated children seeking asylum or otherwise present in a European state sometimes have family member(s) in other European states. Within the EU context, provisions on family reunification are found in the Dublin Convention (1990), soon to be superseded by a new instrument, a Council Regulation. Those countries in Central Europe and the Baltic States which are due to become EU members will also be bound by the Dublin convention. Under the Convention, separated children seeking asylum who have parents who are recognised refugees living in another EU state will be entitled to have their asylum claim dealt with by that state.

However, given the length of time it takes in many countries for asylum applications to be processed and the increasing use of some form of temporary status, family reunification under the Dublin procedures in practice can take up to several years depending on the countries involved. This situation is not in the best interests of separated children.

In most countries in Central Europe and the Baltic States there is no specific legislation about family reunification in a European country and few cases in practice. According to the Country Assessments, however, efforts are usually made to facilitate family reunification for separated children in Europe.

INTERIM CARE, HEALTH, EDUCATION AND TRAINING

Interim Care

Legislation in most countries of Central Europe and the Baltic States contains provisions for the suitable interim care of separated children, although in some cases this applies only to children who claim asylum. According to the Country Assessments, policy and practice in those countries where information is available largely correspond with the Statement of Good Practice, while in others legislation is in line with the SGP but there is insufficient information about practice or there have been no relevant cases recorded.

Health

Regarding separated children's access to health, it appears from the Country Assessments that policy and practice in at least some countries conform to a large extent with the Statement of Good Practice. National laws in a few countries are also in line with the SGP, but either there is insufficient information about their implementation or no relevant cases have been yet recorded. In a majority of countries, nevertheless, separated children are entitled to full health care on the same basis as national children only after they have been granted refugee status. Children applying for asylum in these countries are only entitled to basic and/or emergency health care. Information on counselling for separated children is largely missing from the Country Assessments.

Education, Language and Training

Likewise, according to the Country Assessments, it appears that in many countries only those children who have been granted refugee (or temporary protection) status are entitled to the same statutory education as national children. Although in some countries children seeking asylum are guaranteed the same access to primary education as national children, they often find attendance to secondary and technical schools impossible due to language requirements and/or administrative and financial problems. In a few cases there have been attempts to organise mother-tongue teaching for refugee children, but the small number of children, the variety of languages they speak and the lack of specialized teachers have posed major challenges.

THE ASYLUM OR REFUGEE DETERMINATION PROCESS

Access to normal procedures

While normal asylum procedures should be employed for the determination of separated children's applications, it is also important that the authorities processing asylum applications acknowledge the particular vulnerability of separated children.

According to the information in the Country Assessments, legislation in most countries in Central Europe and the Baltic States guarantees separated children access to the refugee determination process. In some countries, however, separated children can be denied such access on the basis of the “safe third country” notion. In addition, in some countries applications by separated children may be handled under accelerated procedures.

Legal Representation

In most countries of Central Europe and the Baltic States separated children claiming asylum are entitled to have a legal representative. The Country Assessments, however, identify some problems with the practical application of the law in some instances. In some countries, for example, the legal representative is appointed only after a written asylum request has been filed. Separated children, therefore, do not benefit from legal assistance during a crucial step in the refugee determination process. In other instances, legal representatives are not appointed, despite the fact that legislation clearly states that separated children should have a legal representative during the asylum process.

Minimum procedural guarantees

In general, all countries in Central Europe and the Baltic States tend to have minimum procedural guarantees in place. Decisions are taken by the competent authorities and children have the right to appeal. There is considerable evidence, however, that procedures are far too slow in many countries. As a result, children live for long periods in uncertainty, often without contact with their family.

In terms of appeals, although systems appear to be in place in all states, there are widespread problems in relation to access, support and deadlines. In some countries, for example, the time limit to appeal against a decision denying refugee status is unreasonably short, while in others no priority is given to children's applications for asylum, contrary to the Statement of Good Practice and UNHCR Guidelines.

Independent assessment

The Statement of Good Practice states that it is desirable, particularly with younger children or children with a disability, that an independent expert person carry out an assessment of the child's ability to articulate a well-founded fear of persecution.

Legislation in most of the countries of Central Europe and the Baltic States does not contain any special provisions in this respect. Practice in the few countries where provisions exist is, moreover, limited or non-existent. In contrast, although refugee legislation does not contain specific provisions for independent expert assessments during the refugee determination process, in a few countries such assessments are often made in practice.

Interviews

Although some countries have official guidelines regarding the conduct of interviews with separated children, it appears that in most countries in Central Europe and the Baltic States there is no specific guidance requiring, for example, the presence of a child's legal representative or allowing the possibility of the child being accompanied by a social worker or relative of his or her choice. In many countries, in fact, children are interviewed in the same manner as adults and the interview process takes no account of the particular needs of separated children.

Criteria for making a decision on a child's asylum application

Few countries appear to have formal policies regarding criteria to be adopted in making decisions on children's asylum cases. In addition, practice in some countries could not be assessed due to lack of cases or information. The evidence suggests that, in general, there is a lack of clear policies on the factors which should be taken into account in determining separated children's cases, despite the existence of developed UNHCR Guidelines. In practice, this gap means that officials may make decisions in a policy vacuum, leading to wide variations in treatment based on criteria which can be subjective and unfair. Greater efforts must be made to ensure that governments recognise the importance of child-specific forms of human rights violations.

Young people who become adults during the asylum process

The response of European states to the situation of young people who become adults during the asylum process varies. In most countries of Central Europe and the Baltic States no special consideration is given to young people in this situation. On the contrary, at least in some cases, the authorities may have purposely delayed the asylum process in order to exclude young people from any special provisions for children. This practice is known as "ageing-out".

DURABLE OR LONG-TERM SOLUTIONS

Grounds for a child remaining in a host country

In most countries in Central Europe and the Baltic States, if a separated child is granted refugee status, he or she is granted full permission to remain in the country. Alternatively, a separated child may be granted temporary protection or leave to remain on humanitarian grounds (due to armed conflict in the country of origin, ill health or the impossibility of tracing the child's parents, for example). Children who are allowed to remain under temporary protection or on humanitarian grounds in some countries, however, are often not entitled to the same access to benefits and services as national or refugee children.

Family reunification in a host country

Policy in the various countries of Central Europe and the Baltic States varies widely. In some countries family reunification is possible for separated children who are recognised as refugees, but not for those with temporary humanitarian protection or leave to remain. In some countries refugee status is granted to an applicant's spouse and children under 18 but no provisions exist for a child's parents, while some countries' legislation does not provide for family reunification even for a separated child who has been granted refugee status.

Integration

Both legislation and practice regarding the integration of separated children differ in the various countries of Central Europe and the Baltic States. In most countries existing provisions to assist children with integration apply only to children who have been granted refugee status, although children who have a different status (temporary protection or, more rarely, humanitarian status) are sometimes also included. Information on current practice in most countries is extremely limited and few, if any, relevant cases have been documented.

Adoption

According to the Country Assessments, in most countries in Central Europe and the Baltic States adoption is not considered an appropriate solution for separated children and cases of separated children being adopted appear to be extremely rare. In those cases where adoption is considered, the courts need to be satisfied that adoption is in the child's best interests and a detailed assessment of the child's family circumstances is carried out.

Family reunification and return to the country of origin

There are no special legal provisions or guidelines on family reunification or return to the country of origin in most countries in Central Europe and the Baltic States. Moreover, it appears that the authorities in the countries covered by this report are not in a position to assess the conditions in the country of origin, the family situation of separated children or the availability of adequate care. In practice, cases of separated children returning voluntarily to their country of origin are rare or non-existent. According to the Country Assessments, none of the countries covered in the report has any specific programmes or aid to facilitate reintegration in the country of origin.

Settlement in a third country

There is little information about this possibility in the Country Assessments. It appears that none of the countries of Central Europe and the Baltic States has any procedure in place regarding settlement in a third country.

CONCLUSION

In general, and despite some significant gaps, national legislation in the countries of Central Europe and the Baltic States includes many of the necessary provisions for the care of the relatively small number of cases of separated children encountered. Still, practice often falls short of the standards set out in the Statement of Good Practice. This is mostly due to lack of training, experience and resources. There is, therefore, an urgent need to put in place the necessary training, resources and effective mechanisms to implement existing procedures. At the same time, efforts should continue to be made in order to bring legislation and policy fully in line with the SGP, wherever necessary.

PART 2. CONTEXT AND BACKGROUND

2.1 The Situation of Separated Children in Europe

Recent years have seen a steady rise in the numbers of children arriving in European countries who are separated from both parents or their previous legal or customary care giver. At the same time, trafficking in separated children for the purposes of prostitution, the production of child pornography and other forms of exploitation has become a serious problem. Without the protection and assistance of an adult primary care giver, separated children are one of the most vulnerable groups among all refugees and asylum-seekers. A recent study on the trafficking of children for sexual exploitation in four countries of the European Union has highlighted the vulnerability of separated children vis-à-vis international criminal networks and the mechanisms by which they fall into the hands of traffickers. The study found that, despite the lack of accurate data, there has been a considerable increase in the numbers of children trafficked for sexual exploitation.¹

The current climate of restrictive asylum practices raises concerns about the way separated children are treated when arriving in Europe, in terms of both the asylum procedure and the attention given to their particular needs. Refugee children, like their adult counterparts, flee to escape war, persecution and human rights violations. Children have always been the most vulnerable victims of human rights abuses, and are increasingly targeted, especially in ethnically-based conflicts within states. When they arrive in a country of asylum, children share with adults protection and assistance needs, but they also have specific needs as children. They need special assistance with accommodation and to address their health and educational needs, as well as particular attention to their asylum applications.

Under international law, especially the 1989 UN Convention on the Rights of the Child (CRC), Governments have obligations and responsibilities towards children, including separated children. This remains true irrespective of the reasons (and the means by which) they have entered a country, the conditions under which they are living, and their status in relation to national and international law. By ratifying the Convention, governments undertake to put in place systems to protect children and to provide alternative care when children are separated from parents or care givers. Furthermore, under Article 2, they are under an obligation to provide the same standards of care for all children within their jurisdiction; under Article 3, the “best interests” of the child must be a primary consideration in all actions concerning children, and under Article 12, children must be able to express a view on matters relevant to them. There are also more specific provisions which are relevant and which should be read in conjunction with these “umbrella” articles. Article 22, in particular, sets out the rights of a child who seeks refugee status or is considered a refugee, accompanied or unaccompanied, in accordance with international or domestic law, to receive appropriate protection and humanitarian assistance.²

There are, in addition, refugee protection principles which are relevant to the position of separated children. For example, the Conference of Plenipotentiaries which adopted the 1951 Refugee Convention recommended that governments take necessary measures with a view to “the protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption” (Final Act of the Conference, Recommendation B). In 1994, UNHCR published detailed guidelines on refugee children (“Refugee Children: Guidelines on Protection and Care”), recognising the increasing focus on children’s rights globally during the 1980s and 1990s and reflecting the content of the CRC.

These were elaborated upon in 1997 by a further set of UNHCR guidelines specifically addressing the position of separated children ("Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum"). More recently, attention has centred on the 1996 Hague Convention for the Protection of Children; although this Convention has yet to enter into force, it could help to implement some of the major objectives of the CRC in this area.³

2.2 The Separated Children in Europe Programme

The Separated Children in Europe Programme (SCEP) was established in 1997. It seeks to improve the circumstances of separated children in Europe through research, policy analysis and advocacy at the national and regional levels. The SCEP is a joint initiative of and partnership between the United Nations High Commissioner for Refugees (UNHCR) and some members of the International Save the Children Alliance in Europe. The Programme partnership is based on the complementary mandates and areas of expertise of the two organisations: UNHCR's responsibility is to ensure international protection of refugee children and of children seeking asylum; the International Save the Children Alliance is concerned to see the full realisation of the rights of all children.

The SCEP aims to ensure that principles and standards concerning the rights of separated children are upheld through the promotion of a common policy and commitment to good practices at national and European levels. The overall objective is to promote the fulfilment of the rights of separated children and adolescents in Europe. This involves taking remedial action where the rights of separated children are not duly respected, as well as collecting, producing and disseminating information about the situation of separated children in Europe; developing a Statement of Good Practice which provides a clear and comprehensive set of principles and a common standard for work across all countries; developing a European network of non-governmental organisations (NGOs) working with children; and providing training and promoting advocacy among staff members, partners and policy makers.

Funding for the Programme has been provided by Save the Children Norway, Save the Children Sweden, Save the Children UK, the Norwegian Government, the Odysseus Programme of the European Union and UNHCR.

One of the most important achievements of the SCEP to date has been the establishment of a European network of NGOs working with children, asylum-seekers and refugees in 28 countries (17 in Western Europe, including the 15 Member States of the European Union, and 11 in Central Europe and the Baltic States). The network comprises at least one NGO member from each country and at least one UNHCR contact person responsible for each country. The development of this network is crucial if the rights of separated children are to be addressed effectively at the national level. The network enables the exchange of information and experience on lobbying, provides a link with those giving direct support to individual children and assists in the gathering of information.

Another significant achievement was the development of the Statement of Good Practice. The Statement aims to provide a straightforward account of the policies and practices required to implement and protect the rights of separated children in Europe. The Statement is informed principally by the UN Convention on the Rights of the Child (CRC) and two documents: UNHCR's "Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum", of February 1997 (referred to as "UNHCR Guidelines") and the European

Council on Refugees and Exiles: Position on Refugee Children, of November 1996 (referred to as ECRE). The Statement of Good Practice has been translated into a number of languages, including Croatian, Danish, Dutch, French, German, Greek, Italian, Portuguese and Spanish, which will ensure its widespread dissemination and use. Finnish, Russian and Swedish translations are underway.

2.3 First Principles

The following principles, derived from international and regional instruments, underpin the Statement of Good Practice and should be born in mind at all stages of care and provision for separated children:

Best Interests: The principle of the child’s “best interests”, derived from Article 3 of the CRC, requires that the interests of children must be “a primary consideration” when developing and implementing government policy. It also applies to decisions about individual children.

Non-discrimination: Separated children are entitled to the same treatment and rights as national or resident children. They must be treated as children first and foremost. All considerations of their immigration status must be secondary. The principle of non-discrimination is based on Article 2 of the CRC, which states that the rights of the CRC apply to all children without discrimination of any kind and irrespective of their parents' or their own race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

Right to Participate: Alongside the principle of the child’s “best interests”, increasing attention has focused in recent years on the principle of the child’s right to participate in decisions affecting him or her (CRC, Article 12).

Bi-culturalism: It is vital that separated children be able to maintain their mother tongue and links with their culture and religion (CRC, Articles 8 and 30). Provision of childcare, health care and education must reflect their cultural needs. Preservation of culture and language is also important should a child return to his or her home country.

Interpretation: Separated children must be provided with suitable interpreters who speak their preferred language whenever they are interviewed or require access to services (CRC, Articles 12 and 13).

Confidentiality: Care must be taken not to disclose information about a separated child that could endanger the child’s family members in her or his home country. The permission of separated children must be sought in an age appropriate manner before sensitive information is disclosed to other organisations or individuals (CRC, Article 16). Information must not be used inappropriately for purposes other than for that for which it was sought.

Information: Separated children must be provided with accessible information about, for example, their entitlements, services available, the asylum process, family tracing and the situation in their country of origin (CRC, Articles 13, 17 and 22).

Inter-organisational Co-operation: Organisations, government departments and professionals involved in providing services to separated children must co-operate to ensure that the welfare and rights of separated children are enhanced and protected (CRC, Article 22).

Staff Training: Those working with separated children must receive appropriate training on the needs of separated children. Immigration or border police staff must receive training in conducting child-friendly interviews (CRC, Article 3).

Durability: Decisions that are taken regarding separated children should take account of, wherever possible, the long-term interests and welfare of the child (CRC, Articles 3 and 22).

Timeliness: All decisions regarding separated children must be taken in a timely fashion (UNHCR Guidelines: 8.1 and 8.5).

PART 3. METHODOLOGY AND AIMS

With the support of the European network and following the publication of the Statement of Good Practice, the Separated Children in Europe Programme undertook individual Country Assessments of the policies and practices concerning separated children seeking asylum in all the countries covered by the Programme. Based on the Country Assessments of 16 Western European countries (the 15 European Union Member States and Norway), the report "Separated Children Seeking Asylum in Europe: A Programme for Action" written by Sandy Ruxton was published in 2000. It summarises the extent to which law, policy and practice across Western Europe conform to the standards set out in the SCEP Statement of Good Practice and relevant international instruments, identifies significant problems or gaps in law, policy and practice at European and national levels, sets out the case for further action in relation to separated children at European and national levels and makes recommendations for the development of law, policy and practice at European and national levels.

The present report represents a continuation of the work initiated in "Separated Children Seeking Asylum in Europe: A Programme for Action" and it is designed to complement it. It largely follows its format, aims and methodology. Ideally, both reports should be read in conjunction as the earlier report contains general considerations on policy and practice which are also relevant to the countries of Central Europe and the Baltic States, as well as proposals and recommendations for addressing the issues raised by the situation of separated children throughout Europe.

The present report was compiled from information provided in the Country Assessments carried out by members of the SCEP network in Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. The SCEP Statement of Good Practice provided the framework for a detailed questionnaire against which law, policy and practice were assessed in relation to each country.⁴ The questionnaire was completed for each country by staff of member organisations of the European network (Appendix 1).

The production of the Country Assessments was co-ordinated by UNHCR and Save the Children SCEP advisors, who provided assistance throughout the period of research and writing of the Country Assessments, and who made comments and proposed amendments to the drafts. The present report was prepared by a consultant working in close co-operation with the UNHCR and Save the Children advisors, and benefited extensively from contributions by UNHCR and NGO specialist staff in Brussels, Geneva and the relevant countries in Central Europe and the Baltic States.

The aims of the report are to summarise the extent to which law, policy and practice across Central Europe and the Baltic States conform to the standards set out in the SCEP Statement of Good Practice and relevant international instruments (Appendix 2); to identify cases of good practice as well as significant gaps in law, policy and practice and to make specific recommendations to address those gaps.

Although all the assessments were based on the same questionnaire, inevitably differences were evident in the range and depth of analysis in each. Moreover, in many countries there was insufficient information about current legislation, often due to the fact that asylum laws and policies are still being developed. Furthermore, given the fact that most separated children enter the countries of Central Europe and the Baltic States clandestinely and many of them

transit through these countries on their way to Western Europe, considerably fewer cases of separated children claiming asylum have been recorded there. The small number of cases made the task of assessing current practice in these countries particularly difficult.

PART 4. MAIN FINDINGS

THE DEFINITION OF A “SEPARATED CHILD”

“Separated children” are children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal/customary primary care giver. Some children are totally alone while others, who are also the concern of the SCEP, may be living with extended family members. All such children are separated children and entitled to international protection under a broad range of international and regional instruments. Separated children may be seeking asylum because of fear of persecution or the lack of protection due to human rights violations, armed conflict or disturbances in their own country. They may be the victims of trafficking for sexual or other exploitation, or they may have travelled to Europe to escape conditions of serious deprivation.

(Statement of Good Practice: A 2.1)

The term “unaccompanied child” is a familiar one in situations of migration or displacement. It refers to a child who is outside his or her country of origin without his or her parents and is not being cared for by an adult. However, in practice, some children may appear to be “accompanied” by members of their extended family, family friends or other adults, but these accompanying adults are not necessarily able or suitable to assume responsibility for their care. Consequently, the term “separated child” has been formulated as a more appropriate definition and it is now widely used to draw attention to the potential protection needs of this group.

The term “separated child” represents a wider definition which follows the recognition of the fact that children suffer physically, socially and psychologically as a result of being without the care and protection of their parents or previous primary care giver(s). It also aims to ensure that the child’s circumstances are properly investigated and that the authorities are made aware of the particular vulnerability of the child so that appropriate protection is provided in line with the child’s best interests.

While the amended terminology encourages an increased awareness of the potential risks faced by all separated children, the principles and standards concerning their rights and needs can only be upheld through a commitment to good practices and the promotion of a common policy at national and European levels. The definition used in each country will have a significant effect on the approach taken and the process adopted by relevant agencies and is, therefore, crucial.

Separated children seeking asylum are entitled to international protection under various universal and regional legal instruments (Appendix 2). These instruments, however, have not been sufficiently integrated into national legislation and practice.

As far as legislation is concerned, all the countries covered in this study define a child as a person under the age of 18 although, under some states’ legislation, children over certain age (usually 14 or 15) have a different legal and penal status (in Bulgaria, Croatia, Hungary and Poland for example) and in others (i.e. Poland) girls may be considered adults if married (if they are at least 16 and have received a permission of the Family Court to marry).⁵

Although none of the countries in this study specifically uses the term “separated child” in its legislation (the more restrictive terms of “unaccompanied child” or “unaccompanied minor” are still the norm), some of the definitions in use are in compliance with the Statement of Good Practice. This is the case in the Czech Republic,⁶ Estonia,⁷ and Slovenia.⁸ Some countries’ definitions of an “unaccompanied child” or “unaccompanied minor” also comply with the SGP. In Bulgaria, for example, the Border Police define an unaccompanied minor as “any person up to 18 years of age, who is out of his/her country of birth and is separated from his/her parents or legitimate guardians”⁹; and in Latvia, state institutions usually apply the term “unaccompanied child” to “any child under the age of 18 who is located outside his or her country of origin and enters or resides in Latvia without his or her parents or a person replacing the parents”.¹⁰

In some countries definitions can vary between the different agencies dealing with the protection of children. In Romania, for example, the definitions used by some relevant agencies comply with the SGP while those used by others do not.¹¹ This is the case not only in Central Europe and the Baltic States but also in some Western European countries.¹² In order to avoid potentially negative consequences for the protection of separated children, the development of a common standard should be encouraged.

Separated Children with Adult Siblings in Lithuania

Since 1997 there have been two cases in Lithuania where the Migration Department at the Ministry of Interior processed applications submitted by an older sibling and his minor brother as a single application according to the principle of family unity (one a case of asylum-seekers from Chechnya and the other from Pakistan). The family relationship in both cases was formally established by documents and the fact that the older sibling had taken due parental responsibilities upon himself (made schooling arrangements, etc.) Therefore, in practice, if a child comes to Lithuania with older siblings over 18 years of age to apply for asylum, s/he is not considered an unaccompanied minor.

(Lithuania Country Assessment)

In Romania, older siblings over 18 years of age act, in practice, as legal representatives for separated children. Siblings may make separate claims for asylum if the reasons for claiming are different for each sibling, but even when this is the case, the statute of separated children (“unaccompanied children”, according to the terminology used in Romanian law) is not applied to children accompanied by an adult brother or sister.

According to the 1997 UNHCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (Annex II), when a child is accompanied by an adult sibling they should be processed through the refugee status determination procedure together, on the presumption that “they have a shared or common history” and that “the adult sibling is aware of and able to articulate the child’s claim for refugee status”. However, the guidelines also state that the competent authorities should be satisfied that an adult care giver, who may or may not be a relative of the child, has the maturity, commitment and expertise to adequately assume care giving responsibilities. It is important, therefore, that the authorities dealing with separated children do not accept as given the suitability of the temporary care

arrangement and relationship between children and accompanying adults, including siblings over 18, and that the principle of the child's "best interests" be always respected.

This seems to be the practice in Latvia, Poland and Slovenia, where the authorities do not regard an older sibling automatically as a minor's legal representative. An adult sibling, however, may be appointed as his or her younger brother's or sister's guardian if, in the judgement of the competent authorities, this is in the best interests of the child.¹³ In the Czech Republic, separated children are entitled to assistance irrespective of the fact that they may have brothers or sisters older than 18, unless a brother or sister is a legal care giver of the minor. In practice, if a separated child has a brother or a sister older than 18 years of age in the territory of the Czech Republic, usually this person would be appointed as the child's legal care giver by a court decision.

SPECIFIC RECOMMENDATIONS:

- All agencies working with separated children should use the same broad-based definition of a "separated child", as defined by the Separated Children in Europe Programme.
- Authorities dealing with separated children should not automatically accept the suitability of the temporary care arrangement and relationship between children and accompanying adults. While respecting the principles of family unity and the child's best interests, adult siblings should not automatically be regarded as a separated child's legal representative.
- The principle of the child's best interests should apply when assessing whether a child's application for asylum should be processed with that of a sibling over 18 or not.

ACCESS TO THE TERRITORY

Separated children seeking protection should never be refused entry or returned at the point of entry. They should never be detained for immigration reasons. Neither should they be subject to detailed interviews by immigration authorities at the point of entry.

Trafficking in children for the purposes of prostitution, the production of child pornography and other forms of exploitation is a serious problem in Europe. As already agreed in the EU Joint Action, states should take counteractive measures by sharing information on trafficking with other states, and ensuring that immigration officers and border police are alerted to this problem, bearing in mind that trafficking routes are also being used by separated children seeking asylum. The purpose of any such advocated measures should be motivated by child protection principles, not migration or crime control measures.

(Statement of Good Practice: C.1)

Children seeking asylum

The right to seek asylum, recognised in Article 14 of the Universal Declaration of Human Rights, is enshrined in the legislation of most countries in Central Europe and the Baltic States. Although this would seem to suggest that anybody in need of international protection would be able to access these countries' territory, in reality asylum-seekers, including separated children, face many obstacles in trying to gain access to safety. Virtually all the countries included in this study have introduced legislation which makes carriers liable to fines and various other penalties if they transport passengers without adequate documents¹⁴. These practices are also prevalent in Western European countries.¹⁵

There is evidence that, in the majority of cases, separated children seeking asylum enter Europe clandestinely, often without adequate documentation. The reasons for this are varied: their birth may never have been registered or identity documents issued; identity papers can be lost, forged or destroyed; state authorities in the country of origin may confiscate them or refuse to issue them; or it may only be possible to obtain them at great risk.

In most countries in Central Europe and the Baltic States, someone who has entered illegally in order to ask for refugee status will not be prosecuted, but refugee status may be denied if an application is not made immediately on arrival. According to Romanian legislation, for example, penalties are not imposed on asylum-seekers who have entered Romania illegally after fleeing from a territory where their life or freedom was in danger, provided that they address the authorities immediately.¹⁶ The same applies in Bulgaria and Slovenia.¹⁷ In Hungary, illegal entrants are not subject to any sanctions and are automatically granted applicant status if they can submit their request for asylum to the refugee authority before being prosecuted for illegal residence by the immigration authorities.¹⁸ In the case of Lithuania, a person who has entered the country illegally may be prosecuted unless he or she approaches the authorities within 24 hours, but this cannot be a reason to refuse refugee status.

In practice, children (or adults for that matter) seeking asylum are seldom acquainted with these regulations. They are often the victims of smugglers, do not speak the language and may be travelling without documents or have only forged ones. Consequently, they are often afraid to approach the authorities.

Legislation in most of the countries of Central Europe and the Baltic States guarantees access for children seeking asylum. According to Bulgarian legislation, separated children should be admitted unconditionally into the country. The assessment of the Bulgarian Helsinki Committee is that, as far as access is concerned, Bulgarian legislation generally conforms to the SGP. As far as practice is concerned, there is little information available as border procedures are still being introduced and no relevant cases appear to have emerged.¹⁹

Legislation in Croatia is also still taking shape. A new Law on Asylum has been drafted but it is still pending a decision by the Governmental Office for Legislation. Regulations on implementation are to be passed within six months from the date the Law becomes effective. This will regulate access to the territory of Croatia, including access for separated children.²⁰

According to the Country Assessment, separated children who enter the Czech Republic illegally often lack identification documents and the authorities need to rely on the information they provide, including information on family relations.²¹

Estonia's legislation does not provide for unrestricted access for separated children, nor for freedom from detention for violating entry regulations. The legislation also allows the questioning of minors by Border Guard officials. In practice, especially-trained border guard officials question applicants at the border who wish to apply for asylum.²² Under a new draft proposal, however, separated children would not be initially interviewed at the border but in a reception center or a social welfare institution (see under "Registration and Documentation", pp. 31-32).²³

According to Hungarian legislation, foreigners can freely enter the territory of the country after declaring their intention to apply for asylum. In the absence of a request for asylum, however, or if the asylum request is rejected, an applicant can be refused entry. No special rules apply for separated children. If their special status is not identified, they may be returned to the country they came from together with the adult or group with whom they arrived. They may be subjected to lengthy questioning if the border guards believe that this is absolutely necessary.²⁴

In Latvia, under the new draft Asylum Law, the same provisions applicable to adult asylum-seekers will also apply to children: they may be detained by Border Guard or Police officials, their applications may be examined under the accelerated procedure and they may be subject to detailed and repeated interviews. In practice, however, there have been no recorded cases of separated children applying for asylum at the border.²⁵

In Lithuania, the Immigration Department at the Ministry of Interior, is currently assessing a draft internal regulation under which separated children will be considered a "vulnerable group". It is envisaged that under this internal regulation, separated children will not be subject to application of the "safe third country" notion.²⁶

There are no special provisions for separated children in Poland as far as entry requirements at the border are concerned. Separated children may be subject to detailed interviews carried out

by the immigration authorities and they may also be detained for immigration reasons. It is important to note, however, that, as is the case in many other countries of Central Europe and the Baltic States, most separated children enter Poland clandestinely.²⁷

According to Romanian law, no asylum-seeker shall be denied access to Romanian territory without a previous assessment of his or her claim. Applications made by separated children shall not be rejected without a detailed investigation by competent officers. There are, however, no special provisions to exempt separated children from being returned to a safe third country through which they transited (see box below). In practice, separated children and young people are often not identified by the authorities as such. Efforts, however, are being made to bring practice into compliance with the SGP.²⁸

Separated Children Entering Romania Clandestinely

Some separated children are brought into Romania by clandestine "guides" using secret routes, travelling by night and hiding in remote places during the day. Children seeking asylum are seldom aware of the countries they have transited through before arriving in Romania. They have often endured appalling living and travelling conditions. They are, therefore, unlikely to have the knowledge or the opportunity to avail themselves of the possibility of claiming asylum in a country they have travelled through.

(Romania Country Assessment)

In Slovenia, the new Law on Asylum only entered into force at the end of 1999 and regulations regarding its implementation have not yet been fully adopted. Legislation, as it stands, does not contain any special provisions about access to the territory for separated children claiming asylum. Slovenia, in any case, does not host many separated children. Usually, separated children arrive clandestinely, often as part of a group of people; they remain in the country only for a short period and then continue towards Italy or Austria. In practice, separated children who are identified as such by the authorities are not subjected to detailed interrogations when entering the country.²⁹

Trafficking in Children

Trafficking in children for the purposes of prostitution, the production of child pornography and other forms of exploitation is a serious problem in Europe. Trafficking for exploitation purposes must be distinguished from smuggling, which only involves the facilitation of entry into a country. The international criminal organisations involved in trafficking often use established routes to bring children to Europe for the purpose of economic or sexual exploitation. Trafficked children often transit through countries in Central Europe and the Baltic States on their way to Western Europe. While people who must leave their country for refugee-related reasons do not normally arrive in movements organised by traffickers, it is possible that some separated children seeking asylum may form part of such movements.

There is little information on the numbers of children trafficked to countries in Central Europe and the Baltic States and very few cases have been recorded. The Croatian Ministry of

Interior, however, reported two cases of "slavery and the transport of slaves" in 2000 involving children from Romania.³⁰ There is evidence, also, that children under 15 years of age (mostly Romanian and Bulgarian nationals) have been taken to the Czech Republic to engage in petty crime such as pick-pocketing.³¹ In some cases, a child's own family negotiates a deal with traffickers in the hope that the authorities in the country of destination will be more lenient towards the child and that, once the child has been granted permission to stay, they will have a chance to claim family reunification in the host country.

Trafficking and Exploitation of Children in Hungary

In Hungary, the main reason to bring children for exploitation into the country is to use them as beggars. In most cases children are forced to beg by their own parents, but in some cases children can be sold into virtual slavery. In a particularly distressing case, a 12-year old physically disabled little boy from Romania (both legs missing) was sold by his parents for a relatively high sum to work in Hungary. The child entered the country legally (as a tourist). The boy was being kept in a small room together with about 15 other persons and was taken to the streets to beg every day.

(Hungary Country Assessment)

Governments in the countries of Central Europe and the Baltic States have taken several initiatives to tackle trafficking. In Bulgaria, for example, the Government approved a Programme of Action Against Illegal Migration and Trafficking of People in February 1998. In Croatia, a special Task Force to combat the trafficking of people was set up under the Stability Pact for South-Eastern Europe, as well as a national Action Plan to Combat Trafficking in Human Beings. In July 2000, the Government of the Czech Republic adopted a National Action Plan aimed at curbing the exploitation and sexual abuse of children. Moreover, the penal law of the majority of the countries covered in the study punishes severely crimes against children, including trafficking. At the same time, as a condition to joining the European Community, the relevant countries in the region have been actively encouraged to strengthen vigilance and security at their borders. All these measures, however, have been introduced mainly in the context of crime control and prevention, rather than as specific measures for the protection of children. In keeping with child protection principles, measures against trafficking should pay greater attention to children's best interests.

A positive step in this direction is the National Programme Against Children's Commercial Sexual Exploitation and Sexual Violence adopted by the Lithuanian Government in January 2000. The Programme aims to compile and analyse information regarding the exploitation of children, advocate for changes in legislation, train specialists and organise international co-operation on this issue, as well as to create special education programmes for child victims and mechanisms for their rehabilitation and reintegration.³² Similar initiatives have been taking place also in other countries.

SPECIFIC RECOMMENDATIONS:

- Legislation and practice should guarantee that separated children seeking asylum will not be refused entry or returned at a point of entry, and strong measures should be taken to combat trafficking.
- All separated children who are seeking asylum should be excluded from "safe third-country" and other procedures which deny them the opportunity to apply for asylum.
- Current efforts to combat child trafficking and the commercial and sexual exploitation of children should be bolstered by further practical initiatives at all levels. The main objective of all such initiatives should always be to ensure the protection of children, in accordance with the key principle of the child's best interests.
- Separated children who are victims of trafficking should be supported and assisted.

IDENTIFICATION

At ports of entry immigration authorities should put in place procedures to identify separated children. Where children are accompanied by an adult, it will be necessary to establish the nature of the relationship between the child and adult. Since many separated children enter a country without being identified as “separated” at ports of entry, organisations and professionals should share information in order to identify separated children and ensure they are given appropriate protection.

(Statement of Good Practice: C.2)

Identification of separated children at an early state is crucial in order to ensure that they receive the protection they are entitled to. When children are accompanied by an adult, it is necessary to establish the nature of the relationship between the child and adult. Failure to identify a separated child may prevent the authorities from being alerted to the particular vulnerability and needs of the child, and from determining his or her best interests. The basic requirement of identification is endorsed by the CRC (Art. 8), and expanded upon in the 1997 UNHCR Guidelines (paragraph 5.1-5.3 and Annex II). It is also set out in Article 3.1 of the EU Resolution on Unaccompanied Children of 26 June 1997 (relevant, since many countries in Central Europe and the Baltic States are candidates for EU membership).

From the Country Assessments, it appears that no special procedures to identify separated children as such have been put in place in any of the countries in Central Europe and the Baltic States. This seems to be the case also in many countries in Western Europe.³³ This problem is compounded by the fact that, in many cases, separated children who do not apply for asylum are simply deported to their country of origin without investigation. According to some Country Assessments, border immigration authorities seem to purposely avoid the identification of children as separated minors, which would require the performance of the obligations set forth under the law with regard to separated children.³⁴ When a child is accompanied by an adult, for example, the nature of the relationship between the child and the adult is not subject to further investigation. The child is automatically considered not to be “separated”.

It should be pointed out that, in practice, responsible authorities experience considerable difficulty in identifying separated children. Separated children often travel without adequate documentation and, in most cases, in the company of adults who may or may not be relatives or family friends. For the most part, they enter the territories of the countries in question clandestinely, which makes the setting up of any identification procedures very difficult in practice. While the only source of information regarding the identity of separated children are, very often, the children themselves, under these conditions children are often too scared to tell the truth to the authorities.

Photographing and fingerprinting to establish identity are used by some countries, while X-rays of the bones of the wrist are sometimes used to assess a child’s age (see section on “Age assessment”).³⁵

The identification of separated children in Bulgaria, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia is usually based on information supplied by the children themselves or by any accompanying adults. The “Unaccompanied Children in Exile” (UCE) Project in Croatia offers a more systematic and proactive approach to the identification of separated children.³⁶ This NGO initiative succeeded in gathering information about separated children from a variety of sources (see box below) and can be considered a positive development in the identification, registration and documentation of separated children.

Identifying Separated Children in Croatia

The “Unaccompanied Children in Exile” (UCE) Project, an NGO initiative, succeeded in gathering information on separated children living in Croatia. The information came from different sources: social welfare centres, local centres for displaced persons and refugees, NGOs in local communities, UNHCR, ICRC, etc. Separated children, or their adult care givers in the case of very young children, were interviewed by professionally-trained interviewers. After being identified, separated children were registered and documented. The UCE Project and UNHCR, together with the Croatian Office for Displaced Persons and Refugees, suggested that in the future the forms used for registering displaced persons and refugees should contain a special set of questions that would allow the immediate identification of separated children.

(Croatia Country Assessment)

In contrast, in some countries no special searches or investigations are regularly conducted to identify separated children living in the country’s territory.³⁷ Some children may have been living in the country for a long time before the authorities become aware of them, if at all (see box below). The SGP, therefore, recommends the sharing of information and the co-ordination of efforts by relevant organisations and individuals with the aim of ensuring the protection of separated children.

Identification of Separated Children: A Case from Romania

In 1999 a minor from Sierra Leone claimed asylum in Romania without being identified as a separated child by the competent authorities. The child’s application passed through the legal procedures for granting asylum without the benefit of having a legal representative. The claim was first rejected but, after an appeal, the child was granted refugee status. Only afterwards did the authorities learn of the applicant’s status as a separated child.

(Romania Country Assessment)

In Poland, border officials sometimes have to deal with separated children returned to Poland on the basis of readmission agreements with other countries, mostly Germany. In 1999, UNHCR recommended that forced return from third countries to Poland should cease until the

factual and legal situation of separated children seeking asylum had been properly assessed but, in the meantime, the forced returns have continued.³⁸

SPECIFIC RECOMMENDATIONS:

- Comprehensive training in child-friendly processes and environments should be conducted for border and immigration officials dealing with asylum-seekers. Only specially-trained persons should interview children.
- Any procedures for age assessment should be in line with the SGP.
- Separated children who do not apply for asylum should be identified as also being vulnerable and requiring special protection, and adequate provisions should be made for them.
- States should consider introducing legislation requiring immigration authorities and the police to alert the relevant organisations about cases of children who may be separated.

THE APPOINTMENT OF A GUARDIAN OR ADVISER

As soon as a separated child is identified, a guardian or adviser should be appointed - in a long-term perspective - to advise and protect separated children. Regardless of the legal status of this person (e.g. legal guardian, NGO worker) their responsibilities should be as follows:

- to ensure that all decisions taken are in the child's best interests
- to ensure that a separated child has suitable care, accommodation, education, language support and health care provision
- to ensure a child has suitable legal representation to deal with her or his immigration status or asylum claim
- to consult with and advise the child
- to contribute to a durable solution in the child's best interests
- to provide a link between the child and various organisations who may provide services to the child
- to advocate on the child's behalf where necessary
- to explore the possibility of family tracing and reunification with the child.

In order to ensure necessary protection for separated children, appointments of guardians/advisers should be made within one month of a child being notified to the relevant authorities.

The individuals carrying out these responsibilities may be drawn from a range of specialist backgrounds. However, in order to carry out their role effectively, advisers or guardians must have relevant childcare expertise and an understanding of the special and cultural needs of separated children. They should receive training and professional support.

(Statement of Good Practice: C.4)

Several international instruments, including the CRC and the 1996 Hague Convention provide for guardians to be appointed in the absence of parents or other primary care givers. The national legislation of most countries in Central Europe and the Baltic States, equally, includes provisions for the appointment of a guardian or adviser to protect the "best interests" of separated children (Lithuania and Poland being, apparently, the only exceptions³⁹). There are, however, important differences as to the role, duties and responsibilities of guardians and advisers in each country, as well as to the background and qualifications they require. From the Country Assessments it appears that in many countries the function of guardian or adviser is fulfilled by the person or institution representing a separated child claiming asylum (his or her legal representative), although the two functions are in fact different and it is not clear what provisions, if any, are made for separated children who do not claim asylum.

Where a country's national legislation states that a guardian or adviser should be appointed, his or her main role is always to ensure that all decisions taken are in the child's best interests. According to the Statement of Good Practice, however, the guardian or adviser's responsibilities also include to ensure that the child has suitable care, accommodation, education, language support, health care provision and legal representation; to consult with and advise the child; to advocate on the child's behalf where necessary; to contribute to a durable solution in the child's best interests; to provide a link between the child and various organisations who may provide services to the child and to explore the possibility of family tracing and reunification. Apart from Slovenia, where this appears to be the case,⁴⁰ it is not

clear if the guardians or advisers appointed by the authorities in the other countries are required to undertake all or just some of these duties.

In many countries, in fact, it appears that there is little or no specific guidance for guardians or advisers as to how to carry out their role. Although they often have expertise in the fields of child welfare, social work or teaching, many guardians or advisers have limited awareness of refugee issues or of the countries from which separated children come. This is also the case in many countries in Western Europe.⁴¹

Legislation or policy in most countries does not demand specific qualifications for guardians or advisers. In Latvia, guardians may be appointed from social workers or NGO employees,⁴² while in Slovenia they normally need to have knowledge and experience of education and children care.⁴³ In many cases adult relatives can be appointed guardians if they are suitable.

Appointing a Guardian in the Czech Republic

Separated children in the Czech Republic are appointed a different type of guardian depending on whether they apply for asylum or not. Those who do not apply for asylum and are found by the police in the territory of the Czech Republic are dealt with by the District Authority. A guardian from the National Childcare Authority is then appointed by the court.

Separated children who apply for asylum have two guardians. The first one (usually an NGO employee) is appointed immediately by the Ministry of Interior after the child applies for asylum. His or her duty is to supervise the asylum procedure. The second guardian is a residence guardian who is appointed by the court and takes care about matters other than the asylum procedure.

(Czech Republic Country Assessment)

In some countries, such as Estonia and Lithuania⁴⁴, the duties and obligations of guardians are regulated by law, but guardians are only appointed after a child has applied for asylum. In other countries, such as Hungary and Latvia, the regulations are less explicit and it is up to the individual guardian to interpret the extent of his or her responsibilities to the child.⁴⁵

In the Czech Republic, guardians are appointed for separated children whether they apply for asylum or not. The duties and responsibilities of guardians, however, are not regulated by law, nor specific qualifications are required of them.⁴⁶

In a few countries the appointment of a guardian is a legal act comparable to adoption, and it needs to take into consideration the legislation and the circumstances in the child's country of origin (Hungary, Slovenia), while in others it is not possible to appoint a guardian until a child has been granted refugee status (Poland). In most of these countries, however, alternative provisions are applied in practice to ensure that separated children receive some form of protection.

Just as in legislation and policy, there are wide variations in practice regarding the appointment of guardians or advisers in the countries of Central Europe and the Baltic States. In Bulgaria, according to the Country Assessment, regulations related to the appointment of guardians and advisers are rarely applied in practice. According to the Bulgarian Refugee

Agency, however, measures are being taken for the appointment of guardians in keeping with the newly-passed Children Protection Act⁴⁷ and the Aliens' Law. In Croatia, despite the absence of an Asylum Law, guardians are appointed within 24 hours of a child being identified, and Municipal social services departments have social workers on duty 24 hours for this purpose.⁴⁸

In Estonia, apart from an individual or a public childcare institution, the guardian and advisor can also be a foster family, special welfare institution or other institution approved by the social services department.⁴⁹

In Hungary, the law of the child's country of origin has to be taken into account when appointing a legal (permanent) guardian. Contacting the authorities in the country of origin, however, may put a child seeking asylum, or his or her relatives back at home, in danger. In practice, a kind of temporary tutelage is applied to separated children in Hungary. This means that the child is put up in a temporary home and the authorities take the necessary steps to provide protection for the child.⁵⁰

There are no specific references in Lithuanian refugee legislation to the appointment of a guardian for separated children.⁵¹ In Poland, legal representatives can be appointed for children claiming asylum but their role is limited to representing the child during the refugee status determination procedure.⁵² Children not entering any legal procedure do not have legal representatives or guardians appointed. However, it should be noted that in practice separated children in Poland are assisted and advised in the Central Reception Facility by social workers which know them and have rather good personal contact with them.⁵³

In Romania, the appointment of a legal guardian is made quickly (usually within 2-3 days) by the Guardianship Authority, in close co-operation with the National Refugee Office of the Ministry of Interior and NGOs. At the same time, legal or social counsellors working for NGOs act as advisers to separated children.⁵⁴

In Slovenia, the guardian or adviser's duties include ensuring that separated children receive suitable care, accommodation, education, language support and health provision. They also provide a link between the child and various organisations who may provide services to the child.⁵⁵ Following an agreement between the Asylum Department of the Ministry of Interior, Social Services and the NGO *Slovenska Filantropija*, the latter is appointed as legal guardian for all separated children upon arrival in Slovenia (unless the child has siblings living in the country). *Slovenska Filantropija* is responsible to ensure the protection of separated children's rights and to provide all the necessary information regarding their entitlements in terms of medical care, education, humanitarian aid, etc.⁵⁶

SPECIFIC RECOMMENDATIONS:

- For children's "best interests" to be adequately protected, there is a clear need for all children under 18 years of age to be supported by a guardian or adviser at all stages of the asylum process and in relation to durable solutions. Such support should be in line with the provisions set out in international law and guidance (principally the CRC and the UNHCR Guidelines) and the SCEP Statement of Good Practice.
- Guidelines and training on how to perform the functions of a guardian should be developed and adopted.

REGISTRATION AND DOCUMENTATION

Registration and documentation are essential to protect the long-term interests of separated children. This should be carried out by a “twin-track” interview procedure once a guardian/adviser has been appointed. Immigration and border police officers should limit their interviews to gathering basic information about the child’s identity. A complete social history (...) should be taken by an organisation with care duties towards the child. All those interviewing separated children should have appropriate training or expertise.

(Statement of Good Practice: C.5)

Children are often uncomfortable with figures of authority and frequently say what they have been told to say by their parents or the person who arranged travel; afterwards, when they feel more secure, they usually volunteer more accurate information to care professionals whom they learn to trust. The Statement of Good Practice, therefore, recommends a “twin-track” strategy (i.e. a restricted border interview followed by the taking of a complete social history).

Experience in both Western Europe and the countries of Central Europe and the Baltic States is that, in practice, there is often no unified service to register separated children and that duplication of record-keeping is common between agencies (especially because some organisations do not have computers). In many cases neither police nor immigration staff possess childcare expertise or training in child interviews. Children are interviewed in the same manner and by the same staff as adults.⁵⁷

Although all countries register asylum applications, including those by separated children, few countries record relevant information about separated children as a particularly vulnerable group (Croatia and Hungary are exceptions) and even fewer have adopted the “twin-track” strategy recommended in the Statement of Good Practice (Romania and Slovenia, apparently, being the only exceptions). In most countries, separated children applying for asylum receive the same treatment as adults:⁵⁸ after their application is registered, an identification document is issued (an interim refugee certificate or a certificate confirming that the child is an asylum applicant).⁵⁹ Children who arrive with their parents are usually entered in their parents’ identification documents. Separated children are normally issued individual identification documents.⁶⁰

Although many countries lack specific guidelines relating to the registration and documentation of separated children, there are examples of good practice in the countries of Central Europe and the Baltic States. In Croatia, for example, the Project “Unaccompanied Children in Exile” systematically registered and documented separated children. An individual plan of action, which included urgent interventions, short-term and durable solutions, was made for each child in order to ensure that his or her best interests were protected. A special database was developed to follow-up the child’s situation as it evolved.⁶¹ Similarly, in Hungary, although the existing regulations do not take into account the particular needs of

separated children, in practice relevant data on children, their families and their circumstances is recorded and updated regularly.⁶²

According to the Country Assessments, Romania and Slovenia are the only countries where the “twin-track” strategy is currently implemented (it is worth noting, however, that an amendment to the Estonian Refugees Act which is currently in draft form would, if passed, effectively introduce the “twin-track” strategy to Estonia).⁶³ In the case of Romania, preliminary interviews at the border are limited to obtaining basic information and more detailed interviews are normally carried out in a “child-friendly manner” by eligibility officers from the National Refugee Office. Trained staff from *Salvati Copiii* (Save the Children Romania) provide independent assessments, pertaining mainly to the child's psychological profile.⁶⁴ In Slovenia, a "twin-track" strategy was recently introduced by the NGO *Slovenska Filantropija*. Following their arrival, a trained social worker from *Slovenska Filantropija* interviews separated children and prepares a complete social history for each case.⁶⁵

SPECIFIC RECOMMENDATIONS:

- Separated children should be registered and documented without delay.
- A co-ordinated centralised registry should be established for proper registration of separated children.
- Statistics on separated children and other information should be duly compiled and made available on a regular basis.

AGE ASSESSMENT

If an age assessment is thought to be necessary, it should be carried out by an independent paediatrician with appropriate expertise and familiarity with the child's ethnic/cultural background. In cases of doubt there should be a presumption that someone claiming to be under 18 years of age will provisionally be treated as such. Examinations should never be forced or culturally inappropriate. It is important to note that age assessment is not an exact science and a considerable margin of error is called for. In making an age determination separated children must be given the benefit of the doubt.

(Statement of Good Practice: C.6)

Separated children frequently arrive in Europe with false documents or no documents at all. In many cases this is the only means of escape from danger for asylum-seekers – as is recognised in Article 31 of the 1951 Refugee Convention. In some circumstances it may be dangerous to request a passport or visit a consulate to apply for a visa. A consulate may be too far away to travel to. Documents may have been destroyed by the destruction of dwellings or lost during flight. The asylum-seeker may have had to flee at short notice. For children the problem can be compounded if they are not entitled to passports until they reach the age of majority, their birth has not been registered, or their parents are dead or missing.⁶⁶

The age determination of asylum-seekers who claim to be children is very often contentious. If separated children are incorrectly identified as adults, however, they will not be entitled to the full protection which is accorded to them under international law. The SCEP Statement of Good Practice and UNHCR Guidelines, therefore, state that children should be given the benefit of the doubt if their exact age is uncertain.

Age assessment should not be based solely on appearance. Physical ageing can be accelerated due to factors such as hunger, conflict, poverty and child labour. Physiological tests should never be forced or violate the physical integrity of the individual and they must take into account the culture and ethnic background of the child. Testing should stress approaches that are based more on psychological than physical factors.⁶⁷

Moreover, the UNHCR's 1997 Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum indicate that age assessment methods "must be safe and respect human dignity" (paragraph 5.11). It is also essential that the informed consent of a child should be given before any medical examinations are undertaken.

The impact of an age assessment examination finding that an applicant is an adult can be very disruptive. The individual involved may well have to move to an adult reception centre (or equivalent) and leave school, and existing legal representation may be removed.⁶⁸ SCEP accepts that some applications are made by people claiming to be aged under 18 who are actually some years older, but believes that the damage incurred when a child is wrongly denied recognition as a child outweighs the problems that may arise when an adult is accepted as a child. In some cases, children themselves may declare that they are over 18, for example if they are seeking employment opportunities.

As far as policy and legislation are concerned, there are no established procedures for age assessment in the majority of countries of Central Europe and the Baltic States. This seems to be the case in Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia and Slovenia.⁶⁹ Where they exist (the Czech Republic and Poland) the practice seems not to give the benefit of the doubt to children.⁷⁰ (Recent legislation in Poland, however, acknowledges that medical examinations are subject to a margin of error related to the type of examination). In Bulgaria, Latvia and Hungary, on the other hand, children are, apparently, given the benefit of the doubt in practice.

In Bulgaria, Latvia and Slovakia age assessment is based upon the information supplied by the child through interviews; while in the Czech Republic, Estonia, Hungary, Lithuania, Poland and Romania medical examinations are conducted. Wrist and hand X-rays are the most common methods used in the countries of Central Europe and the Baltic States.

SPECIFIC RECOMMENDATIONS:

- Age assessment should be conducted in a flexible manner, taking into account not only physical characteristics but also the maturity and psychological development of the child.
- The principle of the "benefit of the doubt" should be applied in a generous manner.

DETENTION

Separated children should never be detained for reasons related to their immigration status. This includes detention at the border, for example, in international zones, in detention centres, in police cells, in prisons or in any other special detention centres for young people.

(Statement of Good Practice: C.7)

According to the UNHCR Guidelines, “Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children” (paragraph 7.6). The SCEP Statement of Good Practice endorses this position, and further argues that detention should never be used, whether in detention centres, police cells, international “waiting zones”, or prisons.⁷¹ Although restricting children’s freedom of movement may be sometimes necessary in order to protect them from risks (e.g. disappearances, trafficking, exploitation), such restrictions should not be imposed for immigration control reasons.

In many Western European countries separated children are detained on arrival in so-called “waiting zones” while their claims are processed. Practice varies as to where children are held and the conditions they face, but there is some evidence that their special circumstances are sometimes neglected.⁷² From the Country Assessments it transpires that all the countries of Central Europe and the Baltic States also place restrictions on the freedom of movement of asylum-seekers, including separated children, but not all of these restrictions amount to detention.

Detention in Bulgaria

The Bulgarian practice is to detain for an indefinite period of time persons without identification documents until their identity is determined, especially when the persons are foreign citizens. There is not enough information whether this practice is applied to children as well, but we can presume, having in mind that there is no clear age assessment methodology, that there is a risk of placing in a detention centre separated children who have been trafficked into the country. Although the Refugee Agency declares that it accepts the relevant international documents, at least one case was registered in the past of a minor who applied for refugee status in Bulgaria and who was detained in the airport transit zone for more than a week. It is necessary to develop a system which will guarantee that persons applying for asylum in Bulgaria, and especially separated children, would not be detained for reasons related only to their immigration status.

(Bulgaria Country Assessment)

According to the Country Assessment, the policy, as well as the practice, in Croatia is that children are detained only exceptionally and only for the shortest possible period of time. Children, as a rule, are placed in open type institutions managed by NGOs. Detention lasts only while the arrangements are made for the child's return, while contacts are made with the parents or authorities in the countries of origin.⁷³

In the Czech Republic, children under 15 are not detained. If a child under 15 is accompanied by a closely-related adult and this person is taken into a detention centre, the child is placed with the adult in compliance with the principle of non-separation of families. In this case, the detained persons are not placed in a police cell. Children over 15 are not treated differently from adults.⁷⁴

Since no cases of separated children have been recorded in Estonia, there is no practice in this respect.⁷⁵

In Hungary, separated children cannot be lawfully detained. In practice, parents with children under 14 are not placed in detention centres but if an adult primary care giver other than one of the child's parents (relative, adult sibling or another person) is detained, then the child is separated from him or her.⁷⁶

Latvian legislation does not include any special provisions or procedures related to the detention of separated children. In practice, no separated children have been detained in Latvia. During the initial phase of the asylum procedure, applicants, including separated children, may be accommodated at the border or at a police station in premises provided especially for this purpose. In the event that the filed asylum application is considered justified, asylum-seekers are transferred immediately to the nearest reception centre for asylum-seekers.⁷⁷

Persons who enter Lithuania illegally, including asylum-seekers, are detained irrespectively of their age. Separated children seeking asylum are accommodated at the Foreigners' Registration Centre, where they enjoy freedom of movement to a certain extent. Separated children who do not claim asylum are referred to a Social Assistance and Prevention Centre for Minors where they receive temporary accommodation and suitable psychological, medical and social assistance. The children's freedom of movement, however, is restricted and they are not allowed to leave the centre. Children whose parents have been detained are not separated from them.⁷⁸

In Poland, if a separated child enters the territory legally and lodges an application for refugee status, he or she is normally placed in an education and care centre or, if the child is over 13 years of age, in a reception centre for persons applying for refugee status. If the child has entered Poland illegally and has been arrested by the Border Guard or by the Police and is waiting for deportation, he or she may be placed in an emergency care institution.⁷⁹ Children under 18, however, cannot be held under detention pending deportation. New legislation in Poland, moreover, states that children may be deported to their country of origin or to another country only in the event that care will be provided to them by one of their parents, another adult or by competent care institutions in accordance with the standards provided for in the CRC.

Persons claiming asylum in Romania often have their freedom of movement restricted or have to stay in a transit area until they receive permission to enter Romania. Up to the present,

however, there have been no recorded cases of separated children being detained in Romania.⁸⁰

Although it would appear that policy in Slovakia is against the detention of separated children claiming asylum, there has been at least one case of detention (three siblings) in the Detention Center in Secovce, Eastern Slovakia. The Detention Center was opened in September 2000 as the second detention center for illegal aliens in Slovakia, and aimed at treating families with children decently. When a group of illegal aliens is arrested and separated children are among them, they may not be identified by the police as such and not registered as a case of detained separated child. If they do not express a wish to apply for asylum, they will be placed in the Detention Center for a period of one month.⁸¹

In practice, according to social workers consulted in the Slovenia Country Assessment, separated children are not detained in Slovenia, even if they do not have identification documents or their age cannot be determined. However, since there are no special provisions in the Law on Asylum which explicitly forbid the detention of separated children, there are no guarantees that in practice they will not be detained.⁸²

SPECIFIC RECOMMENDATIONS:

- Separated children should not be detained solely on grounds of immigration control.
- Authorities should take legal and practical measures to provide appropriate accommodation alternatives to detention.
- In general, restrictions of movement in reception centres or other accommodation facilities should only be applied in the best interests of the child.

THE RIGHT TO PARTICIPATE

The views and wishes of separated children must be sought and taken into account whenever decisions affecting them are being made. Measures must be put in place to facilitate their participation in line with their age and maturity. Any interviews by immigration or police officers should be done in a child-appropriate manner by officials who have received training in interviewing children. Separated children are entitled to be heard directly or via a legal representative or guardian/adviser.

(Statement of Good Practice: C.8)

Article 12 of the CRC asserts that children have the right to express their opinion freely and to have that opinion taken into account in any matter or procedure affecting them. This is one of the cornerstones of the CRC; it builds on long-standing concerns with protection of and provision for children. The 1997 UNHCR Guidelines cite Article 12 and state that the views and wishes of children should be elicited and considered. A key issue is the participation of separated children in the refugee determination procedure.

It is sometimes argued that participation imposes burdens on children at too young an age; that children lack the capacity to be involved in decision-making, and that children should not be given rights until they are capable of accepting responsibility.⁸³ These arguments are, however, misplaced, as Article 12 recognises the child's right to be heard, but does not imply that a child should be forced to put forward his or her views. Moreover, Article 12 does not imply a right to self-determination, but rather the recognition that children's opinions should be taken into consideration.

With few exceptions, the information in the Country Assessments refers mainly to policy and the law in the different countries. As in Western Europe,⁸⁴ under the legislation of many countries in Central Europe and the Baltic States the authorities are under obligation to consult with asylum-seeking children over certain age and, depending on the child's age and maturity, to take into account his or her views.

In practice, a key role in supporting the participation of children in major decisions affecting them is that of the guardian or adviser (see "The appointment of a guardian or adviser", above).⁸⁵ In order to make effective their legal entitlements, children need to be interviewed by trained staff in child-friendly environments.

In Bulgaria, although the Refugee Act does not contain any special regulations about the child's participation in the refugee determination procedure, the new Children Protection Act states that in any administrative or legal procedure in which the child's rights and interests are concerned, it is obligatory to hear the child, if he or she is over 10, unless this is counter to his or her "best interests". Children under 10 may be heard depending on their maturity. Moreover, children have to be informed about how decisions will affect them. Hearings

should take place in a suitable atmosphere and in the presence of a social worker or child specialist.⁸⁶

The project “Unaccompanied Children in Exile” in Croatia paid special attention to the right of children to participate and express their opinion about decisions affecting their future. This principle was also respected in cases of family reunification.⁸⁷

In the Czech Republic, the Act on Social and Legal Protection of Children states that a separated child able to formulate his or her views is entitled to express them without any restrictions whenever decisions affecting him or her are being made. The views of the child should be taken into account in line with his or her age and maturity.⁸⁸

In Estonia, although there have been no recorded cases of separated children, the right to participate is ensured by the Family Law Act, as well as by the Child Protection Act.⁸⁹

In Hungary and Poland, there are apparently no relevant legal provisions to allow children to participate in the asylum process.⁹⁰ The general principles of the Administrative Procedure Code in Poland, however, require the authorities to ensure that all parties in a legal procedure (this should include separated children who undergo refugee status determination) actively participate at all stages of the proceedings and are free to express their opinions on the gathered evidence before a decision is taken.⁹¹

In Lithuania, the new Civil Code which came into effect on 1 July 2001 contains general provisions on children's right to participate. Article 3.164 states that "while deciding any issue related to a child, and while adopting a decision, a child able to formulate his/her views has to be heard directly or, if that is not possible, through his/her representative, and his/her views have to be taken into account if that does not contradict his/her own interests".⁹²

Under Latvian law, a separated child, like any other asylum-seeker, is granted the right to articulate his or her views and wishes during the asylum procedure. The child (his or her representative) has the right to participate in the examination of the asylum application and in the appeal procedure and to examine case material. The draft Asylum Law explicitly states that the views of children shall be considered in the examination of their asylum application.⁹³

In Romania, children over 14 years of age can make asylum claims, take part in the procedures (through interpreters, if necessary) and appeal against an unsatisfactory decision. An NGO-appointed adviser is normally available to assist them (although the person accompanying and representing them is the legal guardian appointed by the Guardianship Authority).⁹⁴

In Slovakia, the right of children to participate in the asylum procedure is recognised. In practice, experts are called to assess a child's ability to present his or her case for asylum based on his or her age and maturity.⁹⁵

In Slovenia, a child that is capable of forming his or her own opinions has the right to express them freely, in co-operation with his legal representative, on all issues concerning him. Judgements about the legitimacy of those opinions are performed according to his or her maturity and age. In practice, children are interviewed sensitively in an appropriate manner.⁹⁶

SPECIFIC RECOMMENDATION:

- Authorities should establish procedures to ensure that the views and opinions of separated children are taken into consideration regarding any decisions that affect them.

FAMILY TRACING AND CONTACT

Tracing for a child's parents and family needs to be undertaken as soon as possible, but this should only be done where it will not endanger members of a child's family in the country of origin. States and other organisations undertaking tracing should co-operate with UN agencies and the ICRC Central Tracing agency. Separated children need to be properly informed and consulted about the process. Where appropriate, those responsible for a child's welfare should facilitate regular communication between the child and her or his family.

(Statement of Good Practice: C3)

In spite of the extensive legal framework provided by international law (the CRC, for example, states that children who are separated from their parents have the right to maintain contact with them and that governments must co-operate with the UN and NGOs in family-tracing measures. This emphasis is reinforced by the European Convention on Human Rights and the UNHCR's 1997 Guidelines),⁹⁷ many of the countries of Central Europe and the Baltic States, as well as Western European countries, lack official regulations or policy in this area.⁹⁸ Furthermore, when tracing does take place, it is seldom done at the earliest opportunity.

According to the Country Assessments, there are special provisions referring to family tracing in the legislation of the Czech Republic⁹⁹, Estonia¹⁰⁰, Hungary¹⁰¹, Latvia¹⁰² and Slovakia¹⁰³ (although no cases of family tracing have been reported in Estonia or Latvia yet and, in the case of the Czech Republic, provisions exist only for separated children who do not apply for asylum¹⁰⁴).

In Bulgaria, Croatia, Lithuania, Poland, Romania and Slovenia, on the other hand, it appears that no legal provisions for family tracing exist.¹⁰⁵ In practice, however, efforts are made in all these countries to trace separated children's families through national or international organisations such as the Red Cross, ICRC, UNHCR, NGOs, etc. or with the help of diplomatic missions and embassies. If bilateral agreements exist with a separated child's country of origin, the child protection authorities may proceed to contact the authorities there (this is the case in Hungary). The Statement of Good Practice, however, warns that this should only be done where it will not endanger members of a child's family in the country of origin.

In some countries it is not clear which agency holds primary responsibility for tracing, as none is clearly appointed, and co-operation between agencies is often poor. The reality of tracing in countries of origin is frequently extremely difficult, owing to the impact of conflict or other large-scale disruption, and as a result progress is very slow and painstaking.¹⁰⁶

Despite the lack of relevant legal provisions in many countries, there are examples of good practice in Central Europe and the Baltic States. The project "Unaccompanied Children in Exile" in Croatia, for example, implemented family tracing activities and established contacts with families through radio enthusiasts and local media during the war in neighbouring Bosnia and Herzegovina.¹⁰⁷ In the Czech Republic the local authorities are required to inform the district authority of the presence of a separated child. The district authority then takes the

necessary measures to contact the child's parents or primary care givers, often with the help of the relevant embassy. The district authority reports the results of this efforts to the Agency for International Legal Protection of Children.¹⁰⁸

SPECIFIC RECOMMENDATIONS:

- Considering the emotional and psychological importance to the child of maintaining and developing contact with family and relatives and of preserving cultural links with the country of origin, it is vital that European states should develop legislation aimed at ensuring these objectives, in line with the key principles established in the CRC, and reinforced in the ECHR, the EU 1997 Resolution on Unaccompanied Minors, and the UNHCR Guidelines.
- Family tracing efforts should be coordinated and national systems put in place in co-operation with international and national organisations such as the Red Cross, ICRC, UNICEF, UNHCR, etc.

FAMILY REUNIFICATION IN A EUROPEAN COUNTRY

Separated children seeking asylum or otherwise present in a European state sometimes have family member(s) in other European states. European states should positively facilitate family reunion for the child in the state where the child's best interests will be met in accordance with safeguards set out in paragraph 12.2.

(Statement of Good Practice: C.9)

According to Article 10(1) of the CRC, applications for family reunification shall be dealt with by states in a “positive, humane and expeditious manner”. The UNHCR Guidelines similarly emphasise that every effort should be made to reunite a child with his or her parents in another asylum country at an early stage and before status determination takes place.¹⁰⁹

In most countries in Central Europe and the Baltic States there is no specific legislation about family reunification in a European country and very few cases in practice (an important exception is Croatia, where the “Unaccompanied Children in Exile” project facilitated a total of 642 family reunifications between 1993 and 1998, including 50 reunifications in Sweden)¹¹⁰. According to the Country Assessments, however, efforts have been made to facilitate family reunification for separated children.¹¹¹

Family Reunification in a European Country: the “Unaccompanied Children in Exile” project in Croatia.

The “Unaccompanied Children in Exile” project assisted local social services in 13 European countries to collect the necessary documentation for family reunification and to speed up the procedure of family reunification. For this purpose, 13 UCE offices were opened outside Croatia in 1994. The advantage of the UCE Project was that the project co-ordinators were of Croatian origin and they could communicate with the children and help the local social services assess the best interests of the child and fulfil his or her needs. The co-ordinator for the Netherlands, for example, held seminars on the cultural, demographic and geopolitical characteristics of Croatia and Bosnia and Herzegovina for local social workers. These seminars were organised by the Dutch Social Services Department. Co-operation was also very positive in Sweden, where separated children were informed and encouraged by Swedish social workers and other professionals to contact the relevant authorities and put forward requests for family reunification in Sweden. The UCE Project resulted in 50 family reunifications in Sweden alone. The UCE family reunification procedure went on in the following way: family tracing was organised for every child who lost contact with his or her parents during the war, on the basis of an individual action plan for each child. Efforts were concentrated on shortening the period of family separation. The Project co-operated with government social welfare institutions in all 13 countries, as well as with other local organisations, UNHCR, ICRC, IOM, etc. During the period of 1993 to 1998, the UCE Project managed to assist in 642 cases of family reunification.

(Croatia Country Assessment)

SPECIFIC RECOMMENDATIONS:

- In order that the “best interests” of the child are met, states should ensure that separated children seeking asylum within one European country who have family relatives in another European country should receive appropriate assistance so that family reunification can take place as soon as possible. Separated children’s access to reunification procedures should be premised upon the fact that they are children rather than upon their status in the asylum procedure.
- The definition of “family” should be a wide one and should include relatives and dependants living in the same household. It is essential that procedures are swift so that separated children are not left waiting for long periods of time in insecurity.

INTERIM CARE, HEALTH, EDUCATION AND TRAINING

Separated children should be found suitable care placements as soon as possible after arrival. Care authorities should conduct a careful assessment of their needs, and changes in care arrangements should be kept to a minimum. Siblings should be kept together. Where children live with or are placed with relatives, these relatives should be assessed for their ability to provide suitable care. Separated children over 16 years of age should not be treated as “de facto” adults and placed on their own, without adult support, in hostel or reception centre settings.

Whether they are placed in foster care or in residential settings separated children should be cared for by suitable professionals who understand their cultural, linguistic and religious needs. Care workers should help a child develop links with their ethnic community where such exists. Regular reviews of care arrangements should be carried out.

In order to establish safeguards, care workers in reception centres and residential homes need to be made aware of the problem of trafficking of children for the purposes of prostitution or other forms of exploitation.

(Statement of Good Practice: 10.1)

Interim Care

According to Article 20 of the CRC, States are obliged to provide special protection and appropriate alternative care arrangements for children separated from their family environment. Alternative family care or institutional placements should take into account the child's ethnic, religious, cultural and linguistic background. Furthermore, Article 25 recognises the right of a child who has been placed by the competent authorities for reasons of care, protection or treatment, to have that placement evaluated regularly, while Article 26 grants children the right to benefit from social security, including social insurance.

With the exception of Croatia, where the Asylum Law has not yet been adopted, legislation in the countries of Central Europe and the Baltic States contains provisions for the suitable interim care of separated children, although in some cases this applies only to children who claim asylum. According to the Country Assessments, policy and practice in Bulgaria¹¹², the Czech Republic¹¹³, Romania¹¹⁴, Slovenia¹¹⁵ and Slovakia¹¹⁶ largely correspond with the Statement of Good Practice, while in Estonia¹¹⁷ and Latvia¹¹⁸ legislation is in line with the SGP but there is insufficient information about practice or there have been no relevant cases recorded.

Interim Care Arrangements in Poland

According to the Law, separated children who lodge an application for refugee status are automatically entitled to accommodation, food, material and financial assistance. Depending on their age, children may be placed in a Refugee Reception Centre if they are 13 or older, or in special care and education centres (most often in the Warsaw Emergency Children Care Unit) if they are under 13. Children are fed and clothed in these centres and siblings are kept together. Children are assisted by social workers. In the central Refugee Reception Centre, an effort is made to provide the residents with food appropriate to their cultural and religious needs, but in the Emergency Children Care Unit this is sometimes difficult due to financial reasons. In practice, separated children who are granted refugee status may have to continue to stay in the Emergency Children Care Unit or in educational care centres.

(Poland Country Assessment)

In some countries (Hungary¹¹⁹, Lithuania¹²⁰ and Poland¹²¹, for example), interim care arrangements are made for separated children claiming asylum, but no legal provisions seem to exist for children who do not apply for asylum or who have entered the country illegally.

Interim Care Arrangements in Hungary

In Hungary, separated children are placed in "temporary homes" and their interests represented by officially appointed legal representatives. The people working in these homes attempt to take into account the varying cultural, ethnic and religious needs of the children and, if possible, try to establish contact with the children's ethnic communities in Hungary. One of the problems is that the "temporary homes" were set up to accommodate children for 30 days, as required by the law, but the settlement of the legal situation of foreign children in practice takes much longer than this. In several cases children wait months, or even years, in institutions that are unsuitable for this purpose.

(Hungary Country Assessment)

Health

Separated children should have access to health care on an equal basis with national children. Particular attention should be paid to their health needs arising from previous physical deprivation and ill-health, disabilities, and from the psychological impact of violence, trauma and loss. For many separated children access to counselling is vital to assist their recovery.

(Statement of Good Practice: 10.2)

Article 24 of the CRC recognises the right of all children to the highest standard of health and medical care attainable, while Articles 23 and 39 state the rights of disabled children to enjoy a full and decent life and to receive special care, as well as the obligation of States to ensure that child victims of armed conflicts, torture, neglect, maltreatment or exploitation receive appropriate treatment for their physical and psychological recovery and social reintegration.

Regarding separated children's access to health, it appears from the Country Assessments that policy and practice in Bulgaria¹²², the Czech Republic¹²³ and Poland¹²⁴ conform to a large extent with the SGP. National laws in Croatia¹²⁵ and Estonia¹²⁶ are also in line with the SGP, but either there is insufficient information about their implementation or no relevant cases have been yet recorded. In Hungary¹²⁷, Latvia, Lithuania¹²⁸, Romania¹²⁹, Slovakia¹³⁰ and Slovenia¹³¹, on the other hand, only after children have been granted refugee status are they entitled to full health care on the same basis as national children. Children applying for asylum in these countries are entitled to basic and/or emergency health care only. Information on counselling for separated children is largely missing from the Country Assessments, except for Slovenia where counselling is provided by experts working with *Slovenska Filantropija*.¹³²

Education, Language and Training

Separated children should have access to the same statutory education as national children. Schools need to take a flexible, welcoming approach with separated children and provide second language support. In order to preserve their cultural identity separated children should have access to mother-tongue teaching. Vocational and professional training should be available to separated children. It is likely to enhance their life chances if they return to their home country.

(Statement of Good Practice: 10.3)

Bulgaria, where separated children seeking asylum are entitled to free access to primary and secondary education, provides an example of good practice in this respect. The Agency for Refugees provides financial and material assistance and language and vocational training for separated children seeking asylum until they leave secondary school. There have been also attempts to organise mother-tongue teaching for refugee children, but the small number of children and the variety of languages they speak have posed major challenges.¹³³

Although there have been no recorded cases of separated children applying for asylum in Croatia, UNHCR reports that children awaiting the outcome of an asylum application by their parents have not been included in schooling programmes.¹³⁴

According to the Country Assessment, children seeking asylum in the Czech Republic have the same access to primary education as national children. Most children seeking asylum, however, find attendance to secondary and technical schools impossible in practice due to the fact that proficiency in the Czech language is required and mother-tongue teaching is not available.¹³⁵

In Slovakia children seeking asylum are entitled to free primary education and also to secondary education. Children who have been granted refugee status are entitled to free primary, secondary and university education. Children accommodated in the refugee centres attend intensive Slovak language lessons and basic subjects such as mathematics and geography. After a period of 2-3 months they are placed in local public school and attend classes with local children.

Although legislation in Estonia seems to be in line with the SGP, its practice could not be assessed as no cases of separated children have been recorded.¹³⁶ Croatia lacks relevant legislation (there is no Asylum Law) and there is little information on current practice.¹³⁷ In Hungary,¹³⁸ and Slovenia,¹³⁹ it appears that only those children who have been granted refugee (or temporary protection) status are entitled to the same statutory education as national children. According to Latvian legislation, asylum seeking children are also entitled to access education on the same basis as nationals. However, as no extra budgetary allocations have been made for the implementation it cannot be guaranteed in practice. So far, ad hoc agreements have been reached between the reception centre and local schools in the municipality to which the reception centre belongs.¹⁴⁰

In Lithuania, children seeking asylum are granted access to state schools if they have the necessary knowledge of Lithuanian or Russian. Teaching in the children's mother-tongue is not available due to the lack of specialized teachers. Arrangements have been made for children accommodated in the Foreigners' Registration Centre and in the Centre for Minors to receive lessons in Lithuanian and other subjects but, for practical reasons, children staying there do not have access to regular schools.¹⁴¹

Children seeking asylum in Poland are entitled to free primary education. Following UNHCR's intervention, free secondary education has been made available to children who have been granted refugee status. Although in practice children in most of the refugee centres can attend local schools, sometimes due to administrative and financial problems not all children are enrolled. Mother-tongue teaching is not available due to financial and practical difficulties.¹⁴²

In Romania, children accommodated at reception centres attend Romanian-language lessons organised by NGOs and UNHCR, before being integrated into the Romanian school system.¹⁴³

SPECIFIC RECOMMENDATIONS:

- Separated children, whether they have applied for asylum or not, should be granted appropriate reception and care.
- Separated children should have access to health services regardless of their legal status.
- Separated children should have access to the education system on an equal basis with national children, regardless of their legal status.
- Separated children should receive language training in the country of asylum's language.

THE ASYLUM OR REFUGEE DETERMINATION PROCESS

Access to normal procedures

Separated children, regardless of age, should never be denied access to the asylum process. Once admitted they should go through the normal procedures and be exempt from alternative procedures including those relating to 'safe third country'(admissibility), 'manifestly unfounded' (accelerated) and 'safe country of origin' and from any suspension of consideration of their asylum claim due to coming from a "country in upheaval".

(Statement of Good Practice: 11.1)

While normal asylum procedures should be employed for the determination of separated children's applications, it is also important that the authorities processing asylum applications acknowledge the particular vulnerability of separated children. This is recognised in the 1997 UNHCR Guidelines which state that "an unaccompanied child seeking asylum should not be refused access to the territory and his/her claim should always be considered under the normal refugee determination procedure" (paragraph 4.1).

According to the information in the Country Assessments, legislation in most countries in Central Europe and the Baltic States guarantees separated children full access to the asylum process.¹⁴⁴ There are, however, importance differences regarding both policy and practice in the various countries.

In Bulgaria, the Refugee Act does not exclude the possibility of refusal under the "safe third country" and "safe country of origin" procedures.¹⁴⁵

The Law in the Czech Republic states that applications from separated children cannot be refused as "manifestly unfounded" or by application of the "safe third country" and "safe country of origin" notions.¹⁴⁶

In Latvia, the Law states that children's applications for asylum should be given priority to ensure that their case is decided as soon as possible. Since the number of asylum-seekers arriving in Latvia is very small, their cases are examined quickly and efficiently. So far no asylum application has been examined under the accelerated procedure but the Law does not specifically preclude this possibility.¹⁴⁷

According to the Country Assessment, the Lithuanian Migration Department intends to enact an internal ordinance which stipulates that separated children seeking asylum would neither be subject to accelerated procedures nor to the "safe third country" notion.¹⁴⁸

Legislation in Poland, Slovakia and Slovenia does not exempt separated children from procedures relating to the "safe country of origin", "safe third country" or "manifestly unfounded claims" notions.¹⁴⁹

In Romania, applications by separated children cannot be dealt with under the accelerated procedures which apply to "manifestly unfounded claims". They are, however, not exempt from the "safe third country" rule.¹⁵⁰

SPECIFIC RECOMMENDATION:

- Separated children are to have access to normal asylum procedures containing appropriate provisions and safeguards, in line with the UNHCR Guidelines and the SCEP Statement of Good Practice.

Legal Representation

At all stages of the asylum process, including any appeals or reviews, separated children should have a legal representative who will assist the child to make his or her claim for asylum. Legal representatives should be available at no cost to the child and, in addition to possessing expertise on the asylum process, they should be skilled in representing children and be aware of child-specific forms of persecution.

(Statement of Good Practice: 11.2)

In most countries of Central Europe and the Baltic States separated children claiming asylum are entitled to have a legal representative¹⁵¹ (Croatia, where the Asylum Law has not yet been adopted,¹⁵² being an exception). The Country Assessments, however, identify some problems with the practical application of the law in some instances.

In Hungary, for example, a legal representative is appointed only after a separated child seeking asylum has submitted a written application containing detailed descriptions of the facts and circumstances which caused him or her to flee. Separated children, therefore, do not benefit from legal assistance during this crucial step in the refugee determination process. The Hungarian Country Assessment identifies this as a major weakness in the Law.¹⁵³

Although Bulgarian legislation states that separated children have the right to have a legal representative appointed during the asylum process, according to the Country Assessment this is rarely done in practice.¹⁵⁴ This, again, is a major shortcoming.

Lithuanian Refugee Law does not contain provisions for the mandatory appointment of a legal representative. In practice, a representative from the Children's Rights Protection Office and/or a lawyer from the Lithuanian Red Cross is routinely invited to the interviews carried out by the Foreigners' Registration Centre when a separated child is involved. The role of these persons, however, is not formally regulated by legislation or by-laws and they are not available to assist separated children throughout the entire asylum procedure.¹⁵⁵

In Slovenia, since January 2001, the NGO *Slovenska Filantropija* is automatically appointed as the legal guardian of all separated children and is, therefore, responsible to ensure adequate legal representation through a network of refugee counsellors. In 2001, all separated children were represented by a refugee counsellor. The duties of counsellors include informing asylum-seekers about relevant issues, laws and regulations, providing assistance in lodging their asylum application, providing general legal assistance and representing them through the entire asylum procedure.¹⁵⁶

SPECIFIC RECOMMENDATIONS:

- Separated children should be informed about their right to legal advice and representation.
- Access to legal services should be facilitated as much as possible.
- Measures should be taken to ensure that provisions on legal representation are effectively implemented.

Minimum procedural guarantees

Decisions on a child's asylum application should be taken by a competent authority versed in asylum and refugee matters. Children who receive a negative first decision should have a right of appeal. Deadlines for appealing should be reasonable. Children's applications should be identified and prioritised so that they are not kept waiting for long periods of time.

(Statement of Good Practice: 11.3)

According to the reports, minimum procedural guarantees, including the right of appeal, exist everywhere. There is considerable evidence, however, that procedures are far too slow in many countries.¹⁵⁷ As a result, children live for long periods in uncertainty, often without contact with their family.

In Bulgaria¹⁵⁸, the Czech Republic¹⁵⁹, Estonia¹⁶⁰, Hungary¹⁶¹, Lithuania¹⁶² and Poland¹⁶³, no priority is given to children's applications for asylum, contrary to the Statement of Good Practice. Latvia,¹⁶⁴ on the other hand, provides an example of good practice in this respect (see below), as does Slovenia, where legislation includes a provision under which children's asylum applications should be given priority and examined in the shortest possible time.¹⁶⁵ Similarly, in Romania the norms for the implementation of the new Refugee Law state that applications from separated children should be given priority.¹⁶⁶

Latvia: Special Provisions for Children's Asylum Applications

The number of asylum-seekers in Latvia is very small, therefore it is possible to examine all cases fast. Asylum applications by separated children are accorded priority. Asylum applications by both children and adults are examined in a competent manner by staff who have received special training on asylum issues. The right of appeal and reasonable time limits for the examination are secured. The Refugee Affairs Centre of Latvia abides by the principles recognised by the European Union in dealing with separated children – they shall be regarded as a vulnerable group and their cases shall have priority. It is likely that if the number of asylum cases was higher, applications by separated children would still be accorded priority.

(Latvia Country Assessment)

SPECIFIC RECOMMENDATIONS:

- Asylum claims by separated children should be treated on a priority basis and in a timely manner.
- Separated children should be informed about the possibility, requirements and deadlines of appeals.
- In cases where negative decisions have been taken on purely formal grounds (late appeal), the possibility to submit a new application should always be given to the child.

Independent assessment

It is desirable, particularly with younger children or children with a disability, that an independent expert person carry out an assessment of the child's ability to articulate a well-founded fear of persecution. (Statement of Good Practice: 11.4)

Although the same definition of a refugee applies to all individuals regardless of their age, children may manifest their fears of persecution in ways different from adults.¹⁶⁷ For this reason, an expert assessment may be necessary in the examination of children's claims, in order to ensure that objective factors are taken into account and to determine, based upon these factors, whether a child may be presumed to have a well-founded fear of persecution.

Legislation in most of the countries of Central Europe and the Baltic States does not contain any special provisions in this respect. Estonia and Slovakia, where expert witnesses can be called to assess a child's ability to describe his or her fear of persecution, seem to be the only exceptions. Practice in either country, however, is limited¹⁶⁸. In contrast, although refugee legislation in Romania does not contain specific provisions for independent expert assessments, such assessments are often made in practice by psychologists from *Salvati Copiii* (Save the Children Romania) during the refugee determination process. According to the Country Assessment, the UNHCR Guidelines are followed throughout.¹⁶⁹

SPECIFIC RECOMMENDATION:

- In any directive on asylum procedures which is developed by European states, reference should be made to the possibility of undertaking expert assessments on the child's ability to articulate fear of persecution.

Interviews

Where interviews are required they should be carried out in a child-friendly manner (breaks, non-threatening atmosphere) by officers trained in interviewing children. Children should always be accompanied at each interview by their legal representative and, where the child so desires, by a significant adult (social worker, relative etc.).

(Statement of Good Practice: 11.5)

As in many Western European countries¹⁷⁰, in some of the countries of Central Europe and the Baltic States there are no specific guidelines on conducting interviews with separated children.¹⁷¹ In Bulgaria, for example, there is no regulation requiring the presence of a child's legal representative, but children are usually interviewed in the presence of an official from the Social Department of the Agency for Refugees.¹⁷²

Some countries, however, do have official guidelines for interviews with separated children. The Refugee Act in Estonia, for instance, states that interviews with children applying for asylum should be carried out in the presence of their parents or care givers or, in their absence, a guardian appointed by the court. If necessary, a child psychologist or another specialist should also be present. There are also restrictions on how long interviews with children should last.¹⁷³

Although the conduct of interviews with children in the Czech Republic is not regulated by the law, in practice interviews are carried out in the presence of the child's appointed guardian, who makes sure that the interview is properly conducted and may apply for its adjournment for a break, etc. Officials who carry out interviews with children go through special training. A legal representative, however, is not necessarily present at every interview, although, if an appeal is necessary, the child may apply for legal assistance in drafting the appeal.¹⁷⁴

In Croatia, a social worker from the local social services acts as a guardian and has to be present during interviews with separated children.¹⁷⁵ In Slovenia, although separated children are interviewed in the same manner as adults, a trained social worker is always present during the interview and is allowed to intervene to protect the child's best interests. Furthermore, awareness of the specific needs of separated children has been raised among eligibility officers through training.¹⁷⁶ In Poland, similarly, considerable efforts have been made to provide special training and workshops for the relevant officials and this is expected to improve practice there considerably.¹⁷⁷

The current draft of the Latvian Asylum Law states that persons conducting interviews with children have to be duly trained to deal with children and to understand cultural differences and the specific age and behaviour characteristics of children. The draft Law, however, does not state that all interviews should be conducted in the presence of the child's legal representative.¹⁷⁸

In Romania, according to the Country Assessment, separated children are assisted by a legal representative and a guardian and interviews are conducted in a child-friendly manner.¹⁷⁹

SPECIFIC RECOMMENDATIONS:

- States should establish guidelines and training on how to conduct interviews with separated children.
- Measures should be taken by governments to ensure that officials who interview separated children are adequately trained and that interviews are undertaken in a child-friendly manner.

Criteria for making a decision on a child's asylum application

When making a decision about a separated child's asylum claim, authorities should have regard to UNHCR guidelines as contained in the Handbook and the 1997 Guidelines, specifically:

- the age and maturity of a child and their stage of development.
- the possibility that children may manifest their fears differently from adults.
- the likelihood that children will have limited knowledge of conditions in their countries of origin.
- child-specific forms of human rights violations, such as recruitment of children into armies, trafficking for prostitution, female genital mutilation and forced labour.
- the situation of the child's family in their country of origin and, where known, the wishes of parents who have sent a child out of the country in order to protect her or him.
- therefore, in the examination of their claims it may be necessary to have greater regard to certain objective factors, and to determine based upon these factors, whether a child may be presumed to have a well-founded fear of persecution.

(Statement of Good Practice: 11.6)

Few countries appear to have guidelines for evaluating a separated child's asylum application. This applies as much to Western European countries¹⁸⁰ as to countries in Central Europe and the Baltic States such as Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.¹⁸¹ In addition, practice in Croatia, Estonia, Latvia, and Romania could not be assessed due to lack of cases or information.¹⁸²

When considering whether or not a child has a valid ground for fleeing his or her country of origin, officials should pay enough attention to child-specific forms of human rights violations. Furthermore, when trying to assess fear of persecution, the authorities should take into consideration the family's situation and the fact that children may have limited knowledge about the situation in their country of origin. For example, a child may be expected to know details about a family member's political activities which have in fact been kept secret from the child in order to protect him or her.¹⁸³ If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of their own well-founded fear of persecution, the child him/herself may be presumed to have such fear.¹⁸⁴ If the will of the parents cannot be ascertained or if such will is in doubt, then a decision will have to be made on the basis of all known circumstances.¹⁸⁵

As stated in the UNHCR's Guidelines on Protection and Care of Refugee Children: "the problem of 'proof' is great in every refugee status determination. It is compounded in the case of children. For this reason, the decision on a child's refugee status calls for a liberal application of the principle of the benefit of the doubt. This means that should there be some hesitation regarding the credibility of the child's story, the burden is not on the child to provide proof, but the child should be given the benefit of the doubt."¹⁸⁶

SPECIFIC RECOMMENDATION:

- When determining refugee status, governments should make sure that child-specific forms of human rights violations are taken into consideration, as well as the fact that children might have different ways of communicating fear of persecution and different knowledge regarding their claims than adults.

Young people who become adults during the asylum process

Separated children who become adults during the course of the asylum process (sometimes called “aged-out”) should be treated in a generous fashion. In this regard states should eliminate unnecessary delays that can result in a child gaining maturity during the process.

(Statement of Good Practice: 11.7)

The Statement of Good Practice is informed by the ECRE’s Guidelines (paragraph 30) which declare that “States should have a generous approach in the handling of cases where the child reaches the age of maturity during either the determination procedure or during the process of finding the best solution for the individual.” They also emphasise the importance of eliminating unnecessary delays which will extend the case until the age of maturity has been passed.

In practice, the response of European states to the situation of young people who become adults during the asylum process varies. An example of good practice is Estonia, where the age of a person at the time of making an asylum application is taken into consideration.¹⁸⁷ In contrast, in most countries of Central Europe and the Baltic States,¹⁸⁸ as well as in some Western European countries,¹⁸⁹ no special consideration is given to young people in this situation. On the contrary, at least in some cases, the authorities may have purposely delayed the asylum process in order to exclude young people from any special provisions for children. This practice is known as “ageing-out”.

SPECIFIC RECOMMENDATION:

- The assessment and outcome of an asylum claim should not be negatively affected by the fact that a separated child has become an adult during the procedure.

DURABLE OR LONG TERM SOLUTIONS

Grounds for a child remaining in a host country

A separated child may be allowed to remain in a host country for a number of reasons:

- she or he is recognised as a refugee or granted asylum
- she or he receives a de facto or humanitarian status because it is not safe to return to their country of origin due, for example, to armed conflict and/or the child's parents are not traceable and there is no suitable carer in the country of origin
- she or he is allowed to remain under some other immigration category or, for example, on compassionate grounds (e.g. ill health)
- it is clearly in the child's best interests to do so.

(Statement of Good Practice: 12.1.1)

In most countries in Central Europe and the Baltic States, if a separated child is granted refugee status, he or she is granted full permission to remain in the country (an exception is Hungary, where refugee status does not necessarily entail the right to permanent residence).¹⁹⁰ Alternatively, a separated child may be granted temporary protection or leave to remain on humanitarian grounds (due to armed conflict in the country of origin, ill health or the impossibility of tracing the child's parents, for example). This seems to be the case in Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Romania, Slovakia and Slovenia.¹⁹¹ In Poland, on the other hand, there is no humanitarian status to enable separated children to stay if they do not qualify for refugee status, although the possibility of granting humanitarian status has been proposed in a draft amendment to the Aliens Act.¹⁹² Children who are allowed to remain under temporary protection or on humanitarian grounds in some countries, however, are often not entitled to the same access to benefits and services as national or refugee children.

Temporary Protection Status in Slovenia

The 1997 Law on Temporary Protection grants temporary protection status to individuals fleeing from countries at war or where massive violations of human rights occur. The Law specifies the rights and obligations of those individuals who qualify for temporary protection when the Slovene Government decides that in a given country conditions have emerged that call for such a measure. Procedures exist for the reception, accommodation, access to medical care and employment of beneficiaries. These provisions were implemented in the case of refugees from Bosnia and Herzegovina and Kosovo who took shelter in Slovene territory. The Slovenian authorities provided humanitarian assistance and accommodation in collective centres, as well as medical care, education and psycho-social assistance.

(Slovenia Country Assessment)

Family reunification in a host country

Applications by a separated child, residing in a “host” country, for family reunion in that country should be dealt with in a “positive, humane and expeditious manner.”

(SCEP Statement of Good Practice: 12.1.2)

Policy in the various countries of Central Europe and the Baltic States varies widely. Family reunification, for example, is possible in Bulgaria for separated children who are recognised as refugees but not for those with temporary humanitarian protection or leave to remain.¹⁹³ Estonian law, on the other hand, does not provide for family reunification in Estonia even for a separated child who has been granted refugee status.¹⁹⁴

In Hungary, although the law extends refugee or temporary protection status to other close family members, family reunification can only take place if all the members of the family are already in Hungary.¹⁹⁵ In the Poland,¹⁹⁶ Romania¹⁹⁷ and Slovakia,¹⁹⁸ refugee status is granted to an applicant's spouse and children under 18 but no provisions exist for a child's parents (Romanian legislation states that family reunification should take place in the country where the parents are, if this is in the best interests of the child). In contrast, a separated child who has been granted refugee status in Latvia has the right to reunite in Latvia with his or her parents, but not with his or her siblings.¹⁹⁹ Similar provisions also exist in the law of the Czech Republic.²⁰⁰

In Lithuania, children asylum-seekers, refugees or those having temporary residence do not have the right to family reunification with their parents or siblings (however, a draft law on amendments to the 2000 Refugee Law includes the right to family reunification with parents for separated children who have been granted refugee status),²⁰¹ while in Slovenia, close members of an asylum-seeker's family (this includes a separated child's parents or legal or customary care giver) share the same legal status as the person claiming asylum. In practice, however, no cases of family reunification involving a separated child have been recorded in Slovenia.²⁰²

Integration

Once a separated child or young person is allowed to remain, care/welfare authorities should conduct a careful assessment of the child's situation (taking into account her or his age, sex, care history, mental and physical health, education and family situation in the country of origin). In consultation with the child or young person, a long-term placement in the community should then be arranged. This may of course be a continuation of the interim care placement. It is generally desirable that children under 15/16 years of age be cared for in a foster family from their own culture. Older young people may prefer/do well in a small group home environment. This should be staffed by adults aware of the young person's cultural needs. Separated young people who have left care should be offered support via an “after-care” programme, to assist their transition to living independently.

As a matter of principle, siblings should be kept together in the same placement unless they wish otherwise. If a sibling group is living independently, with the oldest taking responsibility, then he or she should be provided with particular support and advice.

The rights of separated children and young people to education and training, health care, language support (as per paragraph 10) should continue on the same basis as available to national children.

(Statement of Good Practice: 12.1.3)

Both legislation and practice regarding the integration of separated children differ in the various countries of Central Europe and the Baltic States. In most countries provisions apply only to children who have been granted refugee status, although children who have a different status (temporary protection or, more rarely, leave to remain) are sometimes also included. Information on current practice in most countries is extremely limited and few, if any, relevant cases have been documented.

In Bulgaria, separated children who have been granted humanitarian status are in the same situation as Bulgarian orphan children (if they have no relatives they are accommodated in an orphanage until they are 18 or until the end of their secondary education). Refugees (including children) enjoy virtually the same rights as Bulgarian citizens under the law but, in practice, due to the state's difficult financial situation, the refugees' integration into society is largely left to the refugees themselves. Their accommodation is paid only for one month after their status has been granted, after which they are left to take care for themselves. Integration programmes have been designed, but could not be implemented due to financial problems. There are no "after-care" programmes or provisions to place children with families with the same culture. This is partly due to the small size of the refugee population in Bulgaria, but also to the fact that until the Children's Act became effective, there was no foster family system.²⁰³

According to the Country Assessment, there is no experience concerning the integration of separated children in Croatia. The Project "Unaccompanied Children in Exile", however, registered a number of cases of local integration in other countries of asylum for educational reasons (the impossibility to attend an appropriate school in the country of origin), family (the child has no parents and lives with relatives) or for the rehabilitation of children with development problems.²⁰⁴

Persons who have been granted refugee status in the Czech Republic are included in a National Integration Programme. This Programme is designed to assist in the integration of foreign nationals into Czech society. Language tuition is provided free of charge and help in finding accommodation is offered. In practice, there has been only one relevant case. A child who was granted refugee status in the Czech Republic was placed in an orphanage where he will stay until he is 18. A suitable school, course or training will be recommended for him.²⁰⁵

No relevant cases have been recorded in Estonia. According to the regulations, however, separated children should be placed in a social welfare institution. After they leave the institution the provisions of the Social Welfare Act should be applied, which would ensure that they receive the necessary support on the same basis as Estonian children.²⁰⁶

A child residing lawfully in Hungary is entitled to receive assistance from state and other institutions in order to facilitate his or her social integration. Child protection authorities are required to provide suitable accommodation, taking into consideration the child's age, nationality, religion, culture and socialisation level. Young people who entered the child protection system before they were 18 may use after-care support if necessary until the age of 24. In practice, however, the clarification of children's legal status requires persistent work and the overloaded child protection system is barely suitable for performing these special proceedings. Brothers and sisters are always placed together but foster care with families of the same culture as the children is not possible since, according to Hungarian law, a child's guardian has to be a Hungarian citizen. An attempt, however, is made to place children of the same nationality together.²⁰⁷

One of the main elements enabling the integration of children into the society of the country of asylum is proficiency in the required language. In Latvia, therefore, although in practice there have been no relevant cases so far, the policy is to give separated children seeking asylum the possibility to learn Latvian before a decision about their status has been made. Following the granting of refugee status, housing and subsistence assistance is provided for a period of 12 months and children can continue to receive language tuition. Moreover, a Department for Integration into Society, charged with the social integration of persons of different national origin, was established at the Ministry of Justice in 2000.²⁰⁸

Lithuanian law states that any separated children who has been granted refugee or humanitarian status would be entitled to language tuition, monthly allowances for food and rent, and a settling-down allowance. They would receive the same medical treatment as Lithuanian residents. However, there have been no relevant cases so far in Lithuania.²⁰⁹

No cases of separated children being placed in foster families have been reported in Poland. Generally speaking, Polish law does not provide for any bicultural principles being applied to children placed in educational centres. Practical and financial problems are obstacles to the provision of a suitable cultural and religious education.²¹⁰

In practice, refugee children in Romania live in reception and accommodation centres and are assisted by a legal guardian. In spite of legal provisions, refugee children do not enjoy the same access to state benefits as Romanian children because they lack a social security number. They often have difficulties when trying to enrol at school because they seldom have a birth certificate or proper identity documents.²¹¹

A person who has been granted refugee status in Slovakia has the same rights and duties under the law as a Slovak citizen (with a few exceptions: they do not have to serve in the army and they do not have voting rights). In the case of children, those who have been granted refugee status have equal rights regarding employment, social care, health care, welfare and education as Slovak children. However, no information about current practice was available.²¹²

Slovenian law grants refugees a broad spectrum of rights, including the right to work, language tuition and access to financial assistance for a maximum period of three years. Asylum applicants and people who have been granted asylum for humanitarian reasons have the same entitlements as those with refugee status. However, the Country Assessment reports that, in practice, there is a significant discrepancy between the legislative arrangements and their implementation.²¹³

Adoption

Adoption is rarely, if ever, a suitable option for a separated child. Before adoption can be considered viable or desirable, a rigorous assessment, conducted by an authorised organisation, of the child's family circumstances in the country of origin is essential. Clear procedures are outlined in the recommendation of the Hague Conference on Private International Law.

(Statement of Good Practice: 12.1.4)

The Statement of Good Practice recommendation draws upon Article 21 of the CRC (States' obligations with regard to inter-country adoption). More detailed procedures are set out in the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, and in the 1994 Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children of this Convention.²¹⁴

The Statement of Good Practice declares that adoption is rarely, if ever, a suitable option for a separated child. This is because the separated child's parents often still live in the country of origin or elsewhere, or sometimes they are missing but not officially reported dead. In addition, there is long-standing experience in Western Europe and elsewhere of cases where children have suffered due to inappropriate adoption placements.²¹⁵

According to the Country Assessments, in most countries in Central Europe and the Baltic States adoption is not considered an appropriate solution for separated children and cases of separated children being adopted are extremely rare.²¹⁶ In those cases where adoption is considered, the courts need to be satisfied that adoption is in the child's best interests and a detailed assessment of the child's family circumstances is carried out.²¹⁷

Return to the country of origin

This is a complex area and detailed guidance is required on the implementation of good practice. The best way for family reunification and returns to be carried out is on a voluntary basis. Children should be fully consulted at all stages of the process.

Before a separated child can be returned to a country of origin the following must be in place:

- **it is safe to return the child to his or her home country;**
- **the child's carer and guardian/adviser in the host country agree it is in the child's best interests to return;**
- **a careful assessment is made of the family situation in the home country and whether it is safe to return a child to that country. It will be necessary to investigate the ability of the child's family (parents or other family members) to provide appropriate care. In the absence of parents or other family members, the suitability of child-care agencies in the country of origin should be investigated;**
- **this investigation should be carried out by a professional and independent organisation (that is different from the body or person(s) making the initial determination) or person(s) and should be objective, non-political and take into consideration the best interests of the child in each case;**
- **the child's parents, relatives, other adult care-taker or government child-care agency agree to provide immediate and long-term care upon the child's arrival in the country of origin;**
- **the child is fully informed at all stages and is provided with appropriate counselling and support;**
- **prior to the return, contact between the child and his or her family is facilitated;**
- **during the return the child is properly accompanied;**
- **after the return the wellbeing of the child should be effectively monitored by appropriate authorities or agencies.**

Separated children who arrived as minors but who have reached the age of 18 should be treated as vulnerable and consulted on the conditions required for a successful reintegration into their country of origin.

(Statement of Good Practice: 12.2)

There are no special legal provisions or guidelines on family reunification or return to the country of origin in most countries in Central Europe and the Baltic States.²¹⁸ In at least one case (Bulgaria), however, the law states that the principle of voluntary return should be respected.²¹⁹ In any case, there is evidence that the authorities in the countries of Central Europe and the Baltic States are not in a position to assess the conditions in the country of origin, the family situation of separated children or the availability of adequate care.²²⁰

In practice, cases of separated children returning voluntarily to their country of origin are rare or non-existent.²²¹ According to the Country Assessments, none of the countries covered in the report has any specific programmes or aid to facilitate reintegration in the country of origin.

Settlement in a third country

When a child has a family member in another European state who is willing and able to care for the child, then family reunification should be expedited as per paragraph 9. Where she or he has a family member in a non-European third country, the opportunity for family reunification should be explored but to the same standards as indicated in paragraph 12.2. Care must be taken in order to ensure that the third country is a safe place for the child.

(Statement of Good Practice:12.3)

There is little information about this possibility in the Country Assessments. It appears that none of the countries of Central Europe and the Baltic States has any procedure in place regarding settlement in a third country. Evidence from Western European countries indicates that children are sometimes reunited with their relatives in a non-European country; however, no statistics are available.²²² The formal procedure is not a smooth process; indeed, it is tiresome and drawn-out if an asylum-seeker does not have a status, or the government in the country concerned refuses to co-operate. Illegal family reunifications do occur as a result of the complicated procedure. In some cases where separated children leave reception centres for an unknown destination, it turns out they have gone to their relatives in a different country.

SPECIFIC RECOMMENDATIONS:

- In situations where separated children are not granted refugee status, the possibilities to remain in the host country should be explored if this is in the best interest of the child.
- European countries should ratify the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (1993).
- Existing evidence suggests that significant improvements are required if the standards of the CRC, the EU 1997 Resolution on Unaccompanied Minors and other relevant international instruments are to be met. All separated children should gain access to appropriate services on a non-discriminatory basis and facilities and programmes should be designed to meet their special needs.
- Experience in European states suggests that greater attention and effort must be devoted to ensuring that the conditions and safeguards set out in the UNHCR Guidelines and the

SCEP Statement of Good Practice are implemented. Guidelines should be developed at national level specifying which steps should be taken before a separated child is returned, including verification that care will be provided for and basic needs will be met.

- Programmes to assist the reintegration of returned children should be initiated and supported.
- Procedures should be put in place in all European states in order to allow for the transfer of a separated child to a third country if the child has a family member in that country who is willing and able to care for him or her.

DATA COLLECTION

In order to assist the implementation of good practice, it is essential to have accurate data on separated children. The collection of relevant information about separated children helps to ensure that clear decisions can be taken about their best interests, that claims can be determined fairly and that appropriate interim care and, ultimately, durable solutions can be established. The sharing of data between child protection organisations can also help to combat trafficking.

Data on separated children in Bulgaria is collected by state institutions such as the Refugee Agency at the Council of Ministers and the Border Police, as well as by NGOs working with refugees. According to the Refugee Agency, as of June 30, 2000, 12 separated children from five different countries had been registered as applicants for refugee status. Most of them were accompanied by relatives – adult brothers, sisters, uncles, etc.²²³

In Croatia, the Ministry of Labour and Social Welfare keeps data on separated children. A total of 132 cases of separated children were registered during 1999, while in the first six months of the year 2000, a total of 99 separated children were registered. However, it is important to note that none of these children applied for asylum in Croatia.²²⁴

Separated Children Registered in Croatia (by country of origin):

Romania	27
Hungary	2
Yugoslavia	9
Turkey	16
Macedonia	6
Albania	1
Bosnia and Herzegovina	9
China	5
Moldavia	3
Bangladesh	15
Slovenia	1
Iran	5
Total	99

In the Czech Republic, the Asylum and Migration Policy Section in the Ministry of Interior keeps statistics on the numbers of asylum applicants, while the Agency for International Legal Protection of Children collects data on separated children. In 1997, there were 62 cases of separated children requesting asylum. In 1998, the figure was 195 (25% from Afghanistan, 18% from Sri Lanka, 15% from the Federal Republic of Yugoslavia and 14% from Bangladesh), while in 1999 the number was 478 (40% from Afghanistan, 17% from Sri Lanka and 9% from India). In the first ten months of the year 2000, 291 separated children had applied for asylum in the Czech Republic (25% from Afghanistan, 24% from India, 16% from Sri Lanka, 10% from China and 8% from Vietnam).²²⁵

There have been no cases of separated children claiming asylum in Estonia and no relevant practice.²²⁶

In Hungary, the Office of Immigration and Nationality of the Ministry of Interior collects data on separated children claiming asylum. In 1997, there were 11 separated children applying for refugee status. In 1998 the total was 209 and in 1999 the figure was 620. No information on countries of origin was available.²²⁷

The Refugee Affairs Centre in Latvia collects data on asylum-seekers and refugees, including separated children. Data on separated children includes information about the age and sex of the child, his or her country of origin, nationality (citizenship), the date and place of entry and information on the asylum process. In 1999 two asylum-seekers, both from Nigeria, claimed to be separated children but it was later established that they were over 18 years of age. Since then, no separated children have applied.²²⁸

In Lithuania, the Migration Department at the Ministry of Interior is responsible for collecting data on asylum-seekers and refugees, including separated children. UNHCR also gathers information on separated children asylum-seekers and refugees, as well as on humanitarian permit holders. NGOs do not collect data but rely on the information provided by the Migration Department. According to the Migration Department, there were three cases of separated children filing asylum applications in 1997 (two Afghan boys aged 16 and 17 and one 17-year old Sri Lankan girl), while in 1998, there were two boys (a 16-year old from Afghanistan and a 17-year old from India) and one 15-year old girl (from Somalia). In 1999 there were two 16-year old boys (from Somalia and Bangladesh) and nine boys (from Afghanistan and Vietnam) in the year 2000. In addition to separated children seeking asylum, in 2000 the Migration Department issued temporary residence permits on humanitarian grounds to 11 Chechen children.²²⁹

Data on separated children in Poland is collected and processed by different government authorities, including the Border Guards, Police, the Refugee Department at the Ministry of Internal Affairs and Administration and the Ministry of Labour and Social Welfare, as well as by the local government authorities (e.g. district family assistance centres) and by UNHCR. Nonetheless, the available data does not seem to be complete and is not easily accessible to NGOs dealing with separated children.²³⁰ The following table provides the numbers of separated children applying for refugee status in Poland by year and country of origin:

Separated Children claiming asylum in Poland:

Country of Origin	1997	1998	1999	2000
Afghanistan	43	30	42	15
Albania	1	1		1
Algeria		1		
Armenia	17	29	5	3
Azerbaijan	1		1	
Bangladesh	72	34	4	3
Belarus		1	1	
Bulgaria	3		1	1
Burundi	1			

Ethiopia	1		3	
FYROM			1	
Ghana			1	
Georgia				1
Guinea	1			
India	27	10	2	
Iraq	14	6	1	1
Congo	1			
Lebanon		2		
Liberia	7	1		
Lithuania			1	
Latvia			1	
Moldova			1	1
Mongolia			4	
Nigeria		2		
Pakistan	118	27	7	1
Russia	2		4	22
Romania			5	12
Rwanda				2
Sierra Leone	1	2		
Somalia	4	3		2
Sri Lanka	146	100	7	
Sudan	2			
Syria	1		1	
Tajikistan		1		1
Togo		1	1	
Turkey			1	
USA		1		
Zaire		1		
Stateless persons	2	1		1
Unknown citizenship	2			
Total	461	297	101	69

The National Office for Refugees in Romania is responsible for collecting data on separated children. The first registered case of a separated child in Romania was in 1999 (a child from Sierra Leone). The number of separated children registered in Romania at the moment is 55, and they come from Afghanistan, Bangladesh, Sierra Leone and Somalia. The figure reported

by the authorities for the year 2000 is 34, which does not include individuals who, after an age assessment, were determined to be over 18; nor some separated children initially registered as such, but whose parents appeared after several weeks. Most separated children came from Afghanistan, Bangladesh, Pakistan, Sierra Leone and Somalia.²³¹

The Migration Office in Slovakia registered less than 10 cases of separated children applying for asylum between 1997 and 1999. In all cases, however, the children left the country before the asylum procedure was concluded. Additional information was not available.²³²

According to the Country Assessment, different organisations in Slovenia collect data on activities regarding separated children, but there is no systematic gathering of information. On the other hand, the number of separated children in Slovenia at the moment is very small, especially compared to the situation at the time of the war in Bosnia. The Foundation GEA 2000 recommends that, in the future, the Asylum Department of the Ministry of Interior and a relevant NGO be appointed to collect, keep and distribute data on separated children in Slovenia.²³³ UNHCR Ljubljana shares the opinion that the Asylum Department of the Ministry of Interior shall systematically collect data on asylum applications made by separated children, and points out that since 2001, a database on separated children is being kept by the NGO *Slovenska Filantropija*.²³⁴

CONCLUSION

In general, and despite some significant gaps, national legislation in the countries of Central Europe and the Baltic States includes many of the necessary provisions for the care of the relatively small number of cases of separated children encountered. Still, practice often falls short of the standards set out in the Statement of Good Practice. This is mostly due to lack of training, experience and resources. There is, therefore, an urgent need to put in place the necessary training, resources and effective mechanisms to implement existing procedures. At the same time, efforts should continue to be made in order to bring legislation and policy fully in line with the SGP, wherever necessary. Urgent attention should be paid to the problems of trafficking and the exploitation of children. Common standards should be adopted in the registration and documentation of separated children, the gathering of relevant information and the compilation of statistics. Greater efforts need to be made to ensure that governments recognise the importance of child-specific forms of human rights violations. Finally, the principles of the child's best interests, non-discrimination, the right to participate, bi-culturalism, interpretation, confidentiality, information, inter-organisational co-operation, staff training, durability and timeliness should be borne in mind when making policies to provide care and assistance to separated children.

APPENDICES

APPENDIX 1. LIST OF COUNTRY ASSESSMENTS

Country Assessment – Bulgaria. Bulgarian Helsinki Committee, Refugee and Migrants Legislative Protection, Refugee Agency at the Council of Ministers. August 2000 - March 2001.

Country Assessment – Croatia. Centre for Social Policy Initiatives. August 2000 - March 2001.

Country Assessment – Czech Republic. Czech Helsinki Committee - Counselling Centre for Refugees. August 2000 - March 2001.

Country Assessment – Estonia. Estonian Union for Child Welfare. August 2000 - March 2001.

Country Assessment – Hungary. Menedék, Hungarian Association for Migrants. August 2000 - March 2001.

Country Assessment – Latvia. National Centre for the Rights of the Child. August 2000 - March 2001.

Country Assessment – Lithuania. Lithuanian Red Cross. August 2000 - March 2001.

Country Assessment – Poland. Warsaw University Legal Clinic. August 2000 - March 2001.

Country Assessment – Romania. Save the Children Romania. August 2000 - March 2001.

Country Assessment – Slovakia. Björnson Society in Slovakia, Ru Omberok. August 2000 - March 2001.

Country Assessment – Slovenia. Foundation GEA 2000. August 2000 - March 2001.

APPENDIX 2. INTERNATIONAL AND REGIONAL INSTRUMENTS

1. Refugee Instruments and UNHCR Executive Committee Conclusions

- 1951 UN Convention relating to the Status of Refugees.
- 1967 Protocol relating to the Status of Refugees
- 1954 Convention relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness

2. General International Human Rights and Humanitarian Law Instruments

- Universal Declaration of Human Rights, 1948.
- International Covenant on Civil and Political Rights, 1966 (and Optional Protocol).
- International Covenant on Economic, Social and Cultural Rights, 1966.
- International Convention against Torture, 1984.
- International Convention on the Elimination of all Forms of Racial Discrimination (1965).
- Convention Relating to the Status of Stateless Persons, 1954.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol 1), 8 June 1977, Arts. 77 and 78.
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol 11), 8 June 1977, Art. 4.

3. Children - International and Regional Instruments

- UN Convention on the Rights of the Child, 1989 and its
- Optional Protocol on the Involvement of Children in Armed Conflict, 2000
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000
- UN Rules for the Protection of Juveniles Deprived of Their Liberty, 1990
- UN Standard Minimum Rules for the Administration of Juvenile Justice (*the Beijing Rules*) 1985
- Hague Conference on Private International Law:
- Convention for the Protection of Minors, 1961
- Convention on the Civil Aspects of International Child Abduction, 1980
- Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 and the associated “*Recommendation on the Application of the Convention to Refugee Children*”
- Convention on Jurisdiction, Applicable Law, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 1996 (not in force yet)

4. Europe

- European Convention for the Protection of Human Rights and Fundamental Freedoms (and Protocols), 1950.
- The Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Community (Dublin Convention), 1990.
- European Convention on the Gradual Abolition of Controls at the Common Frontiers (*Schengen Agreement*), 1985
- Schengen Implementation Convention, 1990
- European Convention on the Adoption of Children of 24/04/67
- European Convention on the Legal Status of Children Born out of Wedlock of 15/10/75
- European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children of 20/05/80
- European Convention on the Exercise of Children’s rights of 25/01/96

Resolutions and Recommendations:

- Joint Position on the harmonised application of the definition of the term “refugee” in Article 1 of the 1951 Geneva Convention relating to the status of refugees, Council of the EU, March 1996
- Resolution on Minimum Guarantees for Asylum Procedures, June 1995

- Resolution on the harmonisation of national policies on family reunification, 1 June 1993
- Resolution on manifestly unfounded applications for asylum, 1992
- Resolution on a harmonised approach to questions concerning host third countries, 1992
- Conclusions on countries in which there is generally no serious risk of persecution, 1992
- Recommendations 564 (1969) and 984 (1984)
- Joint Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, Feb. 1997 (97/1 54/JHA)
- Resolution on unaccompanied minors who are nationals of third countries, June 1997 (97/C 221/03)

Council of Europe

- European Social Charter, 1961

5. UNHCR Guidelines

- The Handbook on Procedures and Criteria for Determining Refugee Status (Handbook).
- Refugee Children: Guidelines on Protection and Care, 1994.
- Working with Unaccompanied Children: A Community-based Approach, 1996.
- Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1997.
- UNHCR Executive Committee Conclusion No. 47 (1987) on "**Refugee Children**"
- UNHCR Executive Committee Conclusion No. 59, (1989) on "**Refugee Children**"
- UNHCR Executive Committee Conclusion No. 84, (1997) on "**Refugee Children and adolescents**"
- UNHCR Executive Committee Conclusion No. 88, (1999) on "**Protection of the Refugee's Family**"

NOTES

- ¹ Trafficking in Unaccompanied Minors for Sexual Exploitation in the European Union, IOM, Brussels, May 2001.
- ² Separated Children Seeking Asylum in Europe: A Programme for Action, Sandy Ruxton, Save the Children and UNHCR, 2000, p. 23.
- ³ Ibid.
- ⁴ Ibid. pp. 105-115.
- ⁵ Country Assessment: Poland, Warsaw University Legal Clinic, p.2.
- ⁶ Country Assessment: Czech Republic, Czech Helsinki Committee, Counselling Centre for Refugees, p. 1.
- ⁷ Country Assessment: Estonia, Estonian Union for Child Welfare, p. 3.
- ⁸ Country Assessment: Slovenia, Foundation GEA 2000, p. 5.
- ⁹ Country Assessment: Bulgaria, Bulgarian Helsinki Committee, Refugee Agency, Council of Ministers, p. 4.
- ¹⁰ Country Assessment: Latvia, National Centre for the Rights of the Child, p. 3.
- ¹¹ Country Assessment: Romania, Save the Children Romania, p. 3.
- ¹² A Programme for Action, S. Ruxton, p. 33.
- ¹³ Latvia, p. 3; Poland, p.4; Slovenia, p. 6
- ¹⁴ Latvia, p.5.
- ¹⁵ A Programme for Action, S. Ruxton, p. 36.
- ¹⁶ Romania, p.5.
- ¹⁷ Bulgaria, p.5; Slovenia, pp. 7-8.
- ¹⁸ Hungary, pp. 4-5.
- ¹⁹ Bulgaria, pp. 5-6.
- ²⁰ Croatia, p.10.
- ²¹ Czech Republic, p.2.
- ²² Estonia, pp. 3-4.
- ²³ Ibid., p.5.
- ²⁴ Hungary, pp. 4-5.
- ²⁵ Latvia, p.4.
- ²⁶ Lithuania, p.4.
- ²⁷ Poland, pp. 4-6.
- ²⁸ Romania, p.5.
- ²⁹ Slovenia, pp. 7-8.
- ³⁰ Croatia, p.11.
- ³¹ Czech Republic, p.3.
- ³² Lithuania, p. 4.
- ³³ A Programme for Action, S. Ruxton, pp. 41-42.
- ³⁴ Poland, p. 7.
- ³⁵ Czech Republic, p.4.
- ³⁶ Croatia, p. 12.
- ³⁷ Slovenia, p. 9.
- ³⁸ Poland, p. 7.
- ³⁹ Lithuania, pp. 6-7; Poland, p.8.
- ⁴⁰ Slovenia, pp. 10-11.
- ⁴¹ A Programme for Action, S. Ruxton, p.46.

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- ⁴² Latvia, p.8.
⁴³ Slovenia, p.11.
⁴⁴ Written comments on draft from authors of Country Assessment.
⁴⁵ Hungary, p.8; Latvia, pp. 7-8.
⁴⁶ Written comments on draft from authors of Country Assessment.
⁴⁷ Bulgaria, pp. 8-9.
⁴⁸ Croatia, p.12.
⁴⁹ Estonia, p.6.
⁵⁰ Hungary, pp. 6-8.
⁵¹ Written comments on draft from authors of Country Assessment.
⁵² Lithuania, pp. 6-7; CA Poland, pp. 8-9
⁵³ Poland, p.9
⁵⁴ Romania, pp. 7-8.
⁵⁵ Slovenia, pp. 10-12.
⁵⁶ Written comments on draft from UNHCR Ljubljana.
⁵⁷ A Programme for Action, S. Ruxton, pp. 48-49.
⁵⁸ Bulgaria, p.10; Czech Republic, pp 3-4; Estonia, p.6; Hungary, p.8; Latvia, p.9;
Lithuania, p.8; Poland, pp. 10-11; Romania, p.9; Slovakia, pp. 6-7; and Slovenia, pp. 13-15.
⁵⁹ Bulgaria, p.10; Estonia, p.6.
⁶⁰ Bulgaria, p. 10.
⁶¹ Croatia, p.15.
⁶² Hungary, pp. 8-9.
⁶³ Estonia, p.6.
⁶⁴ Romania, p.9.
⁶⁵ Written comments on draft from UNHCR Ljubljana.
⁶⁶ A Programme for Action, S. Ruxton, p. 51.
⁶⁷ Ibid. p. 53.
⁶⁸ Ibid.
⁶⁹ Bulgaria, p. 10; Croatia, p. 16; Estonia, p. 7; Hungary, p. 9; Latvia, p. 9; Lithuania, p. 9;
Romania, p. 9; Slovakia, p. 8; Slovenia, pp. 15-16.
⁷⁰ Czech Republic, pp. 6-7; Poland, pp. 12-13.
⁷¹ A Programme for Action, S. Ruxton, p. 54.
⁷² Ibid., pp. 54-55.
⁷³ Croatia, pp. 16-18.
⁷⁴ Czech Republic, pp. 7-8.
⁷⁵ Estonia, p.7.
⁷⁶ Hungary, pp. 9-10.
⁷⁷ Latvia, pp. 10-11.
⁷⁸ Lithuania, pp. 10-11.
⁷⁹ Poland, pp. 13-15.
⁸⁰ Romania, p.10.
⁸¹ Slovakia, pp. 8-9.
⁸² Slovenia, pp. 16-18.
⁸³ A Programme for Action, S. Ruxton, p. 56.
⁸⁴ Ibid., pp. 56-57.
⁸⁵ Ibid., p. 58.
⁸⁶ Bulgaria, p. 12.
⁸⁷ Croatia, p. 19.
⁸⁸ Czech Republic, p. 8.

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- ⁸⁹ Estonia, pp. 7-8.
- ⁹⁰ Hungary, pp. 10-11; Lithuania, p.11; Poland, pp. 15-16.
- ⁹¹ Poland, pp. 15-16.
- ⁹² Written comments on draft from authors of Country Assessment.
- ⁹³ Latvia, pp. 11-12.
- ⁹⁴ Romania, p.11.
- ⁹⁵ Slovakia, p. 9.
- ⁹⁶ Slovenia, p. 18.
- ⁹⁷ A Programme for Action, S. Ruxton, p. 60.
- ⁹⁸ Ibid.
- ⁹⁹ Czech Republic, pp. 9-10.
- ¹⁰⁰ Estonia, p. 8.
- ¹⁰¹ Hungary, p.11.
- ¹⁰² Latvia, pp, 12-13.
- ¹⁰³ Slovakia, pp. 9-10.
- ¹⁰⁴ Written comments on draft from authors of Country Assessment.
- ¹⁰⁵ Bulgaria, p.14; Croatia, p.20; Lithuania, p.12; Poland, p.16; Romania, p.11; Slovenia, p. 19.
- ¹⁰⁶ A Programme for Action, S. Ruxton, p. 61.
- ¹⁰⁷ Croatia, p.20.
- ¹⁰⁸ Czech Republic, pp. 9-10.
- ¹⁰⁹ A Programme for Action, S. Ruxton, p.62.
- ¹¹⁰ Croatia, pp. 20-22.
- ¹¹¹ Bulgaria, p. 14; Croatia, pp. 20-22; Czech Republic, p. 10; Estonia, p. 8; Hungary, pp.11-12; Latvia; p. 13; Lithuania, pp. 13-14; Poland, p. 17; Romania, pp. 11-12; Slovakia, p. 10; Slovenia, p. 20.
- ¹¹² Bulgaria, p. 15
- ¹¹³ Czech Republic, pp. 11-12.
- ¹¹⁴ Romania, p. 12
- ¹¹⁵ Slovenia, pp. 20-22.
- ¹¹⁶ Slovakia, pp. 10-11
- ¹¹⁷ Estonia, p. 10
- ¹¹⁸ Latvia, p.
- ¹¹⁹ Hungary, pp. 15-16.
- ¹²⁰ Lithuania, pp. 14-15.
- ¹²¹ Poland, pp. 10-11.
- ¹²² Bulgaria, p. 16.
- ¹²³ Czech Republic, p. 13.
- ¹²⁴ Poland, p. 19.
- ¹²⁵ Croatia, pp. 22-23.
- ¹²⁶ Estonia, p.
- ¹²⁷ Hungary, pp. 16-17.
- ¹²⁸ Lithuania, pp. 15-16.
- ¹²⁹ Romania, p. 13.
- ¹³⁰ Slovakia, p. 12.
- ¹³¹ Slovenia, pp. 22-23.
- ¹³² Information provided by UNHCR Ljubljana, however, indicates that experts working with the NGO Slovenska Filantropija provide counselling for separated children in Slovenia.
- ¹³³ Bulgaria, pp. 16-17.

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- ¹³⁴ Written comments on draft from Senior Protection Assistant, UNHCR Croatia.
- ¹³⁵ Czech Republic, pp. 13-14.
- ¹³⁶ Estonia, p.10.
- ¹³⁷ Croatia, p.23.
- ¹³⁸ Hungary, pp. 17-18.
- ¹³⁹ Slovenia, pp. 23 -24.
- ¹⁴⁰ Latvia,
- ¹⁴¹ Lithuania, pp 16-17.
- ¹⁴² Poland,
- ¹⁴³ Romania, pp.13-14.
- ¹⁴⁴ Czech Republic, p. 14, Estonia, pp. 9-10, Hungary, p. 18, Latvia, pp. 16-17, Poland, p. 21, Slovakia, p. 14, Slovenia, pp. 24-25.
- ¹⁴⁵ Bulgaria, p. 17.
- ¹⁴⁶ Czech Republic, p. 15.
- ¹⁴⁷ Latvia, pp. 16-17.
- ¹⁴⁸ Lithuania, p. 18.
- ¹⁴⁹ Poland, p. 21, Slovakia, p. 14, Slovenia, pp. 24-25.
- ¹⁵⁰ Romania, p. 14.
- ¹⁵¹ Bulgaria, p. 18, Czech Republic, pp. 4-5, Estonia, p. 10, Hungary, pp. 18-19, Latvia, 17-18, Poland, pp. 21-22, Romania, pp. 14-15, Slovakia, pp. 14-15, Slovenia, pp. 25-26.
- ¹⁵² UNHCR Croatia, however, points out that the social welfare authorities monitor that the rights of persons under guardianship are properly represented. Under the Law on General Administrative procedure (which applies to the asylum procedure) the authorities are required to inform the social welfare authorities if a guardian fails to represent a child properly. (Written comments on draft from Senior Protection Assistant).
- ¹⁵³ Hungary, pp. 18-19.
- ¹⁵⁴ Bulgaria, p. 18.
- ¹⁵⁵ Lithuania, p. 19.
- ¹⁵⁶ Written comments on draft from UNHCR Ljubljana.
- ¹⁵⁷ A Programme for Action, S. Ruxton, pp. 71-72, Hungary, p. 16, Poland, pp. 22-23, Slovenia, pp. 26-27.
- ¹⁵⁸ Bulgaria, p. 18.
- ¹⁵⁹ Czech Republic, p. 17.
- ¹⁶⁰ Estonia, p. 10.
- ¹⁶¹ Hungary, p. 16.
- ¹⁶² Lithuania, p. 20.
- ¹⁶³ Poland, pp. 22-23.
- ¹⁶⁴ Latvia, p. 18.
- ¹⁶⁵ Slovenia, p. 27.
- ¹⁶⁶ Romania, p. 15.
- ¹⁶⁷ A Programme for Action, S. Ruxton, p. 73.
- ¹⁶⁸ Estonia, p. 11, Slovakia, p. 16.
- ¹⁶⁹ Romania, p. 16.
- ¹⁷⁰ A Programme for Action, S. Ruxton, p. 75.
- ¹⁷¹ Hungary, p. 17, Slovenia, pp. 28-29.
- ¹⁷² Bulgaria, p. 20.
- ¹⁷³ Estonia, p. 11.
- ¹⁷⁴ Czech Republic, p. 18.
- ¹⁷⁵ Croatia, p. 26.

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- ¹⁷⁶ Written comments on draft from UNHCR Ljubljana.
- ¹⁷⁷ Poland, 23-24.
- ¹⁷⁸ Latvia, p.19.
- ¹⁷⁹ Romania, p.16.
- ¹⁸⁰ A Programme for Action, S. Ruxton, pp. 78-81.
- ¹⁸¹ Bulgaria, pp. 20-21, Czech Republic, pp.18-19, Hungary, p.17, Latvia, pp.19-20, Lithuania, pp. 21-22, Poland, pp. 24-25, Romania, p.17, Slovenia, pp. 29-30.
- ¹⁸² Croatia, p. 26, Estonia, p. 11, Latvia, pp. 19-20, Romania, p. 17, Slovakia, p. 17.
- ¹⁸³ A Programme for Action, S. Ruxton, p. 79.
- ¹⁸⁴ UNHCR, Handbook on procedures and criteria for determining refugee status, para.218.
- ¹⁸⁵ UNHCR, Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, pp. 10-11.
- ¹⁸⁶ UNHCR, Refugee Children: Guidelines on Protection and Care, p. 101.
- ¹⁸⁷ Estonia, p. 11.
- ¹⁸⁸ Bulgaria, p.21; Czech Republic, p.19; Hungary, p.17; Latvia, p. 20; Lithuania, p. 22; Poland, pp. 24-25; Romania, p.17; Slovenia, p.30.
- ¹⁸⁹ A Programme for Action, S. Ruxton, p. 82.
- ¹⁹⁰ Hungary, pp. 18-19
- ¹⁹¹ Bulgaria, p. 22; Czech Republic, pp. 19-20; Estonia, p. 12; Latvia, p. 21; Lithuania, pp. 22-23; Romania, p. 18; Slovakia, pp. 17-18; Slovenia, pp. 31-32.
- ¹⁹² Poland, pp. 25-26.
- ¹⁹³ Bulgaria, pp. 22-23.
- ¹⁹⁴ Estonia, p. 12.
- ¹⁹⁵ Hungary, p 19.
- ¹⁹⁶ Poland, pp. 26-27.
- ¹⁹⁷ Romania, p. 18.
- ¹⁹⁸ Slovakia, p. 28.
- ¹⁹⁹ Latvia, pp. 22-23.
- ²⁰⁰ Czech Republic, comments
- ²⁰¹ Lithuania, p. 23.
- ²⁰² Slovenia, pp. 33-34.
- ²⁰³ Bulgaria, pp. 24-25.
- ²⁰⁴ Croatia, p. 27.
- ²⁰⁵ Czech Republic, pp. 20 and 23.
- ²⁰⁶ Estonia, p. 13.
- ²⁰⁷ Hungary, pp. 23-24.
- ²⁰⁸ Latvia, p. 22.
- ²⁰⁹ Lithuania, pp. 23-24.
- ²¹⁰ Poland, p. 27.
- ²¹¹ Romania, pp. 20-21.
- ²¹² Slovakia, pp. 18-19.
- ²¹³ Slovenia, pp. 34-35.
- ²¹⁴ A Programme for Action, S. Ruxton, p. 93.
- ²¹⁵ Ibid.
- ²¹⁶ Bulgaria, p. 25; Croatia, pp. 27-28; Estonia, pp. 12-13; Hungary, p. 21; Lithuania, p. 24; Poland, p. 28; Slovenia, pp. 35-36.
- ²¹⁷ Czech Republic, p. 21; Latvia, p. 23; Romania, p. 21
- ²¹⁸ Estonia, p. 13; Hungary, p. 22; Latvia, p. 26; Lithuania, pp. 25-26; Poland, pp. 29-30; Romania, p. 22; Slovakia, p. 21; Slovenia, pp. 39-40.

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- ²¹⁹ Bulgaria, p. 26.
- ²²⁰ Bulgaria, p. 26; Czech Republic, p. 22; Hungary, p. 22; Lithuania, pp. 25-26; Poland, pp. 29-30.
- ²²¹ Bulgaria, p. 26; Estonia, p. 13; Hungary, p. 22; Latvia, p. 26; Poland, pp. 29-30; Romania, p. 22.
- ²²² A Programme for Action, S. Ruxton, p. 102.
- ²²³ Bulgaria, pp. 28-29.
- ²²⁴ Croatia, pp. 14-15.
- ²²⁵ Czech Republic, p. 25.
- ²²⁶ Estonia, p. 13.
- ²²⁷ Hungary, pp. 23-24.
- ²²⁸ Latvia, p. 27
- ²²⁹ Lithuania, pp. 27-30.
- ²³⁰ Poland, pp. 31, 33-36.
- ²³¹ Romania, p. 24.
- ²³² Slovakia, p. 22.
- ²³³ Slovenia, p. 41.
- ²³⁴ Written comments on draft from UNHCR Ljubljana.