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# Separated children in Europe Program

## *Country Assessment*

**Country:** Hungary

**Assessment period:** 1998-2000.

### **Institutions and institutes audited:**

Ministry of Interior, Office of Immigration and Nationality (OIN)  
United Nations High Commissioner for Refugees (UNHCR)  
Budapest Central Municipal Government, Regional Child Protection Service  
Hungarian Helsinki Committee  
Hungarian Red Cross Investigation Service

### **Documents used or referred to in this Report**

Asylum Law (Metv)	Act No. CXXXIX of 1997 on Asylum
Gov. Dec. No. 25/1998	Government Decree No. 25/1998. (II.18.) on the different services and support provided to foreigners subject to the provisions of the Act on Refugee Rights
Gov. Dec. No. 24/1998	Government Decree No. 24/1998. (II.18.) on the detailed rules of refugee status procedures, and the documents for applicants, temporary and harboured refugees
Immigration Law (Itv)	Act No. LXXXVI of 1993 on the entry, residence and immigration of foreigners in Hungary
Gov. Dec. on Immigration (Ikr)	Government Decree No. 64/1994. (IV.30.) on the execution of Act No. LXXXVI of 1993 on the entry, residence and immigration of foreigners in Hungary
Border Control Law (Hörtv)	Act XXXII of 1997 on border control and the Border Guards
Child Protection Law (Gyvt)	Act No. XXXI of 1997 on child protection and child welfare administration
Gov. Dec. on Child Welfare (Gyer)	Government Decree No. 149/1997. (IX.10.) on Child Welfare Institutions, child protection and welfare administrative procedures
Civil Code (Ptk)	Act No. IV of 1959 on the Civil Code of the Republic of Hungary
Statutory Decree on Private International Law (Nmjtv)	Statutory Decree No. 13 of 1979 on Private International Law
Criminal Code (Btk)	Act No. IV of 1978 on the Criminal Code
Education Law (Otv)	Act LXXIX of 1993 on public education
Health Law (Eütv)	Act CLIV of 1997 on Public Health

## *Preamble*

This country report was written to give a thorough assessment of the statutory regulations and practical implementation of the treatment of separated children, following the rules and aspects specified by the program titled *Separated Children in Europe*.

Separated children and young people are children under 18 years of age that are outside their country of origin and separated from both parents, or their legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCE project, 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.

For standard comprehension, the terms and definitions used in this document shall have the following meaning:

*Separated children*- see the definition above, also including the following two terms:

*Unaccompanied child*- a minor without adult supervision

*Minor without primary caregiver* - a minor supervised by a companion but not by his/her primary caregiver (parents or other legal/customary caregiver).

*Child Protection authority* - The Municipal Notary and the Child Welfare Authority with the competence of an authority.

*Regional Child Protection Service (TeGYeSZ)* - Regional Child Protection Services with no competence of an authority.

*Guardian ad litem* - appointed when the person in guardianship is not present or is not capable to decide on his/her own fate

*Officially appointed legal representative* - appointed when the person's statutory representative cannot or is not allowed to take certain actions for some reasons

*Legal guardian (permanent)* - that person who performs the duties of the guardianship which substitutes the missing parental supervision

*Custodian* - general term for guardian ad litem, officially appointed legal representative and other types of custodian

*Legal representative* - optional representative of a person. In practice it is a lawyer during a legal procedure.

*Statutory representative* - obligatory representative of a person (obligatory by the law). In practise it is the parent, the legal guardian or the custodian.

The number of children as defined above is relatively limited in Hungary.<sup>1</sup> Two groups can be distinguished: a) unaccompanied minors b) minors with companion but without their primary caregiver. The relevant rules of law above referred to have no specific regulation for this second group of children. The law prompts for action only if a child enters the country without adult companion, i.e. only in case of unaccompanied minors. (The term 'unaccompanied

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<sup>1</sup> The question is still open as to how to treat children in need of social protection. Quite often pregnant women especially from the neighbouring countries (Ukraine, Romania, Yugoslavia) come to Hungary to deliver the baby here and then vanish and leave the new-born behind in the hospital. In some other cases mothers of foreign nationality with little babies are subjected to social deprivation, are temporarily admitted to a social and welfare institution in Hungary and later vanish leaving the baby behind. These parents leave their babies in Hungary with the intention to secure them better conditions of living even if far from their native country and families.

minor' is not defined in the current Asylum law but will be included in the current proposed amendment.<sup>2)</sup> Whenever such a child is found, the competent authorities - given the low number of cases - tend to apply the current regulations in a specific and ad-hoc manner. This way, children of the same category by definition may end up in different conditions depending on the specific rules the authorities deciding on their fate actually applied. If the child arrives with an adult companion, only after the first interview by the refugee authority or in some cases later it is established that the adult person is not the child's primary caregiver.

Although statistical reports were actually established on unaccompanied minors admitted to the refugee administration in the last three years, but these statistics contain no information whatsoever on children who arrived to Hungary with a companion but not with their primary caregiver.

Year	Number of unaccompanied minors applying for refugee status	Percentage per total applicants
1997	11	1.03 %
1998	209	2.93 %
1999	620	5,39%
2000	1170	15%

Sources: Ministry of Interior, Immigration and Nationality Office

The increase in the number of cases and the unresolved status of foreign children already living in Hungary puts an extra emphasis on the problem and pressure on the legislators. Advancing legal harmonisation will undoubtedly bring about new regulations for the dedicated treatment of unaccompanied minors entering. By definition however, this group would not cover those children that arrive in Hungary with a companion, but whose companion are not capable of representing their basic interests.

Now however that the ambiguity of the terminology in the referenced rules of law is causing a serious problem on interpretation of the relevant refugee regulations - current regulations fail to make a clear distinction between key terms like statutory representative, parental supervision or family members.

This assessment dwelt on a number of different Hungarian rules of law that may have an impact one way or the other on the target group of persons (i.e. foreigners, minors, persons residing in Hungary). The exact points of reference in the relevant rules of law are set forth in the Annex.

### ***Definition of “separated child”***

The rules of law of Hungary today only contain some of the definitions used by the Statement. The term minor, for instance, is defined by the Civil Code [Paragraph (2) of Article 12] as any person below the age of eighteen (all other laws and regulations refer back to this definition, if any). Minor status is then further split by the law into persons below 14 years of age, defined

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<sup>2</sup> Source: Worded information from the lawyer of the UN High Commission for Refugees

as incapable [Article 15 of the Civil Code] and minors of more than 14 years of age, defined as partially incapable (or capable with some limitations) [Paragraph (1), Article 12]. This latter group is referred to as adolescents by Section b), Article 5 of the Child Protection Law. This distinction is important in the definition of capability and thus culpability. This law however can be applied to Hungarian citizens only. The Immigration Law [Paragraph (1), Article 2] defines the term foreigner as a non-Hungarian citizen, but makes no distinction between minor and adult foreigners.

In the current refugee administration process it has happened already that officers accepted non-statutory representative brothers or sisters of age of the minors as their statutory representative, in spite the relevant regulations that define a different process. Paragraph (2), Article 14 of Gov. Dec. No. 24/1998 clearly stipulates that if an applicant of less than 18 years of age has no statutory representative, a guardian ad litem shall be appointed.

A 12 year-old little boy from Afghanistan arrived to Hungary with his brother of 18 years to seek asylum. They had no financial means to rent a flat and so were temporarily put up at the Refugee Authority's accommodation quarters. The 18 months period they were allowed to stay has since expired. It is all too clear that the senior brother is not suitable to become the minor's official guardian and no responsible person to take the role of guardian has been appointed. No long-term solution has been found since to resolve their situation.

It would be a good idea to take the opportunity and extend the notion of 'unaccompanied minor' in the coming amendment of the Asylum law. It would be even more reasonable to replace this term with another that would both include unaccompanied minors and minors accompanied by adults who are not their previous, primary caregivers.<sup>3</sup>

### *1. Access to the territory*

Pursuant to Section c), Article 18 of the Border Control Law, foreigners can freely enter the territory of the country after declaring his/her intention to apply for refugee status. The application is recorded in an official Protocol and the person is accommodated at the nearest refugee reception centre.

The problem arises when the refugee is not aware of this regulation and fails to apply for asylum at the state border, and has no proper documents to enter the country. In the absence of a declaration of request for asylum, the Alien Police file the official alien police proceeding against the foreigner, who can be then expelled from the country.

As for the entry of foreigners at the international airport, the special rules stipulated in Article 42 of the Asylum Law apply. In this case, the Alien Police will not let foreigners requesting asylum enter the country but will instead notify the refugee authority immediately, which will start the asylum proceeding right away. If this authority rejects the asylum request, the applicant can be expelled right away. Needless to say, the principles of non-refoulement shall be observed in every case a foreign citizen is expelled. [Paragraph (1), Article 32 of the Asylum Law].

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<sup>3</sup> In reality it is very difficult to ascertain how rare/often this phenomenon is, as statistics are only available on a limited part of separated children (on unaccompanied minors) subject to refugee administration (see page 2).

In practice, a well-informed refugee can declare his/her intention to seek asylum, will be subjected to the refugee procedure and can thus legitimately enter the country.<sup>4</sup> The refugee is then granted an applicant status and an ID card is issued with a temporary residence permit for the period until a decision on his/her application is taken. Less informed persons either arrive with proper documents and then try to obtain information on what to do later in the country, or come without proper papers and are then subjected to alien proceedings. In this case, unless he/she declares to seek asylum, the decision to expel is rapidly made. 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 Alien Police.

No special rules apply on the treatment of separated children entering the country. Only during the alien proceedings (when the place of accommodation is pointed out) can one special rule be adapted which requires special treatment for children: if a child is under the age of 18 and without parental supervision he/she shall be referred to a child guidance institution. [Gov. Dec. on Immigration, Paragraph (3), Article 53/A] Children arriving with a companion but not with their primary caregiver are generally not disclosed to the authorities - their separation is hidden and would require special detection by the border guards that is currently not given. Those children are therefore treated as if they arrived with their parents.

Separated children receive no special treatment or representation of any kind when entering the country. If their special status is not identified, they may be returned right at the border crossing point to the country they come from together with the adult or group with whom they actually arrived. They may be subjected to detailed interview if the border guards believe the interview of a minor "family member" is absolutely necessary at the spot. This practice is absolutely not in line with the contents of the Statement. There should be instruments in place to identify their special status and let them enter the country to take all necessary actions in the effective manner.

Pursuant to Article 60 of Immigration Law, the transporting airway, railway or other carrier company transporting passengers without legal travel documents can be called to account for illegal trafficking. In this respect, the law makes no distinction between minor or adult illegal entrants.

### *1.1 Trafficking*

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 also be exposed to straightforward trading of humans (slave market). If no visa is required for a foreigner to enter Hungary, these children are simply entered as tourists and officially stay in

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<sup>4</sup> According to Hungarian human rights organisations however, current practice is much more "sporadic". It often happens that foreign citizens trying to enter but unable to satisfy the conditions of entry are simply returned by the Border Guards to the country where they have arrived from regardless of the fact that they seek asylum. If this procedure cannot be completed within a short period of time because of the neighbouring country's opposition, the person is taken to what is known as community shelter (in fact: custody at border; see chapter on *Detention*). (Source: Hungarian Helsinki Committee) This procedure may also be applied to separated children if they arrive with an adult companion rather than alone to the border crossing point.

the country for 1 month. In practise it can mean months or years Certainly they do not enter/get into the asylum procedure since they don't seek for asylum.

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 is being kept by his "owners" in a small room together with 10-20 other persons and is taken to the streets to beg every day. The sad thing is that even under such conditions, his needs are better taken care of than in his original family.

Sometimes children seeking asylum in Hungary are simply smuggled into the country. In most cases it is their family that negotiates the deal with the traffickers in the hope that the host country will be more forgiving, more permissive towards the child in granting refugee status. The family hopes that once the child is granted refugee status, they will later have better chances of claiming family reunification in the host country. ("Status extension", a term that can hardly be referred to as family reunification is detailed in the chapter titled *Family reunification in the host country*.)

Three Somali children (ages 14, 16, 17 years) ventured off to Western Europe in a larger group of people of different nationalities. Traffickers smuggled them through the Hungarian borders in a van with forged papers and dropped them off in the middle of the country saying that this was Germany, the promised land. The three children applied for asylum, but when the parents arrived in Hungary, a new procedure was initiated.

Article 175/B of the Criminal Code on the trade of humans has dedicated stipulations on crimes against children and minors of less than 18 years of age. Article 218 of the Criminal Code contains specific sanctions on smuggling people (whether for slavery or illegal transportation of refugees into the country). This law has different sanctions for different type of smuggling but makes no distinction as to the victim's age, be it minor or adult.

## **2. Identification**

The relevant rules of law require no specific procedure for the identification of separated children.

Refugee policies today merely concentrate on minors without *parents*.<sup>5</sup> Pursuant to the Immigration law, Paragraph (3), Article 53/A, these children shall be referred to Child Guidance Centres. In case of any doubt, the age of the child should be established by an undetermined method (possibly an interview). In the absence of any more specific regulation, this is one way of identification.

The identification proceeding described in the Statement is yet to be regulated in Hungarian law. In order to provide legal and social protection to children and safeguard their best

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<sup>5</sup> Note that there is an ambiguity in the applicable rules of law. In accordance with the Immigration Law, a minor without parental protection has to be transferred to a Child Guidance Centre. By using the term parental protection (or supervision), the law excludes the possibility of having the child under the supervision of another statutory representative under a different regulation. Pursuant to the regulations on refugee procedures however, representation of the minor shall be by a statutory representative.

interests, it would be absolutely necessary to identify and provide dedicated treatment not only to unaccompanied children but also children accompanied by adults but separated from their primary caregiver.

### ***3. Appointment of guardian or advisor***

A separated child can be placed under guardianship in Hungary in two ways.

If a foreign minor arrives in the country alone or if it is established that the adult accompanying him/her in Hungary is not his/her statutory representative, the child is referred by law to the child guidance network, and temporary tutelage actions need to be taken to protect him/ her [Gov. Dec. on Child Welfare, Paragraph (1), Article 167]. This means that the child is put up in a temporary home, and the officer of the competent child guidance authority takes the necessary steps required to provide additional protection to the child. The officer's first job will be to find out if there is any international treaty or legal aid contract between Hungary and the country of origin, which have specific regulations on what needs to be done in this case [Paragraph (2), Article 225 of the Civil Code]. An officially appointed legal representative is appointed only if the child's statutory representative cannot or is not allowed to take certain actions for some reasons. Since legal (permanent) guardian can only be appointed based on the law of the country the child is a citizen of, an officially appointed legal representative is appointed for the child with no statutory representative. (It is easy to imagine how rare it is to find officers and child guidance authority officials with in-depth knowledge of say the relevant Iraqi or Somali laws.) Other than appointing an officially appointed legal representative, the child guidance authority also has to contact the child guidance authority of the child's country of origin to "help in repatriating the child to his/her original family." [Gov. Dec. on Child Welfare, Paragraph (5) of Article 167]

The other possibility is that when the applicant has already filed his/her application for asylum it is found that he/she is of less than 18 years. In this case, it is the refugee authority's responsibility to request the child guidance authority to appoint a guardian ad litem [Paragraph (2), Article 14 of the Gov. Dec. No. 24/1998]. The guardian ad litem is generally appointed whenever the person in guardianship is not present or is not capable to decide on his/her own fate. (See that we mention already three different kinds of guardians: officially appointed representative, guardian ad litem and legal (permanent) guardian.)

A 17-year old boy from Iraq applied for asylum at the refugee authority. The refugee administrator requested the child guidance authority to appoint a guardian ad litem, in line with the statutory provisions. The guardian ad litem was duly appointed. Case documentation however have no further indications on whether the child guidance authority on its own or on the refugee administrator's request took any actions to provide for interim care and protection of the child. The boy was not present when the decision on his asylum application was announced and was never seen again.

The two different types of guardianship are very much similar in their discretion and decision powers. Both the officially appointed representative and the guardian ad litem have a prime responsibility to take every action possible during the asylum proceeding that an adult asylum seeker would otherwise do on its own: participate at the interview, present documents of proof of applicant's fear of persecution, etc.

The process of appointment of the officially appointed legal representative may take weeks, months or even years very much depending on the skills of the child guidance officer in charge of the case. This is because the officer needs to establish first whether any international treaty or mutual legal-aid pact exists between Hungary and the child's country of origin.<sup>6</sup> The appointment of the guardian ad litem takes far shorter time.

Pursuant to Paragraph (2), Article 136 of the Gov. Dec. on Child Welfare, officially appointed legal representatives are generally lawyers with a good deal of knowledge and experience in the legal representation of children - child guidance professionals testify.

Hungarian regulations and legal practice is still rather far from the procedural expectations required by the Statement. As a general phenomenon, child protection aspects are not always and not necessarily and fully adhered to in either the asylum (refugee) or immigration procedures. This is also true the other way round: refugee administration aspects are not always addressed in child guidance procedures. The first phenomenon is best demonstrated by the fact that the rules of law regulating refugee and immigration procedures have hardly any reference to asylum seekers or foreigners of less than 18 years of age. The regulations on child protection however fail to take into account that the stipulations requiring the administration to contact the country of origin may put the asylum seeking child and especially persecuted family members at home in danger.

The person appointed as officially appointed legal representative or guardian ad litem has the obligation to consider and protect the child's interests to the extent possible. This in general complies with the requirements set out in the Statement, but both child protection and refugee regulations fail to detail the special tasks related to the special situation of asylum seeking children (like provision of proper legal representative in the asylum procedure, family search and family reunification possibilities, etc.). This is therefore a mere question of professional skills of the appointed persons.

Certain deadlines are specified by The Law on public administration procedures. Failure to adhere to these deadlines (i.e. very lengthy administration) is typical practice in Hungary even in less complicated cases. The Statement recommendation to appoint a guardian or advisor for a separated child can therefore not be satisfied.

The person appointed as officially appointed legal representative of a child should be, if possible, a lawyer. The regulation however has no requirements on the special skills the appointed lawyers should have to be a officially appointed legal representative. Further on the law say nothing about the professional and special skills of the guardian ad litem.

Notwithstanding the need to protect the best interests' of separated children, certain child protection and refugee aspects also need to be taken care of when taking actions with an impact on the child's fate. This requires all people involved in the different procedures to be fully aware of all the rules of law and regulations concerning the child in order to adopt the best possible actions for the child.

The most important changes to be implemented in the regulations concern the administrative deadlines (and adherence thereto). It has a very detrimental effect on the child's psyche if the appointment of the officially appointed legal representative takes up a long time.

To protect the child and his/her relatives in the country of origin, extreme care should be taken to ensure that any contact established with the representatives of the country origin does not expose these persons to danger.

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<sup>6</sup> On the basis of the verbal information of the Deputy Director of the Capital Tegyesz

#### ***4. Registration and documentation***

As long as the separated child is not part of the child guidance institutional network, his/her data are treated and recorded in accordance with the data management rules pertaining to adult asylum seekers or foreigners [Paragraph (1), Article 50 of the Asylum Law, Paragraph (1), Article 6 of the Gov. Dec. No. 24/1998].

There are no special, dedicated rules of data management for separated children. The child's data in this case is practically handled together with the data of his/her companion, there are generally no data in the case documents that would describe the child's social background.

The 17-year old boy from Iraq did not live in the refugee camp but went to Budapest and specified a domicile address in Budapest. No information whatsoever is available in the documents about his living conditions, how he sustained, took care of himself, whether he lived alone or if there was anyone taking care of him. No information is known as to whether his basic needs were satisfied at all.

Available records on children registered in the child guidance network are more sensitive to social issues. Data management rules are well established, especially those concerning personal data protection. Regulations however fail to cover specific cases like those of separated children. Nevertheless according to practice the registration prepared for the child include data related to the family, finding the child, being separated from his/her family and information related to the physical and mental condition of the child. Keeping the registration is continuous. Its purpose is to record the important changes and development in the child's life and make these traceable.

Taking into account the recommendation of the Statement, it would be worthwhile to stipulate it also in a rule law what data of the separated child would have to be registered. In terms of interviewing the child, either the examiner working in child protection does not have knowledge on refugee matters or the examiner working in the refugee procedure does not have knowledge on child protection. For the decision taking into account the complexity of the child's situation, this would have to be changed as well, i.e. the person performing the interview of the child should have to be of appropriate training and professional knowledge both in child protection and refugee matters.

#### ***5. Age assessment***

There is no Hungarian rule law whatsoever that regulates the age assessment in the course of the refugee procedure. If the asylum seeker is failing within the law (GYER) and his or her age is uncertain then his or her age must be determined by the officer of the asylum proceedings based on the medical examination of the expert in forensic medicine. [GYER 63.§ (3)].

In the course of refugee procedure, in practice, the officer on the basis of his/her decision can request the opinion of the justice medical expert about the age of the asylum applicant if he/she has doubts about the age declared by the applicant and he/she assumes that the

applicant declares him/herself as below 18 in hope of a more yielding assessment. However the medical examinations regarding the age group 16-20 cannot provide more precise determination about the age. The only thing that can be determined is whether the examined person is below 16 or above 20. Thus in the case of such results it cannot be determined with certainty that the applicant is over 18 years of age, i.e. adult, or not.

We have no data as to the conditions of this examination (is it performed by a paediatrician, whether the doctor is aware of the ethnic and cultural background of the person to be examined, etc.). According to one refugee officer and a legal training for lawyers on refugee issues, the applicant is considered as a minor if the age test can only reveal that the applicant is between the age 16 and 20, yet it cannot provide any more precise approximation.

The recommendation outlined in the Statement that in the case of doubt resolution has to be made favour of the separated child, i.e. he/she has to be considered as a minor is basically met by the refugee practice. Change is necessary in terms of the fact that this practice should be stipulated in the rule of law. Moreover, attention has to be paid that the method of examination does not violate the dignity of the examined person.

## ***6. Detention***

Those foreigners who did not declare their asylum application intention and whose travel to Hungary does not have the appropriate conditions are entered in alien police procedure and the deportation resolution against them is made rapidly. Until the execution of the resolution these persons are sent to so-called community shelter, which they can leave only under special circumstances, i.e. they are kept there locked up. (In a characteristic manner, foreigners locked up in these institutes refer to them as “deportation camps”.) Foreigners below the age of 18, without their parents’ supervision, cannot be locked up to community shelter [Paragraph (3), Article 53/A of Gov. Dec. on Immigration]. Furthermore families who have family members below the age of 14 can be placed to other place of accommodation than community shelter.

According to the practice, minors without their parents are sent to child protection authorities. Child protection experts object the humanity of this decree. It is presumably better for the child to remain with his/her usual guardian (who is not necessarily either of him/her parents), even in a locked up institute, than separate him/her from the guardian and place him/her to a totally alien environment.

If there is a minor family member in the family under alien police proceeding, the alien police in general stipulate not the community shelter but another place as place of accommodation for the whole family.

In terms of the section of the Statement about detention the rules of law “over-fulfil the plan” on one hand, since it separates the child from his or her primary caregiver if this person is not the child's parent. The lawmakers did not consider the possibility that the legal/customary primary caregiver of the asylum seeking minor is not either or both of the parents, but can be his/her aunt, adult sibling or another person. Naturally the question of whether it is better for the child to be with the primary caregiver locked up or separated from his/her but not locked.

On the other hand the rule of law “under-performs”, since it makes it only allowable and not obligatory that minors below the age 14 should not be locked up together with their family members (these family members may include the members of the wider family, i.e. not necessary the primary caregiver), closed up in the community shelter. According to Article 23

of Criminal Code, the minor below the age of 14 cannot be punished, however on the basis of the Immigration Law it can occur (and it happens in the practice as well<sup>7</sup>) that minors below 14 are locked up with their family. Even in this case it has to be considered what serves the best interests of the child, and the nature and quality of the child and his or her “family member” has to be assessed.

The rule of law has to be modified in that it should regulate the keeping locked up of minors by taking into account the relationship not only with the parent but also the primary caregiver.

### ***7. Right to participate***

The asylum applicant (applicant) is obliged to participate in the refugee procedure. The rule of law [Paragraph (3), Article 15 of the Gov. Dec. No. 24/1998] permits the involvement of a minor applicant if he/she is over the age of 14 and his/her interview is indispensable for clarifying the facts of the case. However, this rule of law unambiguously applies to minors arriving with their family.

If the applicant below the age 18 does not have a statutory representative and this turns out when submitting the asylum application, the refugee agency has to request a guardian ad litem for the child [Paragraph (2), Article 14 of the Gov. Dec. No. 24/1998]. According to the law [Section (b), Article 2 of the Gov. Dec. on Child Welfare] the statutory representative is the parent, the legal guardian and the custodian. In practice, it depends on the knowledge of the officer, whether he/she knows about this or not<sup>8</sup> and according to his or her knowledge will decide to request a guardian ad litem.

If the separated child enters in the child protection system before entering in the refugee procedure, the guardian authority already assigned him/her an officially appointed legal representative in accordance with the child protection rules of law (See section ***Appointment of a guardian consultant***), and he/she submits the asylum application in the child’s name.

Gov. Dec. No. 24/1998, regulating the refugee procedure does not mention it whether the child under the guardianship of the officially appointed legal representative or the guardian ad litem can be and how can be heard.

According to the practice, the officer judging the application only hears the applicant, i.e. the child. The practical role of the officially appointed legal representative or guardian ad litem is minimal. According to the requested officer, there is only one difference compared to the interview of adult applicants: the guardian appointed to the child sits there, but he/she only monitors the legality of the process.

### ***8. Family tracing and contact***

On the basis of the Paragraph (3), Article 163 of Gov. Dec. on Child Welfare, the child protection authority proceeds on the basis of the international contracts and legal aid contracts in the matter of foreign children entered in the child protection system, if it has a possibility to do so. If the respective international convention stipulates contact with the family through the proper authorities of the country of origin, the child protection authority does so (not knowing that this step could expose the remaining family to danger). If the applicability of the convention is doubtful, the child protection authority has to request an official statement from

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<sup>7</sup> On the basis of the observation of human rights organisations

<sup>8</sup> There have been such officers who consider only the parent of the child as statutory representative.

the Ministry of Social and Family Affairs. Perhaps this could provide protection for the case when the compliance with the international convention endangers the child's family members who remained in the country of origin.

In practice in general the tracing of the family meets with obstacles therefore after a while the child protection authorities perform tracings for each case with less and less intensity. However, there is the danger that a successful contact with the country of origin endangers the child's family.

The child protection authority attempts to explore the parents via consulates or ministries of foreign affairs, it does not involve the UN institutes or the International Red Cross although the Hungarian Red Cross Investigation Service is suitable to trace the family without endangering them. Observable again is the phenomenon that the proceeding authorities do not reconcile the child protection and refugee consideration, therefore it is not sure that such a decision is made that serves the best interests of the child.

This legal status and the practice does not correspond to the contents of the Statement. When formulating the rule of law, a special refugee consideration would be necessary. Co-operation would be necessary between the Hungarian child protection authority and the domestic and international refugee agencies for the successful exploration of the family.

### ***9. Family reunification in a European country***

There are no Hungarian rules of law about family reunification in a European country or family reunification in general.

The practice is that the family member residing in Hungary contacts the UNHCR and requests its help in the family unification. In general UNHCR does not support family reunification if the family members request the family reunification from a host country considered as safe (e.g. Hungary) to another country. An exemption from this is if the best interests of minor family members, is for family reunification.<sup>9</sup>

The members of an Iraqi family (father, three children and the aunt of the children) were separated during fleeing. The father ended up in Austria, where he received a legal permit of residence. The children (the eldest was 14 years old) arrived to Hungary with the seriously ill aunt. Although Hungary is considered as a safe country the UNHCR, nevertheless, organised the family reunification in Austria since the legal representative of the children (the father) resided there.

Currently the Hungarian state does not support family reunification (in Hungary or in a third country from Hungary) with any active tools. As a passive tool, Section a), Article 2 of the Asylum Law extends the refugee status to the direct family members residing in Hungary. But the family member has to be in the area of the country for this. The family members intending to travel to Hungary have to comply with the conditions of entering the country (valid passport, visa and the financial guarantees necessary to obtain the visa) [Paragraph (1), Article 4, Article 9, Article 5 of the Immigration Law], and this represents a serious financial sacrifice

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<sup>9</sup> On the basis of the verbal disclosure of the lawyer of the UNHCR.

from the family.

According to the recommendation stipulated in the Statement, the affected countries would have to agree to family reunification in that country in which the best interests of the child can be best secured. Currently there is no rule of law that would stipulate and regulate this for the Hungarian authorities.

The state should play a greater role in the rapid settlement of the fate of persons, especially children, fleeing from their country and in need. In the case of children with a relative in another European country, family reunification would be helped if the law permitted the entry through the country border of the minor intending to enter with the intention of family reunification, irrespective of the fulfilment of financial guarantees.

## ***10. Interim care – health – education, language and training***

### *10.1 Interim care*

The need for protection of the child separated from his/her primary caregiver, arriving with an adult accompanist can only be recognised when he/she submits his/her asylum application. This is when it may turn out that he or she is a minor and has no statutory representative. The refugee authority has to request a guardian ad litem for the child from the child protection authority. According to the rule of law the child protection authority has to put the endangered child to a temporary home. In practice, however, it occurs often that only a guardian ad litem is appointed for him/her who is present at the refugee procedure conducted at the request of the child and monitors the legality thereof. However the child protection authority does not take the further necessary steps for the protection of the children. More than this is valid for the unaccompanied minor, namely the rule of law serving the protection of children as well if he/she is exposed to the risk of physical, intellectual or moral insecurity [Paragraph (2), Article 4 of the Child Protection Law]. He/she has to be placed in an appropriate institute or suitable person with a temporary effect. If it is necessary, the guardian authority may take him/her to temporary care within 30 days after placement. The law according to the child's citizenship is valid when ordering a guardian [Paragraph (1), Article 48 of the Statutory Decree on Private International Law], however an officially appointed legal representative can be appointed for the child on the basis of the Paragraph (2), Article 49 of the Statutory Decree on Private International Law.

In practice, the children are placed to so-called temporary homes, their interests are 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 they attempt to establish contact with the children and their ethnic communities in Hungary. One of the problems is that the temporary homes are set up to receive the children for 30 days, as required by the law, however the settlement of the situation of the foreign minors takes a much longer time than this. In several cases children wait months or even years in an institute that was not constructed for this and is not suitable to perform this function.

The requirements outlined in the Statement in this issue are more or less realised.

In the case of children separated from their primary caregiver, arriving with an accompanist it is worth considering whether placement in the child protection institute really serves the child's best interests. The transformation of the Hungarian child protection system is still

underway and currently it seems that in the case of acquaintance of any degree with the accompanist it is better for the child if he/she is not separated from this acquaintance and is not placed to temporary home.

## *10.2 Health*

The right for health care of foreign minors residing in Hungary with an accompanist, but not the primary caregiver is not regulated separately. Therefore he/she is entitled to health care depending on his/her asylum status, irrespective of the legal relationship with his/her accompanist. Applicants, persons with temporary protection and accepted persons are entitled to basic care and emergency care. Basic care is defined as health care provided by the family doctor to his/her patients. Emergency care is provided to the patients in the cases only indistinctly defined in terms of emergent need. [Paragraph (1), Article 88 and Paragraph (1), Article 77 of the Health Law]. The right for health care of the acknowledged refugee is identical to that of Hungarian citizens.

The foreign minor residing in Hungary alone is immediately entered in the child protection system. Until his/her citizenship is clarified and in emergency cases (as determined by Section e), Article 3 of the Health Law), the Hungarian laws are valid for him/her [Article 50 of the Statutory Decree on Private International Law]. Therefore he/she is entitled to all health care as a minor of Hungarian citizenship. If his/her citizenship is known, he/she is entitled only for emergency care. He/she can get out of this restriction if he/she receives refugee status.

In the case of children entered in the refugee procedure, the practice follows the rule of law. In extraordinary cases, the UNHCR attempts to assist the minor in need, but not entitled to care, if it is requested to do so.<sup>10</sup> Children separated from their primary relatives would also receives the care, however there has been no example for assistance request of this kind.

The asylum applicants can utilise some very important health care services by the support of UNHCR: internal treatment, pediatry and gynaecology. By the law they cannot utilise one of the (for them perhaps) most important professional cares, i.e. psychiatry care either. A program operated by a non-govermental organisation intends to supplement this deficiency, this intends to improve the mental situation of foreigners living in the camps, but not entitled to professional health care. Its target group also covers the group of children without primary caregiver.

According to the recommendation of the Statement, the same health care should be provided to separated children as children with the citizenship of the accommodating country. According to the Hungarian legal regulation this is not the case if the separated child is provably not of Hungarian citizenship and has not received refugee status either.

Taking into account the increased exposure to injury of children of such situation, the sphere of health care services should not be decreased in their case, since the lack of appropriate medical attention may entail at first unnoticeable but later on it can result in serious consequences.

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<sup>10</sup> There was an example for this, when a baby with ventral hernia the operation of the relatives was paid out by the UNHCR.

### *10.3 Education, language and training*

The right of the separated child is similar to his/her right to health care. Children of status acknowledged refugee and accepted are schoolable according to the Education Law [Article 110]. The law does not provide this opportunity to temporarily protected people, asylum applicants, and foreign children living alone (residing in child protection institutes).

In practice it is difficult to find appropriate school that accepts them even for those entitled to it. There are towns where (breaking the law) the head of school refers to lack of room, another director questions the maturity to school for all the foreign children applying to him.<sup>11</sup>

Voluntaries arriving from developed countries, the national community living in the refugee camp or settled in Hungary, civilian organisations, and sometimes (with application) the camp providing the care attempts to organise a school for the children falling out of education. This, however, is often hindered for lack of sufficient funds. Children excluded from learning are often prone to mental injury, especially if they already went to school regularly in their country of origin. The lack of tasks and activities also has a negative effect on them.

The law making concept (which can be considered as understandable) that only those of the asylum applicants are provided with wider rights who can remain permanently in Hungary as a result of their status. Yet in the case of children the child status would have to be taken into account and their varied interests should be ranked from on the basis of this criterion. Although it does not seem practical that a child with applicant or accepted status go to a Hungarian school, learn a language that he/she will not need after returning to his/her home country or leaving to another country. Yet a very important, decisive part of childhood is learning and not only spontaneous learning but also participation in organised education. For their development, the right to participation in public education has to be secured to all the children belonging to the scope of the Act on Asylum, independently from status.

## ***11. Refugee determination process***

### *11.1 Access to normal procedures*

The refugee procedure starts with submitting the asylum application. The application is filled in by the requesting foreigner in the refugee agency, in the capital city or in any of seven departments in the countryside, or in any of the border stations. The application can be submitted in writing or in words; a Protocol is taken in the latter case. „The application has to include the reference to facts and circumstances providing reason for fleeing” [Paragraph (4), Article 31 of the Asylum Law].

During the procedure, after filing the application, but before the first interviews, the refugee agency requests a so-called guardian ad litem for the minor without statutory representative (whether he/she is an unaccompanied or accompanied minor, but a minor arriving not with his/her primary tutelary) [Paragraph (2), Article 14 of the Gov. Dec. No. 24/1998]. The guardian ad litem is the statutory representative of the child during the procedure.

For the child entered into the child protection system without a statutory representative, the child protection authority appoints an officially appointed legal representative, after the police, alien police, border-guards or other organisation stipulated in the law took the child to a child

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<sup>11</sup> This may be decided not by the director of the school but the Education Counsellor, and then by the Expert and Rehabilitation Committee Examining Learning Capabilities.

protection institute. The task of the officially appointed legal representative is the representation of the child and, in the given case, submitting asylum application.

There is no rule of law that would deny entering into the refugee procedure from anyone, thus separated children are free to enter the procedure.

In practice the only one, yet serious obstacle to the foreigner entering the refugee procedure (be it separated child or not) is the following<sup>12</sup>: if the border-guards for some reason prefer to see him/her outside the territory of the country. It occurs that the border-guards simply disregard the asylum seeking intention of foreigners intending to enter without documents and attempt to as soon as possible deport them to the neighbouring country from which the foreigner attempted the entry.

### *11.2 Legal representation*

The law provides a right to the asylum seeker to have a legal representative<sup>13</sup> and utilise the free legal protection of human rights organisations [Section c), Article 15 and Paragraph (3)-(4) Article 33 of the Asylum Law]. After a certain point the procedure cannot even be continued without a legal representative. There is no special regulation on asylum seeker minors getting legal representation. Thus it can be said they have the right for legal representation as any other asylum seekers. In practice most of the asylum seekers ask for legal representation (usually provided by Hungarian Helsinki Committee or other human rights NGOs) only after their application is rejected by the refugee agency.

The guardian ad litem and the officially appointed legal representative is not equivalent with the legal representative. They provide the statutory representation to the minor.. The guardians ad litem of minor applicants take part in arranging the matters of minor only with minimal activity (according to the experience of the officers of the refugee agency). Officially appointed legal representatives are well prepared lawyers with practice in the representation of children (according to the professionals of Tegyesz). More about the practice can be found out only by interviewing the involved asylum seeker minors. There are no official datas on how many asylum seeker separated children asked for legal representation.

The contents of the Statement are fulfilled only in part, basically only in form. For separated children the law secures statutory representation either by a guardian ad litem or a lawyer appointed as an officially appointed legal representative. But this is not definitely a legal representation. Furtheron even if the statutory representative is able and willing to (or other person is willing to) provide legal representation problems can turn up. For example, the seemingly adult asylum seeker receives a statutory representative only after submitting his/her application (this is when it turns out that he/she is a minor). „The application has to include the reference to facts and circumstances providing reason for fleeing” [Paragraph (4), Article 31 of the Asylum Law, moreover Gov. Dec. No. 24/1998]. The statutory representative cannot even assist the person he/she represents during an important step of the refugee procedure, i.e. the wording of the application. Legal representation would be more complete if the officially appointed legal representative or guardian ad litem who are able and willing to provide legal representation were appointed right after reporting the asylum application intent, yet before submitting the asylum application. Otherwise legal representation should be provided to the asylum seeker minor. In this case minor applicants could be assisted already in wording their request.

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<sup>12</sup> According to the observation of human rights organisations

<sup>13</sup> It is not a statutory representative since the asylum applicant him/herself is the statutory representative (see terms and definitons explained on page 2)

Although legal representation is free for the applicant, yet e.g. the guardian ad litem – according to the experience of one officer – do not provide active assistance to the minor applicant. It is not a requirement therefore is highly unlikely that the guardians ad litem or the officially appointed legal representatives have knowledge about the special forms of persecution suffered by the children.

### *11.3 Minimal procedural guarantees*

The asylum request is assessed by the refugee agency. In the case of a negative resolution there is a possibility to request the supervision of the resolution from an independent court. The law does not regulate it that the applications of minor applicant would have to be kept and handled separately to make the procedure faster.

In practice, because of the overburden of the officers, the assessment of the applications well exceeds the 90 days stipulated in the law. Since the applications of separated children are not kept and handled separately, therefore minors have to wait as long as the other, adult applicant without distinction.

The procedural right guarantees outlined in the Positions Paper can be found in the Hungarian reference procedure as well, except for time, i.e. the stipulation of making the decision in the shortest possible time. Two or perhaps three months of waiting and uncertainty can be damaging for a child. But he/she has to be prepared for longer period of waiting. Therefore primarily the workload of the officers has to be eased. With an appropriate increase in staff number even the stipulated 60-day deadline (which can be prolonged with another 30 days) could be decreased.

### *11.4 Independent assessment*

There is no law that regulates that an expert should assess the intellectual capacity of minor applicants or specifically his/her ability to conceptualise his/her established fear from his/her persecution.

Neither has there been an example in practice that the interviewing officer requested the assistance of a child psychologist or other expert to decide whether the child is suitable to conceptualise his/her fears. It can occur that the child does not mention facts that are necessary for the positive decision, and at the same time mentions other less important facts.

The Statement considers it as necessary to involve such an expert and it would be necessary to make a realistic decision. Otherwise it may occur that the contents of what the child said (description of the persecution) seem to be small so that he/she can receive asylum on the basis of the his/her otherwise established fear from persecution.

### *11.5 Interviews*

In connection with the interview of minors the Asylum Law only regulates it that the minor family member of the adult applicant can be heard if the clarification of the facts of the case necessitates it. There is no regulation related to the circumstances of the interviews.

The refugee rules of law do not regulate the interviews of separated children either.

In practice the course of the interviews is the same as in the case of adult applicants. The only

difference is that the procurator, who is the legal representative of the child, but he/she really monitors the correctness of the procedure. The interviews are performed by the same officer, who hear the adults as well, thus there is no separate professional trained to hear children. The questions raised are not changed to questions that are understandable to a child.<sup>14</sup>

The interviews are not child-friendly neither in terms of the legal regulation nor in its practice. The conditions and questions formed for adults clearly exceed the capacity of endurance and intellectual level a child. In such situations the conduct of a child becomes inconsistent, his/her replies may become confused and impossible to interpret. Therefore it seems necessary to prepare to conduct such interviews that are sized for the children and which represent the least physical, emotional or intellectual difficulty for them.

#### *11.6 Criteria for making a decision on a child's asylum application*

There is no rule of law as to taking into account any reason other than the fact that the contents of the Geneva Convention have to or may be taken into account when acknowledging refugees. The only exemption from this is if the Minister of the Interior exercises reasonableness for humanitarian reasons in the case of an asylum applicant. However there has been no example for this.

Thus the criteria for making a decision are not different for minor asylum applicants either. Actually it depends on the empathy of the officer how he/she can process what the child said and whether he/she can recognise the actual situation of the child, in a given case his/her persecution. There is usually no doubt in the officers in the course of the assessment or they examine the case until the doubt is removed. Thus the principle of “the benefit of the doubt” is not applied either in decision making. By the way, according to the officers, these minor applicants are generally economic migrants, and as such the refugee status cannot be granted to them.

Following the recommendation of the Statement, changes would be necessary already in the method of conducting the interview. Independent experts have to also read through the materials of child-friendly interviews, who should be acquainted with the general conditions of acceptance as refugee and would be able to apply these conditions to minor applicants as well, taking into account such special factors as the intellectual capacity and restricted information of the child

#### *11.7 Young people who become adults during the asylum process*

No rule of law regulates what should happen with youth coming of age during the procedure. Because of the small number of separated children, this question has never arisen, although the question is justified because of the length of the procedure. According to the assumption of the officers, it would be practically of no significance if the coming of age takes place during the refugee procedure. The role of the caretaker in the procedure is minimal anyway, they say, and this minimum can be provided throughout, irrespective of the fact that the counselled person practically does not need a legal counsellor.

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<sup>14</sup>According to one officer there is no need for this, since according him the questions are unambiguous and can be answered by children as well. As an example, he mentioned the question which is usually the first one they ask: „How and why did you leave your home country?“, whose form – two questions asked at the same time – is not professional even in the case of an adult applicant.

## ***12. Durable solutions***

### *12.1 Remaining in a host country or a country of asylum*

#### 12.1.1 Grounds for a child remaining in a host country

According to the Asylum Law only those asylum applicant and their direct relatives can stay permanently in the accommodating country who are acknowledged as refugees by the resolution of the refugee agency or are declared as refugees by the Minister of the Interior for humanitarian reasons. Taking into account other considerations does not make permanent residence possible.

The accommodated status cannot be considered as permanent since the accommodated person can only remain in the country for one year, his/her case is reviewed after one year. The refugee status does not entail right for permanent residence either, since it can be immediately cancelled on the basis of the resolution of the Government, as soon as the situation in the country of origin becomes safe.

In the case of the rejection of the application for refugee status and the termination of the accommodated, temporarily protected persons, the foreign adults are brought to alien policy procedure. The minors below the age 14 cannot be punished because of their disqualification, therefore they cannot be deported from the country. For minor between the age 14 and 18, an officially appointed legal representative has to be requested by the alien police, nevertheless expulsion is valid and attempts are made to execute it.

The child entered into the child protection procedure can remain in the country permanently, if his/her country of origin or guardian cannot be identified or the guardian is not suitable for bringing up the child. In this case the child protection authority has to initiate the permanent fostering of the child, cancel the supervision right of the parents and order a guardian, unless the law according to the child's citizenship prohibits this. However, no one case of separated child has reached this stage.

No other consideration makes permanent residence possible. All the other residence possibilities are temporary, which are terminated once the circumstances change appropriately (the country of origin becomes safe, the parents are found, the child receives appropriate travel documents, etc.).

The actions of the child protection authority (reviewing international contracts and aid contracts, contacting the embassy of the country of origin) may take a very long time, and although the child spends practically month or years in Hungary, his/her residence cannot be considered as permanent because of the unsettled nature of his/her situation.

Some of the reasons providing basis for staying, proposed in the recommendation of the Statement, are sufficient for staying in Hungary. In and of itself the best interests of the child are not a reason for authorising residence on the basis of any laws. There is no such alien policy rule or equitableness that would authorise staying. Nevertheless the minor asylum applicant can remain if he/she is acknowledged by the refugee agency as refugee or adopted child. He/she can also stay if a large number of people are fleeing from his/her country of origin because of an armed conflict and the Hungarian Government acknowledges them as a temporarily protected people, thus the actual minor applicant as well. He/she can stay if his/her taking into guardianship is justified and it is not forbidden by the law according to his/her citizenship. However, permanent residence is provided to the child only by recognition

as a refugee and taking into guardianship.

The time period of waiting for what legal status the minor receives and what will happen to him/her should be set as short as possible. Thus the situation providing possibility for permanent residence (pronouncing as refugee, placement under guardianship) could be established sooner, thus decreasing the child's feeling of uncertainty and defencelessness.

#### 12.1.2 Family reunification in a host country

According to the Hungarian rules of law, family unification in Hungary can take place only in such a manner that the other members of the family are in Hungary legally.

Currently the state does not support with any kind of active tool the family unification taking place in Hungary. As a passive tool Section a), Article 2 of the Asylum Law extends the refugee status to the direct family members in Hungary, but for this the family members have to be in Hungary. The family members intending to travel to Hungary have to comply with the conditions of entering the country (valid passport, visa and the financial guarantees necessary to obtain the visa) [Paragraph (1), Article 4, Article 9, Article 5 of the Immigration Law], and this represents a serious financial sacrifice from the family.

According to the recommendation of the Statement the family unification request of the separated child should be handled in a "positive, humanitarian and rapid" manner. Currently the refugee agency not only does not handle this in this way, but in no way at all. At the request of the UNHCR about all the cases of family unification the reply of the refugee agency was that they can do nothing in the matter of family unification until the family to be unified is not in Hungary. This could only be changed in such a manner that the state and NGOs would undertake the financial burden of family unification.

#### 12.1.3 Integration

The minor residing lawfully in Hungary, as a person taken into guardianship, is entitled to utilise the services of state and non-state institutions assisting in integration. Education is compulsory for these minors until the age 18. Because of their insecurity (for lack of tutelary), it is the obligation of the child protection authority to pay increased attention to them and provided permanent residence for them. When selecting the place of nurturing, the age, nationality, religion and culture and socialisation level have to be taken into account in a manner stipulated by the law. Efforts have to be made that brothers and sisters are placed together if possible. The youth entering the child protection system before age 18 may utilise after-care if necessary between age 18 and 24.

Those separated children who get into the child protection system at all practically only make it until the temporary hostels. The clarification of their legal status requires persistent work and the overloaded child protection system is barely suitable for performing these special proceedings.

For the minors of clarified status no guardian belonging to their culture can be secured. According to the law, the guardian or guardian can only be a Hungarian citizen [Paragraph (1), Article 99 of the Family Law], and very rarely a non-Hungarian nationality person who obtained Hungarian citizenship. In most cases their guardian is the head of the children's home. Brothers and sisters are always placed together, but an attempt is made to place together minors belonging to the same nationality.<sup>15</sup>

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<sup>15</sup> On the basis of the verbal information of the Deputy Director of the Capital Tegyesz

The relevant section of the Statement includes a detailed recommendations about the placement of minors entitled to stay in the accommodating country. From these recommendations the one of providing a guardian originating from his/her own cultural environment cannot be carried out and the oldest brother cannot undertake responsibility for his/her smaller children since the assigned guardian undertakes responsibility for all the brothers and sisters.

In the case of wards of foreign citizenship – provided that they comply with the other requirements and if it does not offend the child's own interests – it could be authorised (even as some kind of an extraordinary case) to assign as a guardian a person originating from another country, but already immigrated to Hungary. Bringing up in a family maintaining the child's own culture can provide safety to the child in basically alien circumstances.

#### 12.1.4 Adoption

If a Hungarian citizen would like to adopt a foreign separated child, the adoption has to be authorised by the child protection authority. Prior to the assessment of the request the agency examines the conditions of adoption in the law according to the child's citizenship and obtains the approval of the agency according to the child's citizenship for the adoption [a)-b), Paragraph (1), Article 52 of the Gov. Dec. on Child Welfare].

The child protection authority has never received a request with the intention of adopting a foreign minor. According to the author no adopter would wait for the result of the proceedings prolonged for months or years as a result of the work load of the agencies.

The Hungarian rules of law comply with the recommendation of the Statement: adoption can be permitted only by taking into account the private international laws.

The problem is with practice: on the one hand, more officers would be necessary in the child protection authority. On the other hand the agency's officers would have to know the relevant rules of law completely and they would have to conduct the proceedings scrupulously in the case of foreign minors as well, despite the difficulties.

#### 12.1.5 Identity and nationality

Hungary has not joined the convention on stateless. Although the scope of some rules of law, such as the Act on citizenship, encompasses stateless people as well, however, this is to be applied only for those, who are recognised as stateless elsewhere.

The foreign persons requesting notarisation have to have an immigration permit to obtain Hungarian citizenship and they must live in Hungary for eight consecutive years from the issuance of the immigration permit. Moreover they must have secure residence and work and take a successful exam from citizenship knowledge.

Those persons whose relative is a spouse who has been a Hungarian citizen for three year, whose minor child is a Hungarian relative, who are adopted by a Hungarian citizen or who are refugees can request naturalisation already after three years of continuous residence in Hungary.

After one year of residence in Hungary naturalisation can be requested by those who consider him/herself as Hungarian and whose ascendant was a Hungarian citizen.

The situation of separated children is simpler in that they do not have to take a citizenship exam as minors. As a recognised refugee, it is sufficient to have three years of continuous residence in the country. In practice there has not been an example that a stateless separated

child turned to the authorities with a request for citizenship.

The Statement recommends assistance in that the stateless separated children can obtain the citizenship of the accommodating country. Currently the Hungarian state intends to provide this amount of concession to the minor applicants. It would be humanitarian to considerably decrease the time conditions of requesting citizenship in the case of separated children. Primarily, however, it would be practical to join the convention on stateless, since by accepting the convention the legal residence in the country would have to be regulated and probably the conditions of obtaining citizenship would be modified as well.

## *12.2 Family reunification and returns to a country of origin*

### 12.2.1 Voluntary return

There are no Hungarian rules of law in connection with family unification taking place in the country of origin. However, according to the Gov. Dec. No. 25/1998, the Hungarian state is ready to support the voluntary repatriation of recognised refugees and temporary protected persons financially as well: the refugee agency pays for part or full of their ticket [25/1998. Article 28.] In practice, this delivery home takes place via the repatriation program of the International Organisation for Migration (IOM).

There are no regulations as to what types of consultations have to be conducted with the voluntarily repatriating children separated from their adult relatives.

On the basis of the recommendation of the Statement, it would be necessary before starting the procedure and during the procedure to continuously consult with the minors in order to secure that they are aware of the consequences of their voluntary decision.

### 12.2.2 Conditions that must be fulfilled prior to return

There is no legal regulation about the examination of the circumstances of voluntary repatriation. In the case of a repatriating separated child, if he/she is within the focus of child protection, the rules of law on child protection in general secure those rights which preclude that the child be taken to circumstances endangering the child's physical or emotional safety. The same rules of law, however, urge and regulate primarily the returning of the child to his/her original family in international cases (i.e. foreign citizen), not taking into account the fact that returning home may entail danger to the child or his/her family.

In the relevant rule of law [Paragraph (5), Article 167 of the Gov. Dec. on Child Welfare] the obstacle of returning is constituted without further details as "it is not possible".

The experts in contact with refugees or foreign minors know of no case when a separated child returned to his/her country of origin.

The circumstances detailed in the Statement have to be examined with similar thoroughness during Hungarian child protection proceedings in the case of placing the child of Hungarian citizenship back to his/her original family. The investigation of the appropriate circumstances is by far not as expressed in the case of foreign minors. In connection with the repatriation of

the child to his/her own family, taking the appropriate diplomatic and authority contacts are regulated as necessary steps.

It would be important to include the special refugee consideration in the procedure, i.e. to take into account that the return of the child to his/her country of origin be safe. Moreover, it would be necessary to have detailed regulation verifying the appropriate repatriation conditions (that are safe for the child).

### 12.2.3 Programmes and aid to facilitate reintegration

Currently in Hungary there are no programs, either stipulated in rules of law or in practice, assisting re-integration, the re-adjustment of persons arriving back to their country of origin.

Refugee policy is glad to give way for refugees to repatriate, but other than a repatriation subsidy to a group of a certain status (refugee and temporary protected person), it has no tools to assist in repatriation, thus neither for supporting persons returning back to their country of origin. The establishment of programs assisting in re-integration requires such material funding on behalf of the state from which Hungary is very far away. Because of its staff and financial endowment, the Hungarian refugee policy can only focus on the basic activities, i.e. receiving the refugees, conducting the refugee procedure and providing for the refugees. Within this activity there are no funds to handle the “shades” the special cases and situations (minor refugee, disqualified refugee, persons receiving temporary protection again year by year, etc.) The executive authorities handle this as a given and unchangeable fact. The establishment of such programs can be undertaken primarily by civilian organisations and considerable international support is necessary for financing these. However the government must also recognise that a solution can be provided also by supporting such programs and a way out of refugee status can be offered.

### 12.3 Settlement in a third country

The Hungarian laws and rules do not regulate family unification in third countries either .

The Search Service of the Hungarian Red Cross, which operates within the Search Service of the International Red Cross, deals with family unification and the prior search of family members. In several cases the Service succeeded in finding and unifying families, but among the persons turning to them there have never been separated children. The Search Service starts the search at the request of the separated family members and organises the family unification at their request as well, if the family unification is allowed by the rules of law of the country serving as the place of the unification. In many cases the obstacle of family unification is that the status of the family member in the third country does not make it possible that his/her family members can legally stay with him/her, perhaps receiving the same status.

### *Data collection*

For promoting the realisation of the desirable practice, the thorough collection of data related to separated children is necessary. Currently there is no civilian organisation that would expressly take up the case of refugee children and hence would be capable of appropriate data collection. In connection with this issue the data of both the refugee agency and the authority for protecting children are very scarce.

For the appropriate assessment of the situation and promoting the realisation of the practice, we would need to know the following data about separated children: number, age distribution, country of origin, distribution of accompanied and unaccompanied children, distribution of asylum status, the number of rejected cases, the number and the state (phase) of procedures or cases within the child protection system.

Data generated after 1997 related to separated children could be obtained only from a government institution, the Office of Immigration and Nationality of the Ministry of Interior. These data series are only about a part of separated children, about unaccompanied minors seeking asylum: their number and ratio compared to all the applicants.

Year	Number of unaccompanied minors applying for refugee status	Percentage per total applicants
1997	11	1.03 %
1998	209	2.93 %
1999	620	5,39%
2000	1170	15%

Currently there is no non-governmental or state organisation in Hungary which specifically deals with separated children. Therefore there can be no connection with either Hungarian or European institutes in this matter. It is unlikely that there are funds at any political levels from which support can be expected for improving the situation of separated children. This is not a high priority issue in Hungary.

## ***ANNEX 1: Rules of Law***

### ***Definition***

**Civil Code, Article 12** Paragraph (2) Persons who have not yet reached the age of eighteen years shall be deemed minors, unless they are married. Marriage shall not constitute adulthood if the marriage has been annulled by a court owing to the absence of the guardian's permission, which is necessary because of incompetence or minority.

**Civil Code, Article 15** Minors under the age of fourteen years are legally incompetent.

**Civil Code, Article 12** Paragraph (1) A minor shall be of diminished capacity if he or she has reached the age of fourteen years and is not incompetent.

**Child Protection Law, Article 5. Section (b) juvenile:** the person who has reached 14 but has not reached 18 at the time of committing the offence or crime,

**Immigration Law, Article 2** Paragraph (1) For the purposes of this Act all persons other than Hungarian citizens shall be deemed foreign nationals.

**Gov. Dec. No. 24/1998, Article 14** Paragraph (2) If the applicant has not yet reached the age of 18 years and does not have a legal representative, the Bureau shall be obliged to take action for appointing a guardian ad litem immediately after submitting the application. The appointment of a guardian ad litem shall have to be requested also if the legal representative may not be present at the interview of the minor applicant because he/she would hinder the clarification of the facts the case.

### ***1. Entering the area of the state, the responsibility of the traveller, trade in people***

**Border Control Law, Article 18** When persons or vehicles and shipments cross the national border, the rules related to crossing the border shall not have to be applied – unless the rule of law or international contract orders otherwise – in the following cases:

...

c) persons requesting recognition as refugee or temporary asylum at the Border-Guards;

**Asylum Law, Article 42** Paragraph (1) Prior to allowing a foreigner to enter the territory of the Republic of Hungary at the border crossing point of the International Airport, the Alien Police shall immediately notify the refugee authority for the purpose of instituting proceedings if a foreigner refers to a reason for flight defined in this Act, furthermore if he has arrived from a safe country of origin or a safe third country and is unable to prove his identity with a passport or another document corresponding thereunto.

(2) If, on the basis of the proceedings, the refugee authority has refused recognition as a refugee or temporarily protected person, unless otherwise provided for by international treaty, the provisions of Act LXXXVI of 1993 on the Entry, Stay in Hungary and Immigration of Foreigners shall apply.

(3) A request for review submitted against a decision of refusal by the refugee authority shall be submitted to the court under the same conditions as in the accelerated proceedings.

**Immigration Law, Article 32** Paragraph (1) A foreign national may not be redirected or expelled to foreign countries, or to the frontier of areas, where such persons may be subject to persecution on racial, religious or ethnic grounds, or on account of his social affiliation or political views, furthermore, to the territory of states, or to the frontier of areas, where there are substantial grounds to believe that the foreign national whose entry has been denied or who has been expelled might be subjected to torture, inhuman treatment or degradation. The refugee authority shall establish the existence of such grounds. The alien control authority may not issue a resolution for denial of entry or for expulsion before receiving the statement of the refugee authority on the case.

**Gov. Dec. on Immigration, Article 53/A** Paragraph (3) If the foreigner residing in Hungary without parental supervision has not reached the age of 18 yet, it shall be obligatory to appoint for him/her a youth protection institute or a place of accommodation provided by the guardian ad litem as place of residence.

**Immigration Law, Article 60** Paragraph (1) If a foreign national arriving by aircraft is denied entry for the reason of having no valid passport or visa, with the exception described in Paragraph (1) of Article 32, the operator of the aircraft of carriage shall provide for such foreign national's return to the country of departure or to the country which is obligated to accept such person.

(2) Unless otherwise provided for by international treaty, the provisions of Paragraph (1) shall also be duly applied if the foreign national arrives in the Republic of Hungary by train or ship in international traffic, and entry into the country takes place at a location other than the state border.

(3) If return cannot promptly be executed, the operator of the aircraft (hereinafter referred to as "operator") shall bear all costs incurred in connection with the stay of the foreign national until the next available flight.

(4) Pursuant to the provisions of Paragraph (1) the alien control authority may order the operator of the aircraft to pay a public order protection penalty of up to one million HUF.

**Criminal Code, Article 175/B** Paragraph (1) Any person who sells, purchases, conveys or receives another person or exchanges a person for another person, or appropriates one for such purpose for another party, commits a felony offence and shall be punishable with imprisonment of up to three years.

(2) The punishment shall be imprisonment between one to five years if the criminal act is committed

*a)* against a person deprived of personal freedom,

*b)* against a person under the age of eighteen,

*c)* for the purpose of forced labour,

*d)* for the purpose of sodomy or sexual intercourse, or to involuntarily engage in such with another person.

(3) The punishment shall be imprisonment between two to eight years if the criminal act

*a)* involves two of the cases described in Paragraph (2), or if the criminal act is committed

*b)* as part of a criminal organisation,

*c)* against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator.

(4) The punishment shall be imprisonment between five to ten years if the criminal act

*a)* involves three of the cases described in Paragraph (2), or if the criminal act is committed

b) against a person deprived of personal freedom, as part of a criminal organisation,  
c) against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom.

(5) The punishment shall be imprisonment between ten to fifteen years or life imprisonment if the criminal act is committed for the purpose of forced labour and sodomy or sexual intercourse, or to involuntarily engage in such with another person

a) against a person deprived of personal freedom, as part of a criminal organisation,

b) against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom.

(6) Any person making preparations to engage in trafficking in human beings commits a misdemeanour offence and shall be punishable with imprisonment of up to two years.

**Criminal Code, Article 218** Paragraph (1) Any person, who acts as an accomplice in the illegal crossing of state borders (Article 217) for pecuniary gain, commits a felony offence and shall be punishable with imprisonment between two to eight years.

(2) Any person who acts as an accomplice in the crossing of the border of the Republic of Hungary without authorisation or in an unauthorised manner, for pecuniary gain, commits a felony offence and shall be punishable with imprisonment of up to three years.

(3) Any person committing the act as a member of or on behalf of a criminal organisation shall be punishable for a felony offence with imprisonment between five to ten years in the case of Paragraph (1), or between two to eight years in the case of Paragraph (2).

(4) Any person involved in preparations for smuggling illegal aliens, as set forth in Sections (1)-(3), shall be punishable for a misdemeanour offence with imprisonment of up to two years.

(5) Expulsion may also be imposed as supplementary punishment against persons engaged in the smuggling of illegal aliens.

## ***2. Identification of the situation of the separated child***

**Gov. Dec. on Immigration Article 53/A** Paragraph (3) see: *Entering the area of the state*

## ***3. Assignment of a guardian (guardian ad litem)/counsellor***

**Gov. Dec. on Child Welfare, Article 167** Paragraph (1) The proceeding guardian authority shall be obliged to take temporary action according to the Hungarian law if the placement, maintenance or care of the children living or residing in Hungary furthermore children of non-Hungarian citizenship found in Hungary necessitates a measure that cannot be delayed.

**Civil Code, Article 225** Paragraph (1) If, owing to a conflicting interest or physical obstacle, a parent, guardian or custodian is not able to proceed pursuant to a legal regulation or a public wardship authority's orders, the public wardship authority shall appoint an officially appointed legal representative.

(2) An officially appointed legal representative shall also be appointed if

a) measures are urgently required and the person who is incompetent or of diminished capacity has no legal representative, or if the identity of the legal representative cannot be determined, and

b) it is necessary for the protection of the rights of a person who is unknown, absent, or otherwise unable to conduct his affairs.

(3) An officially appointed legal representative shall act with the same authority as a ward.

(4) The authority of a parent exercising parental supervision, a guardian, or a custodian shall not apply to the affairs for which an officially appointed legal representative has been appointed.

**Gov. Dec. on Child Welfare, Article 167** Paragraph (5) The Ministry of Social and Family Matters shall turn to the competent public wardship authority for promoting the return of the child to his/her own family, or if it is not necessary then for taking the child protection measure.

**Gov. Dec. No. 24/1998, Article 14** Paragraph (2) see: *Definition*

**Gov. Dec. on Child Welfare, Article 136** Paragraph (1) The appointment of an officially appointed legal representative does not affect the capacity of the guarded person.

(2) With the exception of the case determined in Paragraph (1), Article 89 of the Child Protection Law, primarily lawyers shall have to be appointed as officially appointed legal representatives.

#### ***4. Registration, documentation***

**Asylum Law, Article 50** Paragraph (1) Records in the field of refugee affairs are central official records which contain the personal details of refugees, temporarily protected persons, persons authorised to stay and applicants, in case of the procedure initiated ex officio, the foreigner concerned, (hereinafter referred to jointly as "foreigners") information regarding their stay and care due to them, and any changes therein.

**Gov. Dec. No. 24/1998, Article 6** Paragraph (1) A Protocol shall have to be taken about the application made in words, these shall include the following about the applicant in addition to the procedural rights and obligations:

- a) personal identification data (name, former name, pseudonym, current and previous citizenship, gender, place and date of birth, mother's name);
- b) reason causing the fleeing, moreover data related to his/her nationality and religion if he/she refers to such data in the justification of the application;
- c) data of his/her personal identification and travel documents (identification sign and number of the document, its period of validity, place and date of issuance, name of the issuing authority);
- d) marital status, occupation, school degree;
- e) place of accommodation and place of residence in Hungary;
- f) permanent address according to his/her citizenship – in the case of exiled person: his/her usual place of accommodation;
- g) declaration related to his/her income and property situation
- h) Route leading to arriving to Hungary, place and date of crossing the country border;
- i) a declaration about whether he/she suffers from any of the illnesses included in Article 10 Paragraph (1) or – according to the contents thereof – he/she has in his/her body the pathogen of the infectious illness.

#### ***Age assessment***

**Gov. Dec. on Child Welfare, Article 63** Paragraph (3) If the age of the child is uncertain the supposed date of birth must be established by the medical examinations of the expert in forensic medicine.

## ***6. Detention***

**Gov. Dec. on Immigration, Article 53/A** Paragraph (3) see: *Entering the area of the state*

**Gov. Dec. on Immigration, Article 53/A** Paragraph (1) The place of residence indicated by the foreigner may be assigned as obligatory place of residence, for lack of this in the case of invitation the place of domicile or residence of the inviting person or the place of accommodation secured by the inviting person, moreover the place of domicile of the relative who may be obliged to provide for the foreigner, the place of accommodation made available by caritative organisations, health care institution providing in-patient care for justified treatment for the time period of preventing the acute health injury, and – in the case of a foreigner complying with the conditions of other rules of law of utilisation – social institute providing personal care, provided that the obligation determined in Paragraph (3), Article 43 does not hold.

(2) If the foreigner has not yet completed his fourteenth year and the order of staying in the stipulated place occurs together with his/her family members, the place of residence determined in Paragraph (1) may also be appointed as an obligatory place of residence.

**Criminal Code, Article 23** The person who has not yet completed his fourteenth year when perpetrating an act, shall not be punishable.

## ***7. Right for participation***

**Gov. Dec. No. 24/1998, Article 15** (3) the minor applicant arriving together with his/her adult direct family members may be heard if he/she is older than 14 years of age and the interview is indispensable for clarifying the facts of the case on the basis of the data of the procedure.

**Gov. Dec. No. 24/1998, Article 14** (2) see: *Definition*

**Gov. Dec. on Child Welfare, Article 2** For the purposes of this Decree

...

*b) legal representative: a*

both parents exercising parental supervision together, one parent exercising the parental supervision alone, guardian and custodian,

## ***8. Exploring the family, contacting them and maintaining contact***

**Gov. Dec. on Child Welfare, Article 163** Paragraph (3)

In the matter of children or persons of non-Hungarian citizenship the current international contract, aid contract and the Decree Law No. 13 of 1979 on Private International Law shall have to be applied during the procedure.

## ***9. Family unification in a European country***

**Asylum Law, Article 2** For the purposes of this Act

a) *refugee*: a foreign citizen or a stateless person (hereinafter referred to as "foreigner") who, owing to persecution or well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion, has left the country of his citizenship, or his habitual residence in the case of a stateless person, and is staying in the territory of the Republic of Hungary, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; as well as the immediate family members of such person, provided that the person concerned has been recognised by the refugee authority as a refugee, at the request of the person concerned;

**Immigration Law, Article 4** Paragraph (1) A foreign national may only cross the Hungarian state border and stay in the Republic of Hungary when in possession of a valid passport in evidence of his citizenship (stateless status) and personal identification data, and, with the exception set forth in Paragraph (2), with a valid visa issued by the Hungarian authorities.

**Immigration Law, Article 9** Paragraph (1) A visa, contingent upon the fulfilment of the conditions set forth in this Act, is a permit authorising entry to the territory of the Republic of Hungary, transit through the country, presence in the country for the purpose and for the period specified therein, and exit from the country.

(2) No visa shall be issued if the applicant

a) fails to state the data required, and/or fails to attach the prescribed appendices to the application; or

b) does not have the required financial resources (Article 5);

c) is prohibited from entering and staying in the country;

d) the conditions for prohibition of entry and stay apply in respect of the applicant; or

e) is presumed to have indicated false pretences as for the purpose of travel or transit or stay in the application.

(3) With respect to Section a) of Paragraph (2), a visa may be issued if the applicant supplies the missing data or appendices by the deadline set forth in the notice by the authority.

(4) Resolutions on the rejection of a visa application are not subject to appeal.

**Immigration Law, Article 5**, Paragraph (1) Unless otherwise provided for by international treaties, foreign nationals shall, if so requested by the Hungarian authorities, provide proof of having the financial resources prescribed by another legal regulation for entering, staying in and exiting Hungary, as well as having the visa necessary for continued travel or for returning.

(2) Sufficient financial resources may be verified by

a) Hungarian currency or foreign currency convertible at a Hungarian financial institution; or

b) a valid letter of invitation (Article 6); or

c) documents (bank account agreement, deposit book, etc.) entitling foreign nationals to withdraw cash at Hungarian financial institutions; or

d) cash substitute payment instruments accepted in Hungarian commercial circulation (check, credit card, etc.); or

e) existence of room and board reserved and paid for through travel agencies; or

f) other reliable means.

## ***10. Temporary maintenance – health care – education, language and training***

### *10.1. Temporary maintenance*

**Child Protection Law, Article 4** Paragraph (2) Other than the persons determined in Paragraph (1) proceedings shall have to be made according to this Act for the protection of children of non-Hungarian citizenship residing in the Republic of Hungary if failing the measure would result in insecurity of the child or unavoidable damage.

**Statutory Decree on Private International Law Article 48** Paragraph (1) The personal right of the ward shall govern the conditions of guardian assignment and the termination of guardianship.

**Statutory Decree on Private International Law Article 49** Paragraph (2)

The law of the country of the authority ordering the guard shall have to be applied for the representation of persons hindered in the administration of his/her matters, moreover for the officially appointed legal representation.

### *10.2. Health care*

**Health Law, Article 88** Paragraph (1) It shall have to be provided in the place of the patient's residence or in its vicinity that he/she may receive long term continuous health care that may be utilised on the basis of his/her choice, based on personal relationship, irrespective of his/her gender, age and nature of illness.

(2) The purpose of the basic care described in Paragraph (1) is that ...

**Health Law, Article 77** Paragraph (1) Patients reporting for care with suspicion of urgent need or endangering condition shall have to be examined irrespective of the legal status serving as a basis of utilisation and if the examination certifies the existence of urgent need or endangering condition, the patient shall have to be provided with the urgent care justified by his/her health status.

**Health Law, Article 3 section i) urgent need:** such a change in the health condition as a result of which for lack of immediate health care the patient would become in direct danger of death or would suffer serious or permanent damage of health;

**Statutory Decree on Private International Law Article 50** If a measure not tolerating delay is necessary for the placement, maintenance or care of the non-Hungarian citizen residing in Hungary, the Hungarian law shall have to be applied.

### *10.3. Education, language and training*

**Education Law, Article 110** Paragraph (1) According to the contents of this Act, the non-Hungarian citizen is schoolable in Hungary if he/she has refugee, accepted or temporary asylum status (hereinafter together referred to as the refugee) or he/she has an immigration permit or permanent residence permit. The existence of the conditions shall have to be certified at the time of acceptance of the student to the education institute.

(2) If the non-Hungarian citizen resides in the Republic of Hungary as a refugee or has a immigration permit, moreover on the basis of reciprocity also those who have a permanent permit residence, may utilise the public education service determined in this Act with the same conditions as Hungarian citizens.

## ***11. Refugee procedure***

### *11.1. Receiving procedure conducted according to general rules*

**Gov. Dec. No. 24/1998, Article 14** Paragraph (2) see: ***Definition***

**Gov. Dec. No. 24/1998, Article 6** see: ***Registration and documentation***

### *11.2. Legal representation*

**Asylum Law, Article 15** A person seeking recognition as a refugee is entitled c) to enter into relations with the United Nations High Commissioner for Refugees or with any refugee organisation for the purpose of the provision of his legal representation for the duration of the proceedings.

**Asylum Law, Article 33** Paragraph (3) The applicant shall have the opportunity to use the legal counsel of his choice and expense or to accept the free legal aid offered by any registered non-governmental organisation providing legal protection on a regular basis.

(4) The Alien Police and refugee authority shall inform the person applying for protection regarding his rights and on the possibility to avail himself of legal assistance/support during the proceedings.

## ***12. Permanent solutions***

### *12.1. Remaining in the accommodating or asylum providing country*

#### 12.1.2. Family unification in the accommodating country

**Asylum Law, Article 2** Section C) see: ***Family unification in a European country***

**Immigration Law, Article 4, Paragraph (1), Article 5, Article 9** see: ***Family unification in a European country***

#### 12.1.3. Integration

**Family Law, Article 99** Paragraph (1) All such major Hungarian citizens may be guardians, against whom there is no disqualifying circumstance determined in the law.

#### 12.1.4. Adoption

**Gov. Dec. on Child Welfare, Article 52** Paragraph (1) Taking into account the personal rights of the child, prior to the assessment of the application the guardian bureau shall

- a) examine the conditions of adoption,
- b) obtain the approval related to the adoption from the competent authority (court) of the country according to the citizenship of the child,

## *12.2. Family unification and returning to the country of origin*

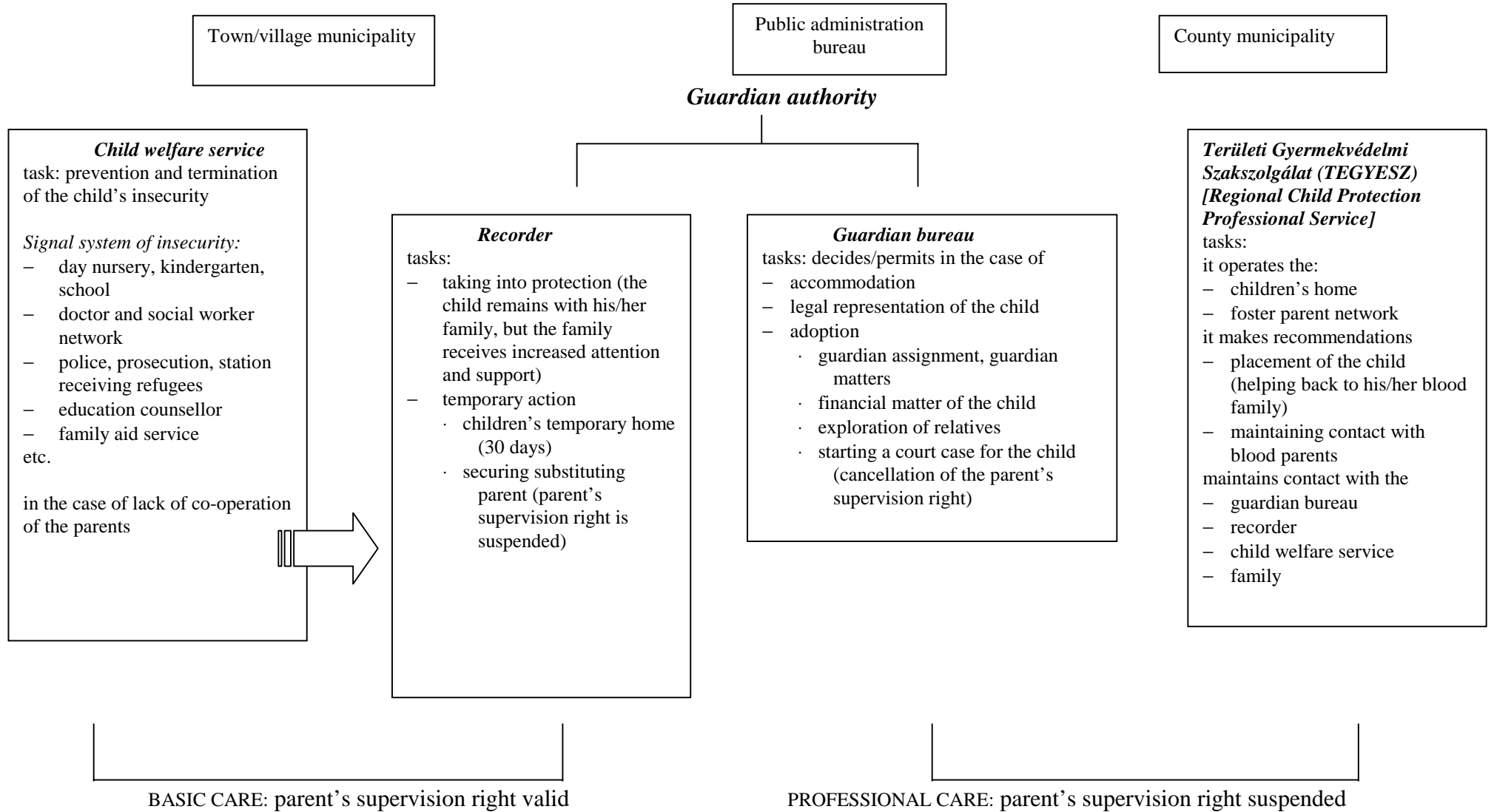
### 12.2.1. Voluntary returning

**Gov. Dec. No. 25/1998, Article 28** In the case of the refugee's or temporarily protected person's permanent repatriation or permanent leaving, the Bureau – at his/her request – may refund part or all the price of his/her ticket valid until the destination stipulated in the certificate on the basis of the certificate issued by the embassy of the affected country.

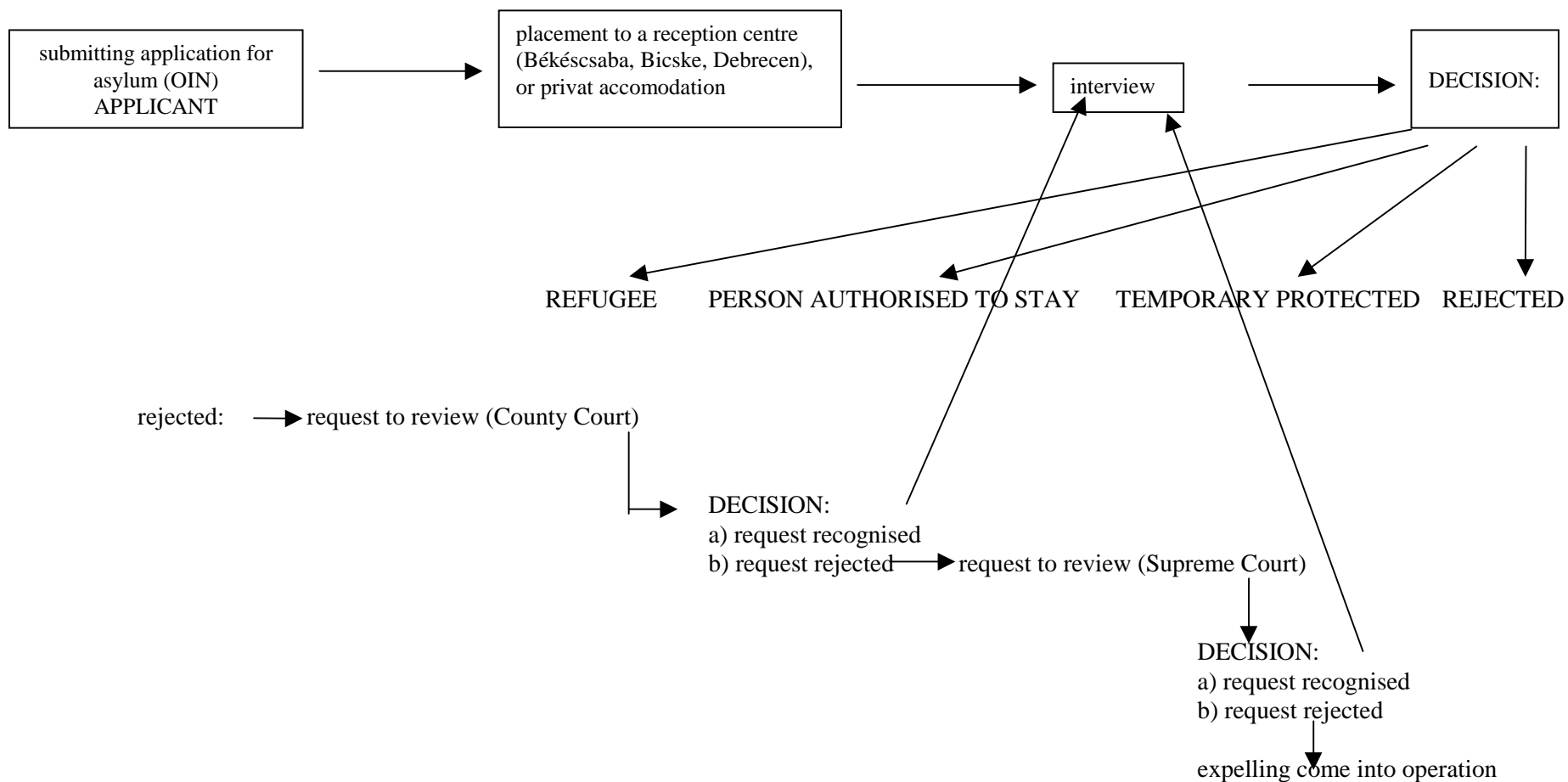
### 12.2.2. Circumstances making return possible

**Gov. Dec. on Child Welfare, Article 167** Paragraph (5) see: *Appointment of an (administrative) guardian/consultant*

ANNEX 2: CHILD PROTECTION SYSTEM



### ANNEX 3: ASYLUM PROCEEDINGS



**refugee:** same rights as Hungarian citizens, residence permit for 15 years, citizenship "available" after 3 years, maintenance in camp max. 3 x 6 months

**person authorised to stay:** limited rights (basic and urgent health care, education) residence permit for 1 year, maintenance in camp till validity of status

***protected person***: limited rights (basic and urgent health care, education) residence permit till the status guaranteed in Governmental Decree, maintenance in camp till validity of status

***applicant***: limited rights (basic and urgent health care, no access to education) residence permit till decision is taken, maintenance in camp till decision is taken

*ANNEX 4: Questionnaire on which the Assessment is based on*

**SEPARATED CHILDREN IN EUROPE PROGRAMME**

**QUESTIONNAIRE FOR COUNTRY ASSESSMENT**

**\* PLEASE READ THE GUIDELINES ON THE FOLLOWING PAGES CAREFULLY \***

**COUNTRY:**

**ASSESSMENT PERIOD:**

**RESPONDENT(S):**

**AGENCIES/INDIVIDUALS CONSULTED:**

**DOCUMENTS USED or REFERRED TO:**

**GUIDELINES ON COMPLETING THE ASSESSMENT QUESTIONNAIRE**

1. Read the Statement of Good Practice carefully. Please ensure that you have understood each point fully. If you have any questions about the Statement (content, technical words etc) please refer to Kate Halvorsen or David Wright, for clarification before you begin to complete the questionnaire.

2. It is important that your response be written in clear and simple language. Explain any jargon or technical terms. Remember that your responses should be translated into English and so there is much room for misunderstanding!
3. Remember that the way things work in your country will not be clear to those outside it. It will be necessary to include brief explanations for example, if you are talking about the kind of care available to separated children give details as to whether this includes foster care, small group home care, placement with relatives or in large institutions.
4. Where relevant please include references to legislation in your country.
5. Give examples (of anonymous cases) where possible, as this will be useful for lobbying work at both national and European level.
6. Sections 1-12 in the questionnaire follow the points contained in the Statement of Good Practice, in the same order. After each section title you will find in brackets the reference to the relevant point in the Statement of Good Practice as for example: (SGP: C.1).
7. **In each section you are asked to give the following information:**
  - i) Current policy and practice in your country in relation to the point in question. Where relevant this could include information on policy and practice at Central Government level, Local Government level or NGO level. Please read the Statement carefully to ensure that a thorough response is given to each point.
  - ii) To what extent does policy and practice in your country conform to the Statement of Good Practice? Please be explicit even if you must repeat certain information.
  - iii) Whether any changes are needed in your country in relation to the Statement of Good Practice, and whether these changes relate to any of the first principles outlined on pages 2-3 of the Statement. Please indicate which principles are involved by number (numbers 1-11).
  - iv) In some sections there are additional questions to answer.
8. **NB:** The answers do need to be precise and accurate, but they do not need to include all the fine detail. For the purposes of the assessment we need sufficient information to identify the gaps in policy and practice which will inform both national and European programmes of action.
9. Section 13 asks questions relating to the sorts of statistical information that need to be gathered in your country. Please also supply statistical information that is currently available.
10. Section 14 contains questions relating to an analysis of the political situation in your country.

Thank you and Good Luck!

## **DEFINITION OF “SEPARATED CHILD” (SGP: A 2.1)**

- a) Please give details of the definition used in your country. Different agencies may apply different definitions. Please give details of this.
- b) Are children with older siblings over 18 years of age considered to be separated children? Please refer to Annex II of UNHCR Guidelines 1997.
- c) To what extent does this conform to the Statement?
- d) Are any changes needed? In relation to any first principle?

## **1. ACCESS TO THE TERRITORY (SGP: C1)**

1.a) Please describe: relevant law and policy in your country

relevant practice in your country

1.b) To what extent does this conform to the Statement? Please outline in brief.

1.c) Are any changes needed? In relation to any first principle?

1.d) Please also indicate whether your country has ‘carrier liability legislation’ whereby airlines, train and boat companies can be fined if they bring in someone without proper documentation. Is this applied to children and young people under the age of 18?

## **Trafficking (SGP. C1.2)**

1.e) Are you aware of any children being trafficked for purposes of exploitation into your country? If so please give brief example(s) stating if possible the country of origin and nature of trafficking. Please also give examples where children have travelled along trafficking routes in order to apply for asylum.

1.f) Have any measures been taken by the state to combat trafficking of any sort?

## **2. IDENTIFICATION (SGP: C2)**

2. a) Please describe: relevant law and policy in your country

relevant practice in your country

2.b) To what extent does this conform to the Statement? Please outline in brief.

2.c) Are any changes needed? In relation to any first principle?

## **3. APPOINTMENT OF GUARDIAN OR ADVISER (SGP: C3)**

3.a) Is a guardian or adviser appointed?

3.b) If so what is their role?

3.c) How soon after arrival are they normally appointed ?

3.d) What kind of background and expertise do guardians/advisers have?

3.e) To what extent does this conform to the Statement? Please outline in brief.

3.f) Are any changes are needed? In relation to any first principles?

**4. REGISTRATION AND DOCUMENTATION (SGP: C4)**

4.a) Please describe: relevant law and policy in your country

relevant practice in your country

4.b) To what extent does this conform to the Statement? Please outline in brief.

4.c) Are any changes needed? In relation to any first principle?

**5. AGE ASSESSMENT (SGP: C5)**

5.a) Please describe: relevant law and policy in your country

relevant practice in your country

5.b) To what extent does this conform to the Statement? Please outline in brief.

5.c) Are any changes needed? In relation to any first principle?

**6. DETENTION (SGP: C6)**

6.a) Please describe: relevant law and policy in your country

relevant practice in your country

6.b) To what extent does this conform to the Statement? Please outline in brief.

6.c) Are any changes needed? In relation to any first principle?

**7. RIGHT TO PARTICIPATE (SGP: C7)**

7.a) Please describe: relevant law and policy in your country

relevant practice in your country

7.b) To what extent does this conform to the Statement? Please outline in brief.

7.c) Are any changes needed? In relation to any other first principle?

**8. FAMILY TRACING & CONTACT (SGP: C8)**

8.a) Please describe: relevant law and policy in your country

relevant practice in your country

8.b) To what extent does this conform to the Statement? Please outline in brief.

8.c) Are any changes needed? In relation to any first principle?

**9. FAMILY REUNIFICATION IN A EUROPEAN COUNTRY (SGP: C9)**

9.a) Please describe: relevant law and policy in your country

relevant practice in your country

9.b) Does this conform to the Statement? Please outline in brief.

9.c) Are any changes needed? In relation to any first principles?

**10. INTERIM CARE - HEALTH - EDUCATION AND TRAINING (SGP.C10)**

**Interim Care (SGP: C10.1)**

10.a) Please describe: relevant law and policy in your country

relevant practice in your country

10.b) To what extent does this conform to the Statement? Please outline in brief.

10.c) Are any changes needed? In relation to any first principles?

**Health (SGP:C10.2)**

10.d) Please describe: relevant law and policy in your country

relevant practice in your country

10.e) To what extent does this conform to the Statement? Please outline in brief.

10.f) Are any changes needed? In relation to any first principles?

**Education, Language and Training (SGP: C10.3)**

10.g) Please describe: relevant law and policy in your country

relevant practice in your country

10.h) To what extent does this conform to the Statement? Please outline in brief.

10.i) Are any changes needed? In relation to any first principles?

**11. REFUGEE DETERMINATION PROCESS (SGP: C11)**

**Access to normal procedures (SGP: C11.1)**

11.a) Please describe: relevant law and policy in your country

relevant practice in your country

11.b) To what extent does this conform to the Statement? Please outline in brief.

11.c) Are any changes needed? In relation to any first principles?

**Legal Representation (SGP: C11.2)**

11.d) Please describe: relevant law and policy in your country

relevant practice in your country

11.e) To what extent does this conform to the Statement? Please outline in brief.

11.f) Are any changes needed? In relation to any first principles?

**Minimal Procedural Guarantees (SGP: C11.3)**

11.g) Please describe: relevant law and policy in your country

relevant practice in your country

11.h) To what extent does this conform to the Statement? Please outline in brief.

11.i) Are any changes needed? In relation to any first principles?

**Independent Assessment (SGP: C11.4)**

11.j) Please describe: relevant law and policy in your country

relevant practice in your country

11.k) To what extent does this conform to the Statement? Please outline in brief.

11.l) Are any changes needed? In relation to any first principles?

**Interviews (SGP: C11.5)**

11.m) Please describe: relevant law and policy in your country

relevant practice in your country

11.n) To what extent does this conform to the Statement? Please outline in brief.

11.o) Are any changes needed? In relation to any first principles?

**Criteria for making a decision on a child's asylum application (SGP: C11.6)**

11.p) Please describe: relevant law and policy in your country

relevant practice in your country

11.q) To what extent does this conform to the Statement? Please outline in brief.

11.r) Are any changes needed? In relation to any first principles?

**Young People who become adults during the asylum process (SGP: C11.7)**

11.s) Please describe: relevant law and policy in your country

relevant practice in your country

11.t) To what extent does this conform to the Statement? Please outline in brief.

11.u) Are any changes needed? In relation to any first principles?

**12. DURABLE SOLUTIONS (SGP:C12)**

**Remaining in a Host Country or Country of Asylum (SGP: C12.1)**

**Grounds for a child remaining in a host country (SGP: C12.1.1)**

12.a) Please describe: relevant law and policy in your country

relevant practice in your country

12.b) To what extent does this conform to the Statement? Please outline in brief.

12.c) Are any changes needed? In relation to any first principles?

**Family Reunification in Host Country (SGP: C12.1.2)**

12.d) Please describe: relevant law and policy in your country

relevant practice in your country

12.e) To what extent does this conform to the Statement? Please outline in brief.

12.f) Are any changes needed? In relation to any first principles?

**Integration (SGP: C 12.1.3)**

12.g) Please describe: relevant law and policy in your country

relevant practice in your country

12.h) To what extent does this conform to the Statement? Please outline in brief.

12.I) Are any changes needed? In relation to any first principles?

**Adoption (SGP: C12.1.4)**

12.j) Please describe: relevant law and policy in your country

relevant practice in your country

12.k) To what extent does this conform to the Statement? Please outline in brief.

12.l) Are any changes needed? In relation to any first principles?

**Identity and Nationality (SGP: C12.1.5)**

12.m) Please describe: relevant law and policy in your country

relevant practice in your country

12.n) To what extent does this conform to the Statement? Please outline in brief.

12.o) Are any changes needed? In relation to any first principles?

**Family Reunification and Returns to a Country of Origin (SGP: C12.2)**

**Voluntary Return (SGP: C12.2.1)**

12.p) Please describe: relevant law and policy in your country

relevant practice in your country

12.q) To what extent does this conform to the Statement? Please outline in brief.

12.r) Are any changes needed? In relation to any first principles?

**Conditions that must be fulfilled prior to return (SGP: C12.2.2)**

12.s) Please describe: relevant law and policy in your country

relevant practice in your country

12.t) To what extent does this conform to the Statement? Please outline in brief.

12.u) Are any changes needed? In relation to any first principles?

**Programmes and Aid to Facilitate Reintegration (SGP: C12.2.2)**

12.v) Please describe: relevant law and policy in your country

relevant practice in your country

12.w) To what extent does this conform to the Statement? Please outline in brief.

12.x) Are any changes needed? In relation to any first principles?

**Settlement in a Third Country (SGP: C12.3)**

12.y) Please describe: relevant law and policy in your country

relevant practice in your country

12.z) To what extent does this conform to the Statement? Please outline in brief.

12.zz) Are any changes needed? In relation to any first principles?

**13. DATA COLLECTION**

Good data on separated children is required to assist the implementation of good practice.

- a. Who should be responsible for collecting data on separated children? Please consider both government departments and NGOs.
- b. What sort of data is required? From government? From NGOs?
- c. Please provide any current (1997-1999) data on separated children, which is available (from both government and NGOs). We appreciate that at this time most of this data will relate to asylum applications by separated children.

DW/ProformaCEE/27.4.00

***ANNEX 5: Statement of good practice of the "Separated Children in Europe" Programme***

SEPARATED CHILDREN IN EUROPE PROGRAMME

**„STATEMENT OF GOOD PRACTICE”**

***JANUARY 1999***

**A. Introduction**

1. Separated Children in Europe Programme (SCE):

The SCE project is a joint initiative of the International Save the Children Alliance and the United Nations High Commissioner for Refugees. The programme is based on the complementary mandates and areas of expertise of the two organisations;

UNHCR's responsibility is to ensure protection of refugee children and those seeking asylum; the International Save the Children Alliance is concerned to see the full realisation of the rights of all children.

1.1 The programme aims to realise the rights and best interests of separated children and young people who have come to or across Europe by establishing a shared policy and commitment to best practice at national and European levels. As part of this process the programme is developing partnerships with organisations working with separated children in European countries.

## 2. Definition:

2.1 Separated children and young people are children under 18 years of age who are outside their country of origin and separated from both parents, or their legal/customary primary caregiver. Some children are totally alone while others, who are also the concern of the SCE project, 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.

(CRC, Arts. 1 & 22; Hague Convention for the Protection of Children, 1996, Art.6 ; HCR Guidelines, para.3.1; ECRE paras. 8 & 11; EU Resolution on Unaccompanied Minors., Art. 1(1))

2.2 „International protection” is necessary because the children and young people have left their home community and country and have travelled into or across Europe. A solution to their situation is likely to require attention in their home country and current country of domicile. Protection through internationally agreed standards and under international law is therefore essential.

2.3 The Separated Children in Europe Programme uses the word „separated” rather than „unaccompanied” because it better defines the essential problem that such children face. Namely, that they are without the care and protection of their parents or legal guardian and as a consequence suffer socially and psychologically from this separation. While some separated children appear to be „accompanied” when they arrive in Europe, the accompanying adults are not necessarily able or suitable to assume responsibility for their care.

2.4 „Europe” for this programme includes: European Union and non-EU states in Western Europe; countries in Central Europe who are currently negotiating accession to the European Union (Poland, Czech Republic, Hungary, Slovenia and Estonia) and other Cental European Countries namely Slovakia, Romania, Bulgaria and Croatia.

3. 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 principally informed 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 here referred to as HCR Guidelines and the European Council on Refugees and Exiles *Position on Refugee Children* of November 1996, here referred to as ECRE.

Throughout the Statement are references to relevant international and regional law, policy and guidelines. These are listed in full in an appendix.

**\*\* Please note that some references are accompanied by a short text. These are only summaries of the relevant article or paragraph and not the complete text. Those who wish to use articles of law or policy to advocate for the rights of separated children should refer to the complete text of these instruments. \*\***

## Abbreviations Used Below

CRC	UN Convention on the Rights of the Child	
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading	Treatment or
Punishment		

CERD	International Convention on the Elimination of All Forms of Racial Discrimination	
ECRE	European Council on Refugees and Exiles: Position on Refugee	Children
ECHR	European Convention for the Protection of Human Rights and Freedoms	Fundamental
EU Res.	EU Resolution on Unaccompanied Minors Who are Nationals of Third Countries	Countries
HCR Guidelines	UNHCR <i>Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum</i>	
ICCPR	International Covenant on Civil and Political Rights	
ICESCR	International Covenant on Economic, Social and Cultural Rights	
UDHR	Universal Declaration of Human Rights	
UNHCR UNHCR	UN High Commissioner for Refugees	
UNHCR Handbook	UNHCR <i>Handbook on Procedures and Criteria for Determining Refugee Status</i>	

## B. First Principles

These are the principles that underpin the Statement of Good Practice and should be born in mind at all stages of care and provision for separated children and young people.

<p>1. <b>Best Interests:</b> „In all actions concerning children... the best interests of children and young people shall be a primary consideration”. (CRC, Art.3(1))</p>	<p>* CRC, Art. 3  * ICCPR, Art. 24: Every child is entitled to measures of protection on the part of the family, society and the state, without discrimination.  * ICESCR, Art. 10(3): Special measures of protection are to be taken on behalf of children without discrimination.  * HCR Guidelines, para.1.5  * ECRE, para. 4</p>
<p>2. <b>Non-discrimination:</b> 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.</p>	<p>* CRC, Art. 2: 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.  * CRC. Art. 22(1): Separated refugee children are entitled to protection and assistance in order to enjoy the rights of the CRC.  * ICCPR, Art. 24: See point B1  * ICESCR, Art. 10(3): See point B1  * CERD. The entire Convention contains measures to eliminate discrimination on the basis of race, colour, descent or national or ethnic origin.  * ECRE, paras. 5-7</p>
<p>3. <b>Right to Participate:</b> 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.</p>	<p>* CRC, Article 12: The views of children are to be given due weight in relation to their age and maturity and children shall have opportunity to be heard in all proceedings affecting them.  * HCR Guidelines, paras. 5.14 - 5.15</p>

	* ECRE, paras. 25 & 26
4. <u>Bi-culturalism</u> : It is vital that separated children be able to maintain their mother tongue and links with their culture and religion. Provision of childcare, healthcare and education must reflect their cultural needs. Preservation of culture and language is also important should a child return to their home country.	* CRC, Art. 8: Children have the right to preserve or re-establish key elements of their identity. * CRC, Art. 30: Children belonging to ethnic, religious or linguistic minorities have the right to enjoy their culture, practice their religion and use their language. * ICCPR, Art. 27 * ECRE, para. 39
5. <u>Interpretation</u> : Separated children must be provided with suitable interpreters who speak their preferred language whenever they are interviewed or require access to services.	* CRC, Art. 12: See point B3. * CRC, Art. 13: Children have the right to freedom of expression and to seek, receive and impart information. * ICCPR, Art. 19 * HCR Guidelines, para. 5.13
6. <u>Confidentiality</u> : 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. Information must not be used inappropriately for purposes other than for that for which it was sought.	* CRC, Art. 16: Children have the right to protection from arbitrary or unlawful interference with their privacy, family, home and correspondence. * ICCPR, Art.17 * ECHR, Art. 8: „Everyone has the right to respect for his private and family life, his home and his correspondence.” * HCR Guidelines, para. 5.16 & 5.17 * EU Res., Art. 3(1)
7. <u>Information</u> : 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, Art. 13. See point B5. * CRC, Art. 17: States shall ensure that children have access to information from a diversity of international and national sources. * CRC, Art. 22(2): States shall cooperate, as they consider appropriate, with efforts by the UN or other IGOs or NGOs in family tracing measures. * ECRE, para. 31
8. <u>Inter-organisational Cooperation</u> : Organisations, government departments and professionals involved in providing services to separated children must cooperate to ensure that the welfare and rights of separated children are enhanced and protected.	* CRC, Art. 22(2). See point B7 * HCR Guidelines, para. 12 * EU Res., Art. 5(3c&d)
9. <u>Staff Training</u> : 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, Art. 3(3): States shall ensure that institutions and services providing protection or care for children meet established standards, inter alia, in the suitability of their staff and competent supervision. * EU Res., Art. 4(5) * HCR Guidelines, para. 11
10. <u>Durability</u> : Decisions that are taken regarding separated children should take account of, where ever possible, the long-term interests and welfare of the child.	* CRC, Art. 3. See point C1. * CRC, Art. 22 (1): States will assist separated refugee children to enjoy the rights contained in the CRC and other international human rights or humanitarian instruments. * CRC, Art. 22(2): Where no parents or family members can be found a separated refugee child will be accorded the

	<p>same protection as any other child deprived of his or her family.</p> <p>* UNHCR <i>Handbook</i>, para. 214. In the asylum process a legal guardian should be appointed to promote a decision that is in the best interests of a separated child.</p> <p>* HCR Guidelines, para.9</p> <p>* EU Res., Art.5</p>
<p>11. <u>Timeliness</u>: All decisions regarding separated children must be taken in a timely fashion.</p>	<p>* HCR Guidelines, para. 8.1 &amp; 8.5</p>

### C. Good Practice

The following section sets out good practice with respect to separated children from the point of arrival up until the taking of a long-term decision on a child's future. Each section is accompanied by references to international and regional instruments (please see the note at A.3).

<p>1. <u>Access to the Territory</u>:</p> <p>1.1 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. (see paragraph C. 4)</p>	<p>* 1951 Refugee Convention:</p> <p>Art. 31: States shall not penalise those who illegally enter or are present in a country if they arrive from a territory where they faced persecution as per Art. 1.</p> <p>Art. 33: States shall not return a refugee to a country where his or her life or freedom are threatened as per Art.1.</p> <p>* CAT, Art. 3. No state shall return a person to a country where he or she is at risk of being tortured.</p> <p>* CRC, Art. 6(1): Every child has the inherent right to life.</p> <p>* ICCPR, Art. 6 (1): Everyone has the inherent right to life which should be protected by law and no one shall be arbitrarily deprived of his or her life.</p> <p>* ECHR, Art. 2(1): Everyone's right to life shall be protected by law.</p> <p>* Dublin Convention, Art. 9: Member States will admit asylum seekers to their asylum procedures on the basis of family or cultural reasons, at the request of another Member</p>
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	<p>State.</p> <ul style="list-style-type: none"> <li>* HCR Guidelines, paras. 4.1 &amp; 4.2</li> <li>* ECRE, paras. 14 &amp; 15</li> <li>* EU Res., Art. 2(1&amp;2)</li> </ul>
<p><b>1.2 Trafficking: Trafficking in children and young people 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.</b></p> <p>The purpose of any such advocated measures should be motivated by child protection principles, not migration or crime control measures.</p>	<ul style="list-style-type: none"> <li>*CRC, Art. 34: States shall protect children from all forms of sexual exploitation and abuse.</li> <li>* CRC, Art. 35: States shall take all appropriate measures to prevent the abduction, sale or traffic in children.</li> <li>* CRC. Art. 36: States shall protect children from all other forms of exploitation prejudicial to their welfare.</li> <li>• ICCPR, Art. 8: No one shall be held in slavery or servitude or forced to perform compulsory labour.</li> </ul> <ul style="list-style-type: none"> <li>* ICESCR, Art. 10(3): Children should be protected from economic and social exploitation.</li> <li>* ECHR, Art. 4: No one shall be held in slavery or servitude or subjected to forced labour.</li> <li>* Council of the EU: Joint Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children, 24 Feb. 1997</li> </ul>
<p>2. <u>Identification</u></p> <p>At ports of entry immigration authorities should put in place procedures to identify separated children and young people. 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.</p>	<ul style="list-style-type: none"> <li>* CRC, Art. 8: See point B4</li> <li>* HCR Guidelines, paras. 5.1 - 5.3 &amp; Annex II</li> <li>* EU Res., Art. 3(1)</li> </ul>
<p>3. <u>Appointment of Guardian or Adviser</u></p> <p>3.1 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 (eg. legal guardian, NGO worker) their responsibilities should be as follows:</p> <ul style="list-style-type: none"> <li>- to ensure that all decisions taken are in the child’s best interests</li> <li>- to ensure that a separated child has suitable care, accommodation, education, language support and health care provision</li> <li>- to ensure a child has suitable legal representation to deal with her or his immigration status or asylum claim</li> <li>- to consult with and advise the child or young person</li> <li>- to contribute to a durable solution in the child’s best interests</li> <li>- to provide a link between the child and various organisations who may provide services to the child</li> <li>- to advocate on the child’s behalf where necessary</li> <li>- to explore the possibility of family tracing and reunification with the child.</li> </ul> <p>3.2 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.</p>	<ul style="list-style-type: none"> <li>* CRC, Art. 18(2): States shall assist legal guardians to carry out child-rearing responsibilities.</li> <li>* CRC. Art. 20(1): Children deprived of their families are entitled to special protection and assistance.</li> <li>* Hague Convention for the Protection of Minors, 1961</li> <li>* Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996:</li> <li>Art. 3: States where separated children have habitual residence can take measures of protection including guardianship or analogous institutions.</li> <li>Art. 6: The Convention applies to separated children who are refugees or internationally displaced due to disturbance occurring in their own country.</li> <li>* UNHCR <i>Handbook</i>, para. 214. See point B10.</li> <li>* HCR Guidelines, para. 5.7</li> <li>* ECRE, paras. 16-18.</li> <li>* EU Res., Art. 3(4&amp;5)</li> </ul>

<p>3.3 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.</p>	
<p>4. <u>Registration and Documentation</u> 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 ( see appendix), should be taken by an organisation with care duties towards the child. All those interviewing separated children should have appropriate training or expertise.</p>	<p>* CRC, Art. 8: See point B4 * HCR Guidelines, paras. 5.6 &amp; 5.8 - 5.10 * EU Res., Art. 3(1)</p>
<p>5. <u>Age Assessment</u> There should be a presumption that someone claiming to be under 18 years of age, will be treated as such. Separated children must sometimes travel on passports giving their age -wrongly- as over 18. The 1951 Refugee Convention recognises that asylum seekers must sometimes travel on false documents in order to flee from danger. In making an age determination separated children must be given the benefit of the doubt. 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. 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.</p>	<p>* 1951 Refugee Convention, Art. 31: Penalties shall not be imposed on asylum seekers those who enter a country illegally if they can show good cause for their illegal entrance. * UNHCR <i>Handbook</i>, paras. 196-197: Persons fleeing persecution may not have personal documents. If proof cannot be found then the benefit of the doubt should be given to credible applicants. * HCR Guidelines, para. 5.11 * ECRE, para. 9 * EU Res., Art. 4(3)</p>
<p>6. <u>Freedom from Detention</u> 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.</p>	<p>* CRC, Art. 37(a): Children shall not be subject to cruel, inhuman or degrading treatment. * CRC, Art. 37(b): Children shall not be deprived of their liberty arbitrarily or unlawfully. * ICCPR, Arts. 7 &amp; 9 * ECHR, Arts.3 &amp; 5 * HCR Guidelines para. 7.6 * ECRE, para. 20 * EU Res., Art. 2(3)</p>
<p>7. <u>Right to Participate</u> 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.</p>	<p>* CRC, Art. 12: See point B3 * HCR Guidelines, para. 5.14 &amp; 5.15 * ECRE para. 25 &amp; 26</p>
<p>8. <u>Family Tracing and Contact</u> 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</p>	<p>* CRC Art. 10(2): Children whose parents reside in different countries have the right to maintain regular relations with their parents. Art. 9(3): Children who are separated from their parents</p>

<p>undertaking tracing should cooperate with UN agencies and the ICRC Central Tracing agency. Separated children and young people 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.</p>	<p>have the right to maintain contact with their parents. Art. 22(2): See point B7. * ICCPR, Art. 23(1): The family is entitled to protection by the state. * ECHR, Art. 8: See point B6. * HCR Guidelines, para. 5.17 * ECRE, para. 32 * EU Res., Art. 3(3)</p>
<p>9. <u>Family Reunification in a European Country</u> Separated children seeking asylum or other wise 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.</p>	<p>*CRC. Art. 10(1): Applications for family reunification shall be dealt with by states in a „positive, humane and expeditious manner.” * ICCPR, Art. 23(1): See point C8 * Dublin Convention: Art.4: Separated children who have parent(s) who are recognised refugees living in another EU state will be entitled to have their asylum claim dealt with by that state. Art.9: Member States will admit asylum seekers to their asylum procedures on the basis of family or cultural reasons, at the request of another Member State. * EU Resolution on harmonisation of national policies on family reunification, 3 June,1993 *HCR Guidelines, para. 5.5 * ECRE, para.35 * EU Res., Art. 5(3a)</p>
<p>10. <u>Interim Care - Health - Education and Training</u></p> <p>10.1 <i>Interim Care:</i> Separated children and young people 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 young people over 16 years of age should not be treated as „defacto” adults and placed on their own, without adult support, in hostel or reception centre settings.</p> <p>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.</p> <p>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 and young people for the purposes of prostitution or other forms of exploitation.</p>	<p>* CRC: Art. 13: Children have the right to freedom of expression Art.14: Children have the right to freedom of thought, conscience and religion. Art. 15: Children have the right to freedom of association. Art. 16: See point B6 Art. 19: States shall take all appropriate measures to protect children from all forms of physical and mental violence, abuse , negligence, maltreatment and exploitation. Art. 20 (1): See point C3 Art. 20 (3): Care provided for children deprived of their family shall take account of their ethnic, religious, cultural and linguistic background. Art. 25: Children who are placed in a care institution have the right to periodic reviews of their circumstances. Art. 26: Children have the right to benefit from social security and social insurance. Art. 27: Children have the right to a standard of living adequate for their physical, mental, spiritual, moral and social development. Art. 30: See point B4 Arts. 34, 35 &amp; 36: See point C1.2 * ICCPR, Arts. 18(1),19, 21,22 &amp; 24(1) * ICESCR, Arts. 9 &amp; 11(1) * ECHR, Arts. 9,10 &amp; 11 * HCR Guidelines, paras. 7.1 -7.5 * ECRE, paras. 12 &amp; 19 * EU Res. Arts. 3(2,4&amp;5) and 4(4)</p>
<p>10.2 <i>Health</i> 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</p>	<p>* CRC Art. 23: Children with disabilities have the right to enjoy a full and decent life and have the right to special care. Art. 24: Children have the right to the highest attainable</p>

<p>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.</p>	<p>standard of health.  Art. 39: States shall take measures to promote the physical and psychological recovery and social re-integration of child victims.  * ICESCR, Art. 12  CAT, Art. 14: Victims of torture shall be able to obtain redress, compensation and rehabilitation.  * HCR Guidelines, paras. 7.9 - 7.11  * ECRE para. 36  * EU Res., Art. 3(7)</p>
<p><b>10.3 Education, Language and Training</b>  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 young people. It is likely to enhance their life chances if they return to their home country.</p>	<p>* CRC  Art. 28: Children have the right to free and compulsory primary education. States shall encourage the development of different forms of secondary education and make them available to all children. Educational and vocational guidance shall be available to all children.  Art. 29(1c): The aims of education shall be, inter alia, to encourage respect of children’s cultural identity, language and values.  Art. 30. See point B4  Art. 32: Children should be protected from economic exploitation and hazardous work.  * European Social Charter, Arts. 7,9 &amp;10.  *HCR Guidelines, paras. 7.12 - 7.14  * ECRE, paras. 37-39  * EU Res., Art. 3(6)</p>
<p><b>11. The Asylum or Refugee Determination Process</b></p> <p>11.1 Separated children and young people, regardless of age, should never be denied access to the asylum process. Once admitted they should go through the <i>normal procedures</i> and be exempt from all special procedures including those relating to „safe third country”, „manifestly unfounded” and „safe country of origin” and from any suspension of consideration of their asylum claim due to coming from a „country in upheaval”.</p>	<p>* UDHR, Art. 14(1): „ Everyone has the right to seek and to enjoy in other countries asylum from persecution.”  * 1951 Refugee Convention: Article I of the Convention makes no distinctions according to age. A person of any age can be recognised as a refugee.  * Protocol Relating to the Status of Refugees, 1967.  * Council of the EU:  Joint Position on the harmonised application of the definition of the term „refugee”. March, 1996  Resolution on minimum guarantees for asylum procedures, June 1995, paras. 26-27.  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  * HCR Guidelines, para.4.1  * ECRE, para. 22 - 23  * EU Res., Art. 4(1)</p>
<p>11.2 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 free of charge 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.</p>	<p>* CRC Art. 12: See point B3  * HCR Guidelines, para. 4.2 &amp; 8.3  * ECRE, para. 24</p>
<p><b>11.3 Minimum Procedural Guarantees</b>  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</p>	<p>* EU resolution on Minimum Guarantees for Asylum Procedures, 1995, paras. 26-27: „Additional safeguards for unaccompanied minors”  * HCR Guidelines, paras. 8.1, 8.2 &amp; 8.5</p>

<p>should have a right of appeal/ review by an independent judicial authority. Deadlines for appealing should be reasonable. Children’s applications should be identified and prioritised so they are not kept waiting for long periods of time.</p>	<p>* ECRE, paras. 22, 24 &amp; 28 * EU Res., Art. 4(2)</p>
<p>11.4 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.</p>	<p>* UNHCR <i>Handbook</i>, para. 214 * Council of the EU Resolution on Minimum Guarantees for Asylum Procedures, para.27. * ECRE, para. 27</p>
<p>11.5 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).</p>	<p>* CRC, Art. 3.3: See point B9 * HCR Guidelines, paras. 4.2 &amp; 8.4 * ECRE, para. 26-27 * EU Res., Art. 4(5)</p>
<p>11.6 <i>Criteria for making a decision on a child’s asylum application:</i> 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 persecution, 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 * the need for a liberal application of the benefit of the doubt</p>	<p>* CRC Art. 12: See point B3 Art. 32: See point C10.3 Arts. 34, 35, 36. See point C1.2 Art. 38: States shall ensure that persons under the age of 15 do not take a direct part in armed conflict. * Protocol 1 Additional to the Geneva Conventions of 12/8/1949, and Relating to the Protection of Victims of International Armed Conflicts: Art. 77(2): Parties to conflicts must take all feasible measures to ensure that children under 14 do not take direct part in hostilities. * Protocol 11 Additional to the Geneva Conventions of 12/8/1949 Relating to the Protection of Victims of Non-International Armed Conflicts Art. 4(3): Children under 15 shall not be recruited in the armed forces or allowed to take part in hostilities. * ICCPR, Art. 8. See point C1.2 * ICESCR, Art. 10(3). See point C1.2 * ECHR, Art. 4(1) and 4(2): See point C1.2 * HCR <i>Handbook</i>, paras. 203 &amp; 213-219 * HCR Guidelines, paras. 8.6 - 8.10 * EU Res., Art. 4(6)</p>
<p>11.7 Separated young people 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.</p>	<p>* ECRE, para. 30</p>
<p>12. <u>Durable or Long-term Solutions</u>  12.1 <u>Remaining in a Host Country/Country of Asylum</u>  12.1.1 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 defacto 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 their 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</p>	<p>* CRC, Art. 3 * HCR Guidelines, para. 9.1 &amp; 9.4 * ECRE, para.42 * EU Res., Art. 5(2)</p>

grounds (eg. ill health) * it is clearly in the child's best interests to do so.	
12.1.2 Applications by a separated child, residing in a „host“ country, for family reunion in a that country should be dealt with in a „positive, humane and expeditious manner“. (CRC, Art.10)	* CRC, Art.10. See point C8 * ECHR, Art. 8: See point B6. * ICCPR Art. 23: See point C8. * ECRE, para. 32
12.1.3 <i>Integration</i> 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 people'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.	* CRC, Arts. 13, 14,15, 16, 19, 20, 25, 26, 27 & 30 . See points B4, B5, B6, C3 & C10(1). * 1951 Refugee Convention Art. 21: Housing provision for recognised refugees Art. 23: Provision of „public relief“ for recognised refugees Art. 24: Working conditions and social security provisions for recognised refugees * HCR Guidelines, paras. 10.6 - 10.9 * ECRE, para. 19 * EU Res., Art. 4(7)
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.	* CRC, Arts. 23, 24, 28, 29(1c), 30, 39: see points C10.2 & C10.3 * 1951 Refugee Convention Art. 22: Education rights of recognised refugees. * HCR Guidelines, para. 10.10 * ECRE, paras. 36 - 41
12.1.4 <i>Adoption</i> 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 and are outlined in the recommendation of the Hague Conference on Private International Law.	* CRC, Art. 21: States obligations with regard to intercountry adoption. * Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993 * „Recommendation Concerning the Application to Refugee Children and Other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption“, Oct, 1994
12.1.5 <i>Identity and Nationality</i> Separated children who are found to be stateless, should be assisted to acquire the nationality of the host country.	* CRC, Art. 7(1): Children have the right to acquire a nationality. * ICCPR, Art. 24(3) * 1951 Refugee Convention Art. 27 & 28: States shall issue identity papers and travel documents to recognised refugees. Art. 34: States shall facilitate the naturalisation of refugees. * Convention Relating to the Status of Stateless Persons, 1954 Art. 32: States shall facilitate the naturalisation of stateless persons. * Council of Europe: Recommendations 564 & 984.
12.2 <u><i>Family Reunification and Returns to a Country of Origin</i></u>	* UNHCR : <i>Refugee Children: Guidelines on Protection</i>

<p>12.2.1 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 <u>voluntary</u> basis. Children and young people should be fully consulted at all stages of the process.</p>	<p><i>and Care</i>, 1994, page 138.</p>
<p>12.2.2 (a) Before a separated child can be returned to a country of origin the following must be in place:</p> <ul style="list-style-type: none"> <li>* it is safe to return the child to his or her home country;</li> <li>* the child’s carer and guardian/adviser in the host country agree it is in the child’s best interest to return;</li> <li>* 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;</li> <li>* this investigation should be carried out by an organisation or persons independent of the governments of the country in which the child is currently residing and of their country of origin. „Independent” here refers to the professionalism of those carrying out the investigation and does not preclude organisations/individuals who are part of the statutory services or are funded by government;</li> <li>* 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;</li> <li>* the child is fully informed at all stages and is provided with appropriate counselling and support;</li> <li>* prior to the return contact between the child and his or her family is facilitated;</li> <li>* during the return the child is properly accompanied;</li> <li>* after the return the situation of the child is effectively monitored by a designated NGO or international organisation.</li> </ul> <p>12.2.2 (b) Young people 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.</p>	<ul style="list-style-type: none"> <li>* CRC Art. 19, 37(a), 38 &amp; 39: See point C10.1, C10.2 &amp; C11.6</li> <li>* 1951 Refugee Convention Art. 32(1): States shall not expel a refugee lawfully in their territory. Art. 33. See point C1.1</li> <li>* CAT, Art. 3: See point C1.1</li> <li>* HCR Guidelines, paras. 9.4, 9.5, 10.5, 10.12 - 10.14</li> <li>* ECRE, paras. 33 &amp; 42</li> <li>* EU Res., Art. 5</li> </ul>
<p>12.2.3 The development of programmes to facilitate the safe return of separated children to their countries of origin should include measures to:</p> <ul style="list-style-type: none"> <li>* facilitate and ensure the development of appropriate skills and successful reintegration;</li> <li>* provide support and aid to the child’s family and community.</li> </ul>	<ul style="list-style-type: none"> <li>* CRC Arts. 28(1b &amp; d),(3), 29(1c). See point C10.3.</li> </ul>
<p>12.3 <u>Settlement in a Third Country</u> When a child has a family member in another European state who is willing and able to care for the child then family</p>	<ul style="list-style-type: none"> <li>* CRC, Art. 10(1): See point C9.</li> <li>* ECHR, Art. 8: See point B6.</li> </ul>

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.

\* HCR Guidelines, para. 10.11  
\* ECRE, para. 34

## **APPENDIX**

Re: paragraph C4 above: the following information should be gathered about a child by an organisation with responsibility for caring for the child:

1. Family information (in the country of origin and elsewhere)
  2. Information on non-family members important to the child
  3. Circumstances when the child was found/identified
  4. Information concerning the child's separation from the family
  5. Information about the child's life before and since the separation
  6. Child's physical condition, health and past medical history
  7. Educational background (formal and informal)
  8. Present care arrangements
  9. Child's wishes and plans for the future
  10. Preliminary assessment of the child's mental and emotional development and maturity
  11. Age assessment
- (HCR Guidelines, para. 5.9)



## INTERNATIONAL AND REGIONAL „INSTRUMENTS”

### 1. Refugee

\* 1951 UN Convention relating to the status of refugees.

\* 1967 Protocol relating to the status of refugees

\* UNHCR:

*The Handbook on Procedures and Criteria for Determining Refugee Status (Handbook)*

*Refugee Children: Guidelines on Care and Protection*, 1994

*Working with Unaccompanied Children: A Community-based Approach*, 1996.

*Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, 1997

Excomm Resolutions: No. 47, 1987 „Refugee Children” and No. 59, 1989 also called „Refugee Children”

### 2. General International Human Rights 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

\* UN Rules for the Protection of Juveniles Deprived of Their Liberty, 1990

\* Hague Conference on Private International Law:

- Convention for the Protection of Minors, 1961

- Convention on the Civil Aspects of International Child Abduction, 1980 ( do you think this is relevant?)

- 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)

\* European Union

- 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)

#### 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.
- \* Schengen Convention, 1990

##### \* European Union:

- 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, I 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

##### \* Council of Europe

- Recommendations 564 (1969) and 984 (1984)
- European Social Charter, 1961