

SEPARATED CHILDREN IN EUROPE PROGRAMME
COUNTRY ASSESSMENT

COUNTRY: SLOVAKIA

EVALUATION PERIOD: AUGUST-OCTOBER 2000

RESPONDENT: BJÖRNSON SOCIETY IN SLOVAKIA,
RUŽOMBEROK

AGENCIES/ INDIVIDUALS CONSULTED :

- the Slovak Republic Ministry of Interior
- the Slovak Republic Ministry of Justice
- the Slovak Republic Ministry of Health
- the Slovak Republic Ministry of Education
- the Slovak Republic Ministry of Work, Social Affairs, and Family
- the Slovak Republic Ministry of Foreign Affairs
- the Slovak Republic Migration Office of the Slovak Republic Ministry of Interior
- Border and Immigration Police Office of the Slovak Republic Police Presidium
- Inforoma
- U.N.H.C.R.

DOCUMENTS USED OR REFERRED TO:

- Civil Code (Law No. 40/1964 Coll.)
- Civil Court Order (Law No. 99/1963 Coll.)
- Penal Code (Law No. 140/1961 Coll.)
- Penal Order (Law No. 141/1961 Coll.)
- Family Law (Law No. 94/1963 Coll.)
- Refugees Law (Law No. 283/1995 Coll.)
- Law on the Stay of Foreigners in the Territory of the Slovak Republic (Law No. 123/1992)
- Proposal of a suitable procedure (Save the Children)

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?**

Under § 3, section 2, of Law No. 283/1995 Coll. on Refugees (hereinafter "Refugees Law") a legal representative or a guardian acts on behalf of a foreigner who is younger than 15 years and on behalf of a foreigner who is deprived of capacity to legal acts or whose capacity to legal acts is restricted.

An amendment to the Refugees Law, which came into effect on November 1, 2000, defines the age of a foreigner as follows *"A legal representative executes legal acts on behalf of a foreigner who is younger than 18 years unless he is of full age under a special regulation¹⁾. If a foreigner lives in the territory of the Slovak Republic without his legal representative the legal acts are executed by an appointed guardian. The same applies to a foreigner who is deprived of capacity to legal acts or whose capacity to legal acts is restricted"*.

Under Article 41, section 4, of the Constitution of the Slovak Republic, parents are entitled to take care and bring up children. Children are entitled to parental upbringing and care. The rights of parents can be restricted and underage children can be separated from their parents against their parents' will only by a decision of the court under law.

If the child's upbringing is seriously threatened or seriously disrupted and if other upbringing measures did not lead to a correction or if the parents cannot provide for the child's upbringing due to other serious reasons the court can decide on an institutional upbringing.

The above information shows that in the Slovak Republic there is no precise and exact definition of a "separated child" arising from legal regulations valid in the Slovak Republic. The definition can be derived only from the above provisions by understanding the meaning of the term and by what the term means in practice.

Therefore, the separated child can be a child who comes to the territory of the Slovak Republic without parents or relatives who are responsible for the child under law or under the decision of the court, i.e. legal representatives or guardians.

In order for the Law to be complete this category of refugees should be defined. According to the above definition, we register only a minimal number of separated children in the Slovak Republic in comparison with the number of other refugee groups. Anyway, it would be suitable to include a precise definition into legal or sub-legal standards together with their undeniable rights because this is a very sensitive group of refugees.

¹⁾ § 13 of Family Law.

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 a "carrier liability legislation" whereby airlines, train and boat companies can be fined if they bring someone without proper documents. Is this applied to children and young people under the age of 18?**

The entry of foreigners (including separated children) to the territory of the Slovak Republic is governed by the Slovak Republic National Council Law No. 73/1995 Coll. on the Stay of Foreigners in the Territory of the Slovak Republic in the wording of later regulations (hereinafter "Foreigners' Stay Law"). This applies to § 3 of the above law and partially to § 4, section 2a), of the Refugees Law.

The above laws stipulate that a foreigner can enter the territory of the Slovak Republic, stay in the territory, and leave the territory of the Slovak Republic only with a valid passport containing a visa unless an international agreement, which the Slovak Republic must adhere to, stipulates otherwise. Visa is not required if the government of the Slovak Republic stipulates so.

A foreigner who intends to ask for a refugee status must do so in a written form or orally in the form of a record as follows:

- a) when entering the territory of the Slovak Republic he must apply for refugee status at the border crossing police station
- b) if there are no serious reasons, he must apply for refugee status at a competent police station in the district where he lives not later than 24 hours after his arrival to the territory of the Slovak Republic
- c) during a legal stay in the territory of the Slovak Republic he must apply for the refugee status at a competent police station in the district where he lives (this possibility has been abolished by a recent amendment of the law)

The current legislation and practice correspond with the proposal.

Under § 25, section 1, of the Foreigners' Stay Law, the carrier who brings a foreigner by air or water to the territory of the Slovak Republic and the foreigner has no documents authorizing him to enter the territory of the Slovak Republic the carrier is obligated to provide for the foreigner's transportation back home. § 21, section 2, stipulates when the carrier is not obligated to do so. This applies to the cases when the Ministry of Interior allowed the foreigner to enter the territory of the Slovak Republic or when the visa given to the foreigner abroad was abolished by the Ministry of Interior before the entry to the territory of the Slovak Republic.

Trafficking (SGP: C 1.2)

1.e) Are you aware of any children being trafficked for the purposes of exploitation into your country? If so please give brief example 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?

The trade in children and the youth for the purposes of exploitation, prostitution, production of child pornography, and for other forms of misusing the child's defenselessness is a serious problem in all European countries, not only in Slovakia. Actual information on this problem does not reflect actual situation in this field. At present, the Migration Office (is an institution that belongs to the Slovak Republic Ministry of Interior and is fully responsible for the policy associated with foreigners, asylum applicant, etc.) does not know of children brought to the territory of the Slovak Republic for the purposes of exploitation. However, this does not mean that there are no such children.

It is necessary to say that if the trade in children and the youth for the purposes of prostitution, production of child pornography, or other form of misuse is ascertained, the competent bodies assign the fact to the bodies that participate in penal proceedings just like in any other cases where there is a suspicion of committing a crime.

Penal Code also includes the facts of the case of such crimes, especially crimes as to the trade in women (§ 246), trade in children (§ 216), illegal employment of children (§ 217a), production of child pornography (§ 205b), distribution of child pornography (§ 205c), reset of child pornography (§ 205d), etc. There are very high sentences especially for the crimes:

- a) committed on the children younger than 12 years
- b) committed with using violence, threat of violence, or threat of other heavy damage or misusing distress or dependence of other person
- c) committed on more children

The sentences range from two to eight years. In the specific cases stated above the sentences range from five to ten years. If the perpetrators commit the above crimes as an organized group, or if they cause a heavy damage to health by the above crimes, they can be sentenced to imprisonment for five to twelve years.

Because there is experience with this issue lately (see scandals with child pornography and pedophilism in Belgium and other European countries) it would be naive to think that there is no such problem in Slovakia. On the contrary, the police information proves otherwise. A better information exchange between individual countries would help a lot because the crime gangs participating in this kind of crimes are international gangs that operate in different countries. A police cooperation between several countries and mutual coordination regarding the employment and misusing of "refugee children" will therefore become an "absolute living necessity" because the borders between individual countries are diminishing.

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?

The issue of identification is very complicated because the refugees very often have no money and no personal documents. This makes the "ascertaining of identity" very difficult. Therefore, the Migration Office cooperates with many institutions as far as identification of persons is concerned - with the Border and Immigration Police Office of the Slovak Republic Police Presidium, UNHCR (United Nations High Commissioner for Refugees), Slovak Red Cross, or with other governmental and non-governmental organizations. Also, the Migration Office cooperates with several asylum offices abroad.

Basic data and information on the foreigner's identity, who entered the asylum procedure, can be ascertained from his declaration (§4 of the Refugees Law) and from his application for refugee status (§ 5 of the Refugees Law).

Under the Slovak Republic Ministry of Interior Ordinance No. 4/1996, Article 2, section 2, the OCP is obligated to ascertain the foreigner's identity, i.e. name, surname, date and place of birth, citizenship, nationality, etc.

This part of the Slovak legislation corresponds only partially with the proposal.

There should be a more precise identification of separated children as really "separated" children with all consequences arising from the status. Therefore, the above organizations should cooperate and exchange information in order to identify such children.

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 the 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 needed? In relation to any first principle?

Under § 3, section 2, of the Refugees Law a legal representative or a guardian acts on behalf of a foreigner who is younger than 15 years and on behalf of a foreigner who is deprived of capacity to legal acts or whose capacity to legal acts is restricted.

An amendment to the Refugees Law, which came into effect on November 1, 2000, defines the age of a foreigner as follows *"A legal representative executes legal acts on behalf of a*

foreigner who is younger than 18 years unless he is of full age under a special regulation¹⁾. If a foreigner lives in the territory of the Slovak Republic without his legal representative the legal acts are executed by an appointed guardian. The same applies to a foreigner who is deprived of capacity to legal acts or whose capacity to legal acts is restricted”.

The appointment of a guardian is also governed by Civil Code, Civil Court Order, Proceedings Law, Family Law, Foreigners' Stay Law, etc.

It is basically the social workers, who participate in professional training, who are appointed guardians of ”separated children” who entered the asylum procedure.

The current legislation and practice do not fully correspond with the proposal.

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?**

§ 4 and § 5 of the Refugee Law and § 4 and § 5 of the Foreigners' Stay Law apply.

In accordance with the above provisions, it is a competent ministry that decides on the granting of refugee status. First of all, the foreigner must declare that he is applying for refugee status. A foreigner who intends to apply for refugee status must do so in a written form or orally in the form of a record as follows:

- a) when entering the territory of the Slovak Republic he must ask for the refugee status at the border crossing police station
- b) he must apply for the refugee status at a competent police station in the district where he lives after his arrival to the territory of the Slovak Republic.

The police station, at which the foreigner orally or in a written form declared his intention to become a refugee, is obligated to prepare a record and send it immediately to a ministry. After the foreigner declared his intention to become a refugee in a written form, the police station will take away his passport or other identity document and will issue a confirmation on this. Police station will give the foreigner mentioned in paragraph 2 a card that replaces his identity document. The card is valid for 24 hours. The card is to show his identity during a transportation to a refugee camp. If it is in the public interest, a policeman will accompany the transport of the foreigner under paragraph 2 to the refugee camp. At the request of the foreigner, who will apply for refugee status during a legal stay in the territory of the Slovak Republic, a ministry will decide if the foreigner is to be transported to the refugee camp.

Asylum seeker must not be send back to the borders of the country where he could be tortured, treated inhumanely, or where he could face a death sentence because of race, nationality, or religious reasons or because of his political conviction or a membership to a social group. This does not apply to a person that can be considered dangerous for the Slovak Republic or a person that was found guilty by a decision of the court due to

¹⁾ § 13 of Family Law.

committing a specially serious intentional crime.

The foreigner, who declared his intention to become a refugee (hereinafter "asylum seeker") is obligated to submit a written application for refugee status to a ministry not later than 24 hours after his arrival to the refugee camp if there are no serious circumstances that would hinder this process. Otherwise, his application will be dealt with under § 10. The asylum seeker is obligated to state truly and completely all information required in the application. The asylum seeker who cannot read and write submits the application for refugee status orally. The oral application is recorded in writing in the presence of a third person. If the person is not capable to legal actions in full extent he must be represented by his legal representative. If the person has no legal representative and if it is necessary to have one in order for his rights to be defended a ministry will appoint a guardian. If the asylum seeker does not speak Slovak a ministry will invite a translator. The asylum seeker is obligated to stay in the refugee camp until the decision on refugee status valid for the territory of the Slovak Republic comes into force. Further, he is obligated to pass a health examination and quarantine measures. If a ministry does not decide otherwise, the asylum seeker must be photographed and must submit himself to dactyloscopy. During his stay in the refugee camp the asylum seeker is obligated to adhere to the internal order.

Foreigners are entitled to stay in the territory of the Slovak Republic for the period of validity of visa. If visa is not required the foreigners can stay in the territory of the Slovak Republic for a period determined by the government of the Slovak Republic or an international agreement by which the Slovak Republic is bound. A short-term stay cannot be longer than 180 days. If the short-term stay was allowed for a period shorter than 180 days the Ministry of Interior can extend the stay at the foreigner's request. The application is submitted not later than three working days before the expiration of the period. The Ministry of Interior will decide on the application without delay, however, not later than the expiration of the stay period.

Abroad, it is a Slovak diplomatic mission or a consulate office that grants the short-term visa at the foreigner's request. In the Slovak Republic, it is the Ministry of Interior. On request, the application for the short-term visa must be supplemented by documents that show that the foreigner has enough money for his stay in the Slovak Republic and for leaving the Slovak Republic.

A body, which is entitled to grant the short-term visa, can condition the granting of the visa by depositing a monetary amount up to the costs associated with leaving the Slovak Republic. If the foreigner leaves the country without the amount deposited, the amount will be given back to him.

A competent body will decide on the foreigner's application for a short-term stay not later than 30 days from the day of the submission of the application. There are no general regulations of administrative proceedings applicable to the granting of the short-term visa and on the extension of the short-term stay.

The current legislation and legal practice correspond with the proposal submitted.

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?**

There is no law. The issue is dealt with as a part of the decision on asylum or stay. Please note that as far as asylum is concerned an administrative body (the Migration Office) under § 32, section 1, of Law No. 71/1967 Coll. on Administrative Proceedings is obligated to precisely and completely ascertain the actual situation and to obtain documents necessary for a decision-making process. The documents necessary for the decision-making process are filings, proposals, and opinions of the participants, proofs, affirmations, and facts generally known to the administrative body from its activity. The administrative body decides on the extent and way of the collection of documents.

Competent bodies realize that to estimate the refugee's age it is necessary to take into account official documents - mostly passport - which the refugee has. On the other hand, the documents can be original or false. This especially applies to separated children who often travel with false passports which state that the children are older than they really are. Therefore, first of all, it is necessary to take into account a child's declaration and then to prepare an expert's opinion of the child's age.

However, so far the Migration Office has not required an expert's opinion (§ 36 of the Administrative Proceedings Law) as to whether it is a foreigner who has a legal representative or a guardian acting on his behalf, because there was no reason for the Migration Office to require such an opinion.

Legislation and practice correspond with the proposal.

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?**

Generally, the Police is in charge of detaining foreigners. This is governed by the Slovak Republic National Council Law No. 171/1993 Coll. on the Police in the wording of later regulations.

However, the "separated children" in the asylum proceedings cannot be detained because of the reasons associated with their status of immigrants.

Law does not deal with the participation of children in this issue. Therefore, the current legislation and practice do not correspond with the proposal. There should be some changes as to the participation right - it is necessary to respect their wishes and opinions. It is also necessary to allow them to participate in this issue taking into account their age and overall maturity. Also, interpreting is a very important principle. When a child is detained there

must be an interpreter who speaks the child's mother language. The interpreter must be available during any discussion with the children and also at the time when the children must use some services. The children must be informed on any facts about them in their mother language.

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 first principle?**

This issue is governed by Civil Code, Civil Court Order, the Administrative Proceedings Law, the Family Law, § 3 on Refugee Law, and internal regulations.

The Migration Office has no experience with the activity included in the Proposal of Appropriate Procedure regarding the right of participation because the "separated children" - applicants for asylum - leave the territory of the Slovak Republic at the beginning of asylum process.

Please note that the Migration Office can invite expert witnesses who would prepare expert's opinions of a child's ability to present its reasons for asylum based on its age and maturity.

Simultaneously, we are aware of the fact that the right of participation is one of the basic principles regarding the children refugees. The Migration Office is ready to apply the principle.

The current legislation corresponds with the proposal.

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?**

§§ 3 and 4 of the Refugee Law apply. The issue also is partially dealt with by § 18 of the Foreigners' Stay Law. The search is mostly done by the Slovak Red Cross.

Legislation corresponds partially and practice corresponds fully with the proposal.

As far as the separated children are concerned this process must be as fast and thorough as possible and the participating organizations must cooperate as closely as possible.

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

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

At present, it is § 7, section 2, of the Refugee Law that deals with the issue. Under the paragraph a ministry can grant a refugee status from humanitarian reasons. Under the amendment to the Refugee Law that came into effect on November 1, 2000 (§ 7 new section 2) "for the family reunion purposes Ministry will grant a refugee status to:

- a) the refugee's husband if their marriage lasts in the country which the refugee left due to the reasons in section 1,
- b) the refugee's single children younger than 18 years of age.

Applicants for refugee status in section 2 cannot leave the territory of the Slovak Republic for the whole period of the process of granting refugee status."

Legislation and practice partially correspond with the proposal.

With regard to the fact that under the above definition the "separated children" are children without adult parents or close relatives who would accompany them, this fact presumes that their parents or relatives are refugees in other countries. Therefore, there should be a closer cooperation between European countries because the refugees are "scattered" in these countries. The information exchange or reunion of such "scattered" refugees must be done in accordance with the principles included in the proposal.

10. INTERIM CARE - HEALTH - EDUCATION - 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 principle?

The socio-legal protection of the underage in the Slovak Republic is governed by: the Slovak Republic National Council Law No. 195/1998 Coll. on Social Help in the wording of later regulations, the Family Law, the Slovak Republic National Council Law No. 265/1998 Coll. on Tutor Care in the wording of later regulations, and the Slovak Republic National Council Law No. 283/95 Coll. on Refugees.

A social worker provides an underage child without a guide with help immediately after his arrival to a camp. The social worker cooperates with a competent district office. He also cooperates with a social affairs department in order to find the best way to take care of the child.

Under valid legislation (a complete wording of the Social Help Law published under No. 238/1999 Coll. and the Family Law) the district office is entitled to decide on an immediate

placement of the child in an institution that would bring the child up instead of his parents. If it is urgent, the district office is obligated to take such preliminary measures which otherwise can be decided on only by the court. The court will decide additionally. The measure protects the child against damage that would happen or could happen if it was necessary to wait for a decision of the court.

Within the framework of asylum procedure there are conditions that allow to take care of underage children without a guide. The conditions correspond with the proposal. With regard to the fact that so far there have been no underage applicants for asylum who would pass through the whole asylum procedure from the beginning to the end, i. e. until the issuance of the decision regarding the granting refugee status, it is impossible to include experience in this field in the questionnaire. It is also impossible to state any shortcomings in comparison with the proposal.

The Slovak Republic Ministry of Work, Social Affairs, and Family is in charge of a temporary care - this applies to accommodation and tutor care.

Health care - the separated children are entitled to the same health care as children that are citizens of a given country.

The extent and the way of providing the refugees with health care (the separated children belong to the category) are governed by the Slovak Republic National Council laws that also deal with the financing of the health care provided.

The health care rendered to the refugee is financed from the Slovak Republic Ministry of Interior's Migration Fund to the extent of a necessary and urgent health care under § 23, section 2, and § 24, section 1, of the Slovak Republic National Council Law No. 283/1995 Coll. on Refugees. When visiting a health care facility the refugee must show his "Refugee Card" and a document that replaces a health insurance card "Right to Health Care" issued by the Slovak Republic Ministry of Interior's Migration Office. A doctor keeps records in health files and any act is recorded in the card that entitles the refugee to health care.

Urgent treatment of refugees is:

- 1.) obligatory initial health examinations within three days after the entry to the territory of the Slovak Republic
- 2.) treatment of injuries and acute diseases, especially infectious, surgical, internal, gynecological, birth, dental, and psychiatric - the treatment is carried out in competent hospitals and polyclinics
- 3.) transportation of refugees with acute diseases to hospitals and polyclinics by ambulances and first medical aid service
- 4.) in case of a death an autopsy carried out in a competent territorial facility (after informing a competent embassy and with the consent of the embassy)

The persons, who were granted refugee status in the territory of the Slovak Republic, are entitled to the health care just like the citizens of the Slovak Republic in accordance with the Slovak Republic National Council Law No. 277/1994 Coll. on Health Care in the wording of later regulations based on health insurance. The state pays the insurance for underage children, women on maternal leave, pensioners, and persons on social benefits. The extent of the care provided is governed by the Slovak Republic National Council Law No. 98/1994 Coll. on Treatment Order in the wording of later regulations. This law ensures that the

children with chronic diseases and long-term health problems are entitled to health care as well.

Health (SGP: C 10.2)

**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 principle?

Laws:

the Slovak Republic National Council Law No. 283/95 Coll. on Refugees (underage applicants for asylum)

the Slovak Republic National Council Law No. 277/94 Coll. on Health Care (underage foreigners with refugee status)

At the beginning of asylum process the Ministry of Interior will appoint a guardian (in accordance with the Refugee Law) to an underage child without a guide. The guardian will represent the child as to the granting of refugee status. First, the child is placed in a detention refugee camp where he has to pass quarantine measures. Then, the child goes to a residential refugee camp which, e.g. has a pre-school facility. If necessary, he receives the same health care as Slovak citizens.

Health care corresponds with the proposal.

Education, Language and Training (SGP: C 10.3)

**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 principle?

Laws:

Law No. 29/1984 Coll. on Elementary and High Schools System (School Law) in the wording of later regulations

Law No. 283/95 Coll. on Refugees

The underage child can attend a course of the Slovak language basics while in the residential refugee camp. There is one teacher in the pre-school facility. She focuses on educational games, widening of vocabulary, physical strength, correct hygienic habits, and development of esthetical feeling. After they have learned the language basics the school-age children are placed in an appropriate elementary school class in the district where the residential refugee camp is located.

Social worker in the camp cooperates with competent institutions such as schools, school administrations, and health care facilities. He is also an advisor.

The underage foreigner with refugee status has the same rights to education as an underage

citizen of the Slovak Republic.

At present, there is a gap in legislation namely the absence of a provision that would explicitly impose upon the underage applicant for asylum an obligation to attend school despite the fact that this requirement is strictly adhered to in practice.

Education and associated language preparation (or training) for children is governed by Law No. 29/1984 Coll. on Elementary and Secondary Schools System (School Law) in the wording of later regulations and Law No. 542/1990 Coll. on Educational State Administration and School Administration in the wording of later regulations.

However, we have to say that the above legislation does not directly govern the issue because the legislation does not include a provision about the obligatory school attendance for the underage applicants for asylum.

We can also mention an *Agreement on Rights of Child* which is based on a principle that all rights apply to all children without exception and that the state is obligated to protect children against any form of discrimination. The underage applicant for asylum has the same rights to education as any underage citizen of the Slovak Republic.

Pre-school facilities are in charge of education of underage children in refugee camps. Here, the children participate in the Slovak language course.

After they managed the basics of the state language, the school-age children are placed in an appropriate elementary school class.

11. REFUGEE DETERMINATION PROCESS (SGP: C 11)

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.

The approach to asylum procedure, regardless of the applicant's age, is governed by § 4, section 2, of the Refugee Law.

A foreigner who intends to apply for refugee status must do so in a written form or orally in the form of a record as follows:

- a) when entering the territory of the Slovak Republic he must ask for the refugee status at the border crossing police station
- b) he must apply for the refugee status at a competent police station in the district where he lives after his arrival to the territory of the Slovak Republic.

After the submission of his application the refugee takes part in the same procedures as other applicants for asylum.

In the territory of the Slovak Republic there were some cases when an underage child applied for refugee status without being accompanied by adults. However, there were only

few cases like this and therefore we have little experience in this field. Also, the young applicants often leave the territory of the Slovak Republic very soon. In most cases before adopting a decision on their application.

The current legislation as to the application of the institutes of "save country of origin, save third country, and obviously unsubstantiated applications for asylum" included in the law applies to all applicants regardless their age.

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

There is a new legislation being prepared as to this issue. This new legislation will consider possible changes to the above institutes regarding this category of applicants for refugee status.

Legal Representation (SGP: C 11.2)

**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 principle?

Under § 3 of the above law "a legal representative or a guardian acts on behalf of a foreigner who is younger than 15 years and on behalf of a foreigner who is deprived of capacity to legal acts or whose capacity to legal acts is restricted".

An amendment on the Refugees Law, which came into effect on November 1, 2000, defines the age of a foreigner as follows "*A legal representative executes legal acts on behalf of a foreigner who is younger than 18 years unless he is of full age under a special regulation¹⁾. If a foreigner lives in the territory of the Slovak Republic without his legal representative the legal acts are executed by an appointed guardian. The same applies to a foreigner who is deprived of capacity to legal acts or whose capacity to legal acts is restricted*".

At present, the employees of the migration department and the Migration Office Integration, who have sufficient knowledge on administrative and asylum proceedings in the territory of the Slovak Republic, assume the role of guardians. However, they are not specially trained for this kind of work.

The current legislation and practice correspond with the proposal. The employees who act as guardians should be trained in the future.

Minimal Procedural Guarantees (SGP: C 11.3)

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

The decision-making process corresponds with the above Refugee Law and provisions of the Agreement of Legal Status of Refugees (Geneva, 1951). The process is the same for all

¹⁾ § 13 of Family Law.

applicants for refugee status regardless of the applicant's age. Decision of the first-level body is made in accordance with § 13 of the above law. Ministry will decide on granting refugee status within 90 days of the beginning of proceedings in accordance with the above decision. If necessary, the minister of interior of the Slovak Republic can extend the above term of 90 days. He will inform the applicants on the extension of the period in writing. The decision on granting refugee status is given for undetermined period.

The decision on granting refugee status is delivered to the applicant, his legal representative or guardian, residential refugee camp, and the United Nations High Commissioner for Refugees. The decision must be in the language which the applicant understands.

Every applicant, or his legal representative, can appeal to the minister of interior of the Slovak Republic against the decision. He can do so under § 15 of the above law. The appeal is submitted within 15 days from the day of its delivery to the body that issued the decision. The minister will decide on the appeal within 60 days. If the decision was issued during a short proceedings the minister will decide on the appeal within 30 days.

Moreover, the minister's decision can be judged by the court. All applicants for refugee status can file an action against the decision of the minister of interior of the Slovak Republic with the Highest Court of the Slovak Republic in accordance with Civil Court Order.

The ministry pays all fees associated with the granting of refugee status during administrative proceedings. Also, the ministry pays the interpreter under § 16 of the Refugee Law. Costs associated with the transportation of the applicant to the detention refugee camp, his stay in the detention refugee camp, and his stay in the residential refugee camp are paid by the ministry as well.

Practice corresponds with relevant provisions.

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 principle?

The current legislation and practice partially correspond with the proposal. In order to provide for a comprehensive protection of refugees' rights it is necessary to establish an independent second-level body.

Independent Assessment (SGP: C 11.4)

**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 principle?

In accordance with the above law and Law No. 71/1967 Coll. on Administrative Proceedings, a competent administrative body is obligated to review the facts of the case and to take measures so that every application for refugee status in the territory of the Slovak Republic is objectively reviewed. That means that the underage child's age must be taken into account as well. There are expert witnesses who can determine the child's ability to describe his concerns from being persecuted.

It was not necessary to prepare such independent opinions because of the small number of this kind of applicants. Also, the applicants left the territory of the Slovak Republic during the decision-making process. However, if necessary, it will be no problem to prepare such opinions with the help of expert witnesses.

No changes are necessary in this part.

Interviews (SGP: C 11.5)

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

Participation in an interview is governed by § 3 of the above Refugee Law. It says who can participate in the interview. Under the provision, the participant is defined as a foreigner who will apply for refugee status in the territory of the Slovak Republic. If the foreigner is younger than 18 years, if he is not of full age under a special regulation, it is his legal representative or guardian who acts on his behalf.

Under § 17, section 1, of the Administrative Proceedings Law, the interview participants, their legal representatives, or guardians can be represented by an attorney or other representative whom they appoint. § 26 also enables the UNHCR representatives to take part in the process regarding the granting of refugee status at any time. Further details regarding the interview and the work with underage applicants are not stipulated.

However, in practice, all provisions of the proposal are taken into account.

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 principle?

We recommend the interview's internal standards regarding the interview with underage applicants to be developed in more detail. This should not only take into account "how" to make such interviews, but also "who" should make such interviews. Also, it is necessary to consider what education, potential experience, and training the employees should have.

Criteria for making a decision on a child's asylum application (SGP: C 11.6)

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 principle?

All relevant criteria of decision-making process are taking into account.

Young People who become adults during the asylum process (SGP: C 11.7)

**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 principle?

Relevant criteria of decision-making process are taken into account.

12. DURABLE SOLUTIONS (SGP: C 12)

Remaining in a Host Country or Country of Asylum (SGP: C 12.1)

Grounds for a child remaining in a host country (SGP: C 12.1)

**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 principle?

§ 7 (refugee status) and § 21 and on (defacto refugee) of the Refugee Law and § 4 to 7 and § 15 of the Foreigners' Stay Law apply.

Under the above § 7, section 1, of the Refugee Law, the ministry will grant refugee status to the foreigner who, in the country which nationality he is of, have substantiated concerns from being persecuted because of race, national, or religious reasons, or because of certain political opinions, or because of being a member of certain social group and the foreigner cannot or does not want to go back to the country. The same applies to a person without citizenship who is outside the country in which the person had a permanent residency.

The ministry can grant refugee status from humanitarian reasons.

The applicants for refugee status in paragraph 2 cannot leave the territory of the Slovak Republic during the proceedings regarding the granting of refugee status.”.

Legislation and practice partially correspond with the proposal.

Family Reunification in a Host Country (SGP: C 12.1.2)

**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 principle?

At present, the issue is governed by § 7, section 2, of the Refugee Law under which the ministry can grant refugee status from humanitarian reasons. Under the amendment to the Refugee Law that came into effect on November 1, 2000 (§ 7 new section 2) ”for the family reunion purposes Ministry will grant a refugee status to:

- a) the refugee's husband if their marriage lasts in the country which the refugee left

- due to the reasons in section 1,
b) the refugee's single children younger than 18 years of age.

Applicants for refugee status in section 2 cannot leave the territory of the Slovak Republic for the whole period of the process of granting refugee status.”.

Legislation and practice partially correspond with the proposal.

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 principle?

The integration of foreigners who were granted refugee status into society is considered one of the key issues of the country's migration policy in the Slovak Republic. There is an effort to find long-term solutions. The government of the Slovak Republic adopted a basic integration policy document No. 105 named "Comprehensive Solution of Integration of Foreigners Who Were Granted Refugee Status Into Society". The document was adopted on February 6, 1996 and it shows the government's support in this issue. The document, which is based on the principles of the Slovak Republic's migration policy and concrete economic and social conditions of the Slovak Republic, stipulates the main fields as to taking care of foreigners who were granted refugee status. It also stipulates solutions, executions, and legal framework of conditions which the Slovak Republic created for the integration of this group of foreigners.

When, under the Refugee Law, granted refugee status the foreigner has the same rights and duties as any citizen of the Slovak Republic, unless stipulated otherwise in special regulations (he is not obligated to serve in the army and he has no voting rights). However, he is equal with other citizens regarding employment, social care, health care, and education. In case of the underage, who were granted refugee status, the same provisions of laws on social help, family, and tutor apply as in case of an underage citizen of the Slovak Republic. The above provisions are a legal basis for competent bodies' decisions on the location and the way of integrating the underage foreigner into society according to his needs and other circumstances that are relevant for the decision-making process in his best interest.

The current legislation corresponds with the proposal.

Adoption (SGP: C 12.1.4)

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

The adoption is governed by Law No. 94/1963 Coll. on Family in the wording of later regulations. Adoption means the same relation between adopter and adoptee as there is between parents and children and between adoptee and adopter's relatives. Adopters have the rights and duties of parents. The court decides on the adoption at the adopter's request.

Law No. 195/1998 Coll. on Social Help in the wording of later regulations stipulates the organization of substitutive family care, i.e. it also deals with adoption as one of the socio-legal protection activities. The organization of substitutive family care is defined as follows:

- keeping a list of children who need substitutive family care and keeping a list of citizens who are suitable for the substitutive family care,
- preparation of citizens who are suitable for the substitutive family care,
- intermediation of a personal contact between the children who need the substitutive family care and the citizens suitable for the substitutive family care,
- monitoring of development of children in substitutive family care.

Acting on behalf of underage child who is not a citizen of the Slovak Republic until a body of the state of which the child is citizen acts on his behalf is one of other activities within the framework of socio-legal protection. A district office and a county office, who are state bodies of social help, are in charge of the organization of substitutive family care and they act on behalf of underage child, who is not a citizen of the Slovak Republic.

The government of the Slovak Republic issued its Decision No. 914 of November 8, 2000. The Decision is a basis for the ratification of the Agreement on Protection of Children and Cooperation Within International Adoptions of May 29, 1993. The government appointed the Center for International Protection of Children and the Youth with its headquarters in Bratislava to be a central body under Article 6 of the Agreement. The Center is also competent to issue certificates under Article 23 of the Agreement. The government of the Slovak Republic recommended the president of the Slovak Republic to ratify the Agreement after it is adopted by the Slovak Republic National Council.

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

The present process of adopting the Agreement on Protection of Children and Cooperation Within International Adoptions of May 29, 1993 by the Slovak Republic shows that after the process is finished it will correspond with the proposal.

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

It is necessary to finish the present process of adopting the Agreement on Protection of Children and Cooperation Within International Adoptions of May 29, 1993 by the Slovak Republic.

Identity and Nationality (SGP: C 12.1.)

**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 principle?

It is necessary to take into account the relevant declarations of refugees and their personal documents if they are available. Right to nationality is one of the basic rights that a child is entitled to. They are fully guaranteed by the Constitution of the Slovak Republic. According to the constitution everyone has a right to decide on his nationality. Any influencing of the decision and all ways of duress aiming at changing ones nationality are prohibited.

Selection of nationality in connection with Slovak citizenship is governed by the Slovak Republic National Council Law No. 40/1993 Coll. on Citizenship. The law also guarantees the right of a child to citizenship.

When the parents are citizens of the Slovak Republic, or if they become ones under the law, their underage children also have the parents' citizenship. If only one of the parents is alive his/her child has his/her citizenship. If a child (with regard to the fact that we talk about "separated" children) who is not a citizen of the Slovak Republic is adopted by adopter or adopters, of which at least one is a citizen of the Slovak Republic, the child becomes the citizen of the Slovak Republic. However, the adoption must be an adoption that cannot be canceled.

The above law also stipulates conditions under which a person who is not a citizen of the Slovak Republic can be granted citizenship.

The current legislation and practice correspond with the proposal.

Family Reunification and Returns to a Country of Origin (SGP: C 12.2)

Voluntary return (SGP: C 12.2.1)

**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 principle?

§ 14, section 2, of the Refugee Law applies. The provision has been amended so that it contains a cooperation with the International Organization for Migration. The Ministry of Interior has entered into a bilateral contract with the organization. The contract deals with the help regarding voluntary returns of illegal migrants and rejected applicants for asylum. The Border and Immigration Police Office of the Slovak Republic Police is in charge of the agreement.

The provision includes moments when the refugee status expires:

- a) if the refugee voluntarily used protection given by the country of which he is a citizen,
- b) if the refugee re-gained his original citizenship after he lost it,
- c) if the refugee gained new citizenship and accepted protection of the country of which he is a citizen,
- d) if the refugee rejects without any reason protection given by the country of which he is a citizen despite the fact that there are no circumstances due to which he was granted refugee status,
- e) if the refugee is able to return to the country in which he had the last permanent residency because there are no circumstances due to which he was granted refugee status,
- f) if the refugee voluntarily returned to the country which he had left because of the concern of being persecuted,
- g) if the refugee gives up his refugee status in writing.

These provisions deal with the status of the refugee as such. They do not specially deal with

the status of "separated children". However, the provisions adequately apply to the children.

Legislation partially corresponds with the proposal.

Conditions that must be fulfilled prior to return (SGP: C 12.2.2)

**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 principle?

The Slovak Republic legislation does not stipulate such conditions. Therefore, it has to be said that the current legislation and practice do not correspond with the proposal. They have to be adjusted to the proposal.

Programmes and Aid to Facilitate Reintegration (SGP: C 12.2.2)

**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 principle?

The issue is partially governed by the Refugee Law and the Foreigners' Stay Law.

The current legislation, as in the above issue, does not specially deal with the issue. Therefore, it does not correspond with the proposal and it should be adjusted to it.

Settlement in a Third Country (SGP: C 12.3)

**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 principle?

There is no appropriate law. International agreements apply.

The current legislation does not deal with the issue. Therefore, it does not correspond with the proposal.

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.

The government bodies, especially the Ministry of Interior, the Ministry of Work, Social Affairs, and Family, Red Cross, the UNHCR, or other governmental or non-governmental

organizations should be in charge for data collection (especially from the precise registration of official data point of view).

b. What sort of data is required? From government? From NGOs?

Within the framework of this complex issue it is necessary to have data from both governmental and non-governmental organizations.

c. Please provide any current data (1997 - 1999) 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 application by separated children.

In 1997 - 1999 the Migration Office registered less than 10 "separated children" - applicants for asylum. However, these had left the territory of the Slovak Republic before the asylum procedure was concluded, i.e. before the decision on granting or not granting refugee status was issued. Therefore, it is impossible to provide relevant data on the children.

14. POLITICAL LEVEL - SUPPORT FOR CHANGE

Please where possible provide the following information :

*** describe the level of contact NGOs working with separated children have with: central government departments, local and regional governments**

This information can be supplied by competent non-governmental organizations.

- **describe any contacts with European institutions e.g.: members of European Parliament, European Commission, or European Council. (give names if possible)**
- **can you identify at the different political levels, any sources of support for improving the situation of separated children?**
- **can you identify, at the different political levels, the main obstacles to change?**

Unfortunately, we are not able to evaluate the above relations and contacts at this stage.

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