

SEPARATED CHILDREN IN EUROPE PROGRAMME
QUESTIONNAIRE FOR COUNTRY ASSESSMENT

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COUNTRY:

Austria

EVALUATION PERIOD:

1999-2003

RESPONDENT:

Heinz Fronck

AGENCIES/ INDIVIDUALS CONSULTED:

UNHCR, Birgit Einzenberger – written notice, 28 May 2003
UNHCR, Sabine Racketseder – conversation, 11 June 2003
Office for Youth and Family Vienna (MA 11), Katharina Memoli – conversation, 13 June 2003
Federal Asylum Office, Wolfgang Taucher (Director) – conversation, 20 June 2003
Care Centre Traiskirchen/Association Human Rights Austria, Klaus Neumann – conversation, 10 June 2003
Youth Welfare Agency Tyrol, Christoph Gstrein – conversation, 22 May 2003
Asylum Coordination Austria, Anny Knapp – conversation, 17 June 2003
Asylum seeker from Nigeria, Martin Ode – conversation, 23 May 2003
Several asylum seekers from Afghanistan – discussion, 10 June 2003
Office of the Provincial Government of Lower Austria, Head of the Youth Welfare Department, Wolfgang Kienecker – reply to e-mail, 17 June 2003
People’s Help Upper Austria, Herbert Eckhart – interview by phone, 11 June 2003

DOCUMENTS USED OR REFERRED TO:

Federal Law Gazette (FLG) I, 34/2000 Revision of the Aliens Act 1997 and of the Penal Code (30 June 2000)

FLG I, 126/2002. Revision of Aliens Act 1997 (13 August 2002)

FLG I, 76/1997 Asylum Act 1997 (14 July 1997)

FLG I, 146/2002 Radiation Protection EU Adaptation Act 2002 (20 August 2002)

FLG I, 75/1997 Aliens Act (14 July 1997)

FLG I, 76/1985 Re-announcement of the Compulsory Education Act 1985

Guideline on Federal Care for asylum seekers in need including admission to the emergency quarter (as of October 1, 2002), Federal Ministry of Interior

Report of the Human Rights Advisory Board on the issue “Minors in pre-deportation detention”
http://www.menschenrechtsbeirat.at/index_berichte.html

Answer by Federal Minister of Interior Ernst Strasser to the written question (4234/J XXI.GP) by MPs Terezija Stoisits and colleagues to the Federal Minister of Interior regarding unaccompanied minor refugees (4199/AB XXI.GP 11 September 2002).

Answer to the question by MP’s Schwaighofer and Reiter to Deputy Governor Mr. Buchleitner regarding separated children – Answer by Provincial Councillor Blachfellner – (No. 730 of the Annexes to the Stenographic Records) (25 May 2001).

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Official Journal L 050, 25 February 2003)

Council Regulation (EC) No 407/2002 of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of "Eurodac" for the comparison of fingerprints for the effective application of the Dublin Convention (Official Journal L 62, 5 March 2002).

Foundations of responsibility for the accommodation of separated children in material law; Beatrix Ferenci, Ludwig Boltzmann Institute for Human Rights, Vienna 2001
http://www.asyl.at/umf/unterbringung/gutachten_bmi.doc

Manual Separated children, edited by Heinz Fronck and Irene Messinger, Vienna, Mandelbaumverlag 2002

Preliminary remark:

At the time of preparing the SCE Report a comprehensive amendment of the Asylum Act was underway. On June 12, 2003, the respective draft has been approved by the Council of Ministers. If the amendment finds a majority in the parliament as well, the protection of refugees would be weakened to a considerable extent. Separated children (SCs) are massively affected by many of the planned revisions. These revisions are not included in the present report. The Working Group Human Rights for Refugee Children has published a statement containing a list of central points of criticism. The statement (in German) is available for download at www.asyl.at.

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.

„Separated children“ are all children and adolescents that are under 18 years old, are situated out of their country of origin, are separated from both their parents and not cared for by an adult who by law or custom is obligated to care for them.

- in procedures pursuant to the Aliens Act minors have legal capacity starting at the age of 16
- under the asylum law aliens of the age of 18 have legal capacity to act regardless of their being considered major or minor according to the laws of their country of origin.

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.

No change compared to country assessment 1999

c) To what extent does this conform to the Statement?

No change compared to country assessment 1999

d) Are any changes needed? In relation to any first principle?

The lowering of the majority age from 19 to 18 years already mentioned in country assessment 1999 has meanwhile taken effect (Children's Law Modification Act, FLG I 135/2000). Accordingly, the age of legal

capacity in procedures pursuant to the Asylum Act is now 18 years. In contrast, in procedures pursuant to the Aliens Act any adolescent of or over the age of 16 is still assumed to have full legal capacity.

As a matter of urgency, the age of legal capacity in procedures pursuant to the Aliens Act should be raised to 18 years.

1. ACCESS TO THE TERRITORY (SGP: C1)

1.a) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

Asylum applications at frontier crossing points

There are no statistics on the number of asylum applications filed at frontier crossing points. According to the Federal Asylum Office the number of such asylum applications is very small (information by Director Wolfgang Taucher, June 20, 2003).

Entry under evasion of border control points

There are no statistics on the number of asylum applications filed by SCs after having been picked up by border patrol officers. Asylum applications filed after being picked up have to be forwarded to the Federal Asylum Office. There are indications that at least in individual cases asylum applications have not been forwarded and applicants have been returned to the third country instead. This suspicion was substantiated by several media reports in May 2003. The charge was raised by several so-called assistant soldiers on border patrol duty in the area of Kittsee (Province of Burgenland, at the Hungarian border). In contrast, military commander Johann Luif assured that refugees are only rejected if they are discovered before crossing the border.

Entry at an airport:

Art. 39 (3) Asylum Act stipulates that asylum applications from asylum seekers arriving via an airport may not be dismissed as being manifestly unfounded or rejected by reason of existing protection in a safe third country except with the consent of UNHCR.

According to information from UNHCR, SCs arriving via an airport are not denied entry into the territory. The Austrian authorities are respecting the principle of access to the territory insofar as an "airport procedure" is not initiated when SCs apply for asylum at the time of the border control at the Vienna International Airport (Schwechat). Instead, the Federal Asylum Office permits their entry into the federal territory. An exception to this proceeding is made only if the Federal Asylum Office is of the view that the age stated does not correspond to the facts. In this regard it is often tried to infer the actual age of the person concerned from answers to questions on topics such as school education, professional life or family situation.

A subsequent notification of a case to UNHCR according to Art. 39 (3) Asylum Act takes place only if the Federal Asylum Office is of the view that the asylum seeker is, contrary to his/her allegations, major and that the asylum application has to be rejected or dismissed according to Art. 4 or Art. 6 Asylum Act after conducting a hearing. Consent of UNHCR to a dismissal or rejection of an asylum application pursuant to the "airport procedure", required under the Asylum Act, is given only when two conditions are met: first, UNHCR concludes that the criteria for manifest unfoundedness or safe third country are fulfilled; second, the transcript of the interview conducted by the Federal Asylum Office and, as the case may be, a complementary hearing conducted by UNHCR itself leaves no doubt that the person concerned is not a minor. According to the assessment by UNHCR access to the Austrian territory to SCs applying for asylum at Vienna International Airport is ensured.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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 responsibilities of transport companies are established in Art. 103 (3) Aliens Act. The act contains no special rules on the transport of separated children.

Art. 103 (3) If the border control authority cannot readily establish an alien's identity or if the alien is not in possession of the documents required for entry purposes and the carrier which conveyed the alien to Austria fails to comply promptly with its obligation to communicate particulars in accordance with Art. 53 and 54, the authority shall in such cases order the carrier to effect a reimbursement of expenses at a flat rate of Euro 3,000. There shall be no reimbursement if the carrier arranges at its own expense for the alien's immediate exit. The amount of an effected reimbursement paid shall be paid back to the carrier should the alien be granted asylum upon lodging an application after his entry.

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.

During the last years, the number of children brought to Austria for the purposes of exploitation by criminal organisations has risen significantly (information by Katharina Memoli, June 13, 2003). Initially this was observed mainly in Vienna; meanwhile similar incidents are reported also from other provinces.

In Vienna it is mainly children from Romania that are trafficked into Austria, mostly for stealing. Accommodation is organised by adults who tell the children where to steal and what kind of goods are needed. The youth welfare agency (YWA) gets contacted by the police 40 times per month on average because Romanian boys were picked up stealing. Some children get picked up by the police several times a week. Some younger boys are also forced into prostitution. The children are then assigned to an accommodation by the YWA, but almost never remain there for more than a few hours. According to the YWA, most of these boys are orphans and street children; but sometimes they still have parents in Romania. Except for very few cases these children cannot be returned to the home country. If the children are ready to return, the repatriation is supported by the Romanian Embassy.

There are now plans in Vienna to establish an accommodation with Romanian-speaking staff especially for these children in order to give them the opportunity to find personal contacts outside of the criminal environment.

Every now and then also Bulgarian girls are brought to Vienna. Aged 7 to 14, these girls are mostly picked up shoplifting by the police and then handed over to the YWA. Up to now the girls were transferred to a home in Sofia with support of IOM. Yet the conditions in this accommodation are so bad that IOM is no longer ready to bear the responsibility for repatriations. In Linz in 2002, there was suspicion that approximately 20 to 30 adolescents from Georgia were brought to Austria in an organised way for stealing. At least in some of these cases indications exist that the adolescents are provided with drugs in order to make them more dependent and compliant.

In some provinces clear indications exist that adolescents have to work as drug dealers or even as prostitutes to pay back debts. These debts result from the high costs of trafficking them to Austria. Often their families need financial support and are also expecting it, an additional pressure on the adolescents.

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

Since 1999 several laws have been amended in order to strengthen the prosecution of the offence of trafficking and exploitation. At the one hand, trafficking – which under the Aliens Act 1997 was under certain conditions classified as an administrative offence – has been generally redefined as a criminal offence by the amendment of the Aliens Act 2000. Likewise, the exploitation of the special dependency of an alien illegally resident in the Federal territory has been made a criminal offence by the Amendment of the Aliens Act 2002 (FLG I, 34/2000, Amendment of the Aliens Act 1997 and of the Penal Code).

In the current version of the Aliens Act [Federal Law No 126: Revision of the Aliens Act 1997 (Amendment of the Aliens Act 2002), the Asylum Act 1997 (Amendment of the Asylum Act 2002) and the Foreigner Employment Act (13 August 2002)] the exploitation of an alien is subject to the following punishments:

Art. 105 (1) Whoever, with the intention to earn an ongoing revenue for himself or a third person by taking advantage of the special dependency of an alien illegally present in the federal territory, not in possession of an employment permit or otherwise in a special relation of dependency, exploits this alien, shall be punished by the court with imprisonment of up to two years.

(2) Whoever in so doing subjects an alien to hardship or exploits a larger number of aliens shall be punished with imprisonment of up to five years.

(3) If the act causes the death of an alien the perpetrator shall be punished with imprisonment of between one year and ten years.

The Intervention Centre for Persons Concerned by the Trafficking of Women (“Interventionsstelle für Betroffene von Frauenhandel”) is a recognised institution for victim protection caring for female migrants, which by violence, dangerous threat, abuse of their strong dependency or by deceit are forced to work as prostitutes in Austria. The organisation is also assisting female migrants which have been brought here by trafficking in marriage partners or housemaids and are forced to live under conditions of extreme exploitation.

Time and again, also separated children are supported within the scope of this project.

2. IDENTIFICATION (SGP: C2)

2.a) Please describe:

- **relevant law and policy in your country**

The amendment 2002 of the Asylum Act established that photographs and fingerprints have to be taken from so-called “major minors”, meaning persons already 14 years old but not yet major.

Article 35. (1) The asylum authorities shall arrange for the photographing and fingerprinting of aliens who are at least 14 years old and who submit an asylum application or an asylum extension application and of aliens who are to be granted asylum pursuant to article 9 of the Asylum Act (article 64, paragraph (3), of the Security Police Act (SPG), FLG No. 566/1991). The aliens shall cooperate in the measures required for the photographing and fingerprinting procedures. The authorities shall further be empowered to carry out measures for the establishment of personal identity (article 64, paragraph (5), of the Security Policing Act). The photographing and fingerprinting procedures and the establishment of personal identity may also be undertaken by agents of the public security service. In such cases, they shall intervene on behalf of the Federal Asylum Agency.

(2) The authority or agent of the public security service shall issue a notice to the person concerned requiring him to undergo photographing and fingerprinting and shall inform him of the determining reason for such procedures. They shall be empowered, if the person concerned fails to comply with the notice without delay, to carry out the photographing and fingerprinting procedures by the exercise of direct powers of command and constraint insofar as such measure is actually possible and does not entail any violation of physical integrity.

The photographing and fingerprinting serves the purpose of a speedy identification but is not intended to initiate specific measures of protection for separated children. The specific intention is to determine as fast as possible if a person has already filed an asylum application in another EU member state. Under the Dublin Convention the responsibility for examining an asylum application is assigned to the state where a person first entered EU territory, whether legally or illegally, or in which an asylum application has first been filed. Until January 2003 data have been exchanged on a bilateral level. Clarification took several weeks, was complicated and inefficient. EURODAC means that data of all asylum seekers and persons crossing borders illegally are gathered EU-wide in digitalised form in a central database. Thus it is possible to quickly clarify if an asylum seeker has already been registered in another country.

- **relevant practice in your country**

As a consequence of EURODAC separated children (SCs) will depend even more on a trafficker's support than before. For many SCs Austria is not a target country; they just make an interim stop and file an asylum application to achieve a legal residency for the short term. During the following days or weeks, the next part of the journey is organised. From now on any refugee who does not have Austria as his/her target country will have to consider this step very carefully. Thus EURODAC means more forced illegality, more profit for traffickers and additional dangers for refugees, especially for SCs.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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

3.a) Is a guardian or adviser appointed?

In January 2001 the Ludwig Boltzmann Institute for Human Rights issued a legal opinion on the responsibility for the accommodation and care for separated children (Foundations of responsibility for the accommodation of separated children in material law; Beatrix Ferenci, Ludwig Boltzmann Institute for Human Rights, Vienna 2001).

According to the legal opinion, a guardian has to be appointed for a minor if there is not at least one person responsible to act as representative within the scope of curatorship. The legal representation, care and education of a child until the age of majority is the duty of its legal representatives, i.e. its parents in the normal case. Yet, if there is not at least one person responsible for representation of the minor, a guardian has to be appointed by the court as soon as it becomes aware of a separated child. If no suited person can be found among relatives or other eligible persons the court has to appoint the youth welfare agency as guardian.

The responsibility of the youth welfare agency (YWA) is derived from the General Civil Code (Allgemeines Bürgerliches Gesetzbuch, ABGB):

Art. 215 The youth welfare agency shall file for any court orders required to protect the best interests of a minor within the scope of curatorship.

Although under the law a guardian has to be appointed by court for each and every separated child, the prevailing practice is different:

Only in the area of Linz a guardianship procedure is regularly initiated by the competent guardianship judge. In almost all cases guardianship is transferred to the YWA. In all other provinces transfer of guardianship to the YWA is still the exception. In Vienna, as of December 31, 2002, guardianship has been transferred to the

YWA for just 23 separated children (SCs); at this date there were 833 SCs resident in Vienna. As a rule, applications for a transfer of guardianship by the YWA are based on the age of the minor. A guardianship application at the guardianship court is only filed for SCs subject to compulsory education (i.e. up to the age of 15). In Salzburg, during the year 2000, guardianship was transferred to the YWA in five cases, with all transfers originally suggested by the Child and Youth Advocacy Salzburg. (See Provincial Parliament of Salzburg, answer to question No. 730 concerning separated children). There are only individual cases of a transfer of guardianship to the YWA in other provinces.

3.b) If so what is their role?

In addition to education, management of assets and legal representation, guardianship also includes the care for the minor. According to the General Civil Code, this encompasses maintaining its physical well being and health, direct supervision, education, especially the development of its physical, intellectual, mental and moral capabilities, the promotion of the child's dispositions, abilities, affinities and development opportunities, school education and professional training.

The court may transfer guardianship only for partial areas.

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

In Linz, the juvenile court is usually informed about two weeks after the arrival of a separated child. Then investigations are initiated. On average, guardianship is transferred to the youth welfare agency after six months.

Also in other provinces, applications for guardianship are mostly filed a relatively short time after arrival of the adolescent; transfer of guardianship by the court may take from several weeks up to several months.

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

As a rule, the persons appointed as guardians for separated children are specially qualified welfare officers of the youth welfare agency.

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

The situation in Austria does not conform to the Statement, mainly because for many separated children the question of guardianship is not regulated at all. Yet even in those cases where guardianship is transferred to the youth welfare agency (YWA), the duties are not fulfilled as carefully as required. As an example, in Salzburg in 2000 no measures of support or education were taken even after transfer of guardianship to the YWA.

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

No change compared to country assessment 1999

4. REGISTRATION AND DOCUMENTATION (SGP: C4)

4.a) Please describe:

- relevant law and policy in your country

No change compared to country assessment 1999

- relevant practice in your country? Please outline in brief.

With the establishment of clearing facilities and other accommodations specialised on separated children, it is now partly possible to investigate the particular social background. In such cases information is gathered by qualified employees.

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

It should be ensured that a detailed investigation of the social background takes place for each separated child.

5. AGE ASSESSMENT (SGP: C5)

5.a) Please describe:

- **relevant law and policy in your country**

Since its amendment of 2002, Art. 95 (5) Aliens Act stipulates that it is the duty of the authority to consult evidence for the determination of age. The Act refers especially to the consulting of a public health officer. In practice however, especially the age assessments by public health officers have proven to be highly problematic. The age assessment by public health officers takes often just a few minutes: the adolescents are looked at, height, weight, body hair growth and status of teeth are established. Thereafter it is regularly stated that the person looked at is not under age.

The Act refers also to the possibility to perform an x-ray examination of the wrist “by request” of the alien on its own expense. The recommendations of the Human Rights Advisory Board, itself established by the Federal Ministry of Interior, were ignored when the Act was conceived.

Until recently the use of x-ray examinations was restricted by law to medical purposes. With the Radiation Protection EU Adaptation Act 2002, in force since March 1, 2003, the use of this method is for the first time permitted for other purposes as well.

- **relevant practice in your country**

During the last years it has become more frequent that persons being obviously older pretend to be under age. The main reason for this development is the lack of basic care for adult asylum seekers. Adult asylum seekers from certain countries, even if they are completely destitute, do neither receive accommodation, food nor medical treatment during the asylum procedure, whereas for separated children (SCs) at least basic care is ensured.

A further cause for wrong information on age is specific flight stories and age information recommended to the refugees by traffickers.

Time and again, the age information is corrected during the interview at the Federal Asylum Office. The principle of free evaluation of evidence means that the officer is empowered to determine that a person alleging to be under age is already major. In part, this is done in cooperation with the competent youth welfare agency. The Federal Asylum Office does not order x-ray examinations of the wrist. The officers have been instructed by written notice to assume nonage when in doubt. In some cases, persons accommodated in a clearing facility corrected their age information during the interview at the Federal Asylum Office.

There have been isolated cases of adolescents alleging to be older than they actually were. In one case, a minor from India wanted to work as a newspaper seller, which required him to be of full age. A further case was that of a girl who wanted to work as a prostitute without being bothered by the Youth Office.

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

The expert opinions regarding age assessment do in no way conform to quality criteria of an expert opinion. This has already been recognised by the Administrative Court in December 1999:

“(...) to refrain from creating legal preconditions for age assessment by use of medical methods, especially by use of ionising x-ray examinations.”

http://www.menschenrechtsbeirat.at/index_berichte.html

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

First of all and as a matter of urgency basic care for all adult asylum seekers has to be ensured. As long as adult asylum seekers from certain countries are left without support by the Austrian State, the allegation to be under age will be seen by many as the only chance to survive. The lack of a right to basic care leads to a situation which is disadvantageous for all people concerned (adolescents, adults, authorities, NGOs).

Regarding age assessment, efforts would make sense to find a single solution for the whole federal territory. Currently existing methods are not sufficiently exact to allow a meaningful age determination.

6. DETENTION (SGP: C6)

6.a) Please describe:

- **relevant law and policy in your country**

The recommendations of the Human Rights Advisory Board¹ notwithstanding, it is still possible to impose an order for *detention pending deportation* on minors, even after the amendment 2000 of the Aliens Act. The Advisory Board concludes in its report that for the time being, to impose an order for detention pending deportation on minors as done in practice contradicts international minimum standards for the treatment of children and adolescents in prison.

- the advisory board recommends refraining from imposing an order for detention pending deportation on minors as long as there are no facilities established in Austria that would conform to internationally recognised and recommended standards.

With the Aliens Act 1997 a new instrument, the so-called “measures of a more lenient nature” was introduced. The authority may refrain from imposing an order for detention pending deportation if it has reasons to assume that its objective can be achieved by the use of measures of a more lenient nature (Art. 66 Aliens Act). To this Art. 66, the Amendment 2002 of the Aliens Act added the following paragraph 5:

(5) The use of more lenient measures shall not constitute an obstacle to the exercise of powers of command and constraint necessary for the enforcement of a deportation, forcible return or transit order. If required for the implementation of such action, the person concerned may be instructed to remain at specific locations for periods not exceeding 24 hours in all.

In the official comments to the Amendment this is explained as follows:

The addition of paragraph 5 shall ensure that the imposition of measures of a more lenient nature does not lead to the frustration of the enforcement of a residence-terminating measure. Accommodation may be effected expediently also in a detention centre (police arrest facility).

¹ The Human Rights Advisory Board at the Federal Ministry of Interior was established in July 1999 after repeated recommendations by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The Human Rights Advisory Board has eleven members plus an equal number of substitute members whose independence was constitutionally secured by the amendment to the Security Police Act 1999.

The Human Rights Advisory Board monitors the activities of the public security authorities (“Sicherheitsexekutive”) for compliance with human rights, issues reports on its work and derives recommendations therefrom.

With the addition of Art. 66 (5), imprisonment is thus also possible within the scope of a measure of more lenient nature. This amendment contradicts the objective of the measure of a more lenient nature, namely to refrain from imprisonment. This change affects mainly minors for which this measure of a more lenient nature has to be applied, except if the authority has reason to assume that the objective of the detention depending deportation can thereby not be achieved.

The Federal Ministry of Interior has instructed the authorities to never impose an order for detention pending deportation against minors less than 14 years old and to keep the number of minors in detention pending deportation as small as possible.

- **relevant practice in your country**

The number of orders for detention pending deportation imposed on separated children (SCs) is going down since the start of 2002. During the second six months of 2000, 129 SCs were put in detention pending deportation, 217 in the first six months of 2001, 278 in the second six months 2001 and just 47 in the first six months of 2002 [reply by Federal Minister Ernst Strasser to the written question (4236/J) of MPs Terezija Stoisits and colleagues to the Federal Ministry of Interior concerning separated children]. These statistics include all persons less than 19 years old.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

7. RIGHT TO PARTICIPATE (SGP: C7)

7.a) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

In the asylum procedure, the wish of a separated child to lodge an appeal against negative first instance decisions is respected by the legal representatives more often now than some years ago.

However, separated children (SCs) do almost never have a say in questions related to accommodation. Time and again, SCs want to live at a specific place in Austria, either because they want to live in a bigger city or because friends or relatives (other than father and/or mother) live at a certain place in Austria.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

8. FAMILY TRACING & CONTACT (SGP: C8)

8.a) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

In winter of 2002 Austrian NGOs and the International Social Service (ISS) met for the first time to look into a possible cooperation. There are plans to establish a branch office of the ISS in Austria. The worldwide ISS network could be used inter alia to trace relatives of separated children (SCs) and to establish contact.

In some cases the youth welfare agency makes use of the services of the International Red Cross to trace relatives of SCs.

In some of the accommodation facilities, possibilities exist to support SCs in their efforts to contact their families. They can make phone calls to their country of origin or access the Internet. In Vienna, the office for youth and family (MA 11) provides adolescents with the opportunity to make long-distance calls in its premises. However, this opportunity is seldom made use of.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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

9.a) Please describe:

- **relevant law and policy in your country**

The Austrian border constitutes – until implementation of the EU’s Eastern Enlargement – about 1,400 kilometres of the EU’s external border. A consequence is that many refugees on their way to another EU country have to cross Austria. Many of them will be registered in the EURODAC database – be it because they are picked up by the police, the Constabulary, the Federal Army or because they file an asylum application in Austria on their own. If a refugee is registered while crossing the country and then files an asylum application in another EU member state, he/she will be brought back to Austria. There is substantial evidence that the Dublin Convention leads to unreasonable hardships for the persons concerned:

According to Art. 6 of the Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II), the asylum application of a separated child shall be examined by the member state where a relative is legally present. This provision, taking effect in September 2003, is a significant improvement over current EU law which ensures family reunification only for recognised refugees. The same article 6 provides also that separated children shall only be brought to another Member State if family members are present. In other cases, the adolescent’s asylum application has to be examined by the state where it was lodged – meaning that in contrast to practice up to now, a journey through or a previous presence in another EU member state will in future cease to be a ground for rejection of an asylum application or for a return to another EU member state

- **relevant practice in your country**

The Dublin Convention is based on a very narrowly defined concept of “family”, including only the nuclear family. Time and again, this leads to human hardships.

In summer of 2001, the afghan citizen E., aged 15, entered Austria unaccompanied by any relatives. He filed an asylum application and stayed for several weeks in the refugee camp Traiskirchen. Then he left Austria in order to get to his uncle in England. Nine months later the British authorities brought him back to Austria, having established that Austria was responsible to examine his asylum application. After two weeks E. was again on his way to his uncle and cousin, both lawfully resident in England. But a further month later, he

found himself in Austria against his will for a second time, having been picked up again by the British police. His wish is to be able to live in England without being bothered further. But his understandable wish will not be fulfilled because of the Dublin Convention's narrowly defined concept of family.

The measures of the authorities are in accordance with the law, but contradict the central principle of the Convention on the Rights of the Child (CRC) which stipulates that in all actions concerning children the best interests of the child shall be a primary consideration.

The number of requests to other EU member states made by Austria under the Dublin Convention is relatively low. For the whole year of 2002, the youth welfare agency in Vienna registered less than ten such procedures in its area of competence.

A further problem is the length of the Dublin procedures. It differs widely depending on the country concerned and may range from a few weeks up to a year.

In most cases the adolescents do not wait until the Dublin procedure is completed and just proceed on their own on their way to their target country.

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

No change compared to country assessment 1999

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

The concept of family should be more generously defined. Until the reunification is possible, accommodation suitable to age and care for the separated child has to be ensured.

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

10.a) Please describe:

- **relevant law and policy in your country**

Guideline on Federal Care (October 1, 2002)

This Guideline lists absolute and relative grounds for the exclusion from Federal Care. Separated children (SCs) are affected by this guideline if they are from countries whose citizens are absolutely excluded from Federal Care. These are: countries of the EEA, Switzerland, U.S.A., Canada, Japan, New Zealand, and all EU accession candidates. Citizens of Russia, Armenia, Turkey, Georgia, Azerbaijan, Macedonia, Yugoslavia and Nigeria are excluded as soon as their asylum application is dismissed or rejected by the first instance (there are exceptions for some minorities). A further absolute ground for exclusion is a prison sentence in Austria. At first, this guideline was implemented by the Federation as intended, with SCs being released on the streets and suddenly transformed into a potential financial burden for the provinces. After vigorous protests of provinces (mainly Lower Austria) this provision was later no longer applied to SCs.

For more than two years now, the allocation of costs for the care for refugees has been the subject of negotiations between Federation and Provinces. Up to now these talks were not successfully concluded. On October 16, 2002, the Provincial Governors Conference signalled a readiness to accept, in principle, the cost allocation proposal tabled by the Federation (40% Provinces, 60% Federation). At the same time however, the provinces asked for an absolute upper limit for the provinces' costs.

This model provides for three forms of accommodation of SCs with varying intensity of care.

The provinces' readiness to bear 40% of the costs declined after a judgement by the Supreme Court in spring 2003 which unequivocally confirmed the Federation's responsibility for the accommodation of asylum seekers. It is not clear when, if at all, an agreement between Federation and Provinces will be concluded.

- **relevant practice in your country**

Accommodation under Federal Care

As a rule, separated children (SCs) are still accommodated under Federal Care. At the cut-off dates indicated below, the number of SCs accommodated in the Federation's care facilities of Traiskirchen, Vorderbrühl, Bad Kreuzen and Thalham Reichenau was as follows:

31.01.2002	376
28.02.2002	376
31.03.2002	406
30.04.2002	370
31.5.2002	398

Specific care for separated children is only provided by the care centre Traiskirchen.

Under Federal Care, SCs are also accommodated in private facilities and guesthouses. SCs are frequently sent away from Vienna to care facilities in the provinces. In the first three months of 2003 more than 100 SCs were affected by such measures. Frequently the adolescents refuse to leave or come back to Vienna a few days after. Since the Youth Welfare Agency Vienna does not provide accommodation for these SCs, the relocation often means that they end up on the streets.

Other forms of accommodation

Only a small percentage of separated children (SCs) in Austria are accommodated in youth welfare facilities. In Vienna, only SCs subject to compulsory education are still admitted to special facilities. More often services are outsourced to private institutions providing SCs with accommodation and care. Such facilities, each specialised on the accommodation of SCs, have been established during the last years in Vienna, Hirtenberg, Traiskirchen, Mödling, Salzburg, Graz and Linz.

Clearing facilities represent a special form of accommodation of SCs. Clearing facilities are facilities of first accommodation where the adolescents should stay for a maximum of three months. During 2002, clearing facilities provided temporary accommodation for a total of 489 SCs (Mödling 78, Salzburg 57, Graz 128, Linz 99 and Vienna 127). Finding suitable accommodation for the time after is still a problem, as is the fact that not all SCs arriving in Austria can be referred to such facilities. While sufficient capacities do exist for most of the time in Salzburg, Vorarlberg, Tyrol and Styria, many more places would be needed in Vienna, Lower Austria and Burgenland.

Reaching majority during a pending asylum procedure can lead to precarious situations for adolescents regarding their accommodation. For instance, an asylum seeker from Moldavia had to leave the accommodation facility for SCs after becoming 18 years old; then, he slept in a Caritas emergency accommodation on a mattress in front of the toilet.

In the majority of cases at least sleeping places can be found. In the medium term however, the accommodation in emergency quarters or under Federal Care leads time and again to homelessness.

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

The quality of accommodation of and care for separated children does only partially correspond to their needs. The accommodation of SCs under Federal Care is especially problematic; time and again relocations lead to homelessness. After reaching majority basic accommodation is completely unsecured.

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

The establishment of clearing facilities represents an important step in implementing the objectives envisaged in the Statement. Yet insufficient capacities mean that only a part of the SCs can actually be admitted to clearing facilities. Additional and sufficient resources have to be provided so that all SCs can be

accommodated in clearing facilities promptly after their arrival. There is also a need to provide for sufficient follow-up accommodation facilities suitable for adolescents.

Health (SGP: C 10.2)

10.d) Please describe:

- **relevant law and policy in your country**

In principle, separated children (SCs) are covered by health insurance. However, asylum seekers which are neither supported under Federal Care nor by the Youth Welfare Agency have no health insurance.

- **relevant practice in your country**

In rural areas, transportation costs for medical visits are a recurring, massive problem. SCs are essentially left on their own when they need medical help. Emergency care is possible, but preventive health checks are not provided for. Treating doctors are not adequately prepared or supported.

A problem exists with adequate care for SCs with physical and/or mental impairments. Currently there is a young boy in Traiskirchen who is paralysed from the navel down. Yet because of its constructional conditions and a lack of personnel, the refugee camp Traiskirchen is not suited for his long-term accommodation. Up to now all efforts to find a suitable accommodation have failed.

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

In the majority of cases access to medical care is ensured. However, shortcomings exist regarding early diagnosis and preventive examinations. Thus infectious diseases may be detected very late or not at all, endangering the people concerned and others.

Adolescents who for whatever reason are left without official support have no access to medical care at all.

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

No change compared to country assessment 1999

Education, Language and Training (SGP: C 10.3)

10.g) Please describe:

- **relevant law and policy in your country**

Adolescents not having completed the nine years of compulsory education required in Austria have to attend a compulsory general education school; this applies to separated children as well. Since in most cases it is impossible to prove that those nine years have been completed, this rule is dealt with by admitting all adolescents under 15 years to a compulsory school. The competent local school has to admit all children subject to compulsory education and therefore also children of asylum seekers or children with unsettled residence status; in case of "permanent residence" in accordance with Art. 1 Compulsory Education Act (CEA), in case of "temporary residence" in accordance with Art. 17 CEA.

Separated children (SCs) are mostly older than 15 years and therefore not subject to compulsory education. They can be admitted to secondary schools as irregular pupils, but only after all applicants qualifying for admission as regular pupils have been admitted. Because irregular pupils are not counted for the purpose of establishing the number of pupils for splitting classes or opening new classes, schools are often overstrained by their admission. Classification problems mean that an admission as regular pupil is difficult. In most cases certificates do not exist, and to successfully pass an admission exam in German would require previous intensive language training.

While access to school education for SCs is in principle possible, serious problems do exist with access to vocational training and legal employment. The provisions of the Foreigner Employment Act make it very difficult for asylum seekers to find legal employment. The first requirement for access to the labour market is an application for an employment permit by the potential employer. Then the Labour Market Service (the

Austrian employment office) examines if there is a place available in the quota allocated each year to foreign workers (Federal Maximum Figure, Provincial Maximum Figure). With the Provincial Maximum Figures permanently exceeded for years already, a permit can only be obtained by a more burdensome procedure. This starts with a special procedure to ascertain if a national worker or better integrated foreign worker is available for the job in question ("Ersatzkraftverfahren"). If no such person is found, the application is transferred to the Regional Advisory Board. If all groups represented in the Regional Advisory Board (Chamber of Labour, Federation of Trade Unions, Economic Chamber, Federation of Industry) agree unanimously to the employment (discretionary decision) the employment permit is granted. The same restrictions exist in regard to access to apprenticeship. In practice, applications for employment permits are often rejected by the Labour Market Service, though big regional differences do exist. While in Vienna and Lower Austria there is almost no chance to receive an employment permit for SCs, the odds in Upper Austria are reasonable.

- **relevant practice in your country**

Because of the age structure of SCs and their lack of German language skills, only a few of them are attending public schools. Funding for transportation costs, instruction materials and excursions are a recurrent difficulty. Some SCs no longer subject to compulsory education are attending external courses to acquire a leaving certificate of the „Hauptschule“ (a compulsory lower secondary school), others are attending German language courses facilitated by private persons or associations. These courses differ greatly in duration and quality.

As of January 2003, a total of 65 asylum seekers aged 15-18 years were working with an employment permit in Austria. In autumn 2002, within the scope of EQUAL², the development partnership EPIMA was established to fight against the discrimination of separated children and young asylum seekers on the labour market.

EPIMA wants to help young asylum seekers with language problems, disorientation and lack of information with a variety of courses. Asylum seekers are often seen as a "problem" on the training and job market. Precise information and the opportunity to gain first-hand experience with regard to initial training phases and practical work are meant to minimise prejudices and misjudgment - even on the part of employers. Altogether 165 young asylum seekers are supposed to take part in the EPIMA-programme, which runs until the early summer of 2005. Due to the current legal situation an immediate integration into the job market won't be the primary aim of the work done within the modules. Whenever it is not possible to start a job immediately, focus is placed upon gaining skills and information about jobs as well as offering asylum seekers various work experience placements in different fields of work. All these methods are supposed to guarantee a quick start after obtaining permanent residency. The skills and experiences gained should also help with taking up a job in the case of return to one's native country or in the case of migrating to another country.

The modules are offered in 5 regions of Austria. The differences one might experience from region to region have been taken into account. Currently, all modules start with practical work.

Lobbying, publicity and the press are important to ensure that there will be a permanent educational opportunities for the target group - even after EU subsidies have run out. Exchange of knowledge and experiences with other EU countries will be an important issue in linking the work so far. The collected experiences from this practical work will be exchanged on a permanent basis. The members of the module-teams will have the opportunity within the network to join in with other EU projects for a few days. The teaching modules used there will be collected, compared and then used to develop the modules further.

² The European Union has realised that it is important to fight existing discrimination on the job market, on the one hand to help the people involved, and on the other hand to avoid social unrest. For this reason the programme called EQUAL was established in the year 2000. EQUAL is trying to establish cooperation amongst those in charge of making decisions. Altogether 58 development partnerships have been admitted in Austria, three were from the field of asylum seekers. The development partnership EPIMA is concerned with young asylum seekers.

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

As far as children subject to compulsory education are concerned, the situation conforms more or less to the objectives of the Statement. Recurrent problems exist with funding of instruction materials, transportation costs and excursions.

There is a lack of inclusive classrooms with special education teachers for pupils with non-german native languages. Insufficient language skills mean that in the short time available, adolescents are often not able to acquire a leaving certificate, thus at the end instead of a certificate they just receive a confirmation of school attendance.

In regard of SCs not subject to compulsory education the objectives envisaged in the Statement are not implemented. Projects like EPIMA clearly represent an opportunity for some SCs, since they offer the possibility to develop individual capabilities and skills, but for the time being they cannot offset or eliminate the structural disadvantages.

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

No change compared to country assessment 1999

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**

As mentioned already in the country assessment 1999, asylum applications of separated children (SCs) can be rejected by reason of “safety in a third country” or “absence of responsibility under treaty provisions” or be dismissed as being “manifestly unfounded”. There are no rules providing exceptions for SCs.

- **relevant practice in your country**

During the last years the number of so-called “accelerated” procedures has been relatively small.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

Legal Representation (SGP: C 11.2)

11.d) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

During the last years the youth welfare agencies, several NGOs, child and youth advocacies and UNHCR initiated a number of vocational training seminars to increase the quality of legal representation.

With these trainings it was possible to, on average, improve the quality of legal representation.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

Minimal Procedural Guarantees (SGP: C 11.3)

11.g) Please describe:

- **relevant law and policy in your country**

Minors 14 years old or older are entitled to file an asylum application on their own. With separated children (SCs), at this point the locally competent youth welfare agency becomes the legal representative in the procedure. Appeals against negative decisions can only be lodged by the legal representative; time limits for appeals are the same as for adult asylum seekers.

The law does not provide for a preferential handling of asylum applications from SCs. In principle the authority has to decide on the application within reasonable time, but not later than within six months. If the authority fails to comply with this time limit it can be deprived of jurisdiction in the case; then the superior authority is entrusted with the decision.

- **relevant practice in your country**

During the last years the number of appeals lodged by youth welfare agencies against negative asylum decisions by the Federal Asylum Office has increased significantly. In Linz, an appeal is lodged whenever the adolescent wishes so. In Lower Austria, the youth welfare agency lodges appeals against negative first instance decisions as a matter of principle. The number of complaints filed with the Administrative Court has increased markedly. During the year of 2002, 67 complaints with the Administrative Court have been filed in Vienna alone. This increase in the use of legal remedies has led to a significant improvement in the legal certainty of separated children (SCs).

At the other hand, it is often not possible to prepare SCs for the procedure. Significant regional differences exist in this regard. In Vienna and Linz as a rule, preparatory conversations with the youth welfare agency take place before the interview at the Federal Asylum Office; in Traiskirchen such conversations are held in about 30% of the cases. In other provinces however – as for example in Burgenland – the youth welfare agencies do not prepare the adolescent for the interview at the Federal Asylum Office.

In Salzburg and Styria, the representation duties are at least partly fulfilled by NGOs on behalf of the youth welfare agency.

Still less frequent are conversations between the youth welfare agencies and the SCs after the interview. Sometimes the adolescent has the opportunity to discuss his/her impressions and experience during the interview with care staff in the accommodation.

Often it can take several years until an asylum procedure ends with a final, legally binding decision. Especially second instance procedures usually take several years. In well-founded cases, it is possible to influence the time of the interview at the Federal Asylum Office by way of intervention and thus the time of issue of the first instance decision as well. Yet in practice this possibility is seldom made use of.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

Independent Assessment (SGP: C 11.4)

11.j) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

Interviews (SGP: C 11.5)

11.m) Please describe:

- **relevant law and policy in your country**

Pursuant to Art. 27 (3) Asylum Act 1997 a representative of the locally competent youth welfare agency has to attend the interview in the asylum procedure. However, there are no special rules on the conduct of the interview. Decisions on breaks or interruptions are within the discretion of the officer of the Federal Asylum Office or, at the second instance, of the member of the Independent Federal Asylum Review Board (UBAS). The legal representative may indicate that breaks or interruptions are necessary.

- **relevant practice in your country**

In each branch office of the Federal Asylum Office one officer is responsible especially for issues concerning asylum seekers in need of special protection. In cooperation with UNHCR, two training blocks with lectures by recognised experts have been organised. However, asylum procedures of separated children (SCs) are still handled by all officers. The qualified officers are available for questions of the other officers. The Federal Asylum Office has started to work on guidelines for dealing with SCs and hopes to finish them during 2003 (Director Wolfgang Taucher, June 20, 2003).

Since the authorities are understaffed to handle the great number of asylum procedures, the interviews take place under great time pressure. Breaks and interruptions run contrary to the aim of speeding up the procedures. In some provinces several asylum procedures of SCs are lumped together on one day, the purpose of which is to spare the representative of the youth welfare agency the need to travel several times to the Federal Asylum Office. Actually this translates into even more time pressure, providing further incentives to dispense with necessary breaks. Frequently interviews are conducted in the minor's second language, leading to misunderstandings and difficulties to credibly relate the reasons for her/his escape.

The atmosphere during the interview is strongly influenced by the particular officer on duty. Many adolescents describe the atmosphere during the interviews as encumbering. The situation at the Federal Asylum Office can make them recall interrogations or intimidations suffered in their home country. In the course of the interview, the respondents have to relate credibly the persecution suffered by them and how they fled, making them relive feelings of desperation, stress and fear.

Non-verbal expressions – dismissive gestures, shaking of the head etc. – intermediate conversations and comments by the officer which are not translated, for example relating to the indicated age, add to the uneasiness felt by the applicants.

One problem is that frequently, the stories of escape related during the interviews are actually devised by the trafficker. The same stories are told again and again, and in most cases it is impossible to identify the actual reasons for the escape which could be relevant for asylum decisions.

The officers of the Independent Federal Asylum Review Board are not specifically prepared for dealing with SCs and interviewing them. Another problem is that the interviews partly take very much time, which is encumbering both for the minors and their legal representatives.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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**

There are no specific legal provisions relating to the treatment of separated children (SCs) in the asylum procedure. The applicable procedural principles are those of the General Administrative Procedures Act (AVG), relating to the evaluation of evidence especially the principle of the „*Offizialmaxime*“ (general duty to act *ex officio*), of material truth, of free weighing of evidence and unrestrictedness of means of evidence.

- **relevant practice in your country**

In principle the authorities' sensibility for the need of SCs for special protection has increased during the last years. In some of its opinions, the Independent Federal Asylum Review Board has made an explicit link between the granting of asylum and the nonage of the applicant. In the case of a young girl from Iran who was granted asylum (UBAS decision 203.332/0-VIII/22/98) the opinion refers especially to the uncontradictory plea despite the low age of the applicant.

“The Independent Federal Asylum Review Board follows the extraordinarily dense, convincing and apparently conclusive plea of the asylum seeker during her first interview which coalesces into a homogenous whole. The conclusive, uncontradictory account of the young girl, confined to the essential, is all the more impressive when considering that at the time of her first interview the asylum seeker was just 15 years old.”

Another decision of the Independent Federal Asylum Review Board refers to the need of considering the age when assessing the intensity of persecution (UBAS decision 204.738/0-VIII/23/98).

“Against the background that in Iran the status of an under age woman is worse than that of a man another yardstick has to be applied in respect of intensity of persecution. In doing so it has to be considered that the appealant was unmarried, under age and uncared for. Since the persecution has been initiated by the state itself it would have been unreasonable for the appealant to approach the state for protection.”

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

The current legislation and practice, despite the increased sensibility regarding the consideration of child-specific reasons for escape, does not conform to the Statement. One particular reason is the lack of binding guidelines requiring decision makers to specifically assess and evaluate child-specific reasons for escape.

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

The principles regarding child-specific forms of persecution, lesser knowledge of the situation in the country of origin, dealing with fears and the stage of maturity of the child as established by UNHCR in its respective Manual (1994) and Guidelines (1997) should be included in the wording of the law.

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

11.s) Please describe:

- **relevant law and policy in your country**

Since the Children's Law Modification Act took effect in 2001, the representation of minors by the youth welfare agency in the asylum procedure terminates at the age of 18. Thereafter the responsibility for the asylum procedure is borne by the asylum seeker alone. There are no transitional periods for a continued representation by the youth welfare agencies.

- **relevant practice in your country**

The fact that an application has been filed by a minor close to the age of 18 does not lead to its' speedier processing, neither at the first nor at the second instance. However, it is partly possible to accelerate the course of the procedure through targeted interventions based on arrangements or complaints of delay.

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

Specific measures regarding the problems of aged-out persons are neither provided for in Austrian law nor are they taken in practice. Often the youth welfare agency tries to refer the minor to a NGO that subsequently would assume the further legal representation.

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

It would make sense to ensure an appropriate representation of adolescents in the asylum procedure after they become 18 years old. This could be accomplished in two ways: or the youth welfare agency continues to handle the procedure after the adolescent reaches majority until a final decision is made or the representation duties are transferred to a NGO based on an orderly procedure and with the consent of the adolescent.

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**

No change compared to country assessment 1999

- **relevant practice in your country**

Pursuant to Art. 8 Asylum Act the authority shall examine if in the case of the asylum seekers' deportation, rejection at the border or forcible return to his/her country of origin he/she would be in danger of being subject to inhuman treatment or punishment or to the death penalty, i.e. an examination of compliance with Art. 3 ECHR. There are some known cases of separated children in which a deportation, rejection at the border or forcible return to the country of origin has been declared inadmissible by the Independent Federal Asylum Review Board.

In one case (220.413/0-IX/27/00) the Independent Federal Asylum Review Board gave the following reasons for the inadmissibility of the forceful return of a separated child (an Ukrainian orphan child): "... [it] cannot be excluded with the probability required in the present context that the appealant would be subject to inhuman treatment upon a return to Ukraine. For based on the established facts it has to be assumed that after a return the appealant would be brought back to the same orphanage in which he used to be beaten regularly in the past, once that badly that he could not get up for eight days. There is no need to point out in further detail that such a treatment, in its intensity, is a danger in the sense of Art. 57 (1) Aliens Act."

Another case was that of an orphan from Moldavia who had to eke out a living on the street. In its decision (216.594/0-VII/22/02) the Independent Federal Asylum Review Board gave the following reasons for the inadmissibility of a forcible return:

“As pointed out above, in his country of origin the minor appealant was homeless, suffered from hunger, could not go to school and did not find work. Contrary to the opinion of the first instance, the appellate instance assumes that in his country of origin the appealant had no opportunity to change this situation on his own.”

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

No change compared to 1999

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

No change compared to 1999

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

12.d) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

The Administrative Court has decided on January 23, 2003 (ZI: 2001/01/0429) that the relevant criterion for an asylum extension is the minority at the time of application and not at the time of decision.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

Integration (SGP: C 12.1.3)

12.g) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

Adoption (SGP: C 12.1.4)

12.j) Please describe:

relevant law and policy in your country

No change compared to country assessment 1999

- **relevant practice in your country**

Individual cases of adoptions of separated children do exist. In Vienna in 2002, there were about 10 such adoptions.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

Identity and Nationality (SGP: C 12.1.)

12.m) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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**

No change compared to country assessment 1999

- **relevant practice in your country**

In some cases the return of separated children to their family in the country of origin has been supported by the Caritas return project. In Vienna, the youth welfare agency is always involved, and several preparatory conversations take place. The local situation is clarified and contact is established with the legal guardian in the home country. The return is affected only if there is assurance that it is actually in the interest of the adolescent.

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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.

When the Caritas return project is involved with the return to the home country, at least some of the criteria mentioned in the Statement are taken into account. However, at the time of final decision on their asylum application separated children are usually already older than 18 years.

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

No change compared to country assessment 1999

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

12.v) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

Settlement in a Third Country (SGP: C 12.3)

12.y) Please describe:

- **relevant law and policy in your country**

No change compared to country assessment 1999

- **relevant practice in your country**

No change compared to country assessment 1999

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

No change compared to country assessment 1999

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

No change compared to country assessment 1999

13. DATA COLLECTION

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

The data on separated children (SCs) have become slightly better during the last years, particularly since the middle of 2001 when the Federal Ministry of Interior started to centrally gather specific data. Unfortunately, systematic and publicly available statistics on SCs are still lacking.

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?

As a central authority, the Federal Ministry of Interior should gather as detailed data as possible on the asylum procedure and the measures taken by the Aliens Police.

Complementary data regarding accommodation, care and employment should be gathered and provided by the youth welfare agency, if possible in a standardised form.

Please provide any current data (2000 -2003) 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.

According to the statistics of the Federal Ministry of Interior, from 1 July 2001 until 31 December 2001 1,741 separated children (SCs) have filed an asylum application. That number has to be taken with caution however, because for many adolescents Austria is just a transit country. For instance, 50% of the SCs accommodated in the refugee camp Traiskirchen leave the camp within the first week. In 2001, approximately 300 SCs arrived in the province of Burgenland, but the average number of SCs resident in Burgenland (per cut-off date) is somewhere between 25 and 35.

According to the Federal Ministry of Interior, in the first six months of 2001 a total of 21 asylum procedures of SCs in Austria ended with a legally binding decision, of which six in the positive and 15 in the negative.

Key data from selected provinces:

Vienna:

In 2002, 877 new arrivals of SCs were registered. In 2001 the number of arrivals was 661. The main countries of origin in 2002 were: Nigeria (273), India (137), Georgia (106) and Afghanistan (51).

Lower Austria:

The total number of arrivals of SCs in Lower Austria in 2002 was approximately 1,500. More detailed figures for 2002 are not available. According to Mr. Kienecker, head of the Youth Welfare Department in the Office of the Provincial Government of Lower Austria, work is underway to build a database.

Tyrol:

There are detailed statistics for the second half of 2002 compiled by the Youth Welfare Agency Tyrol. The total number of registered SCs during this period was 60. Male SCs (58) clearly dominated, with only two female asylum seekers registered. Two male SCs were under 14 years old. During the period mentioned, there were 49 new admissions; care was terminated by the YWA for 38 persons.

Upper Austria:

In 2002, the Office for Youth and Family Linz registered 110 newly arrived SCs originating from 27 different countries. The main countries of origin were: Georgia (31), Afghanistan (19), Nigeria (10) and Iraq (9). These persons have been represented during their asylum procedure. In addition, there were about 60 procedures pursuant to the Aliens Act. As a consequence of the legal framework established by the Aliens Act, the Office for Youth and Family has no responsibility for adolescents of or over the age of 16. If they wish so and upon issuance of power of attorney, adolescents are represented also in these procedures (starting with presence during the interview at the Aliens Police and including an appeal against a negative decision). The predominant majority of adolescents make use of this representation offer.

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**

During the last years, the cooperation between NGOs and the authorities intensified significantly. Especially between NGOs and Youth Welfare Agencies contacts are lively and experiences are exchanged frequently. Since the clearing facilities were established, the NGOs maintain stronger contacts with the Aliens Police, the Federal Asylum Office and the Federal Ministry of Interior.

With the foundation of the EPIMA development partnership within the scope of EQUAL, authorities, experts, social partners and NGOs are for the first time involved in a project on an equal footing.

- describe any contacts with European institutions e.g.: members of European Parliament, European Commission, or European Council. (give names if possible)**

There are no regular contacts to Members of the European Parliament. However, there are event-related, loose contacts to the MEPs Maria Berger (Social Democrats) and Raina Mercedes Echerer (Greens). There are no direct contacts between Austrian NGOs and the European Commission and the European Council.

- can you identify at the different political levels, any sources of support for improving the situation of separated children?**

Networks like the SCE Network and ECRE can help to make the concerns of separated children better heard on a European level.

- can you identify, at the different political levels, the main obstacles to change?**

Both at the European and national levels, more and more restrictions against asylum seekers are introduced. The fight against terrorism and the abuse of asylum procedures are used as arguments to further weaken the legal certainty of asylum seekers.