

SEPARATED CHILDREN IN EUROPE PROGRAMME

COUNTRY: the Republic of Bulgaria

ASSESSMENT PERIOD: until 30th July 2000

RESPONDENT(S): Bulgarian Helsinki Committee, Refugee and Migrants Legislative Protection, Refugee Agency at the Council of Ministers

AGENCIES/INDIVIDUALS CONSULTED: Refugee Agency at the Council of Ministers, Ministry of Foreign Affairs, National Border Police Service, UN High Commissioner for Refugees – Sofia , International Migration Organisation.

DOCUMENTS USED or REFERRED TO:

1. Refugee Act
2. Family Code
3. Persons and Family Act
4. Hague Convention for the Protection of Children from 1996
5. European Resolution for Unaccompanied Minors
6. Children Protection Act
7. Foreigner Citizens in the Republic of Bulgaria Act
8. Regulations of the Application of the Foreigner Citizens in the Republic of Bulgaria Act
9. Penal Code
10. Administrative Procedure Act
11. Administrative Offences and Penalty Act
12. High Administrative Court Act
13. Ministry of Home Affairs Act

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.

There are very few cases of unaccompanied children in Bulgaria /four cases from 1999/, and therefore the assessment will refer to the law and policy.

The Bulgarian legislation does not content the notion of "separated" child. Instead the notion "unaccompanied" minor is used in Bulgarian legislation /Law on Refugees/. There is also a notion "child at risk" in Child Protection Act, which includes a child victim of traffic, or at risk of violations as well as unaccompanied child.

According to the Child Protection Act term "child" means a person under age of 18. There are two categories of children: Children from 0 to 14 and children from 14 to

18.

In the Bulgarian legislation there is no special definition of the term "unaccompanied" child. A definition could be extracted from the Law on Refugees, the Aliens Act and the Child Protection Act.

According to Art. 22.1., Law on Refugees "Minor refugee who is within the territory of Bulgaria without his parents.... Shall be represented by Trustee or Guardian, appointed by the Court."

Art. 49.6, of the Law on Refugees says "The accelerated procedure shall not be apply in respect of minors unaccompanied by their parents."

Art.28/a/ of the Aliens Act says that "Residence in Bulgaria may be permitted to a foreigner who is under the age of 18 and entered legally into Bulgarian territory without being accompanied by one of his parents or other adult person who is responsible for him by law or by custom..."

According to the above mentioned legal provisions and to the practice, the definition for unaccompanied minors would be: **A person under the age of 18, who is outside of the territory of the state which citizen is or outside of the state when he has a permanent residence and isn't accompanied by one of his parents or by an adult person who is responsible for him by law or by custom.**

The Bulgarian Law on Refugees from 1999 is on the process of amendments. We expect the new Law on Refugees will enter into force in spring 2002. It will not include a special definition for "unaccompanied" child.

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.

According to the Refugee Agency and the Bulgarian legislation, persons over 18 years of age are not considered belonging to the group of separated children.

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

According to the Refugee Agency, the principles stated in the Statement of Good Practice are observed with regard to the definition. According to the Border Police, the definition used completely corresponds to the adopted European standards (that is, the good European practice).

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

We think that as far as the adopted definition of separated/unaccompanied child is concerned, there is no need of changes in legislation in relation to the first principles. Nevertheless, it is advisable that legislation should pay a more special attention to those, completing their 18th year at the time of the procedure. The regulations being formulated, as they are now, these persons will be treated as every other refugee, not taking into consideration their being minors when leaving the country of birth and during the travel.

1. ACCESS TO THE TERRITORY (SGP:C1)

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

Access to the territory is regulated in the Foreign Citizens in the Republic of Bulgaria Act and the Regulations for its application, as well as in the Refugee Act. All foreign citizens, having entered the country in compliance with the established by the Foreign citizens in Bulgaria Act rules, that is with a visa **in order**, can apply for asylum in the country. They, however, have to do this within 72 hours. The Bulgarian Helsinki Committee considers this counter to the spirit and meaning of the Convention Relating to the Status of Refugees from 1951, because such a term is an additional excluding clause, which does not exist in the Convention and narrows the limits of the refugee definition.

According to the Penal Code, a person is not punished if s/he enters not in compliance with the established rules in order to use the right of asylum according to the constitution. There is a similar provision in the Refugee Act, too – Art. 6, para. 4 states that a foreign citizen who has entered the country not in compliance with the established rules in order to ask for a refugee status is not punished, if s/he arrives directly from a country where his/her life and freedom have been endangered in the sense of Art. 1 of the Convention Relating to the Status of Refugees from 1951.

On the other hand, persons who have entered the country illegally have to apply for a refugee status **immediately**. If they do not do it, they can be denied a refugee status. The case is similar to the above mentioned – persons entering Bulgaria are often victims of traffickers, are not acquainted with the laws, do not speak the language, often have no documents or have forged ones and are afraid to appeal to the authority. To expect them to find their bearings at once and to apply for the status is logically unjustified, and contradicts the Convention Relating to the Status of Refugees from 1951, because it is an additional excluding clause.

The access of unaccompanied minors to the territory of Bulgaria is regulated, also, in Art. 49 /6/ of the Refugee Act: “The accelerated procedure under subs 1 shall not apply to minors or persons who have not come of age, who are not accompanied by their parents”. In practice, this should mean that it is compulsory that each unaccompanied child be unconditionally admitted into the territory of the country. /In the accelerated procedure a decision may be taken for no admission in the country until the candidate refugee procedure end/.

Please describe the relevant practice in your country.

Till the month of June there have been no children applying for asylum who have expressed their wish in the border region, the Border Police' information shows. We have no data pointing to a refusal to unaccompanied children to enter the territory of the country. Unaccompanied minors have immediately access to the Bulgarian territory. The National service of Border police takes initial care for them and escorts them to the Agency for Refugee.

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

We think that as far as access is concerned, the legislation generally conforms to the Statement, with the exception of the administrative terms for applying for a refugee status. As far as practice is concerned, there is not enough data for us to form our opinion – the border procedure is still being introduced, and practice is yet to be built.

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

The Refugee Agency declares that it fully adopts “the first principles” regarding the access to procedure, and that it adopts the formulations of the international normative documents.

We think it is necessary that the evil practice of impeding or refusing access to a procedure for granting a refugee status be changed in the future.

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

Art. 51 of the Foreign Citizens in the Republic of Bulgaria Act makes provision for administrative liability of the carrier, whether physical or juridical person:

Art. 51. (1) An official who does not do his/her duty is fined with 500 to 5000 lv., and the juridical person is fined with 10 000 to 20 000 lv.

(2) When the offence is for more than one person, the paragraph 1 fine is from 1000 to 10 000 lv., and the property sanction is from 20 000 to 40 000 lv.

(3) When the offence is repeated, the sanctions are:

1. In cases under para. 1 – a fine of 5000 to 20 000 lv. and a property sanction from 20 000 to 40 000 lv;
2. In the cases under para. 2 – a fine of 10 000 to 30 000 lv. and a property sanction from 30 000 to 60 000 lv.

The sanctions for carriers bringing in undocumented persons shall apply independently on age of these persons.

Art. 26 from the Administrative Offences and Penalty Act defines the circle of penalty liable persons – these are only majors, over the age of 18, who have committed an administrative offence in a state of responsibility.

Trafficking (SGP. C1.2)

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

The Border Police have no statistics about the number of trafficked children. We have no information about separated children, trafficked into the country to apply for asylum. Bulgaria is still a country that the trafficked ones only pass through in their attempt to reach Western Europe.

The amendment of the Penal Code from 1997 criminalises the abduction of a person who is to be sexually exploited out of the country borders /Art. 156, para. 2, section 3 from the PC/. That text is related to the amendments made in Art. 280, para. 2, section 5, which criminalises, as a qualified corpus, the traffic of people across the country border, organised by a group or organisation, or with the assistance of an official who has taken advantage of his/her official status. The traffic of people under 16 years of age, female as well, is also a crime, according to the Bulgarian laws. In Art. 188 the Penal Code makes a provision for a penal liability of everyone who forces a minor to prostitution. Greater penalty is administered to those

persons who have used forged documents for the purpose.

In this way, according to the Border Police, the effectiveness of the penal policy is increased. The penalty for illegal traffic of people was increased in the last year – imprisonment and considerable fines for trafficking across the border without a proper licence. The penalty policy affects also the persons forming or leading a group, whose object of activity is sexual exploitation, as an aspect of organised criminality.

The task of discovering and preventing the traffic of people for sexual exploitation is assigned to the specialised police services in the structure of the Ministry of Home Affairs. These services are:

- National Border Police Service – according Art. 95, para. 1, section 4 of the Ministry of Home Affairs Act, it works individually or in co-operation with other bodies to prevent, discover and take part in the inquest of crimes and other offences, committed in the border regions. The focus is on discovering the persons organising canals for contraband and traffic of people across the country border.
- National Police Service – its task, according to Art. 59 of the Ministry of Foreign Affairs Act, is to prevent and discover crimes, connected to forcing female persons to prostitution, and abduction of persons to be used in acts of debauchery. This service finds and keeps watch on persons involved in procuring in the country's territory, discovers and averts their criminal activity.
- National Service for Struggle with Organised Criminality – as a specialised police service for countering and neutralising the criminal activity of local and international criminal structures, it finds groups and organisations, accumulating illegal profit from the traffic of people in other countries, for the aim of sexual exploitation, as well.

The interaction and co-ordination among the police services are carried on in conformity to their functions, as determined by the law, and are realised though an information exchange, usage of information funds, and conducting co-ordinated action for countering the traffic of people.

The co-ordination of the services' activity is realised by the secretary-general of the Ministry of Home Affairs, who is competent about the relations with international bodies and organisations.

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

In February 1998 the Bulgarian government accepted a Programme for Counteraction against illegal migration and illegal trafficking of foreign citizens, which frames the efforts in this direction. Nine ministries are included in the realisation of this programme. An Interdepartmental Council on the Problems of Border Passages, which is presided by the secretary general of the Ministry of Home Affairs, is created. This body has to control the working out of a Bulgarian Border Control Development Programme, to elaborate a financial planning, to co-ordinate the interaction of the services performing the obligatory border control, on a national level.

It has to be noted in relation to the Statement's principles, that the above listed measures are introduced mainly in the context of an anti-criminal struggle and the prevention of such deeds, rather than as measures for the protection of children.

There are no special texts, providing heavier penalty for traffickers of children, nor there is any data that the lawkeeping structures pay special attention to the trafficking of children and the problem of its victims. Despite of the good organisation, it would be better if in view of the internationally recognised principles for the protection of children's best interest, special measures for the prevention of the trafficking of children and youths are provided and a greater attention to the victims is paid.

2. IDENTIFICATION (SGP: C2)

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

There are no special laws regulating the identification of separated children in Bulgaria.

Please describe the relevant practice in your country.

According to the Refugee Agency data, identification is carried out upon information supplied by the child or the accompanying parents or adults.

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

There is no information pointing that the practice is in contradiction to the principles adopted in the Statement. It would be better, if there were regulations to settle the child's identification and to ascertain the kinship ties of the child with the adults accompanying him/her.

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

We think that it would be better, if there were regulations to regulate the child's identification and ascertain the kinship ties of the child with the adults accompanying him/her.

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

3.a) Is a guardian or adviser appointed?

Art. 22 (1) of the Refugee Act states:

"A minor refugee or a refugee who has not come of age, who is in the territory of the Republic of Bulgaria without his parents, as well as a refugee who, from birth or as a result of an illness, does not understand the character or the implications of his acts shall be represented by a guardian or tutor appointed by the court.

(2) Where a refugee under subs 1 has no guardian or tutor, the Agency for Refugees shall file a proposal with the county court in the area where the refugee concerned stays in order for a guardian or tutor to be appointed."

The Bulgarian legislation distinguishes between two types of legal representation of children. **Guardianship** is established to minors under 14, whose

parents are unknown, departed or deprived of parental rights. **Trusteeship** is established to minors between 14 and 18, whose parents are unknown, departed or deprived of parental rights. There are some differences in the rights and duties of the two types of representatives, related to the differences in the minors' status. Guardians and trustees are appointed by the court. The municipality temporary accommodates them till the court decision for their permanent accommodation.

These regulations should have been applied, also, with respect to separated children – to be appointed a guardian or a trustee by the court. Unfortunately, in spite of the small number of separated children in Bulgaria, this has been done in none of the cases. Children are left to live with adult relatives, whom they have come with, or in the respective reception centre, and no person is appointed to be responsible for them.

According to the Refugee Agency, investigations are being made for the appointment of guardians in keeping with the newly-passed Children Protection Act.

3.b) If so what is their role?

See subsection a).

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

See subsection a).

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

See subsection a).

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

The fact that no guardians are practically appointed does not conform to the Statement.

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

If there were any normative regulations, the interests of separated children would have been protected in conformity to the principles of the Statement. The suggested time limit of one month cannot be observed, as the procedure of appointing a guardian by the court in all cases needs more time. Clear criteria, also, have to be worked out for the assessment of the future guardians/trustees' capacities.

4. REGISTRATION AND DOCUMENTATION (SGP: C4)

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

According to Art. 44 of the Refugee Act, the procedure of granting a refugee status starts with an application to the Refugee Agency and its regional subdivisions, to the competent bodies of the Border Police or the passport-and-visa issuing offices of the regional Ministry of Home Affairs departments, as well as to the diplomatic and

consular missions of the Republic of Bulgaria, which have to retain the identification documents and record all special peculiarities and other distinguishing features for a comparative investigation. This is the way to register separated children, as well. According to the law, the application can be in an oral or written form in a language comprehensible by the child.

After the application is registered, an identification document is issued – an interim refugee certificate. Children who arrive with their parents are usually entered in their parents' identifications. Separated children should be issued individual identifications.

Please describe the relevant practice in your country.

As described above, in practice, registration of the application is not done in due time. There is no information whether this practice exists with regard to separated children, and the number of such cases so far is too small to speak about a stable practice.

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

Women interviewers and translators gather the information about the child and the refugees' history, according to the Refugee Agency. A psychologist from the "Refugees' Social Adaptation and Integration" department renders assistance. The Refugee Agency states that the information is used in a psychological work with the child for finding a long-lasting solution.

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

It would be better to introduce the practice, suggested in the Statement and provided for in the Refugee Act, of the interviews about the separated child's history being performed only after the appointment of a guardian or trustee and in his/her presence, with the compulsory participation of a counsel in the procedure of granting a refugee status.

5. AGE ASSESSMENT (SGP:C5)

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

There are no regulations about age assessment in the Bulgarian legislation.

Please describe the relevant practice in your country.

According to the Refugee Agency, in practice, age assessment is made upon the information supplied by the child, as s/he is given the "privilege of doubt" in the cases when it is not clear whether the person is under 18.

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

The practice is more or less consistent with the Statement. It would be better if there

were regulations in the law concerning this problem.

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

See para b)

6. DETENTION (SGP:C6)

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

According to the Children Protection Act a child in risk shall be assured a police protection. They are accommodated by the specialized service of the Ministry of the Interior in the orphanages and the relevant municipal department "Child protection" shall be informed. The police protection shall last no more than 24 hours. After that period children are accommodated in respective orphanage by the municipal department 'Child protection'.

Till this moment there are no mechanisms of implementation of Child protection act. For those reason it might be differences between law and practice. It is not clear which provisions shall apply.

Please describe the relevant practice in your country.

The Bulgarian practice is to detain for an indefinite period of time persons without any identification documents until the identity is determined, especially when the persons are foreign citizens. There is not enough information whether that practice is applied to children as well, but we can presume, having in mind that there is no clear methodology for the detainee's age assessment, that there is a risk of detaining separated children who have been trafficked into the country in the above mentioned detention centre.

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

The Refugee Agency declares that it accepts the relevant international documents: CRC, Art. 37 a, b; ICCPR, Arts. 7 & 9; ECHR, Arts. 3 & 5; HCR Guidelines para. 7.6; ECRE, para. 20; EU Res., Art. 2(3). Nevertheless, at least one case was registered in the past of a minor who was detained in the airport transit zone for more than a week, although he had applied for a refugee status in Bulgaria.

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

It is necessary to develop a system which will guarantee that persons applying for asylum in Bulgaria, and especially separated children, would not be detained for reasons related only to their immigration status.

7. RIGHT TO PARTICIPATE (SGP:C7)

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

The Refugee Act does not contain any special regulations about the child's participation in the administrative procedure of granting a refugee status. However, the new Children Protection Act states that in each administrative or legal procedure, in which the child's rights and interests are concerned, /undoubtedly the refugee status procedure is such/, it is obligatory to hear the child, if s/he is over 10, unless this is counter his/her interests. Children under 10 are heard depending on their

development. Some guarantees are provided for the protection of children's rights in such cases – they have to be informed about the eventual consequences of their desires, about every decision of the administrative body; the hearing should be performed in a suitable atmosphere and in the presence of a social official or another specialist.

Please describe the relevant practice in your country.

According to the Refugee Agency, the participation right is observed when working with separated children – to take permanent decisions “Refugees’ Social Integration and Adaptation” department gathers information and discusses the possibilities for the child's personal development. The supplied information does not specify how exactly the participation right is observed.

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

See subsection b).

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

We do not have much practice in order to offer any changes.

8. FAMILY TRACING & CONTACT (SGP: C8)

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

In the Refugee Act there are no regulations about the exact means of gathering information about the separated children' families.

Please describe the relevant practice in your country.

According to the Refugee Agency, in practice, information about the child is gathered from the child, and with the help of other organisations representations are made to bring together the family, if that is possible. In the past, this was assisted by the UN High Commissioner for Refugees and the Red Cross.

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

Although the practice is not rich, it conforms to the Statement.

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

See subsection b).

The Refugee Agency declares that it fully accepts CRC, Art. 10(2), Art. 9(3), Art. 22(2); ICCPR, Art.23(1); ECHR, Art. 8; HCR Guidelines, para. 5. 17; ECRE, para. 32; EU Res., Art. 3(3).

We do not have much practice in order to offer any changes

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

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

There are not specific regulations about the reunification of children with their family in other European countries.

Please describe the relevant practice in your country.

In all cases, we are familiar with, Bulgarian authorities have always assisted children who had to go to their parents in other European countries.

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

The Agency's practice conforms to the Statement.

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

It would be better if there were regulations about the system of family tracing and the reunification of separated children with their families in third countries.

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

Interim Care (SGP:C10.1)

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

According to Art.25 of the Refugee Act, during the status granting procedure, the refugee has the right of shelter and food, of social insurance, of free psychological help, health insurance, accessible medical aid and free use of medical service in the limits allowed for Bulgarian citizens. These regulations refer to separated children, as well.

Art. 48(5) of the Act also refers specially to separated children. According to it, children unaccompanied by their parents are accommodated in registration and reception centres or in lodgings, while measures are taken to protect them against any physical or psychic maltreatment or any other violence.

Please describe the relevant practice in your country.

As far as accommodation is concerned, the practice is to accommodate the child in individual rooms on a common floor with other families in the reception centres or with his/her relatives who have arrived and who have taken care of him/her until their arrival.

The "Refugees' Social Adaptation and Integration" department keeps separated children under constant observation, according to the Refugee Agency's information.

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

Our opinion is that the legislation and practice concerning health service and accommodation of separated children in Bulgaria generally conform to the first principles. However, it is not clear whether the capacities of the major relatives, who are taking care about the child, are assessed, and if they are in what way it is done. Also, it is not clear how the children's state is observed.

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

First of all, it is necessary to keep to the existent regulation base and to appoint legal representatives of the children in due time. Also, it is necessary to build a system with well-defined criteria of assessment of the parents' capacity to take care of the child, and to work out a mechanism for observation and control over the care taken.

Health (SGP:C10.2)

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

According to the above mentioned Art. 25, the refugee applicants have the right of health insurance, accessible medical aid free use of medical service like the Bulgarian citizens.

Please describe the relevant practice in your country.

So far, the refugee applicants in Bulgaria, children including, were offered medical aid in Sofia in a particular hospital, with which the Refugee Agency had entered into contract, and in the general hospital net in cases of emergency. At the moment the health system is going through a period of intense reform, so that changes in the current situation are possible.

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

Generally, refugee applicants who are children receive the same care like the Bulgarian citizens, which conforms to the first principles. We have to take into consideration, also, the total state of the economics and the health service in Bulgaria, which, unfortunately, is far from being perfect.

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

No changes are needed in the regulations of health service.

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

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

The refugee applicants have the right to continue their education until they finish a secondary education / which lasts till 12th grade in Bulgaria/. There is a special regulation in the Act concerning separated children – Art. 26: "Minor asylum

seekers and asylum seekers who have not come of age, who are not accompanied by their parents, shall be entitled to financial and material assistance equivalent to that provided to adult refugees, and to free training until graduation from a secondary school. The Agency for Refugees shall ensure to them the indispensable training aids required for the normal development of the process of education”.

Please describe the relevant practice in your country.

Our information shows that in practice, the Refugee Agency effectively provides refugee children with the opportunity to attend school and with the necessary appliances, within the bounds of possibility.

In the past the Refugee Agency organised numerous courses in Bulgarian language for refugees and refugee applicants. Most children learn the language mainly in the process of communication with their classmates and neighbourhood children.

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

As far as education is concerned, the practice generally conforms to the first principles.

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

The possibility of studying one’s mother tongue would be a good addition. There are attempts to organise this with the children of the largest groups of refugees. The small number of children and the linguistic variety does not allow organising a mother-tongue education for every refugee applicant child.

11. REFUGEE DETERMINATION PROCESS (SGP:C11)

Access to normal procedures (SGP:C11.1)

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

There are two procedures in the Bulgarian law – ordinary and accelerated procedure, the accelerated one being applied generally in cases of manifestly unfounded applications, submitted mostly at the border. During the accelerated procedure an access to the country’s territory may be denied. However the law explicitly states that accelerated proceedings are not applied to minor persons, unaccompanied by their parents. This means basically that as far as separated children are concerned, only an ordinary procedure with all provided by the law guarantees of the refugee status applicant can be applied.

Please describe the relevant practice in your country.

Although the law states that everyone has the right to apply for a refugee status, actually the Refugee Agency often refuses the immediate registration of applications for a refugee status on different grounds. This attitude is taken mainly to citizens of the so-called safe countries or to those without identification documents in order. The access to procedure often becomes possible only after an interference of

a lawyer or a NGO. There is no information whether the practice is the same with unaccompanied children. Usually, the Agency is more compliant to the vulnerable groups of women, children, old people, but the alarming tendency of refusing access to procedure exists in the practice.

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

Although accelerated procedure is not applied to separated children, the Refugee Act does not exclude the possibility of refusal on the grounds of the concepts of a “safe third country” and a “safe country of origin”. There is no information about a separated child’s being refused on the basis of these clauses, but also there is no guarantee that if the number of separated children increases in the future, they would not be applied.

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

It is necessary to exclude the application of all special procedures in cases involving separated children – especially the concepts of a “safe third country”, “manifestly unfounded” application and a “safe country of origin”.

Legal Representation (SGP:C11.2)

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

According to Art. 15 /7/ of the Children Protection Act, the child has the right of a legal assistance and appeal in all proceedings concerning his/her rights and interests. The Refugee Act, as mentioned above, has a provision for the appointment of a special representative of the separated child during the procedure.

Please describe the relevant practice in your country.

In practice, despite the small number of separated children, legal representatives are not appointed during the procedure.

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

The fact that children do not get any lawyers’ consultation or legal assistance during the procedure conforms neither to the Statement and the first principles, nor to the Bulgarian legislation. This practice has to be totally changed. We are acquainted with a case, in which, on the ground of lacking special representative during the procedure, the High Administrative Court brought a separated child’s case back for reconsideration; consequently the child was granted a refugee status. However, the practice has to be effectively changed in all cases.

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

See subsection e).

It is also necessary to regulate the possibility of the separated child’s receiving free legal assistance, as to this moment Bulgaria has not developed a

system for the citizens' legal aid.

Minimal Procedural Guarantees (SGP:C11.3)

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

The decisions on the separated children's applications for a refugee status are taken only by the Refugee Agency, which is the only body in Bulgaria competent to take these decisions. Children, as well as all refugees, have the right to appeal the decisions of denying a refugee status. Unfortunately, the time limits in which this can be done are extremely short – 7 days for a first instance, and 14 days for a second instance. The 7-day term is shorter than the one given to Bulgarian citizens to appeal against any kind of administrative act. This presents a form of discrimination towards refugees and is unjustified, especially when it is a matter of children. Besides, it is not possible to give priority to the appeals of persons under 18, so that they have to wait for the appointment of their cases' date on a par with all others.

The Refugee Act contains some explicit minimal guarantees of the refugee applicants' rights during the status granting procedures. The refugee has the right:

1. Of a translator or an interpreter, registered in the Refugee Agency.
2. To receive an interim refugee card;

The Bulgarian Constitution states that every citizen has the right of defence when his/her rights or legal interests are violated or threatened, and that s/he can visit the state institutions accompanied by a counsel.

The women refugees must be interviewed by women interviewers and translators, as the law is. This refers also to minor girls.

The legal regulations mentioned above are generally observed during the procedure. However, the practice in most cases is that refugee applicants have no counsel during the procedure, because the authorities do not inform them about this possibility and because Bulgaria has no system of legal assistance. There are exceptional cases when the refugee applicants ask for assistance the Bulgarian Helsinki Committee, which provides consultations and representation when necessary. Unfortunately, there is no established practice of an obligatory provision of legal representation even for separated children.

Please describe the relevant practice in your country.

The rule, established through legal practice, that applicants for a refugee status should be taken **at least two interviews**, in order to clarify the refugee's history to the detail, is seen as a minimal guarantee.

In practice the cases of unaccompanied children applying for asylum are proceeded very quickly.

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

The absence of free legal assistance during the procedure is a considerable unconformity to the Statement and to the Bulgarian legislation.

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

As mentioned above, it is necessary that all separated children be provided with free legal assistance and effective representation during the procedure. It is also necessary to systematically educate the Agency' staff who carry out the procedure with separated children, in order to be able to recognise the child-specific forms of persecution, and the characteristics of the children's psyche when relating the refugee's history.

Independent Assessment (SGP:C11.4)

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

Neither the legislation, nor the practice in Bulgaria provide or permit independent assessment of the cases by an independent expert. The Agency explains this with the small number of separate children cases in the country.

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

See subsection a).

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

It is necessary to make provisions for the participation of a specialist during interviews with handicapped children, in order to assess correctly their capacity to apply for asylum.

Interviews (SGP:C11.5)

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

According to Art. 45 of the Act, the Agency is obliged to interview the applicant for a refugee status, the information about which is recorded. As it was mentioned above, there are usually two interviews. The information gathered during the interviews has to be preserved in a protocol. The protocol drawn up, signed by the refugee and the translator, are attached to the case together with the references, provided by the interviewing specialists. In cases of separated children under 14, the record should be signed by the child's guardian, in cases of children between 14 & 18 – by the child and the trustee. However, in practice this is not observed in all cases.

Please, describe the practice in your country.

The interviews with separated children are performed in the presence of a psychologist. The Agency's information shows that the psychologist controls the child's state and takes into consideration the atmosphere of performing the interview. Immediately after the registration, the psychologist plans a psychological work with the child.

The Refugee Agency notes that a two-week training has been performed with Border Police officials in connection with the Refugee Act, during which Art. 49 /6/ was put to a detailed discussion /that is, the non-appliance of accelerated procedure to

unaccompanied children, mentioned above/.

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

There is no regulation providing an opportunity for an obligatory attendance of a legal representative, nor of the child's being accompanied by a social official or a relative of his/her choice.

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

It would be better if the above listed digressions from the Statement are regulated in practice, too, from a point of view of the protection of separated children's rights. The attendance of a psychologist is a positive step, but there should be a provision for the attendance of a legal counsellor, of the child's guardian or trustee, as well as of a relative of the child's own choice.

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

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

So far there are too few decisions taken on cases of separate children. No clear criteria of the decision taking, specific to the cases with such children have been worked out.

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

This practice is incorrect as a whole, because children are being kept in procedure for an indefinite time, without a decision of their applications being taken. Thus, the principles of the child's best interest, of timely decision taking and finding a permanent solution of the problem are violated. Still greater is the problem that in many of the cases, the children will pass 18 and will be treated as adults in the procedure, thus losing their due defence.

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

It is necessary to observe the time limits of decision taking determined by the Refugee Act and to take decisions about the applications for a refugee status in due time.

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

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

Young people who complete the age of 18 during the procedure are treated as adults, regarding to all their rights and obligations, after they reach that age. Unfortunately the duration of the procedure – 3 to 6 months according to the law often is not observed, which may lead to incorrect treatment of cases of children

reaching 18, especially as there is no rule establishing a more lenient treatment of that category of refugee applicants.

Please describe the relevant practice in your country.

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

See the above paragraph.

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

It would be better to establish a practice of treating more leniently persons completing 18 during the time of the procedure, and to eliminate the delays prolonging the procedure until the refugee applicants reaches 18. Such a development would conform to the principle of a timely decision making in cases of separated children.

12. DURABLE SOLUTIONS (SGP:C12)

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

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

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

As it has already been described, according to the Refugee Act, there are two possibilities to remain in Bulgaria – of granting a refugee status and of granting a humanitarian protection. /The humanitarian protection according to Art.10 of the Refugee Act is : “.....a temporary protection provided by the Republic of Bulgaria to persons forced to leave the state whose nationals they are or, where they are stateless, the state of their permanent residence due to the existence of internal or international armed conflicts, large-scale violations of human rights, foreign aggression, as well as due to the reasons listed in the conclusions of the Executive Committee under the programme of the United Nations High Commissioner for Refugees.”/

Another possibility is if the President of the Republic grants asylum – the President has this right according to the constitution. However, no procedure has been worked out, nor any time limits for the granting of asylum and practically such cases are extremely rare and have never been applied to children.

According to Art. 23, para. 2 of the Foreign Citizens Act, a short-term stay can be prolonged by the services of administrative control of foreign citizens for reasons of humanitarian character. On the basis of this decree, there can be negotiations for the remaining of separated children in the country in single and extraordinary instances, but there is no practice, nor clear criteria, nor any definition of the “reasons of humanitarian character”.

Please describe the relevant practice in your country.

In Bulgaria there is no practice because of the small number of separated children.

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

Not conforming to the Statement is the lack of a separate status which can be granted to children who are not refugees, but are unable to return to their country of origin for other reasons, or their best interest is to remain in the country /e.g. for reasons of health/.

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

In order to preserve the child's best interests, it is necessary to make provision for a particular status which will be applied in the above mentioned cases.

Family Reunification in Host Country (12.1.2)

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

According to Art. 32 from the Refugee Act, a refugee with a granted status has the right to get permission from the Refugee Agency's president to reunite with his/her family on the territory of the Republic of Bulgaria. This decree can be applied also in reference to separated children. Unfortunately, there is no analogous article allowing reunification of families during the procedure or of those refugees who have received humanitarian protection from Bulgaria.

The Refugee Agency meets the requests of status applicants or refugees, who have been granted a status in the Republic of Bulgaria, to reunite in Bulgaria with their minor children residing unaccompanied in the country of birth or in a third country. The Agency, together with other organisations, assists them in issuing the necessary documents and observance of the legal procedures.

Nevertheless, the refugees that have been granted humanitarian status are denied permission to reunite with their families on the territory of Bulgaria. /According to the Refugee Act, the humanitarian status differs from the refugee status. It is a temporary protection, provided by the Republic of Bulgaria to persons who are enforced to leave the country of their domicile, or, to persons who have no nationality - the country of their permanent residence. The enforcement might be caused by internal or interstate armed conflicts, gross violations of human rights, foreign aggression, as well as by the reasons stated in the conclusions of the Executive Committee of the UN High Commissioner for Refugees' Programme. /

Since the persons that have been granted humanitarian status have the legal rights of the permanent foreign residents, but not of the refugees, they have no right to reunite with their families on the territory of Bulgaria, according to the Agency.

Please describe the relevant practice in your country.

See previous paragraph

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

The Bulgarian Helsinki Committee conceives that the practice of denying the right of family reunification on the territory of Bulgaria to persons who have been granted humanitarian status does not comply with the spirit and the essence of the Convention Relating to the Status of Refugees. It is, also, inconsistent with other international instruments for human rights protection, such as those provided for in the Art. 8 of the European Convention for Human Rights and Basic Freedoms and in the Convention for the Rights of Children.

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

The Bulgarian legislation should envisage a possibility to enable all refugees, refugee status applicants and persons that have been granted humanitarian protection to reunify with their families on the territory of Bulgaria, or to assist their reunification in other states.

In the elaboration of these rules, first principles should be taken into consideration, especially the following ones:

- The principle of the best interests of child
- The principle of non-discrimination
- The principle of immediate action
- The principle of lasting solution

Integration (SGP:C12.1.3)

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

There are no legal regulations on integration except those, regulating the rights and obligations of recognised refugees. Art. 28 of the Refugee Act states:

“(1) A refugee who has been granted refugee status shall acquire the rights and obligations of a Bulgarian national with the exception of:

1. the right to vote and to be elected;
2. the right to take positions in the state administration for which Bulgarian nationality is required by law;
3. the right to be a member of the Bulgarian Army;
4. other restrictions laid down by law.

(2) The refugee shall have the right to acquire real estate in the territory of the Republic of Bulgaria in accordance with the conditions and procedure laid down for foreign nationals.”

Moreover, persons recognised as refugees are issued refugee identity cards and certificates for travelling outside the territory of Bulgaria.

Please, describe the practice in your state.

In practice, due to the hard financial situation of the state, the refugees' integration in society at the moment is left to the refugees themselves. Their accommodation is being paid in the course of one month after the status granting,

after which they have to take care of themselves.

The state of separated children who have been granted a refugee status probably will be made equal to that of Bulgarian parentless children. If these children have arrived with other members of their families, they will be settled in those families for bringing up. If there are no relatives, they should be accommodated in an orphanage till the completion of the age of 18 or end of their secondary education. In kindergarden the children should be accommodated together with children of the same sex and age. There is no programme for post-bringing up, or for accommodating the children in families with the same identity culture. This is due partly to the small number of the refugee population in Bulgaria, and partly to the fact that until the Children's Act became effective, there was no system for receiving families. So far, this system has not yet started to function.

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

The general equalisation of the refugee rights to the rights of Bulgarian citizens is extremely positive. On the other hand, the integration of refugees still remains a painful and hair-splitting problem for the Republic of Bulgaria. In the past, some integration programmes were worked out which, however, did not start functioning due to financial problems. No system of guiding principles for the integration programmes has been created.

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

It is necessary to work out programmes for refugees' integration. They should take into consideration the existence of separated children and their specific needs. This is the only way to observe the first principles of the Statement.

Adoption (SGP:C12.1.4)

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

The Family Act contains the adoption procedures applicable on the territory of Bulgaria. According to it, the adopter can be only an efficient person who has not been deprived of his/her parent rights. He should be at least 15 years older than the adopted one. No adoption is permitted between close relatives (for example grandfather's adopting grandchild), nor between sisters and brothers. The grandparents, or only one of them, can adopt their grandchild only when he/she is born out of wedlock or when one, or of both, of his/her parents has died. No one may be adopted by two persons at the same time, except when they are married.

In principal, in order to realise the adoption, it is obligatory to get the agreement of the adopter, the child's parents, the adopter and the adopted's spouse (this applies in the rare case when the adopted has married at the age of 16) and by the child, when he/she is more than 14 years old.

The guardian, the trustee, as well as the parents and the spouses, who are under limited judicial disability or deprived of parent rights, give their opinion on the

adoption.

The agreement of the child, when required, has to be given personally before the court. The requests for adoption are heard before the regional courts. The Family Act explicitly declares that the adoption is permitted only when it is in the interest of the adopted.

Please, describe the practice in your state.

We are not aware of any cases of adoption of separated refugee children in our practice. It can be stated that, even if such a case appears, it will be an exception.

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

It could be conceived that as a whole adoption is not considered an appropriate solution for separated children. In the practice of Bulgarian courts the principle for the child's best interest is observed and the personal characteristics of the adopter is taken into consideration.

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

See the above paragraph.

Identity and Nationality (SGP:C12.1.5)

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

According to the Bulgarian Citizenship Act, refugees may apply for citizenship three years after the acquirement of a refugee status. It is an alleviation in comparison to the other foreign citizens, who should have had a permission for permanent residence for five years, before being able to apply for citizenship. In the case of separated children, the documents should be submitted either by the trustees (for children under the age of 14), or by the children themselves with the agreement of their trustees (if they are between 14 and 18 years old).

Please, describe the practice in your state.

We are not aware of any cases of separated children who have applied for or have been granted citizenship.

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

See the previous paragraph.

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

See the previous paragraph.

Family Reunification and Returns to a Country of Origin

(SGP:C12.2)

Voluntary Return (SGP: C12.2.1)

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

Neither the Refugee Act, nor any other national act, handles the matter of return. The Refugee Agency has always declared that it fully accepts the principle of voluntary return. There are no legal regulations how to assess the danger in the country of birth, the family's situation in the motherland, or the safety of the child during his/her return. It is not yet clear whether and how to assess the family's capacities (parents or other family members) to take proper care of the child. In cases of absent parents and other family members, it is not specified how to evaluate the appropriateness of the agencies looking after the child in the country of birth.

Please, describe the practice in your state.

We are not aware of any cases of separated children's return.

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

See the previous paragraph.

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

Due to the insignificant practice and the lack of legal regulations, there is no system of rules regarding the return of separated children. However, it is necessary that such a system should be developed in the future.

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

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

There are no obligatory conditions that the legislation of the Republic of Bulgaria requires to be fulfilled prior to the child's return.

Please, describe the practice in your state.

See the previous paragraph.

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

The lack of such conditions does not conform to the Statement.

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

In order to observe the first principles, it is necessary to create a system of conditions, which are to be fulfilled prior to the child's return to his/her country of birth. The fulfilment of these conditions should provide the minimum guarantees

for the child's safety upon his/her return, as well as for the security that he/she will be well taken care of by the parents, trustees or the relevant state institutions.

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

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

In the Republic of Bulgaria there is no programme facilitating reintegration of the returned refugees.

Please, describe the practice in your state.

In the Republic of Bulgaria there is no practice to facilitate reintegration of the returned refugees.

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

See the previous paragraph.

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

See the previous paragraph.

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

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

The only existing regulation regarding the settlement of refugees in a third country is Art. 16.1.4 of the Refugee Act. It states that the refugee status ceases to apply to a person who has acquired new nationality and who enjoys the protection of the country of his/her new nationality. There is no legal regulation referring to the settlement of separated children in a third country, nor any other rules on how to guarantee their safety in such a country.

Please, describe the practice in your state.

There are no cases of separated children who have been assisted to settle in a third country.

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

See the previous paragraph.

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

See the previous paragraph.

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.

Data on separated children in Bulgaria can be collected by the competent state institutions such as the Refugee Agency at the Council of Ministers and Border Police, as well as by NGOs working with refugees. Up to date, only the Refugee Agency keeps precise statistics, mainly due to the small number of separated children and the lack of practice.

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

It is necessary to gather at least information about the number, origin, age, kinship relations with the accompanying persons, roads via which the children have reached the country, child-specific kinds of persecution in the country of birth.

- c. Please provide any current (1997-1999) data on separated children which is available (from both government and NGOs). We appreciate that at this time most of this data will relate to asylum applications by separated children.

According to the information provided by the Refugee Agency at the Council of Ministers, up to June 30th 2000, 12 unaccompanied children from 5 different countries were registered as applicants for a refugee status. The greater part of them is without parents, but are accompanied by relatives – adult brothers, sisters, uncles etc.

14. POLITICAL LEVEL - SUPPORT FOR CHANGE

Please where possible provide the following information:

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

The only NGOs working actively with refugees in Bulgaria for the moment are the Bulgarian Helsinki Committee and the Bulgarian Red Cross and those are the NGOs that will be eventually involved in the cases of separated children. BHC is willing and insisting to provide legal representation of all separated children at all the stages of the refugee status determination procedure. Both organizations have fairly good relationship with the Agency for Refugees, the main state body dealing with such cases. The other authority involved in the separated children cases would be border police- they have, according to the new law the responsibility for the accelerated procedure and they shall have to identify the separated children, to allow them into the territory of the country and to redirect them to the ordinary procedure. The possibility for legal assistance to this children especially at the border check points, is not clearly established yet and probably will represent a problem in the future.

- * describe any contacts with European institutions eg: MEPs, European Commission (NB: please give names)

There are no contacts with such institutions due to the little practice.

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

All the changes in the legislation that could be made must be enacted by the Parliament. It is not likely that the law will be amended soon, however, because it was enacted only last year and the process of enactment took more than 5 years.

At the level of practice the main authorities that can improve the situation are again the Agency for Refugees and the Border Police.

The source of support for separated children rights promotion are the NGOs in Bulgaria.

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

It is difficult to identify those at this stage. The huge bureaucracy and the little number of cases lead the administration not to consider the existing problems in the separated children rights situation as substantial.

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