

## **SEPARATED CHILDREN IN EUROPE PROGRAM**

### **COUNTRY EVALUATION**

**COUNTRY :** CZECH REPUBLIC

**EVALUATION PERIOD :** JUNE - OCTOBER 2000

**RESPONDENT :** CZECH HELSINKI COMMITTEE -  
COUNSELING CENTER FOR REFUGEES

**CONSULTANTS :** Ministry of Interior  
Ministry of Labor and Social Affairs  
Administration of Refugee Facilities  
Alien Police  
Czech Language Teachers of the Czech Helsinki  
Committee

**REFERENCES :** Civil Code  
Criminal Code  
Family Act  
Code of Civil Procedure  
Code of Administrative Procedure  
Alien Act  
Asylum Act and Amendment of the Act on the  
Police of the Czech Republic  
Act on the Police of the Czech Republic  
Act on Schools  
Act on Social and Legal Protection of Children

## **„SEPARATED CHILD“ – DEFINITION ( SGP: A 2.1 )**

a) There is no such term as “separated child” in the Czech legislation. Under the laws of the Czech Republic all children are provided with social and legal assistance. The assistance is provided either to children who are Czech nationals being outside their country and separated from both parents or their primary caregiver or to children currently living in the territory of the Czech Republic without having a permanent or long-term residence permit.

A child is considered a person under 18 years of age.

Provided that a person under 18 years of age without being accompanied by his/her legal caregiver applies for asylum in the Czech Republic he/she is in asylum terminology considered to be “a minor separated from his/her legal primary caregiver”. In the Asylum Act such person is defined as “a party to the asylum procedure younger than 18 years of age residing in the territory of the Czech Republic without being accompanied by his/her legal caregiver”.

b) Assistance is provided to all minors i.e. children under 18 years of age irrespective of the fact that they have brothers or sisters older than 18 years, unless such brother or sister is a legal caregiver of the minor.

A legal caregiver is assigned to a minor by a decision of court. If there is minor's brother or sister older than 18 years of age in the territory of the Czech Republic usually this person would be suggested to the court to be appointed a legal caregiver.

The same applies to the asylum procedure. Administrative authority deciding on grant of asylum considers a minor without a legal caregiver to be a person being in the territory of the Czech Republic unaccompanied by his/her legal caregiver i.e. parents.

c) We believe that the Czech legislation is in compliance with the Statement. The legal age is the same and the fact that also the children being in the territory of the Czech Republic accompanied by distant relatives, unless they are their legal caregivers, are considered to be “separated children” complies with the Statement.

d) In our opinion there is no need of any significant changes in the legislation.

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

1.a) Access to the territory is regulated by the Alien Act. The Act also provides for special terms of accessing the territory in cases when a temporary protection is granted.

According to the statement of the Alien Department of the Czech Police there have not been any difficulties with entrance of unaccompanied children to the territory across the national borders reported so far. Children residing in the territory illegally usually do not enter the country at a border crossing. The Alien Police further states, that it has not recorded any case of an unaccompanied child being seized immediately after illegal crossing of borders. In such a case, it is always a group of adults together with children. These people usually do not have any identification documents and therefore, the authorities rely on information they give, including the information on family relations. If the prescribed conditions are fulfilled, these groups of aliens are returned to the country from which they entered the territory of the Czech Republic as is provided for by the re-admission treaties.

1.b) As has been mentioned before, a case of an unaccompanied child entering the territory of the Czech Republic has not been recorded so far. If a child arrives in the Czech Republic it may apply for temporary protection or asylum. We believe that this practice complies with the Statement.

1.c) No.

1.d) Under the Alien Act No. 326/1999 Col. a carrier, who transports an alien who does not possess documents that entitle him/her to enter the territory of the Czech Republic legally, commits an administrative offence. The police may impose a fine for commitment of this offence. The amount of the fine is set by the law. These sanctions apply to airway companies and waterborne transport providers.

An amendment to the Alien Act that is currently pending in the Parliament shall secure that this liability is extended to charter bus companies. A carrier is sanctioned for transporting any alien not having documents enabling him/her to enter the country legally regardless of his/her age or other characteristics.

## **Trafficking in Children**

1.e) Statistics of the Ministry of Interior of the Czech Republic do not show any cases of children transported to the Czech Republic for exploitation purposes. Employees of the Counseling Center do not have information about such cases either.

Alien Police co-operates in investigation of cases when children under 15 years are taken to the Czech Republic where they take part in economic criminal activity (mostly small thefts such as pickpocketing). Usually, these children are Romanian or Bulgarian nationals. Special measures are taken against persons that transport children to the Czech Republic (usually thanks to a power of attorney issued by the child's parents) disabling them to enter the country. Such person is declared a "persona non grata".

General provisions on trafficking in children are incorporated in the Criminal Code. It says that a person that in return for compensation entrusts a child to another person's care for the purpose of adoption, exploitation of the child's work or for another purpose, shall be punished by imprisonment for a term of maximum three years. The Code provides special protection to women under 18 years of age. Punishment of imprisonment for 3 to 8 years shall be imposed on a person that entices, hires or transports such woman abroad with the intention to use her there for the purpose of having sexual intercourse with another person or engaging in prostitution.

On 12 July 2000 the Government of the Czech Republic in its resolution adopted National Action Plan aimed at curbing commercial sexual abuse of children.

1.f) see 1.e)

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

2.a) Legal regulation is incorporated in the Alien Act. If a child is registered in travel documents of his/her legal caregiver the border police is obliged to verify their relationship. If an alien under 15 years of age travels using his/her own travel documents, he/she must be subjected to the same control procedure as an adult person. The person that accompanies a child does not have to be subjected to the control procedure at the borders.

A situation, when an alien under 15 years arrives in the country with his/her legal caregiver who then abandons the child without any maintenance and leaves the Czech

Republic, should be prevented by the law regulating terms under which leaving of the country is prohibited.

The above mentioned law set out the circumstances when the police is entitled to take finger-prints and photographs. The law does not abolish collecting such documentation in case of persons under 15 or 18 years of age. When an alien is a party to administrative expulsion procedure, his/her identity is established in cooperation with the embassy of the country of which he/she is national.

In order to find out the aliens age, which fact is indispensable for determining further course of action, the information provided by the alien and results of medical examination (X-rays of wrists) are taken into account. In practice, it happens quite often that an alien is younger than 15 years of age according to his/her travel documents (that means not liable for criminal actions under the Czech Criminal Code) but he/she is older according to the medical examination. This is frequently the case of Bulgarian nationals who engage in economic criminal activities in the territory of the Czech Republic. Real identity of an alien is then established in cooperation with the embassy.

2.b) Complies.

2.c) No.

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

3.a) As soon as a separated child is identified as a person with no legal caregiver, a residence guardian is appointed by court. If a minor applies for asylum in the territory of the Czech Republic he/she is assigned a guardian for asylum procedure.

Both guardians are obliged to promote the child's best interests.

Alien Police deals with separated children only occasionally. In cases of aliens under 15 years of age it passes the child over to the District Authority that takes further steps. (More detailed description follows). The Alien Police plays a more active role in cases of aliens engaged in criminal activities in the territory of the Czech Republic who cannot be prosecuted because of lack of age. However, also in these cases based on a decision of court the child is placed in a diagnostic institution and at the same time a guardian is appointed for him/her by court.

3.b) c) A guardian for procedure is appointed by a decision of a Division for Asylum and Migration Policy at the Ministry of Interior of the Czech Republic. Usually, this guardian is assigned as soon as the application is filed and watches over the asylum procedure and the child's stay in the refugee facility. Frequently, this guardian is an employee of the Czech Helsinki Committee working in the respective refugee facility.

A residence guardian is appointed by court that also specifies the extent of his/her rights and duties so that protection of the child's interests is ensured. Provided that a minor has applied for asylum and has received the second negative decision a guardian is obliged to ensure accommodation for him/her, which in practice means a placement first, in a diagnostic centre and then, in an orphanage.

When it comes to the assessment of time within which a residence guardian has to be appointed, opinions of national authorities and NGOs differ. While the Ministry of Interior claims that a residence guardian is appointed as soon as possible (either immediately or within a few days), the experience of the NGO representatives shows that the waiting time until the court issues its decision is unreasonably long. However, they say the situation is getting better.

3.d) A guardian is usually appointed an employee of the National Childcare Authority. If there is a person working outside national authorities and interested in being appointed a guardian, court shall usually nominate the person provided that his/her suitability for carrying out the function has been examined.

For example, a lecturer of Indian studies applied for being appointed a guardian of a boy from Sri Lanka. Due to her knowledge of language and the boy's cultural and social background the court appointed her a guardian.

Generally, no specific knowledge is required. However, since the decision on appointing a guardian is made by court, there is certain guarantee that the person appointed would be really able to carry out his/her duties.

3.e) As for the care for minors provided in their best interests, duty to ensure their accommodation, education, health care, legal assistance, possibility of consultations with a guardian, etc., the situation in the Czech Republic corresponds with the principles stipulated in SGP.

The time limit for appointing a residence guardian should be shortened. Furthermore, measures designed to increase the level of expertise of those who exercise the function of a guardian should be taken.

The NGO workers who usually are appointed guardians in administrative asylum procedure, have several years of experience with this kind of work. They carry out their function thoroughly and provide care that frequently goes beyond their duties as appointed guardians. They ensure that the children are provided with care that would otherwise be assigned to residence guardians until these are appointed and even afterwards they closely cooperate with each other.

3. f) As has been mentioned before, there is a need to shorten the time limit for appointing a guardian and pay more attention to their qualification.

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

4.a) The moment a child legally enters the territory of the Czech Republic he/she is registered by a local department of the Alien Police in its own register. When he/she is given to temporary custody of a national authority for care of children, the child is also registered in the authority's register. After the child had been taken to a diagnostic center or orphanage a personal file containing all the relevant data is established.

If an unaccompanied minor applies for asylum, he/she goes through a procedure described in the following paragraphs. As well as adult asylum seekers minors also have to have their fingerprints and pictures taken in order to establish or verify their identity. This is done by the police. In the course of asylum procedure the Ministry of Interior Department of Asylum and Migration Policy keeps a file on a minor. The file contains all the information relating to a particular minor that the Ministry gathered during the asylum procedure. Another file is kept by minor's guardian for asylum procedure appointed by the Ministry. From the moment when a guardian for residence is nominated, he/she also keeps a file containing all the data concerning the minor.

In case of an unaccompanied minor who did not apply for asylum a file containing all his/her personal data is kept by the national authority for care of children. Another file is kept by

diagnostic center or orphanage where the minor is accommodated. Register of all unaccompanied minors residing in the territory of the Czech Republic is kept by the Agency for International Legal Protection of Children.

4.b) An unaccompanied minor who applies for asylum in the Czech Republic is registered by many authorities. Information on a minor are passed. The Alien Police when first contacting an unaccompanied minor who expresses intention to apply for asylum in the Czech Republic, records essential information and then passes the child to competent authorities as described further. We believe that this procedure is “de facto” in compliance with the Report. The Alien Police restricts itself to gathering only basic information. A more extensive file is then kept by the Ministry of Interior that decides upon applications for asylum, by a guardian for asylum procedure and guardian for residence.

4.c) We do not think any major changes are necessary in the area of registration and documentation.

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

5.a) To assess the age of a child whose identity cannot be established is extremely complicated. When there is a foreign national without any identification documents claiming to be younger than 18 years of age in the Czech Republic, a District Authority files a petition for issuance of an interim measure at a court in order to provide protection to the child. Based on the interim measure a person under 15 years of age is placed in a diagnostic institution, where they examine whether the age claimed corresponds with the true age.

If a person that applies for asylum claims to be younger than 18 years of age, this statement is respected absolutely even in cases when he/she is apparently older. If the age claimed is obviously different from the true age, X-ray and bone examination of wrist bones is carried out in order to establish biological age. According to the statement of the Ministry of Health of the Czech Republic the age assessment based on X-ray examination of wrist bones is not a reliable method, as it is not very precise and is not appropriate especially, for the people between 10 and 20 years. Unfortunately, there has been no other more precise method suggested so far.

In the course of the year 2000 57% of unaccompanied minors have been subjected to anthropologic examination for age assessment purposes. Difference between true and claimed age has been found out in 72% of the cases. 98% of persons claimed to be younger and 2% claimed to be older than true age.

5.b) In compliance with the Statement the age a person claims is always respected even when he/she is obviously older. X-ray examination is carried out by a pediatrician with the person's consent.

5.c) Still, the results of the examination used to establish biological age remain unreliable. It seems that introduction of an X-ray examination of elbow joints would assess age in a more precise way.

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

6.a) Legal regulation is contained in the Act on the Police of the Czech Republic, Alien Act and in the Act on Social and Legal Protection of Children.

Approach of the Alien Police differs according to whether the alien is older or younger than 15 years of age. In cases of persons under 15 years detention is not used. These people are passed over to District Authorities that take further necessary steps. (As described above).

Provided that an alien under 15 years is seized together with a closely related adult person and the terms for taking the person into custody are met, the freedom of movement of the adult person is therefore restricted and the minor is left with the adult in compliance with the request of non-separation of families. In this case the seized alien is not placed in a police cell. The Police are entitled to place an alien whom a seized alien is obliged to sustain or care for in a facility where the seized person is kept unless the care for minor alien may be provided in another way. Consequently, if an alien is about to be expelled from the country, a minor person he/she is obliged to care for may be placed in a detention facility as well. On regular basis, families are kept together and are placed in a section allowing for more liberal conditions of detention. If a family is, eventually, separated, for example, because a member of the family is placed in a section with strict conditions of detention, it should always be seen to it that the consequences of the separation correspond with the reasons that made it necessary.

Aliens older than 15 but younger than 18 years are not preferred in any way under the law. The age of an alien is taken into account when fulfillment of terms for taking a person in detention at the beginning of administrative expulsion procedure is estimated. The embassy of the country of which the alien is a national is always informed about such detention. In case of aliens older than 18 years the embassy is informed only upon their application.

6.b) Detention is not used in case of aliens under 15 years of age which fact fully complies with the Statement. However, aliens older than 15 but younger than 18 years do not enjoy such protection.

6.c) Protection of aliens older than 15 and younger than 18 years shall be introduced.

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

7.a) Right to participate is fully respected in compliance with the Convention on the Rights of a Child. Its provisions have been incorporated in the Act on Social and Legal Protection of Children that states, that a child able to formulate his/her views is, for the sake of social and legal protection, entitled to express them without any restrictions whenever decisions affecting him/her are being made even in the absence of the child's parents or persons responsible for his/her upbringing. The views of a child are taken into account when decisions affecting it are being made in line with its age and maturity..

A minor without a legal caregiver is represented by an appointed guardian in asylum procedure. In case an administrative decision on grant of asylum is being reviewed before the High Court representation of a party in the procedure by an attorney is obligatory.

When the interviews with a minor asylum seeker take place, a guardian and sometimes also an NGO lawyer is present.

If an alien is a party to any administrative procedure conducted by the Alien Police, he/she always has the right to comment on the facts on which subsequent decision is based. In case the alien is younger than 15 years and, therefore, has not legal capacity to move for actions, he/she is in the course of procedure represented by a legal caregiver or appointed guardian. This, however, does not prevent him/her from being present in all the phases of procedure. On the contrary, his/her presence is necessary when all facts of the case are to be precisely established.

An alien legally residing in the Czech Republic may only be expelled based on a lawful decision. He/she has the right to object against expulsion and to have the case reviewed, in which instance he/she has the right to appoint a representative who will act on his/her behalf before the competent authorities. An alien has always the right to comment on the facts that are being dealt with and use an interpreter.

7.b) In compliance with the Statement minors are always heard in the presence of their guardian or attorney. If a minor is not an asylum seeker he/she is allowed to express his/her views in the absence of appointed representatives.

7.c) Vocational training of migration officers.

## **8. FAMILY TRACING AND CONTACT ( SGP : C8 )**

8.a) Primary obligation to satisfy fundamental needs of a child that is in the territory of the Czech Republic without a caregiver or his/her life or welfare is endangered or impaired is vested in municipality in territory of which the child stays. The municipality then, without any delay, notifies about the fact District Authority that is obliged to take further necessary measures aimed at protection of the child and if it is possible, to notify the embassy of the country of which the child is a national.

Afterwards, the embassy in cooperation with the District Authority negotiates about the ways how to contact the child's parents or other responsible persons. The District Authority reports the results to the Agency for International Legal Protection of Children.

### Asylum procedure :

It has to be noted, that most of the minor asylum seekers in the Czech Republic are heading to Western Europe, where they are awaited by their relatives (who usually have lived there for many years).

Therefore, for minor asylum seekers the Czech Republic remains to be a "changing point". The experience of NGO workers show, that these are often children from extremely remote countries brought to Europe by smugglers with the consent of the child's parents or other close relatives. The minors are then in occasional telephone contact with the family in

their country of origin. Sometimes, their relatives from EU countries contact them and very often the children flee further to the West.

An NGO worker employed in a facility for minors reports that none of the children placed there was interested in contacting the family.

In cases of family tracing the Czech national authorities cooperate with investigative department of the Czech Red Cross and with the UNHCR.

8.b) We believe that the situation in the Czech Republic is on acceptable level.

8.c) No.

## **9. FAMILY REUNIFICATION IN A EUROPEAN COUNTRY ( SGP : C8 )**

9.a) If the minor does not apply for asylum in the Czech Republic see a). In compliance with the child's best interests, the District Authority makes an effort to cooperate with the embassy so that reunification with other relatives is possible especially, in cases when the child's parents cannot be found.

The Czech Republic is not an EU member state yet, therefore, it is not bound by the Dublin Convention. Under the Asylum Act, upon an application, parents of a person under 18 years that has been granted asylum will also have the asylum granted even if the general conditions are not fulfilled. Similarly, asylum would also be granted to single children under 18 of a person that has been granted asylum upon his/her or the child's application even if the general conditions for grant of asylum are not fulfilled.

9.b) This relates to international law instruments especially, bilateral treaties and cooperation within the European Union of which the Czech Republic is not yet a member.

9.c) We do not believe that any significant changes are necessary.

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

### **Interim Care ( SGP: C.10.1 )**

10.a) An alien can apply for asylum in the Czech Republic either at a border crossing immediately after entering the country or in the only reception center located in Moravia. If

an alien applies at a border crossing he/she has to get to the reception center right after that. Only in case he/she is not able to get there the transport is taken care of by the Alien Police.

After arrival to the reception center the minor is contacted by a social worker who carries out a social interview. Afterwards, a health care service conducts medical examination and issues a certificate on the child's health and his/her ability to reside in a collective facility for children. The District Authority – Childcare Section is then notified about presence of the child in reception center and is sent an application for issuance of a court interim measure. Within 24 hours the District Court decides upon interim measure and placement of the child under 15 years in a Diagnostic Institution or an orphanage.

If a child is accompanied by a closely related person but not a legal caregiver, social service secures a doctor's and psychologist's written opinion on the person's ability to provide care to the child. Then the District Authority – Childcare Section is asked to solve the situation by applying for interim measure by means of which the child would be entrusted into custody of a guardian who, in this case, would be the accompanying person.

Minors between 15 and 18 years not accompanied by their legal caregiver are included in a special program. They are all concentrated in one accommodation facility part of which is specially designed to provide conditions for residence of young people. If the capacity of the facility allows it, they are accommodated separately from others. In case they wish to share accommodation with other minors (of the same nationality for example), it is usually allowed.

There are facilities for spare time activities (library, study room, gym). Services of social workers, psychologist (special educationalist) and staff looking after the young people are provided.

If the child does not apply for asylum in the Czech Republic the municipality is obliged to provide care meaning satisfaction of the basic child's needs including health care. The municipality reports about taken measures to the District Authority that takes further necessary steps such as application for issuance of an interim measure, application for appointment of a guardian and application for starting institutional education or, if the person between 15 and 18 years wishes to apply for asylum, it secures his/her placement in an asylum facility.

Provided that it is found out that a child not applying for asylum has no legal caregiver, the District Authority files with a court an application for appointment of a guardian. The procedure of appointing a guardian is instituted also without filing an application or upon application filed by another natural or legal person. A guardian appointed by court is then obliged to fully replace parents' care, that means to foster the child, represent

it and manage its property. In all other cases the court upon application of the District Authority appoints a guardian for the child and defines the guardian's rights and duties so that protection of the child's interests is secured.

For the purpose of mediating an adoption or foster care there is a record of children eligible for adoption in the Czech Republic. These are the children who neither have a permanent or long-term residence permit to stay in the country nor are entitled to reside permanently in the territory of the Czech Republic. The record is kept by the Agency for International Legal Protection of Children. At the same time the Agency also keeps a record of applicants interested in and suitable for adoption.

For the purpose of mediating an adoption or foster care the child's physical and mental maturity, specific needs and requirements and suitability of substitute parents' care and its forms are assessed.

With respect to applicants their personal characteristics, mental health, preconditions to bring up a child, motivation to adopt or provide foster care, stability of marriage, family environment and other facts decisive for decision upon adoption or placement in foster care are assessed.

10.b) In compliance with the Statement minors in the Czech Republic are entitled to special care. When a minor is about to be placed with relatives, suitability of such measure is assessed by court. In case a minor is about to be placed in foster care, suitability of the foster family with regard to the child's needs is thoroughly assessed.

However, the problem is that, in spite of its goodwill and devotedness, the staff in diagnostic institutions and orphanages is not able to provide the minor aliens with necessary specific care such as language training and access to literature written in their mother tongue. Communication between the staff and these children basically, does not exist because of the language barrier.

10.c) It is necessary to improve the situation in language training, access to literature and to information from the country of origin.

### **Health ( SGP : C 10.2 )**

10.d) A child that does not have temporary or permanent residence on the territory of the Czech Republic and who, by the decision of the court, was placed in institutional care on the

territory of the Czech Republic, has equal status to a Czech child. This means that he/she has the same rights to social welfare and health care. The same applies to children in substitute parental care (adoption, foster care, upbringing by a natural person other than a parent, guardianship), if at least one person to which the child was entrusted is registered as a permanent resident in the territory of the Czech Republic.

In the event that a child - before being placed in the institutional care or care of another natural person - is threatened with serious harm to their health or the denial of normal tutelage and assistance cannot be provided under specific laws, it is possible to assist him/her to the necessary extent in the form of material or financial contributions or by the social welfare service.

Minors from 15 to 18 years of age, who applied for asylum in the Czech Republic and are placed in a Ministry of Interior accommodation facility, are subject to standard health care covered by the state. A psychologist is available in the institutions where the minors reside.

10.e) Our opinion is that the situation is fully in compliance with the Statement.

10.f) No.

### **Education, training, language ( SGP : C 10.3 )**

10.g) Formally, the situation is in compliance with the Statement. Also, state institutions that have been contacted agree on the fact that the minors receive adequate care in the areas of education and language training. Minors under 15 years of age attend elementary schools.

However, the opinions of our NGO personnel who are active in the accommodation facilities for asylum seekers as Czech language teachers, are entirely opposite. They all agree that in these areas the situation in the Czech Republic is absolutely unsatisfactory.

The fundamental problem is in the language barrier. The minors' indifference comes next. The minors attend elementary school only in some cases. In most of the cases they are excluded because they are +/- 17 years of age. Conclusion of elementary school education is

also impossible, since the Czech language is needed to pass the exams for mathematics, physics, chemistry and other subjects. In our conditions, it is impossible to provide for native language education. It can be drawn from the personal experience of the NGO personnel that professional training and attendance of secondary and technical schools is out of the question. Only as an exception do we manage to find a secondary or a technical school that would agree to accept the foreign minor. The problem is that the minors do not have the documents on finishing their education, which is required by the principals of schools. Therefore, the decision is upon each principal.

In the case of minor asylum seekers below the age of 15, access to education is granted (fulfillment of obligatory school attendance in elementary schools).

10. h) As to elementary education, the minors have the same access to education as do Czech children. In the case of higher levels of education, the situation is absolutely unsatisfactory. The possibilities of native language or professional training are absolutely not feasible under the existing conditions.

10.i) Provide for employees familiar with the language and cultural environment of the minors' countries of origin. Provide for access to education.

## **11. PROCEDURE ON GRANTING THE STATUS OF REFUGEE ( SGP : C11 )**

### **Access to regular procedure ( SGP : C 11.1 )**

11.a) Under the current valid legislation, a foreigner cannot be denied the right to commence an asylum procedure, res. to ask the Czech Republic for protection in the form of asylum. Minors are regular parties to the procedure. The law explicitly regulates that an application for commencing the asylum procedure cannot be refused as manifestly unfounded in the case of foreigners who do not enjoy full legal capacity. Minors belong to this group.

The manifestly unfounded application is, in other cases, an application of a party who arrives from a state classified by the Czech Republic as a third safe country or a safe country of origin.

11.b) Our opinion is that the situation is fully in compliance with the Statement.

11.d) No.

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

11.d) The Act on Asylum enables each party to the administrative procedure on asylum, including minors, to ask for the legal assistance of an attorney, or natural or legal person providing for legal assistance to refugees. The expenses incurred in connection with the legal assistance of an attorney have to be borne by the applicants themselves.

Legal assistance by a natural or legal person providing for legal assistance to refugees is at no charge. The natural or legal person has the right for a financial contribution for such an activity.

The Ministry of Interior of the Czech Republic grants the contribution under a contract. In practice, a minor party to the procedure without accompanying legal guardian in the procedure on granting the asylum is represented by a guardian appointed by the administrative organ (Section of asylum and migration politics of Ministry of Interior of the Czech Republic). The asylum procedure is a two-instance procedure, where the Ministry of Interior decides in the first instance and the Minister of Interior decides in the second instance. A claim against the decision of the second instance to the High Court is an extraordinary legal remedy. When the procedure is before the High Court, representation by an attorney is mandatory.

11.e) The situation is fully in compliance with the Statement.

11.f) Currently, a new law on asylum is being prepared that will change the asylum procedure. The change will be in the fact that the asylum procedure will be a two-instance procedure, where a court will decide as the second instance and the claim to the High Court will no longer be possible. Filing claims to the High Court has become an automatically used third instance, even though it is an extraordinary legal remedy.

In our opinion, it is necessary to wait until the final draft of the new regulation is prepared. Then the changes should be initiated in the commenting procedure.

### **Minimum Procedural Guarantees ( SGP : C11.4 )**

11.g) Decision upon the child's asylum application in 1<sup>st</sup> instance is made by the Ministry of Interior. If the first decision is negative, an applicant has the right to appeal to the Minister of Interior (2<sup>nd</sup> instance administrative body) within 15 days from the delivery of 1<sup>st</sup> instance decision. The second instance administrative body fully reviews 1<sup>st</sup> instance decision and is empowered to supplement the procedure, remove acknowledged defects of the procedure, modify or revoke the decision.

After delivery of the second negative decision, within 30 days an alien has the right to apply to have the lawfulness of his/her enforceable administrative decision reviewed by the High Court. The Court reviews the decision with regard to the state of facts at the time of issuance of the decision but does not review the evidence. Provided that the Court establishes that the legal reasoning in the appealed decision was incorrect or state of facts on which the decision was based is contrary to the facts contained in the file or the amount of ascertained facts is not sufficient for deciding the matter, it revokes appealed administrative decision and returns the case back to the administrative body that issued it to conduct further procedure. The administrative body is bound to apply legal view of the High Court.

11.h) Decision on an asylum application is taken by the Ministry of Interior of the Czech Republic. An appeal may be filed within 15 days. The time limit seems to be quite short but it is necessary to keep in mind that an appeal already submitted may be supplemented within reasonable time. Therefore, if an alien remembers further details that he/she forgot to state in the appeal he/she still has a chance to do it. This applies to adults as well as to minors.

Our NGO workers employed in accommodation facilities as guardians for asylum procedure say it is quite complicated to identify any significant differences in the asylum procedure of separated children and adult applicants. The only difference is appointment of a guardian for asylum procedure who should take part in all activities within the procedure that are related to separated child.

We can confirm that the regulation allowing to hand out 2<sup>nd</sup> negative decision to an applicant under 15 years only if the child has already been entrusted in permanent care by a decision of a court is observed in practice.

However, the problem is that asylum applications of minor applicants are not prioritized in any way and therefore, disposal of their applications takes as much time as in cases of adult applicants and that is often unreasonably long.

11.i) Generally, it is necessary to shorten the period of disposing of an application. As has been mentioned before, under a new law the asylum procedure should be changed in such a way, that 2<sup>nd</sup> instance decision is made by an independent appellate body of a judicial nature.

#### **Independent Assessment (review by an independent authority) ? ( SGP : C11.4 )**

11.j) Referring to the above mentioned, right after arrival of a minor to the reception center medical examination is carried out and a social worker carries out a social interview. The interview is done in a child- friendly manner in the presence of parents and in case of a separated child, in presence of the appointed guardian.

11.k) As far as we know, there is no special assessment of the child's ability to articulate fear of persecution carried out, however, as we mentioned before and will mention further, the asylum procedure interviews with a minor are conducted with appropriate care.

As shows the experience of our NGO workers, no psychological examination is automatically carried out. If an NGO worker, based on the child's behavior, assumes that the child is having a psychological problem, he/she is left for a certain time to get acquainted with the new environment and then a psychologist (eventually, the family) is contacted.

11.l) We believe that a psychological examination of minors should become an integral part of standard obligatory examination right after the child's arrival in the reception center.

### **Interview ( SGP : C11.5 )**

11.m) Conduct of interview with a minor in the asylum procedure is not legally regulated. However, in practice, the age of a minor is taken into account. In case of a separated child, the interview is carried out in the presence of the appointed guardian, interpreter or lawyer. Officers who carry out interviews with minors go through training organized by, for example, UNHCR or Federal Agency for Recognition of Foreign Refugees (Germany).

11.n) We believe that, with the exception of the presence of a lawyer at every interview with a minor, the situation in the Czech Republic basically complies with the Statement. The guardian present at the interview makes sure it is properly conducted and may apply for its adjournment or for a break, etc. As the number of interviews with a minor is quite large, it is impossible to secure that a lawyer is present at each of them. However, if a minor receives negative decision, he/she may always apply to NGO lawyers for legal assistance concerning drafting of the appeal.

11.o) We believe that no significant changes are required.

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

11.p) Deliberations on an asylum application filed by a minor in the Czech Republic are governed by the same law as in case of adults i.e. Asylum Act. Grounds for grant of asylum are enumerative. Therefore, their number cannot be extended. According to the statement of the national authorities, minor age of applicants is taken into account in the asylum procedure.

11.q) Legal regulation of asylum is based on .the Convention relating to the Status of Refugees. In course of the procedure UNHCR Guidelines are respected.

11.r) We believe that the conduct of an interview should be regulated especially, the range of questions posed to minors. Our experience shows that the questions posed to minors are the same as the ones posed to adults and that the authorities expect them to produce equally precise answers.

## **Separated young people who become adults in the course of the asylum procedure ( SGP: C.11.7 )**

11.s) Legal regulation is incorporated in the Asylum Act. Appointment of a guardian becomes “de facto” invalid when the applicant reaches the age of 18 years. However, appointed guardians are still kept informed about these cases and about the decision and are present when it is hand out.

Generally, the asylum procedure in the Czech Republic is very long. Since, as far as we know, the minors’ cases are not prioritized, lengthy procedure also applies to their cases.

11.t) As we mentioned before, the asylum procedure is often very lengthy. We could not claim that the national authorities deliberately wait to hand out 2<sup>nd</sup> negative decision until the minor is 18. However, we have had a few cases that could uphold this claim.

11.u) Generally, the time of asylum procedure should be shortened.

## **12. DURABLE OR LONG-TERM SOLUTIONS ( SGP: C 12.1 )**

### **Remaining in a Host Country or Country of Asylum ( SGP: C 11.7 )**

#### **Reasons for a child to remain in a host country ( SGP: C12.1.1 )**

12.a) Legal regulation is incorporated in the Asylum Act and in the Alien Act. They provide for forbearance of stay, grant of permanent residence permit on humanitarian grounds and grant of temporary protection.

##### In practice:

1 ) If a person is granted asylum, he/she has the right to reside in the territory of the Czech Republic as an alien with permanent residence permit.

2 ) If asylum has not been granted, impediment in leaving the country is declared and the alien stays in the Czech Republic according to the provisions on forbearance under the Alien Act.

3 ) If there is an armed conflict in the country of child’s origin he/she may be granted temporary protection visa allowing him/her to stay in the Czech Republic.

12.b) Grant of residence permit based on the grounds stated in the Statement is allowed under the Czech law. However, grant of residence permit on the grounds that it is in the child's best interests is not contained in any legal regulation and therefore, cannot be applied.

12.c) Grant of residence permit on the grounds that it is in the child's best interests should be introduced in the Czech legal system.

#### **Family reunion in a host country ( SGP : C12.1.2 )**

12.d) As we have mentioned before, if a minor applies for asylum in the Czech Republic and his parents have already been granted it, the decision will be made in his/her favor even if the general conditions for grant of asylum are not fulfilled in his/her case.

#### **Integration ( SGP: C12.1.3 )**

12.g) Legal regulation is incorporated in the Asylum Act. A refugee recognized in the Czech Republic is included in a "national integration program". The program is designed to help the refugees to integrate into the society and improve the knowledge of language. The language courses are organized by the Ministry of Education of the Czech Republic and are free of charge.

A part of the "national integration program" is provision of accommodation meaning a single offer of accommodation made by the Ministry of Interior.

In our practice we have only had one case when a minor has been granted asylum. The child has been placed in a Diagnostic Institution and then in an orphanage where he will stay until he is 18. An appropriate school, course or training will be recommended for him there in cooperation with the Job Center.

12.h) Complies.

12.i) No.

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

12.j) Based on an interim measure, a separated child found in the territory of the Czech Republic is usually placed in a residential setting. Provided that the parents or other close persons cannot be traced, suitability of placement in a substitute family is inspected. The District Authority is obliged to look for the children suitable for adoption or placement in foster care and report them to regional offices of the Ministry of Labor and Social Affairs that mediate substitute family care.

When these children are about to be placed in substitute family care, it is necessary to find out, whether according to the laws of the country of which the child is a national, the child or other persons or bodies have to give their consent to such placement.

On a day when the decision on adoption comes into force, the child assumes the citizenship of the Czech Republic.

12.k) Complies.

12.l) No.

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

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

12.p) If there is a case of family reunification with a child that has been granted asylum in the Czech Republic it is dealt with in a way described above. A minor's return to the country of origin may be secured. Before that, he/she has to apply for termination of asylum procedure and unconstrained repatriation. The repatriation is then executed in cooperation with UNHCR or IOM.

In case of minors who have not applied for asylum in the Czech Republic their repatriation is negotiated with the embassy of their country of origin. In the process of making the decision the best interests of the child are always taken into account.

12.q) In practice, parents of a person under 18 who has been granted asylum are upon their application granted it as well, even if they do not comply with the general conditions for grant

of asylum. Eventual consent of the minor is not required under the law, nor in practice. In case, when parents have been granted asylum in the Czech Republic, the asylum is also granted to a minor child upon his/her or parents' application, even if in his/her case the general conditions for such grant are not fulfilled. If the child applies for repatriation in the course of the asylum procedure, he/she is returned to the country of origin. In case a minor becomes 18 in the course of procedure and has been hand out 2<sup>nd</sup> negative decision, he/she may apply for repatriation within 24 hours from the hand out. It is within the competent body's discretion to decide that the costs of repatriation will be borne by the state (the Czech Republic).

12.r) In cases of children who do not apply for asylum in the Czech Republic, their return is negotiated with the embassy of their country of origin. We were not able to identify the extent to which their wishes and views are taken into account. It is likely that the children are consulted depending on their maturity and ability express their views on the matter.

#### **Requirements to be complied with before the return ( SGP : C12.2.2 )**

12.s) If a child manifests his/her wish to return to the country of origin, he/she has to apply for termination of asylum procedure or the procedure must have been terminated before the return. Furthermore, the child's health has to be examined and during the return he/she has to be properly accompanied.

12.t) When assessing requirements for return of a child to the country of origin, we were not able to identify what specific measures must be taken there prior to the return. Therefore, we do not know whether the ability of the family or other natural or legal person that shall provide the child with care in the country of origin is investigated in any way. Monitoring of the child's situation after he/she has been returned is not carried out either. The IOM Prague office provides assistance in repatriation of aliens back to their country of origin. We have not contacted this organization, however, it is possible to provide information on their eventual monitoring activities later on.

We believe that in case the national agencies cooperating in completing this questionnaire were involved in such activities they would have mentioned it in their statements. During the return to the country of origin the child is properly accompanied what is fully in compliance with requirements under the Statement.

We have not assisted with repatriation of a minor so far, however, we have been involved in a case when a young man from Pakistan with a severe disease was repatriated and the whole operation has been carried out in a very sensitive way and with no difficulties. Prior to repatriation the relatives willing to care for him have been contacted.

We believe that despite, or perhaps because, repatriations of minors are so few, they are carried out with due care. There are certain shortcomings in investigation of family situation and follow-up monitoring in the country of origin.

12.u ) see 12.t )

### **Assistance and programs designed to make reintegration easier ( SGP : C12.2.2 )**

12.v ) After an alien had been granted asylum in the Czech Republic he/she is included in a National Integration Program. It is designed to help with integration of aliens into the society. Free of charge language course is the part of the Program so that they are able to improve their knowledge of the Czech language. Within 30 days from the grant of asylum an alien is offered the chance to attend the course. As a part of the Program an accommodation is offered to a recognized refugee by way of a single offer.

12.w ) Yes.

12.x ) No.

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

12.y,z,zz ) This has been dealt with above; see 9.

## **13. COLLECTING OF INFORMATION**

a. In the course of asylum procedure it is Asylum and Migration Policy Section in the Ministry of Interior and cooperating NGOs. Regarding minor aliens in the territory of the Czech Republic it's the Agency for International Legal Protection of Children.

b. All accessible identification data are needed especially, those concerning previous and current situation of the child as well as the information important for securing his/her interests and protection.

c. Number of separated children – asylum applicants :

	1996	1997	1998	1999	2000*
0 – 15 years		14	42	63	28
15 – 18 years		48	153	415	263
Total	46	62	195	478	291

\* data concerning the year 2000 cover the period until 31 October 2000

- Separated children composed in 1996 2%, in 1997 3%, in 1998 5%, in 1999 6,6% and in 2000 ( as of 31 October 2000 ) 4,4% of the total number of asylum applicants resident in asylum facilities.
- It is typical for these people that in most cases they decide to leave asylum facilities shortly after arrival. 42% of all minors decided to leave in 1998. In 1999 the percentage was 84% and in 2000 75%.
- In 2000 nationality of minors was as follows:
 

Afghanistan	25 %
India	24 %
Sri-Lanka	16 %
China	10 %
Vietnam	8 %

In 1999 the most asylum seekers were from the following countries:

Afghanistan	40 %
India	9 %
Sri-Lanka	17 %

In 1998 :

Afghanistan	25 %
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Sri-Lanka	18 %
Republic of Yugoslavia-Kosovo	15 %
Bangladesh	14 %

#### **14. POLITICAL LEVEL – SUPPORT FOR CHANGES**

- Cooperation exists, however, it is not sufficiently developed due to short existence of the issue in the Czech Republic
- We have not received any information on existing contacts at this level.
- It is mostly the Asylum and Migration Policy Section in the Ministry of Interior who initiates suggestions aiming at improvement of situation for this type of applicants for asylum. Non-governmental sector's support focuses on commenting on draft laws.
- The principal problem is a very slow pace in enforcing the changes.