

SEPARATED CHILDREN IN EUROPE PROGRAMME **COUNTRY ASSESSMENT**

COUNTRY: LITHUANIA

ASSESSMENT PERIOD: 1997 – DECEMBER 2000

RESPONDENT(S): “Save the Children” Lithuania

AGENCIES/INDIVIDUALS CONSULTED:

- State Border Guard Service at the Ministry of Interior (MOI);
- Refugee’s Affairs Division and Foreigners’ Affairs Division of the Migration Department at the Ministry of Interior (MOI);
- Foreigners’ Registration Center of the State Border Guard Service at the Ministry of Interior (Foreigners’ Registration Center);
- Public Police Prevention Service Of the Police Department at the Ministry of Interior;
- Criminal Police Service of Investigation of Organised Crimes of the Police Department at the Ministry of Interior Criminal;
- Social Assistance and Prevention Centre for Minors under Police Department at the Ministry of Interior;
- Department of Social Aid, Family and Children Division of the Ministry of Social Security and Labour;
- Children’s Rights Protection Service at the Ministry of Social Security and Labour;
- Court Medical Examination Service;
- UNHCR Vilnius Office;
- “Save the Children” Lithuanian branch;
- National Society of Lithuanian Red Cross;
- Vilnius Caritas.

DOCUMENTS USED or REFERRED to:

1. The Constitution of the Republic of Lithuania;
2. Civil Code of 18 July 2000 (will come into effect on 1 July 2001);
3. Law on Refugee Status of the Republic of Lithuania of 29 June 2000 (enforced since 1 September 2000);
4. Law on the Status of Foreigners of 17 December 1998 (enforced since 1 July 1999);
5. Law on Fundamentals of Protection of the Rights of the Child of 14 March 1996;
6. Law on Child Guardianship of 24 March 1998;
7. Regulations of the Centre for Social Assistance to Minors and Prevention, approved by the Order No.259 of the Commissar General of the Police Department at the MOI on 7 September 2000;

8. Law on Citizenship of 1991;
9. Law on the Ombudsman for Protecting Rights of the Child (enforced since 1 September 2000);
10. Order on Refugee Social Integration approved by the Government Resolution No. 239 of 26 February 1998;
11. National Programme against Children Commercial Sexual Exploitation and Sexual Violence, approved by Governmental Resolution of 11 January 2000;
12. Regulations of the Foreigners' Registration Center of 2 June 1999;
13. Regulations of the Refugees' Reception Center of 27 March 1996;
14. Order on Establishing Safe Country of Origin and Safe Third Country and Returning or Deporting Foreigners to Them of 27 October 2000, approved by the Minister of Interior and Minister of Foreign Affairs.

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.**

This assessment will cover two categories of "separated children" in Lithuania: separated children asylum seekers and separated children of foreign origin who do not seek asylum in Lithuania.

There is no definition of "separated children"¹ in Lithuanian legislation. The Refugee Law uses the term "minor who is not accompanied by parents or legal representative" (Art.8 paragraph 3).

Law on Fundamentals of Protection of Rights of the Child gives the definition of the child: "a child is a human being below the age of 18 years, unless otherwise established by laws" (Article 2).

Law on Child Guardianship, which is also applicable to foreigners, lists several groups of children who are deprived of parental care. They are:

- 1) the orphaned child, whose both parents or a single parent are dead;
- 2) the child whose parents or close relatives are unknown (a foundling);
- 3) the child who is placed outside the care of his parents in the manner prescribed by law;
- 4) the child whose both parents or the single parent are known and attempts are made to trace them;
- 5) the child whose both parents or the single parent are declared dead or missing according to the procedure prescribed by law;
- 6) the child whose both parents or the single parent are declared legally incapable according to the procedure prescribed by law;
- 7) the child whose both parents or the single parent are declared temporarily incapable to take care of him by reasons of illness, arrest, imposed court sentence or because of other valid reasons;
- 8) the child whose both parents or the single parent neglect him, do not take proper care

¹ "Separated children" as a term is neither used in Lithuanian legislation, nor in the practice. However, for the purpose of this assessment report, instead of "unaccompanied children" a term "separated children" will be used to describe Lithuanian legislation, policy and relevant practice.

of him, are not bringing up him properly, have a negative influence on the child and his physical and mental health is endangered” (Article 2).

In practice, a term “unaccompanied children” is used by the Lithuanian state institutions. Both state institutions and NGOs consider minors under 18 years of age as children.

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.

Refugee Law provides that “application of a minor, unaccompanied by parents or legal representative, may be submitted by assigned representative of the institution for the protection of children’s rights” (Art. 8.3). It follows that children with older siblings over 18 years of age, but without presence of parents or legal representative, should be legally considered as separated children.

In practice, since 1997 there were three cases when the Migration Department at MOI processed applications submitted by an older sibling and his minor brother as one application according to the principle of family unity (one case of Chechen asylum seekers, one case of Pakistan asylum seekers, one case of Afghan asylum seeker). In other cases such applications were processed individually and those children were treated as separated. Family relationship in these cases were formally proved by documents and the fact that the older sibling had taken due parental responsibilities upon himself, e.g. made schooling arrangements, etc. Therefore, practice to consider a child coming to Lithuania with older sibling over 18 years of age to apply for asylum as separated, is not consistent.

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

It partially conforms to the Statement because Refugee law makes reference only to the lack of parental and legal representative care. The Refugee law, however, does not take into account substitute care, which may be available to a minor (e.g. guardianship according to custom). The Migration Department at MOI inconsistent approach to consider children as separated, if they come together with older siblings over 18 years of age, does not correspond to the Statement.

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

By-laws implementing Refugee Law should be adopted. They should establish that all aspects of “separated children” definition are fully taken into account. The Migration Department at MOI should take care that all state institutions related to the asylum procedure in Lithuania strictly implement “separated children” definition in practice. It is recommended that all experts on separated children in Lithuania, including experts from UNHCR and NGOs, would participate in the drafting process of relevant legislation and by-laws related to separated children matters. These changes are related to the principles No. 1 and 8 of the First Principles.

2. ACCESS TO THE TERRITORY (SGP: C1)

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

A separated child applying for asylum shall be admitted into territory under the same procedure as adult asylum seekers. However, there are no exceptions to prevent refusal of children's admission into Lithuanian territory if they arrive from a safe third country or their applications are considered to be manifestly unfounded (Art. 10 of the Refugee law). Refugee law provides no suspensive effect of appeal against refusal on admission to the Lithuanian territory, if child's application is turned down at the state border. But the implementing by-law - Order on Establishing Safe Country of Origin and Safe Third Country and Returning or Deporting Foreigners to Them - stipulates that safe third country notion and safe country of origin notion may be not applied to foreigners under 18 years of age unaccompanied by parents and other legal representatives. The Migration Department at the MOI also considers adopting an Order on Examination of Applications to Grant Refugee Status and Issuing Personal Documents (further – Draft Order on Asylum Applications), which will also be an implementing by-law of the Refugee Law. It will establish that asylum seekers under 18 years of age, unaccompanied by parents and other legal representatives, are considered as constituent part of “a group of particularly vulnerable persons”². In the draft it is envisaged that separated children's appeal at the state border might have suspensive effect.

Amendments of the Refugee law are pending in the drafting procedure³, which will revise grounds for refusal entry into Lithuanian territory. It is suggested that entry into the Lithuanian territory could be denied only on the ground of application of safe third country notion.

According to the Refugee Law the Migration Department at MOI should take decisions on admission into the territory within 48 hours.

Up to date, no special arrangements are provided for the separated children under Lithuanian legislation. The existing border facilities to hold there the separated children should be improved. Medical check-up could be available only in case of emergency.

relevant practice in your country

In practice, since 1997 up to 31 December 2000 there was one case of separated child's application at the Lithuanian border. All other children's applications were submitted after their detention in the Lithuanian territory.

In practice, Migration Department at the MOI adopts decisions on admission into Lithuanian territory within 24 hours of asylum application.

² “Vulnerable group” will be considered asylum seekers, who are in need of particular attention: children under 18 years of age unaccompanied by parents and other legal representatives, women- asylum seekers, asylum seekers experienced trauma or torture, asylum seekers with mental disorder, asylum seekers under age of pensionary, asylum seekers who are in need of permanent care because of their state of health” (Draft Order on Examination of Applications for Granting Refugee Status and Issuing Identification Documents).

³ It is expected that these amendments will be adopted by the end of the 1st half of 2001.

In practice, the separated children who illegally arrive in Lithuania and use forged passports for this purpose are not held criminally responsible for violation of Lithuanian criminal laws.

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

The current legal framework partially conforms to the Statement, because under the current Refugee Law the separated children may be still refused entry into the territory. The current practice on admission of the separated children to the territory, however, conforms to the Statement. The existing border facilities to hold there the separated children should be improved.

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

Refugee law should be amended in order to exempt the separated children from the grounds denying entry into Lithuanian territory. If the accession procedure at the state border is retained and minors for certain time cannot be moved from the border to the territory for examination of their asylum claim, they should receive all necessary material support and care to satisfy their basic needs, such as food and medical care. The border facilities for holding there the separated children should be also improved to the level suitable for their age, sanitary and medical care. These changes are related to the principle No. 1 of the First Principles.

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.40 of the Law on Legal Status of Foreigners provides for carrier sanctions without giving a specific reference or exceptions with regard to the separated children. There are no by-laws adopted explaining how this provision will be interpreted and applied in practice.

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.

Competent institutions of the MOI do not have information whether any child asylum seeker or stranded migrant in Lithuania would be trafficked for the purpose of any kind of exploitation. There were neither signals from the children themselves about such trafficking. However, the separated children usually arrive to Lithuania with assistance of smugglers.

Child trafficking - example from Lithuania

One case involves a boy from Afghanistan of 15 years of age separated from his parents and legal representatives. This boy together with other 3 separated Afghan children and four adult Afghans applied for asylum in Lithuania. The reason why he left Afghanistan was that he feared Taliban forceful conscription to take part in the fighting with the Northern Alliance and for the reason he could not attend school for two years. Therefore his parents decided that his son, the oldest in the family, should leave the country. His parents and younger siblings could not flee the country together with him because the family had money only for him to pay to the smugglers. Boy's family agreed with an "agent" that he would be taken to Germany for 5,000 USD. However, the family did not have all needed money and gave to the smuggler only 3,500 USD. They agreed that the boy would collect the rest of the money by working in Moscow City. The "agent" arranged everything for the trip to Moscow. He left Afghanistan in the group of 5 other Afghans with a car from Herat City to Dushambe in Tajikistan. From Dushambe they took a train to Moscow where the boy stayed for about 10 months. The boy worked there in hotel "Sevastopol" as carrier in order he and his family could collect the rest of the needed money for smugglers. When the money were collected he contacted again the "agent" who took care of arrangement of his trip from Moscow to Germany. In Moscow the "agent" got him into bus which without problem took them to Minsk City in Belarus. In Minsk City the boy lived for two days in an apartment rent by the "agent". After two days a car took him in a group of other three minors and four Afghans to the forest. It was dark and cold. The "agents" told them to wait in the forest for 1 hour until they would come back. But they did not keep up to the promise. Then the group, first, walked about 3 hours in the forest, and then they started camping. When they made a small fire, the police came and arrested them. The boy found out that he was in Poland. Later on, he together with the rest of the group was handed over to the Lithuanian border police. In Lithuania the boy applied for asylum.

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

Criminal responsibility in the Penal Code is established for trafficking people into Lithuania. Criminal sentence for such activity under aggravating circumstances (for repeated criminal activity or for persons agreed in advance to commit such crime) amounts from 10 to 15 years of imprisonment (Art. 82¹). Art.131³ of the Penal Code provides for punishment by imprisonment from 6 to 12 years for trafficking of minors with the purpose of their sexual or material exploitation.

On 11 January 2000 Lithuanian Government has adopted a National Programme against Children Commercial Sexual Exploitation and Sexual Violence which has to be fully implemented until 2004. The Programme's aims are to improve legal framework, create special education programmes for this category of children, prepare methodical information, prepare specialists, create mechanism for rehabilitation and reintegration, and organise international co-operation on this issue. The programme envisages that it should be linked to a prospective programme on Prevention and Control of Prostitution and Human Trafficking. A similar programme on separated children could be also promoted.

2. IDENTIFICATION (SGP: C2)

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

Article 9 of the Refugee Law provides that authorities receiving asylum applications should interview asylum seekers on their personal data, accompanying family members, travel route and motives for submission of asylum application. These interviews serve for initial identification, which is further verified during the in-country procedures, including another interview, carried out by the staff of the Foreigners' Registration Centre under Article 11 of the Refugee Law. Refugee Law or by-laws implementing it do not establish special procedure for identification of the separated children.

The Migration Department at MOI intends to adopt Order on Examination of Applications to Grant Refugee Status and Issuing Personal Documents⁴ which will establish general principles of work with the separated children. It is intended that such applications will be examined only by qualified Migration Department personnel, interviews with the separated children will be conducted in the presence of his/her guardian and legal representative, medical age assessment will be conducted only with consent of his/her guardian and legal representative, family tracing will be conducted only if it is in conformity with child's interests, asylum applications will be prioritized.

relevant practice in your country

The identification process, that is determining the age of the child and whether s/he is separated, starts at the port of entry or in the country while conducting an initial interview. Border police officials conduct the initial interview with the separated children. This initial procedure is further conducted in the in-country procedure at the Foreigners' Registration Center. In case child's identity cannot be established on the bases of documents, Migration officers rely on the information provided by the child or his/her accompanying relatives or other adults.

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

It generally conforms to the Statement, but the identification procedure should be regulated in more details in the by-laws implementing the Refugee law.

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

By-laws implementing the Refugee law should govern in more details the identification procedure which is two-fold: first, to find out whether or not the child is separated and second, to determine whether the child is an asylum seeker or not. Moreover, comprehensive training on separated children interviewing technique, child-friendly processes and environments should be continuously conducted for the border officials and migration officers working with the separated children asylum seekers in the country. These remarks are related to the principle No. 1 of the First Principles.

⁴ It is expected that this Draft Order will be adopted by the end of the 1st half of 2001.

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

3.a) Is a guardian or adviser appointed?

Under old Refugee law, which was effective until 31 August 2000, there was no clear legal bases and procedure to assign guardian or adviser to the separated children. The new Refugee Law⁵, which is effective from 1 September 2000, does not either set a clear obligation for the Children's Rights Protection Service to initiate assignment of guardian or for the Migration Department at MOI to assign adviser⁶ to a separated child.

As of submission of asylum application by the separated children, Law on Child Guardianship comes into play. This law regulates types and forms of child's guardianship, procedure of its establishment, duties and liability of child's guardian. However, it does not have references to the refugee status determination procedure. It is not clear what specific duties and role has a child's guardian in this procedure. The Migration Department at MOI seeking to improve the legal framework intends in the Draft Order on Asylum Applications to set a procedure of establishment of temporary guardianship to the separated children through the Children's Rights Protection Service. This Draft Order will state that "if asylum seeker under 18 years of age arrives alone, the institution which received application, has to submit request to the Children's Rights Protection Service of the city (district) municipality for establishment of child's temporary guardianship".

According to the Law on Child Guardianship the procedure for establishment of guardianship is the following: 1. Temporary guardianship of the child is established on the decision (ordinance) of the municipal board (the mayor) following the recommendation of the Children's Rights Protection Service of the district (city) municipality; 2. Permanent guardianship of the child is established by the court decision on the application of the Children's Rights Protection Office of the district (city) municipality.

In practice, during the period of 1997- 1998 there were 6 separated children who applied for asylum in Lithuania. During this period no guardians⁷ or advisers⁸ were appointed to the separated children seeking asylum in Lithuania. During the period of 1999–2000 there were 11 separated children who applied for asylum in Lithuania. In all these cases representatives⁹ from the Children's Rights Protection Service participated in the interviews with the separated children conducted by the Foreigners' Registration Center.

⁵ Article 8.3 of the new Refugee Law states that "application on behalf of minor may be submitted by her/his parents or other legal representatives. Application of a minor, unaccompanied by parents or legal representative, may be submitted by assigned representative of the institution for the protection of children's rights." (underlying added)

⁶ Lithuanian legislation on refugees or child's guardianship provides no legal regulation for the issue of adviser.

⁷ In Lithuania guardian is appointed under Law on Child Guardianship.

⁸ Lithuanian legislation does not regulate appointment of adviser to the separated children, such adviser's role, rights and duties. In Lithuanian context a representative appointed by the Children's Rights Protection Service could be interpreted as being such adviser.

⁹ Notion of "representative", his/her role and duties in the refugee status determination procedure is not elaborated in the Refugee Law. In practice, assignment of representative from Children's Rights Protection Service is a one-time act and is confined to participation in the interviews with the separated children conducted by the Foreigners' Registration Center officials.

b) If so what is their role?

Neither Law on Child Guardianship nor Refugee Law specifically regulates guardian or adviser's role in the refugee status determination procedure. Law on Child Guardianship only deals with duties of child's guardian in general. Under this law a child guardian shall ensure the child's physical and mental safety, take care of the child's health and schooling, educate child, etc.¹⁰ The Refugee Law makes only a reference to representative appointed by the Children's Rights Protection Service (Article 8.3 of the Refugee Law).

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

Neither Law on Child Guardianship nor other refugee legislation sets time limit for appointing a child guardian or adviser to the separated children. Such time limit does not either exist for establishing guardianship for other categories of children in Lithuanian legislation. In practice, representatives from the Children's Rights Protection Service are appointed to the separated children within few days.

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

Neither Law on Child Guardianship nor other legislation requires specific expertise or background from guardians or advisers. However, Law on Child Guardianship establishes general provision that "child's guardian shall be chosen taking into consideration his personal properties, his relationship with the child deprived of parental care and child's interests" (Article 22). The Law also specifies who may not be appointed as the child's guardian, that is:

- "1. A person who is under the age of 21 years, unless guardianship is assumed by a close relative;
2. A person recognized as legally incapable or as a person of diminished capacity;
3. A person from whom the child has been removed without terminating the person's parental rights;
4. Former adoptive father (adoptive mother) if the adoption is terminated because of the foster father's (foster mother's) failure to duly fulfil his/her duties;
5. If the person's authority as the child's guardian has been terminated under paragraph 2 of Article 2 of this Law;
6. A person who has a record of convictions for wilful offences;
7. A person who has attained the age of 50 years, if he wants to assume permanent guardianship of a child younger than 10 years of age;
8. A person who has attained the age of 65 years or older, except for a close relative, if he wants to assume temporary guardianship of a child younger than 10 years of age."

In practice, representatives from the Children's Rights Protection Service appointed to the separated children have technical and humanitarian background with expertise in the field of children's rights protection.

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

It does not conform to the Statement, because the Law on Child Guardianship does not

¹⁰ Article 25 of the Law on Child Guardianship.

make references to the refugee status determination procedure. Neither this law nor Refugee law nor by-laws implementing it regulates guardian or adviser's specific role, rights and duties in the refugee status determination procedure. The existing legal acts do not either provide time limits for appointment of guardian to the separated children.

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

Draft Order of Asylum Applications should be adopted. Law on Child Guardianship or Refugee Law should be amended that would allow to create an effective procedure of appointment of guardians to the separated children. Guidelines for the Children's Rights Protection Services should be adopted which would detail the procedure of appointment of guardian to the separated children. Such appointments should be made as soon as possible of a child being notified to the migration authorities. Law on Child Guardianship should be supplemented with specific references to guardian's role and responsibilities in the refugee status determination procedure and vis-à-vis other separated children (who are not asylum seekers). Law on Child Guardianship should be also supplemented with requirements related to relevant childcare expertise and understanding of the special and cultural needs of the separated children to persons to be appointed as guardians to the separated children.

4. REGISTRATION AND DOCUMENTATION (SGP: C4)

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

Article 9 of the Refugee Law serves as a basis for conducting initial interview with a separated child who submitted asylum application either at the Lithuanian border or in the country (see 2 a) above). The Migration Department has drafted Order on Asylum Applications and questionnaires of the asylum seekers, which will detail performance of the initial interview.

relevant practice in your country

In practice, the Migration Department at MOI is responsible for overall and complete information about the separated children. Children's Rights Protection Services are not involved in these matters. The initial information about the separated children (see paragraph 2a above) is collected by state institution to which asylum application is submitted. The Migration Department at MOI collects further and more detailed information during the refugee status determination procedure.

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

It partially conforms, because a 'twin track' approach to register and document the separated children is not fully developed. Children's Rights Protection Services are not involved in gathering information for a complete child's social history.

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

A 'twin track' approach to register and document the separated children should be fully

developed. Children's Rights Protection Services through the assigned representatives/guardians to the separated children should be asked to conduct a complete social history according to the Statement (Appendix). Training for workers of Children's Rights Protection Services on interviewing techniques in relation to the separated children should be arranged. These changes are related to the principle No. 1 of the First Principles.

5. AGE ASSESSMENT (SGP: C5)

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

There are no explicit legislative provisions with regard to age assessment.

relevant practice in your country

Since 1997 up to December 2000 age assessment was conducted only once for two young Afghan people who arrived to Lithuania for the purpose of family reunification.

In practice, if child's age cannot be established on the basis of available documents (in case of absence or presence of false documents), migration officers rely on the information provided by the child or his/her accompanying relatives or other adults, unless there are obvious doubts about child's age.

If there are obvious doubts about child's age, he/she might be proposed to undergo medical examination, namely limbs ex-raying. In the only age assessment case of Afghan children the results of age assessment have been applied as the sole ground for declaring them adults. Court Medical Examination Office specialists conduct medical examination. Lithuania has a few qualified specialists for medical examination of children's age assessment. The methodology for age assessment applied in Lithuania allows certain margin of error: for children until 14 years of age – 1-2 years and for children of 14-18 years of age – 2-3 years margin of error. The applied methodology does not allow taking into account the examined child's ethnic, geographical, social nutritional or other background. In order to avoid any ethnically predetermined variations Lithuanian specialists tend to co-operate with experts from Russia who have more expertise in working with refugee children.

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

It partially conforms, because there is no established procedure for the separated children's age assessment. It is not clear what legal effects could have results of medical examination on age assessment in the refugee status determination procedure. The current medical examination applies ex-raying methodology in age assessment. However, the applied methodology in ex-raying is rather inaccurate (large margin of error) and does not allow taking into account ethnic, geographical, social nutritional or other background of the separated children). There are no alternatives established to ex-raying for age assessment.

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

Detail procedure for age assessment should be established in the Draft Order on

Asylum Applications, which should indicate in which cases medical examination for age assessment should be carried out. It is recommended that the Draft Order specifies that medical assessment will not be used as a sole evidence for establishment. The Draft Order could also indicate that the principle “benefit of doubt” is applied in these cases. Alternatives to x-raying and more accurate age assessment ways and methodology should be created in Lithuania. Co-operation with relevant experts from other countries could be further developed. Experience of Lithuanian specialists working with age assessment in children’s ethnic, geographical, social nutritional or other background needs to be further developed.

6. DETENTION (SGP: C6)

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

Article 12 of the Refugee Law provides that minors are detained only as exception and on the following grounds:

1. Prevent the foreigner from unauthorized entry into the country;
2. When actions are being taken with regard to deportation of foreigner;
3. Ascertain the reasons, based on which foreigner used forged identity documents or destroyed them;
4. Prevent the spread of infectious diseases;
5. Other grounds provided by the laws of the Republic of Lithuania.

According to the same provision a person can only be detained for 48 hours. For a longer period, a person can only be detained on the basis of court ruling.

Article 54 of the Law on Fundamentals of Protection of the Rights of the Child provides that “arrest, deprivation of liberty or any other restriction of liberty of a child must be substantiated, as brief as possible and applied only in exceptional circumstances”. It further elaborates that “a child who has been detained or arrested shall have the right to immediate legal or another type of required assistance, and shall also have the right to dispute in court, the legality of restriction or deprivation of his liberty”. It also states that “a child whose liberty is restricted or deprived, must be held separately from adults”. “Upon restriction or deprivation of a child’s liberty, his other rights (right to education, and physical, mental, spiritual and moral development) may not be restricted”.

relevant practice in your country

In practice, detention is applied to all asylum seekers who illegally come to Lithuania irrespective of their age and accompanied status. As a rule, illegal migrants are sent to the Foreigners’ Registration Center in Pabrade of the State Border Protection Service at MOI on the basis of court ruling. Foreigners who apply for asylum at the state border or in the police commissariats are sent to this Center on a base of the Migration Department decision. Maximum time frame for holding asylum seekers in this Center is 45 days (Article 11 of the Refugee Law). Children, having illegally come to Lithuania, may be referred to the Social Assistance and Prevention Centre for Minors in Kaunas (Center for Minors) where they can receive more suitable psychological, medical and social assistance. Maximum time limit for holding a child in that Center is 20 days. However, in case, a minor comes together with his/her parents or relatives, who are held at the Foreigners Registration Center, a minor is not separated from his/her family

or relatives.

The Center for Minors could be regarded as an alternative to the Foreigners' Registration Center, which is an officially unrecognised detention center for illegal migrants in the country. But children in the Center for Minors are also restricted from outside with their freedom of movement, that is, they are not allowed to leave the perimeter of the Center. In addition to the main functions of that center that is to provide temporary accommodation, social, medical assistance to waifs and strays, it also takes care of sending minors to their countries of origin. The latter function is carried out with co-operation of the Migration Department at the MOI.

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

It does not conform to the Statement, as detention is used almost automatically for the illegally entered separated children, without examining the availability of alternative measures. No particular rights of detained persons, including the separated children, are enlisted in the Refugee law. In practice, courts do not take into account special needs of the separated children and do not apply the principle "best interest of the child" in detention matters.

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

Rights of the detained children should be elaborated in the Refugee Law. The Courts should be trained to take into account special needs of the separated children and apply the principle "best interest of the child" in detention matters. Alternatives to detention of the separated children should be established in the Refugee Law. These changes are related to the principles No. 1 and 2 of the first principles.

Supplements to the Refugee Law have been drafted to introduce alternatives to detention of asylum seekers and also with specific references to detention of the separated children.

"1. Court adopting decision not to detain a foreigner, can apply these alternative measures to detention:

1. Establish a duty for foreigner to periodically come to the city (district) police commissariat at established time;
2. Establish a duty for foreigner to inform the city (district) police commissariat about his/her whereabouts by communication means at established time;
3. Leave a deposit established by court at the city (district) police commissariat;
4. A minor who is unaccompanied by his/her parents or legal representative, can be referred for care to social institution;
5. A Foreigner can be referred for care to non-governmental organisation, if this organisation expresses a wish to provide such care to the foreigner;
6. Foreigner can be referred for care to a citizen of the Republic of Lithuania or foreigner legally resident in the Republic of Lithuania who has kinship with the foreigner whose detention issue is under determination;
7. A foreigner can be temporary accommodated in the Foreigner's Registration Center without applying restriction to his/her freedom of movement".

2. If a foreigner fails to comply with the prescribed alternative measures to detention by

court, the Migration Department submits a repeated request to detain the foreigner”¹¹.

The Draft Law on Supplement and Change of the Refugee Law also envisages that “when issue of detention of a minor, who is not accompanied by his/her parents or legal representative, is determined by court, a representative appointed by the Children’s Rights Protection Service has to participate in the court and express his/her opinion”¹².

7. RIGHT TO PARTICIPATE (SGP: C7)

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

No relevant legal provisions exist in asylum legislation. Similarity could be found in the adoption matters. Adoption of the child over 10 years of age cannot be conducted without his/her consent. If a child is under 10 years of age, but is able to express his/her opinion, then he/she has to be heard in the court. (Article 115 of the Code on Marriage and Family)

New Civil Code, which will come into effect on 1 July 2001, provides with more legal regulation on minor’s right to participate. Article 3.164 states that “while deciding any issue related to child, a child able to formulate his/her views has to be directly heard, and if that is not possible – through his/her representative, and while adopting a decision, his/her views have to be taken into account, if that does not contradict to his/her own interests. While deciding an issue on appointment of guardian (trustee) or adoption, child’s wishes have to be exclusively taken into account”¹³.

relevant practice in your country

In practice, children separated from their parents or legal representatives and who are not accompanied by adult siblings or relatives are interviewed in the presence of representative from Children’s Rights Protection Service and Red Cross lawyers (the latter since 1 November 2000; see below). If adult siblings or relatives accompany children separated from their parents or legal representatives then they are not interviewed directly because such children are not considered a party to the asylum proceedings. Since they cannot make a separate asylum claims, possibility to receive refugee status for them exclusively depends on the grounds submitted by their accompanied adult siblings. The views and wishes of the separated children unrelated to their asylum claim, such as, schooling, nutrition and other needs, are usually elicited during the informal conversations conducted by social workers of Lithuanian Red Cross working in the Foreigners’ Registration Center and Refugees’ Reception Center. These views and wishes are taken into account while providing humanitarian, social and other assistance by NGOs.

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

It does not conform to the Statement because Lithuanian legislation, including Refugee Law, does not ensure separated children’s right to be heard during asylum procedures.

¹¹ Article 12¹ of the Draft Law on Supplement and Change of the Refugee Law.

¹² Part 2 of the Article 12² of the Draft Law on Supplement and Change of the Refugee Law.

¹³ Article 3.164 of the Civil Code.

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

Legal regulation of this issue will be improved when the new Civil Code will come into effect on 1 July 2001. But separated children's right to be heard should be also elaborated in the relevant by-laws implementing the Refugee Law. By-laws should establish a minimum age of separated children for their automatic right to participate directly in the asylum proceedings. These changes are related to the principle No. 3 of the First Principles.

8. FAMILY TRACING & CONTACT (SGP: C8)

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

No relevant legal provisions exist in legislation.

The Draft Order on Asylum Applications provides that during the refugee status determination procedure migration officers while examining asylum claim have to address to Lithuanian institutions or the ones in the foreign states, except to the institutions of the countries of origin of asylum seekers, seeking to identify "whereabouts of the parents or other close relatives of the asylum seekers under 18 years of age unaccompanied by their parents or legal representatives, provided that is not in contradiction to child's interests".

relevant practice in your country

Lithuanian legislation does not provide for legal regulation of family tracing of the separated children. In practice, social workers or lawyers of the Lithuanian Red Cross, having obtained permission from the child initiate family tracing of the asylum seeking separated children. Such requests for family tracing are forwarded to the Lithuanian Red Cross Tracing Department or UNHCR Vilnius Office. However, family tracing is not offered to the separated children who do not apply for asylum and who are accommodated in the Center for Minors. NGOs are not present there.

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

It partially conforms to the Statement because initiating family tracing procedures should be regulated in the by-laws implementing the Refugee Law. After adoption of the Draft Order on Asylum Applications legal framework of this issue will be in conformity.

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

The Draft Order on Asylum Applications should be adopted. This Order should also establish that family tracing procedures are initiated shortly after identification of a separated child. These changes are related to the principle No. 7 of the First Principles.

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

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

Article 26 of the Refugee Law regulates the issue of family reunification¹⁴. However, this provision does not provide for the right of the separated children holding refugee status in Lithuania to invite his/her parents or siblings for reunification purposes in Lithuania. The Refugee Law does not establish a special procedure of reunification applicable to refugees, thus the general procedure applicable to foreigners would be applied to refugees (including requirement to have residence, means of subsistence, documents proving relationship between family members, health insurance and others). No right to family reunification for children holding humanitarian status, that is temporary residence permit because of humanitarian reasons, exists under Law on Legal Status of Foreigners.

At present, changes of the Law on the Legal Status Foreigners are being under discussion among ministries. According to the Draft, foreigners issued with temporary residence permits will have the right to reunify with their family members. It is not clear whether this change will also include the separated children's right to family reunification in Lithuania.

relevant practice in your country

There is no practice.

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

It partially conforms to the Statement because the procedure for family reunification does not take particular account of the special status of refugees vis-à-vis other foreigners in the country. There is no possibility for the separated children having refugee or humanitarian status in Lithuania to reunify with his/her parents or siblings in Lithuania. After adoption of the changes to the Law on the Legal Status Foreigners legal framework of this issue will be improved. However, those changes have to include the separated children's right to family reunification in Lithuania.

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

The changes to the Law on the Legal Status Foreigners have to be adopted. Those changes should include the separated children's right to family reunification in Lithuania. In practice, the principle "best interest of the child" should be always applied in family reunification cases.

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

¹⁴ Article 26 of the Refugee Law stipulates that "according to the order established by the laws of the Republic of Lithuania, a refugee shall have a right to invite for residence in the Republic of Lithuania his spouse, children and foster children under 18 years, living abroad, if they are not married, and parents, who are disabled due to age or illness, with whom refugee used to have a common household".

Article 17 of the Refugee Law provides that foreigner [who applied for asylum in Lithuanian] has a right:

1. "Live in the Foreigners' Registration Center or Refugees' Reception Center and make use of the services provided there".
2. "Receive compensation for the use of public transport".
3. "Receive monthly allowance for minor expenses in accordance with the order established by the Government of the Republic of Lithuania or institution authorised by it".

Rules of the Center for Minors establish that children from 3 to 18 years of age shall be admitted in the Center who, having illegally come to Lithuania or illegally staying in Lithuania, are from other countries without parents' or legal representatives' care. The Center takes overall care of the children staying there, educates and supervises them.

relevant practice in your country

In practice, there are no formal criteria applied while deciding in which place the separated children should be accommodated, if they illegally arrive to Lithuania or already illegally are present in its territory. Since the Center for Minors is not integrated in the asylum determination procedure, usually all those children are accommodated in the Foreigners' Registration Center. In the nearest future the latter Center will establish two regimes for its residents: open and closed. The difference between those two regimes will be restriction of freedom of movement. Closed regime will be applied for those asylum seekers who will be detained under Refugee Law. Open regime will be applied to those asylum seekers who will not be detained under Refugee Law.

In practice, there were no cases when the separated children asylum seekers would be accommodated in foster institutions. But there is a case when a separated child who applied for humanitarian residence permit continues to live in Children foster house. 12 orphan Chechen children holding a temporary residence permit on humanitarian grounds are staying with their guardians from the same ethnic origin. All of them reside in the apartment provided by Kaunas City municipality.

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

It partially conforms to the Statement, because courts almost automatically accommodate the separated children who illegally arrive in the Foreigners' Registration Centre. Courts, while deciding the issue of detention, that is temporary accommodation place, do not take into account the separated children's specific needs on the most suitable placement for their care.

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

Article 45 of the Law Legal Status of Foreigners¹⁵ should be amended in the way that

¹⁵ Article 45.2 of the Law on Legal Status of Foreigners proclaims that "An alien who cannot attest or fails to attest his identity or his lawful presence in the Republic of Lithuania may be detained by the police for not more than forty-eight hours. If during that time the identity of the alien or lawfulness of his presence in the Republic of Lithuania cannot be established, he shall be sent by a court order to the Foreigners' Registration Centre". (underlying added)

Courts, while deciding the issue of detention, that is temporary accommodation place, for the separated children, would be obliged to take into account the separated children's specific needs on the most suitable placement for their care. These changes are related to the principle No. 1 of the first principles.

Health (SGP:C10.2)

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

Article 17 of the Refugee Law provides that foreigner [who applied for asylum in Lithuanian] has a right to “use medical services in accordance to the order, established in the Foreigners’ Registration Center and Refugee’s Reception Center”.

Regulations of the Foreigners’ Registration Center of 2 June 1999 provide that the Center “ensures the established individual’s initial medical care”, and “organises other foreigners’ individual medical care”.

Regulations of the Refugees’ Reception Center of 27 March 1996 establish that the Center “provides [foreigners having temporary territorial asylum] with the first medical, psychological assistance”.

Regulations of the Center for Minors of 7 September 2000 stipulate that its medical staff observe health conditions of the children, diagnose, treat simple illness, and in case of necessity refer children to other medical institutions.

However, under the Law on Health Insurance (Article 5), foreigners, who do not hold permanent residence permit, are not covered by mandatory health insurance paid from the state budget. Thus, those who receive temporary residence permits fall out of state guaranteed health care regime.

relevant practice in your country

The separated children asylum seekers have access to initial medical assistance available in the centres where they are accommodated. Access to more sophisticated medical examination and treatment, which is available only in the clinics, depends on the actual financial resources of accommodating centers, that is on the amount of money allocated in the center’s budget for medical treatment. Access to special counselling for children, such as psychological counselling in general and/or therapeutic treatment from the psychological impact of violence, trauma and loss, is not available.

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

It partially conforms to the Statement, because only the initial and medical treatment which can be covered from the Centers’, accommodating the separated children, budget is available. Special and more sophisticated medical examination and treatment which cannot be provided by the Centers themselves and which exceeds Centers’ budgets is not available.

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

Law on Health Insurance (Art. 5) should be changed that the separated children would be covered by mandatory health insurance paid from the state budget. Access to special counselling for children, such as psychological counselling in general and/or therapeutic treatment from the psychological impact of violence, trauma and loss, should be developed and made available at the Centers where they are accommodated or alternatively they should be referred to hospitals where such treatment is available.

These changes are related to the principle No. 1 of the first principles.

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

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

Article 17 of the Refugee Law provides that children of foreigners seeking asylum have a right to attend public schools.

relevant practice in your country

In practice, children asylum seekers are granted access to secondary schools depending on their knowledge of Lithuanian language. It means that before they are admitted into schools, they are asked to take language proficiency test. Those children who have better knowledge of Russian language, than Lithuanian, they can opt for secondary schools taught in Russian. There is also a school within the Refugees' Reception Center in Rukla where they are taught Lithuanian language, geography, history and other subjects. Children asylum seekers staying in the Foreigners' Registration Center do not have access to secondary schools, but a school teacher, financed through the Lithuanian Red Cross, pays regular visits (twice a week) to the Center and provides lessons for children under 16 years of age. Those over 16 do not attend lessons provided by the teacher during their stay in the Center. Children asylum seekers in Lithuania do not receive their mother-tongue teaching due to the lack of such specialized teachers. Children staying in the Center for Minors receive education provided by the Center teachers. Those children, however, do not have access to secondary schools.

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

It is partially in conformity because children staying in the Foreigners' Registration Center and in the Center for Minors do not have access to secondary schools. Children asylum seekers should also receive their mother tongue teaching (provided, there are such specialised teachers).

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

Children asylum seekers staying in the Foreigners' Registration Center and in the Center for Minors should be provided with access to secondary schools. It is recommended that Ministry of Science and Education should take steps to ensure that the separated children accommodated in the Foreigners' Registration Center would be able to attend secondary schools. In general, access to secondary schools for all children asylum seekers should also be improved. State funding should be provided to those secondary schools, which agree to admit such children. This change is related to the principle No. 1 of the First Principles.

11. REFUGEE DETERMINATION PROCESS (SGP: C11)

Access to normal procedures (SGP: C11.1)

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

The separated children fall under the same refugee status determination procedure as adult asylum seekers. No special considerations are provided by the Refugee law, except of the possibility to have representative for the separated children (see above).

Under Article 10 of the Refugee Law the separated children may be refused admission into Lithuanian territory¹⁶. Under Article 9 of the Refugee Law their appeals against refusal on admission into the territory submitted at the border do not have suspensive effect. But the implementing by-law - Order on Establishing Safe Country of Origin and Safe Third Country and Returning or Deporting Foreigners to Them - stipulates that safe third country notion and safe country of origin notion may be not applied to foreigners under 18 years of age unaccompanied by parents and other legal representatives. The Migration Department at the MOI also considers adopting an Order on Asylum Applications, which will also be an implementing by-law of the Refugee Law. It will establish that asylum seekers under 18 years of age, unaccompanied by parents and other legal representatives, are considered as constituent part of “a group of particularly vulnerable persons”. In the Draft it is envisaged that separated children’s appeal at the state border may have suspensive effect.

Article 14 of the Refugee Law does not make exceptions to the separated children asylum applications from the accelerated procedure if they fall under the established criteria¹⁷.

Draft Law on Supplements to the Refugee law has been also prepared to change admission procedure into the territory for asylum seekers. Under the draft law the only ground to refuse such admission will be application of safe third country concept.

The Ministry of Interior also intends to sign an agreement with the Lithuanian Red Cross, which, inter alia, would regulate provision of free legal aid to all foreigners seeking asylum in Lithuania, including to the separated children.

relevant practice in your country

In practice, under the new Refugee Law all the separated children are granted access to the Lithuanian territory. In one case of the separated child asylum seeker from Pakistan,

¹⁶ Article 10 of the Refugee Law establishes the following grounds for refusal of admission into Lithuanian territory. If a foreigner:

- 1) arrived from a safe third country; (underlying added)
- 2) has been granted asylum in another state;
- 3) possess a citizenship of several states and without serious reasons does not avail himself/herself of the protection of a state of which s/he is a citizen;
- 4) his/her application for refugee status has been earlier rejected after examination under the order of this Law, and new application does not contain important additional information.
- 5) his/her application is manifestly unfounded. (underlying added).

¹⁷ Under Article 14 of the Refugee Law accelerated procedure may be applied when:

- 1) foreigner came from a safe country of origin;
- 2) foreigner’s application is manifestly unfounded;
- 3) foreigner submits clearly fraudulent information about him/herself and the circumstances of his/her arrival or stay in the Republic of Lithuania;
- 4) there are serious reasons to consider that s/he poses a danger to the security or public order of the Republic of Lithuania.

who was accompanied by his adult sibling, his asylum application was examined under the accelerated refugee status determination procedure.

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

It is partially in compliance with the Statement, because the separated children are still not exempted from the accelerated refugee status determination procedure.

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

The Migration Department should establish in the Draft Order on Asylum Applications or other by-law implementing the Refugee Law that the separated children asylum applications would not be examined under the accelerated refugee status determination procedure.

Legal Representation (SGP: C11.2)

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

Refugee Law provides with the possibility for all asylum seekers, including the separated children, to “make use of legal assistance provided by the state¹⁸.”

The Migration Department at MOI intends to sign a new agreement with the Lithuanian Red Cross, which would regulate provision of free legal aid to asylum seekers in Lithuania. Under this agreement Lithuanian Red Cross lawyers will oblige to participate in all interviews with the separated children conducted by the migration authorities.

relevant practice in your country

Since mechanism of legal assistance to asylum seekers is not incorporated into general free legal aid scheme financed by the state, and due to low remuneration rates fixed by the state for advocates providing such assistance, the current mechanism to provide free legal aid to asylum seekers is established under two bilateral agreements between the Ministry of Interior and Lithuanian Red Cross¹⁹ and Refugee Reception Center under the Ministry of Social Security and Labor and Lithuanian Red Cross²⁰.

Since 1 November 2000 the Migration Department at MOI started inviting Lithuanian Red Cross lawyers to participate in the interviews with the separated children conducted by the Foreigner’s Registration Center. Red Cross lawyers during such interviews has assumed observers’ role, but at the end of the interviews they are allowed to note remarks and register them at the interview protocols.

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

¹⁸ Paragraph 1.3 of the Article 17 of the Refugee Law.

¹⁹ A cooperation agreement between the Ministry of Interior and Lithuanian Red Cross of 21 January 1999, which will expire on 21 January 2001.

²⁰ Cooperation Agreement between the Refugee’s Reception Center and Lithuanian Red Cross of 26 January 2000 which will expire on 31 December 2000.

It is partially in compliance because existing legal acts on refugees do not regulate lawyer's participation in the refugee status determination proceedings with the separated children until the 1st instance decision (the Migration Department at MOI) is adopted.

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

Lawyer's role and functions in the refugee status determination proceedings with the separated children before the 1st instance (the Migration Department at MOI) should be formalised in the by-laws implementing Refugee Law. Expertise on the rights of children seeking asylum and awareness of specific needs of the separated children should be raised among those lawyers who provide legal assistance to the separated children. The changes are related to the principle No. 9 of the First Principle.

Minimal Procedural Guarantees (SGP: C11.3)

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

Article 19 of the Refugee Law provides that the Migration Department at MOI is a competent institution to decide asylum matters. While Article 21 of the Law identifies independent appeal institution – Vilnius District Administrative Court. There are no by-laws yet adopted which would regulate prioritization of separated asylum seekers' application. But this is envisaged in the Draft Order on Asylum Applications.

relevant practice in your country

The Migration Department at the MOI is a competent authority to take decisions on children asylum claims. The separated children as adult asylum seekers have 14 days to appeal against negative decision of the Migration Department at MOI to Vilnius District Administrative Court. In practice, the Lithuanian Red Cross lawyers provide all asylum seekers at appeals stage with free legal aid.

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

It is partially in conformity to the Statement because applications of the separated children are not yet prioritised. The Migration Department at MOI intends to adopt an Order on Asylum Applications by which the separated children will be considered as part of "vulnerable group". Therefore, their asylum applications will be given priority and will be investigated in as speedy manner as possible.

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

Order on Asylum Applications should be adopted. The change is related to the principle No. 1 of the First Principles.

Independent Assessment (SGP: C11.4)

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

Neither Refugee Law nor implementing by-laws regulates issue of independent assessment. Law on the Ombudsmen for Children Rights Protection could be mentioned as relevant legislation. Under this law Ombudsmen has to control how conventions ratified by the Republic of Lithuania as well as the national legislation and other legal instruments, regulating protection of children's rights and legitimate interests are implemented.

relevant practice in your country

No relevant practice exists.

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

It does not conform to the Statement because neither independent expertise is available nor independent evaluation is carried out at the moment. However, the need of existence of such separate institution should be examined due to the low numbers of the separated children seeking asylum in the country.

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

The need of existence of such separate institution should be examined. If such need is established, an institution or organisation should be identified which could carry out such independent assessment of the child's ability to articulate a well-founded fear of persecution. Legal regulation on this issue should be adopted by the Migration Department at MOI or other state institution, provided such need is established. This change is related to the principle No. 9 of the First Principles.

Interviews (SGP: C11.5)

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

Several provisions of the Refugee Law indicate that interviews have to be carried out by the state authorities. However, no specific guidelines exist with regard to interviewing of children asylum seekers.

relevant practice in your country

Expertise on interviewing techniques is developed through seminars organised by UNHCR, IOM and those held in the framework of PHARE Horizontal Programme.

All separated children so far have been mature enough to give their story in a fluent and coherent manner and to co-operate during the examination of their asylum application. (As regards external participants present during the interviews see above)

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

It is generally in compliance, but guidelines on children interviewing procedure and the Migration Department at MOI should adopt tactics.

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

It is recommended that the Migration Department at MOI should adopt guidelines on children interviewing procedure and tactics. The guidelines should also provide with the possibility for lawyers to be present during the interviews with the separated children. Role of representative from Children's Rights Protection Service and lawyers should be regulated in the Draft Order on Asylum Applications.

Draft Order on Asylum Applications provides Children's Rights Protection Service representative and lawyers with the possibility to participate in the separated children interviews conducted by the migration authorities. However, role and functions of these external participants is not regulated.

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

There are no specific provisions in the Refugee Law or by-laws on refugee matters for making decision on a child's asylum application. There are neither child-specific forms of human rights violations which could be assessed during the refugee status determination procedure. Since there has been no 1st instance decisions (by the Migration Department at MOI) on refugee status of the separated children asylum applications, it is not possible to state whether specific human rights violations related to children in their country of origin (such as sexual exploitation, forceful conscription, etc.) are taken into account while making such decisions on their refugee status.

relevant practice in your country

In practice, according to the Migration Department at MOI information, "benefit of doubt" principle would be applied in a more flexible manner while adopting decisions on refugee status for the separated children. Standard of proof would be lower than in cases of adult asylum seekers. A child would not be expected to explain all that happened to him/her in the country of origin in a detailed and coherent way. Situation of the family members' would be also examined.

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

It partially conforms to the Statement, because there are no specific detail provisions in the Refugee Law or by-laws on refugee matters for making decision on a child's asylum application. It is not clear whether specific human rights violations related to children in their country of origin would be taken into account while making decisions on their refugee status.

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

Draft Order on Asylum Applications should be adopted. This Draft Order should also state that specific human rights violations related to children in their country of origin are taken into account while making decisions on their refugee status.

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

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

No relevant legislation exists on this issue.

relevant practice in your country

No practice so far exists with regard to “aged-out” separated children asylum seekers.

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

It partially conforms to the Statement because there are no by-laws adopted regulating prioritisation of children asylum applications seeking to ensure that children do not age out while asylum procedure extensively continues.

Draft Order on Asylum Applications will provide that “applications of asylum seekers under 18 years of age unaccompanied by their parents or legal representatives are examined at the earliest possibility”.

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

Draft Order on Asylum Applications should be adopted.

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

Under Refugee Law Migration Department at MOI is competent to grant refugee status to those separated children who qualify as refugees under 1951 Convention. On the basis of refugee status permanent residence permit is issued to those children.

Law on Legal Status of Foreigners provides for possibility to receive temporary residence permit (for 1 year with possibility to re-apply for extension) because of humanitarian reasons, which are specified in the by-laws. Humanitarian reasons are: application of non-refoulement principle, war or calamity situation in the country of origin, sickness if a foreigner has to be treated in Lithuania, and others.

Relevant practice in your country

No practise exists that the separated children would be granted any type of the residence permits.

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

It is generally in conformity with the Statement, although there is no ground established to allow a child to remain in the country on the bases of his/her best interests. But it is believed that such cases could fall under the humanitarian residence clause, as the list of humanitarian reasons in the by-laws is not exhaustive.

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

No.

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

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

The separated children asylum seekers, refugees or those having temporary residence permits are not afforded with the right to family reunification with their parents or siblings staying outside the country.

Relevant practice in your country

No practice exists in this respect.

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

It does not conform to the Statement, as no right to family reunification is granted for the separated children in Lithuania as a host country.

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

Right to family reunification for the separated children asylum seekers, refugees or those having temporary residence permit should be introduced in the Refugee Law and Law on Legal Status of Foreigners.

Integration (SGP: C 12.1.3)

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

Legislation on integration is applicable to all conventional or humanitarian refugees (the latter category means holders of residence permits on humanitarian grounds) irrespective of their age. They are provided by the Government with housing, language training, medical services and alike for the period of 12 months with a possibility of extension for another 6 months period. According to the Law on Child Guardianship temporary child guardianship could be established to the separated children. If there is no family willing to foster such a child, then s/he should be accommodated in child foster homes. The separated children conventional or humanitarian refugees as adults with the same status are entitled to receive free of charge 96 hours of Lithuanian language courses, monthly allowances for food, and apartment rent, one-time allowance for settling down in the accommodation place. As regards the separated children right to preserve their cultural identity, state social integration program indicates that provided there is a need, additional lessons on "ethnic culture" could be organised for refugee children from the money allocated for the social integration. Since there is no practice on that, it is impossible to assess how effective they would be or whether such lessons would be available to the separated children. As regards medical treatment of the separated children holding humanitarian status, they are not entitled to have their

medical expenses covered by the state. The current legislation on health insurance is applicable only to foreigners holding refugee status, that is, status of permanent residency²¹. Social integration program does not establish any specific provisions related to the separated children.

relevant practice in your country

No practice exists with regard to the separated children holding refugee status or humanitarian residence permits so far in the country.

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

It is partially in conformity to the Statement because costs for medical treatment of the separated children holding humanitarian status could not be covered by the state. The current Social integration program does not either address issue of post-social integration period. It is not clear what social, economical guarantees the separated children will have after social integration program is over.

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

Social integration program could be amended in the way as to ensure that specific needs of the separated children are always prioritised and met during this period. Problem of post-social integration period should be legally addressed. Law on Health Insurance should be amended in order foreigners holding temporary residency in Lithuania could be provided with mandatory health insurance at expenses of the state.

Adoption (SGP: C12.1.4)

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

General rules for adoption are applicable to the separated refugee children. In the area of adoption the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption is directly applicable in Lithuania. Code on Marriage and Family has also a separate chapter on adoption. According to the Code on Marriage and Family adoption of the separated children should be established by Court decision. New Civil Code, which will come into effect on 1 July 2001, will establish similar legal regulations for adoption of the separated children.

relevant practice in your country

No practice exists so far.

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

It is generally in conformity with the Statement.

²¹ Article 5 of the Law on Health Insurance provides that “citizens of the Republic of Lithuania, and citizens of other states and stateless persons permanently residing in the Republic of Lithuania are provided with mandatory health insurance”.

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

Co-operation should be developed between the Migration Department at MOI competent on assessing the family circumstances of the separated children in their country of origin and Adoption Agency and Children's Rights Protection Service deciding on suitability of adoption for the separated children. Assessment of family circumstances in the country of origin should be made obligatory for the Court deciding on adoption of the separated children. Competence of the Adoption Agency and Children's Rights Protection Service in assessing the family circumstances of the separated children in the country of origin should be developed.

Identity and Nationality (SGP: C12.1.5)

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

Citizenship Law of 1991 provides for the principle that any child found in the territory of Lithuania whose parents are unknown is presumed to be born in Lithuania and is Lithuanian citizen until proven otherwise²².

Relevant practice in your country

No practice exists so far.

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

In generally, it is in compliance with the Statement.

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

No.

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

No specific legislation exists for the separated children.

relevant practice in your country

Majority of those separated children seeking asylum expressed wish to terminate examination of their asylum claims and opted for return home. However, no special considerations by the Migration Department at MOI were made in order to assess those children's situation in their country of origin or other country of destination. Neither special consultations of the Children's Rights Protection Service and Lithuanian Red

²² Article 11 of the Law on Citizenship.

Cross lawyers were made available for those separated children before they made the first steps for discontinuation of examination of their asylum applications and opted for return home.

Regarding voluntary return of the children accommodated in the Center for Minors, this process is carried out by the Center in co-operation with the Section on Foreigners' Matters of the Migration Department at MOI. NGOs are not consulted in this process.

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

It partially conforms to the Statement because no special considerations by the Migration Department at MOI are made to assess the separated children's situation in their country of origin or other country of destination in individual cases. Neither special consultations of the Children's Rights Protection Office and Lithuanian Red Cross lawyers are made available for those separated children before they make the first steps for discontinuation of examination of their asylum applications and opt for return home or other country.

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

Draft Order on Asylum Applications or other by-laws on refugee matters should establish that special considerations by the Migration Department at MOI, such as assessment of situation in the country of origin or other country of destination in individual cases of separated children, should be applied if they decide to discontinue examination of their asylum applications and opt for voluntary return to their country of origin or other country. Special consultations of the Children's Rights Protection Service and Lithuanian Red Cross lawyers should be made available for those separated children before they make the first steps for discontinuation of examination of their asylum applications. In all cases the best interests of the child should be identified and complied with. These changes are related to the principle No. 1 of the First Principles.

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

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

No specific legislative requirements exist.

relevant practice in your country

In practice, conditions in the country of origin or transit country are not examined if the child expresses wish to return to his/her country of origin or other country. Neither special consultations of the Children's Rights Protection Office and Lithuanian Red Cross lawyers are made available for those separated children before they before they make the first steps for discontinuation of examination of their asylum applications and opt for return home or other country.

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

It does not conform to the statement, because no assessment of situation in the country

of origin or other country of destination is carried out. No independent organisation is available in Lithuania to carry out such assessment. No counselling is provided to the separated children on the conditions in the country of origin or other country of destination before voluntary return, and the same goes for facilitation of contacts with the separated children's family. Neither special consultations of the Children's Rights Protection Office and Lithuanian Red Cross lawyers are made available for those separated children before they make the first steps for discontinuation of examination of their asylum applications and opt for return home or other country.

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

Draft Order on Asylum Applications or other by-laws on refugee matters should establish that special considerations by the Migration Department at MOI, such as assessment of situation in the country of origin or other country of destination in individual cases of separated children, should be applied if they decide to discontinue examination of their asylum applications and opt for voluntary return to their country of origin or other country. Special consultations of the Children's Rights Protection Service and Lithuanian Red Cross lawyers should be made available for those separated children before they make the first steps for discontinuation of examination of their asylum applications. In all cases the best interests of the child should be identified and complied with. Separated children should be provided with a possibility to establish a contact with their family members before a decision on voluntary return is officially implemented. These changes are related to the principle No. 1 of the First Principles.

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

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

No relevant legislation exists.

relevant practice in your country

No practice exists. However, more emphasis could be put on the separated children specific education programs at schools related to preservation of their cultural identity and education in general which could facilitate reintegration of the separated children.

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

It is difficult to assess because of absence of relevant legislation and cases when the separated children would be granted any type of residence permits in Lithuania.

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

See above 12 w) .

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

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

There is no relevant legislation.

relevant practice in your country

No practice with the separated children exists so far.

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

It is difficult to assess because of absence of relevant legislation and practice. But it could be stated that no restrictions are made in legislation for family reunification outside the country.

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

Safety conditions in the third country should be taken into consideration while deciding to allow departure to such country for family reunification purposes.

13. DATA COLLECTION

Comprehensive data on the 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.

Migration Department at MOI is responsible for collection of official data on asylum seekers/refugees and other foreigners in the country. UNHCR also prepares and collects statistics, which covers the separated children asylum seekers and refugees, as well as humanitarian permit holders. Collected data of NGOs is only used within the organisation and is not official. NGOs usually rely on the information provided by the Migration Department at MOI.

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

The same data, as for adult asylum seekers, is required for the separated children. At the moment, there is no data specifically collected on the separated children in the country. Such data is included in overall databases on asylum seekers in Lithuania.

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.

The following table represents the available data on the separated children asylum seekers provided by the Migration Department at MOI.

Year - 1997

Nationality	Gender	Age (at the time of submitting asylum application)	Status in the country
1. Afghan	Male	16	Having received temporary territorial asylum disappeared from the Refugee's Refection Center in 1998
2. Afghan	Male	17	While waiting decision on temporary territorial asylum opted for voluntary departure from the country in 1998
3. Sri Lankan	Female	17	While waiting decision on temporary territorial asylum opted for voluntary departure from the country in 1997.

Year - 1998

Nationality	Gender	Age (at the time of submitting asylum application)	Status in the country
1. Indian	Male	17	Having received refusal on refugee status voluntarily left the country in 2000
2. Afghan	Male	16	While waiting decision on temporary territorial asylum opted for voluntary departure from the country in 1998
3. Somali	Female	15	While waiting decision on temporary territorial asylum opted for voluntary departure from the country together with her adult sister in 1999

Year - 1999

Nationality	Gender	Age (at the time of submitting asylum application)	Status in the country
1. Somali	Male	16	Having received temporary territorial asylum disappeared from the Refugee's Refection Center in 2000.
2. Bangladeshi	Male	16	Having received temporary territorial asylum disappeared from the Refugee's Refection Center in 1998

Year - 2000 (until 31 December)

Nationality	Gender	Age (at the time of submitting asylum application)	Status in the country
1. Vietnamese	Male	15	While waiting decision on temporary territorial asylum opted for voluntary departure from the country in 2000
2. Afghan	Male	15	While waiting decision on temporary territorial asylum opted for voluntary departure to Afghanistan from the country in 2000
3. Afghan	Male	15	While waiting decision on temporary territorial asylum opted for voluntary departure to Afghanistan from the country in 2000
4. Afghan	Male	15	While waiting decision on temporary territorial asylum opted for voluntary departure from the country in 2000
5. Afghan	Male	14	While waiting decision on temporary territorial asylum opted for voluntary departure from the country in 2000
6. Afghan	Male	16	While waiting decision on temporary territorial asylum opted for voluntary departure from the country in 2000

7. Afghan	Male	15	While waiting decision on temporary territorial asylum opted for voluntary departure from the country in 2000
8. Pakistan	Male	16	Awaiting decision on refugee status
9. Russian (Chechen)	Male	14	Awaiting decision on temporary territorial asylum

In addition to the separated children asylum seekers, in 2000 the Migration Department issued temporary residence permits on humanitarian grounds to 11 Chechen children. They are all orphaned children, however, arrived in Lithuania under guardianship of foster parents.

The following information represents available data on the separated children non-asylum seekers accommodated at the Center for Minors provided by the "Save the Children" Lithuania²³.

1998 year

27 separated children of foreign origin were accommodated in the Center of whom were:

- 4 from Belarus
- 7 from Latvia
- 3 from Czech Republic
- 1 from Ukraine
- 2 from Russia (1 from Kaliningrad region)
- The rest were from other countries.

1999 year

14 separated children of foreign origin were accommodated in the Center of whom were:

- 7 from Belarus
- 6 from Russia (2 from Kaliningrad region)
- 1 from Estonia.

2000 year (until 1 September)

6 separated children of foreign origin were accommodated in the Center of whom were:

- 2 from Latvia
- 2 from Russia (1 from Kaliningrad region)
- 1 from Ukraine
- 1 from Kirgyszstan.

14. POLITICAL LEVEL - SUPPORT FOR CHANGE

Please where possible provide the following information:

*** Describe the level of contact NGOs working with separated children have with:**

²³ There is no official data available for this category of the separated children.

central government departments, local and regional governments

Lithuanian Red Cross co-operates with the administrations of the Foreigners' Registration Centre and Refugees' Reception Centre in organising socialisation activities for children asylum seekers and refugees. Red Cross have its three social workers locally assisting both centers. Based on the tentative agreement between the Migration Department at MOI and Lithuanian Red Cross, the latter's lawyers are invited to participate in the interviews with the separated children conducted by the Foreigners' Registration Center.

"Save the Children" Lithuania co-operates with the administration of the Refugees' Reception Centre while implementing a program on "Integration of Refugee Children in Lithuania" funded by PHARE LIEN for 1999-2000 year.

*** Describe any contacts with European institutions eg: Members of the European Parliament, European Commission or the Council of Europe (NB: please give names where possible)**

In 1998 Finish Ministry of Labour provided financial support to the Lithuanian Red Cross to organise a summer camp for 50 children. Both Lithuanian and asylum seekers/refugees children were invited in the summer camp.

Contract with the EU Commission has been signed by Lithuanian Red Cross in September 2000 for support of 260.717 Euro for asylum related and tolerance building activities in Lithuania, which also include initiatives for the separated children asylum seekers and refugees.

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

Situation of the separated children could be improved through raising awareness among the members of the Parliament, Government and Municipalities representatives on the issue of the separated children and the problems involved in their protection. NGOs working in the field of children's rights should unite their efforts and be more proactive in monitoring the situation of the separated children in the country, and engage in lobbying activities through responsible ministries and Parliament groups towards improvement of the existing situation. In this regard the present assessment report together with Statement of Good Practice could be translated into Lithuanian language and published as a separate publication. Invitation of officials to conferences/seminars and workshops related to the issue of the separated children could also assist in raising awareness on this topic and possibly lead to changes of policies or/and practices.

And most importantly, the State Institutions of Ombudsman on Children Rights, Children's Rights Protection Service and Adoption Agency should be more involved in the protection of the separated children's rights in Lithuania.

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

The main obstacles today within the Parliament, Government or Municipality could be

identified: absence of relevant and updated information on the separated children situation in the country, low prioritisation of the issue and lack of active lobbyists in this area. Low prioritisation could result in reluctance to bring up changes to legislation, while lack of knowledge on the issue hampers the changes of the existing practice.

Vilnius

31 December 2000