

SEPARATED CHILDREN IN EUROPE PROGRAMME

COUNTRY ASSESSMENT

COUNTRY: ROMANIA

ASSESSMENT PERIOD: JUNE – DECEMBER 2000

RESPONDENT(S):

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This study was prepared in co-operation with a working group consisting of representatives of the following institutions:

- United Nations High Commissioner for Refugees: Mrs. Liliana Ionescu and Mr. Mihai Delcea;
- National Refugee Office: General of Brigade Vasile Dragoi and Lt. Robert Neagoe;
- Romanian National Council for Refugees: Ms. Cristina Bunea;
- Romanian Forum for Refugees and Migrants "ARCA": Ms. Georgeta Iorga;
- Guardianship Authority of Bucharest Sector 4: Mr. Sorin Bogaldea;
- Court of Law Bucharest Sector 4: Ms. Gabriela Niculae;
- Salvati Copiii (Save the Children Romania): Ms. Gabriela Drobu.

DOCUMENTS USED or REFERRED TO:

- Romanian Constitution of 1991;
- UN Convention on the Rights of the Child, ratified by Law no. 18/1990;
- 1951 Convention Relating to the Status of Refugees;
- Family Code;
- Criminal Code of Romania;
- Decree no. 31/1954 Relating to Natural and Legal Persons;
- Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania;
- Law no. 56/1992 Relating to Romania's State Border;
- Law no. 25/1969 Relating to the Regime of the Aliens;
- Law no. 145/1997 Relating to Health Social Insurance;
- Education Law no. 84/1995;
- Law no. 61/1993 Relating to the State Benefit for Children;
- Romanian Government Decision no. 217/1998 Relating to the Conditions for obtaining the certificate, certification procedures for, and the status of professional foster parents;
- Emergency Ordinance of Romanian Government no. 26/1997 Relating to Children in Difficulty;
- Romanian Government Decision no. 205/1997 Relating to the Organisation of the Activity of Local Public Administration Authority in the Field of Child Protection;
- Emergency Ordinance of Romanian Government 25/1997 Relating to Adoption;
- Law no. 21/1991 Relating to Romanian Nationality;
- Law no. 105/1996 Relating to Population Records and Identity Card;
- Law no. 119/1996 Relating to Civil Status Documents;
- UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

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.**

The Romanian law does not give any specific definition. Ordinance no. 102/2000 introduces the term '*unaccompanied minors/children*'; by interpretation, it is assimilated to the term '*separated children*'.

As per Decree no. 31/1954 relating to natural and legal persons, every person under 18 years of age is considered to be underage/minor.

In practice, both the Romanian authorities - The National Refugee Office – and the Romanian National Council for Refugees use the definition according to which "*unaccompanied minor/child*" is : **"Every person under 18 years of age who is on Romania's territory without parents, relatives or legal guardian."**

The definition used by Salvati Copiii (Save the Children Romania) is the one in the SGP.

The term '*unaccompanied children*', which is used in the Romanian legislation will be used in this questionnaire. It should be mentioned that the term refers to the same category of children as the term '*separated 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.**

Romanian law has no specific provision in this respect. In practice, they are not considered unaccompanied children, the sibling of legal majority being assimilated to the legal representative. The adult sibling assists the siblings under 18 in all the stages of the refugee status determination procedure.

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

Considering that, in practice, the definition in the SGP is used, it de facto conforms to the Statement.

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

The term "*unaccompanied children*" should be clearly defined in the law.

1. ACCESS TO THE TERRITORY (SGP: C1)

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

Laws and conventions:

- Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania;
- Law no. 56/1992 Relating to Romania's State Border;
- UN Convention on the Rights of the Child, ratified by Law no. 18/1990;
- 1951 Convention Relating to the Status of Refugees.

Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania

This Ordinance establishes the general framework for granting the refugee status and other forms of protection, the conditions under which the refugee status is granted, reasons, procedures, the rights and obligations of asylum-seekers and/or the persons who have been granted another form of protection. It includes, with significant improvements, the provisions of the 1951 Convention Relating to the Status of Refugees.

Law no. 56/1992 Relating to Romania's State Border

This document regulates the organisation of the ports of entry, staff and functioning as well as the deeds to be punished in this field.

According to the Romanian law, an asylum application submitted at a point of entry will be immediately forwarded to The National Refugee Office, which will analyse it and make a decision within 2 days from receipt. The authorities may decide as follows: a) to grant the applicant the refugee

status or other form of protection, as well access to the Romanian territory; b) to grant the applicant the access to the Romanian territory and to the normal refugee status determination procedure, if the case needs further documentation; c) to reject the application. Until granted access to the territory, the asylum-seeker will stay in the transit area for a period of maximum 20 days. If no decision is taken within 20 days, access to the territory is granted.

It should be mentioned that, according to the law, an unaccompanied child will be granted immediate access to the territory and to the normal procedure.

There are no provisions to exempt an unaccompanied child from being returned to a safe third country which (s)he has transited and whose protection (s)he has been offered or has had the opportunity to apply for. However, the asylum claim could be decided upon on the Romanian territory if the child agrees and states his/her agreement in the presence of his/her legal representative.

Practice:

In practice, there have been no unaccompanied minors submitting asylum applications at the border. The representatives of The National Refugee Office consider that accelerated and border procedures are not applicable to unaccompanied children. They will granted direct access to the ordinary procedure, therefore immediate access to the territory, the "20 days" provision being not considered in their case.

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

It conforms to the SGP. The illegal access to the Romanian territory, in certain conditions, can be considered a minor or even a criminal offence and penalised either by a fine or by prison. However, by observing Article 31 of the 1951 Convention Relating to the Status of Refugees, specifically mentioned in the domestic law (art. 35 of the Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania), penalties shall not be imposed on asylum-seekers fleeing from a territory where their life or freedom were in danger, who enter Romania illegally, if they immediately contact the authorities and can show good cause for their illegal entry and also apply for the refugee status.

Unaccompanied children have access to the normal procedure, are granted immediate access to the territory, are guaranteed the right to non-refoulement and are not subjected to a detailed interview at the border.

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

The law should include a special provision granting access to the territory as soon as the applicant has been identified as an unaccompanied child.

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?

According to the Romanian law, there is 'carrier liability' in such situations. In practice, Romanian authorities have not faced such cases because the routes of the persons who have illegally entered Romanian territory were exclusively terrestrial.

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.

Authorities have no knowledge of networks dealing with trafficking of children and young people for the purpose of exploitation. However, in most cases, separated children have entered the country with the support of clandestine "guides", travelling along routes through the former Soviet Union territory on their way to Western European countries. Further Investigations in this regard would be needed.

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

It hasn't been the case.

2. IDENTIFICATION (SGP: C2)

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

Law no. 25/1969 Relating to the Regime of Aliens stipulates that identification is made based on the civil status documents or relevant documents issued by a competent foreign authority.

The Ordinance of Romanian Government no. 102/2000 stipulate that an asylum-seeker, regardless of his/her age, is obliged to have his photograph and fingerprints taken and give complete and accurate information about himself/ herself.

Practice:

Many times, difficulties occurred in identifying separated children. In most cases there is no identity document or the existing documents in original or copies could be false or at least dubious. A child's statement regarding his/her identity and status is in general accepted, information in this respect being collected subsequently. Whenever the presence of an unaccompanied child is noticed, the necessary measures for his/her protection are taken. At present, whenever the authorities have doubts with respect to the declared age of an unaccompanied child, steps are taken for his/her age assessment through a medical examination as soon as possible after the application for asylum has been submitted.

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

It conforms to the Statement, as the identification procedure is based on the principles promoted by the SGP (declared identity, collect information, etc.).

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

No changes are needed.

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

3.a) Is a guardian or adviser appointed?

The status of *unaccompanied child* brings about the immediate procedure for the appointment of a legal guardian, as per the provisions of the Ordinance of Romanian Government no. 102/200 and the Family Code. The refugee status determination procedure is suspended until the guardian is appointed and The National Refugee Office provide the minor with the necessary accommodation and medical care.

3.b) If so what is their role?

The legal guardian is appointed to protect the person under 18 years of age who, consequently, is considered not to have the necessary degree of maturity to conclude legal documents on his/her own behalf. The legal guardian ensures that all the decisions taken are in the child's best interests both during the refugee status determination procedure and after having been granted the refugee status or any form of humanitarian protection. The Guardianship Authority functioning with the Local Council of the town/Bucharest sector where the child is accommodated appoints the legal guardian. As per law, the legal guardian has the same rights and obligations as the parents have, which he/she may exercise only in the best interests of the child until the child comes of age. For children aged over 14, a legal guardian during asylum interviews may be present, but such presence is not compulsory. Based on the fundamental principle of the Family Code however, the presence of the legal guardian during interviews is compulsory.

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

The procedure of appointing a legal guardian is carried out in an accelerated manner, having in view its purpose. In practice, such a procedure relating to unaccompanied children seeking asylum takes 2-3 days, based on the relationship between the Guardianship Authority and the NGOs, the two structures currently involved directly in the appointment of a legal guardian.

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

Law requires no specific background and expertise. It stipulates conditions relating to : nationality, which must be Romanian, and moral qualities. In practice, legal guardians are NGO social or legal counsellors or persons working in the field of protection of children's rights.

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

It conforms to the Statement, as legal guardians have all the rights and obligations of the parents; their responsibilities stay valid until the children reach the age of legal majority.

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

At present, the legal guardians are appointed by the Guardianship Authority of the Local Council in the town/Bucharest sector where the child is living, the guardians being recruited from among staff of refugee-assisting NGOs. Legal counselling and social assistance are carried out with the assistance of the NGOs, funded by UNHCR. It is necessary that the State should become directly involved by establishing a permanent and simple system for appointment of the legal guardians.

4. REGISTRATION AND DOCUMENTATION (SGP: C4)

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

Laws:

- Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania;
- Law no. 25/1969 Relating to the Regime of Aliens;
- Law no. 56/1992 Relating to Romania's State Border.

The Law includes no special provisions referring to the procedure applicable to unaccompanied children. After being granted access to the territory, every person applying for the refugee status is registered with the The National Refugee Office and receives a temporary card of permission to stay.

Practice:

The preliminary interviews are limited, the SGP principles being observed. They are carried out in a child-friendly manner. "Twin-track" is also applied.

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

It partly conforms to the Statement. At this stage, interviews are limited to finding out minimum information about the child's identity. The problem consists in the fact that most interviewers are not properly trained and do not have the necessary expertise, given the limited practice in this field.

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

Adequate training of the interviewing officers is needed.

5. AGE ASSESSMENT (SGP: C5)

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

Laws:

Domestic laws include no special provisions in this respect. The provisions of the 1989 UN Convention on the Rights of the Child, ratified by Law no. 18/1990 and of the Convention Relating to the Status of Refugees are to be applied. According to the 1991 Romanian Constitution, the international treaties ratified by the Parliament become part of the domestic law.

Practice:

Co-operation between the authorities and "Mina Minovici" Institute of Forensic Medicine started towards the end of the year 2000, in order to conduct examinations for age assessment, if there are no valid identity documents and there are serious doubts that the declared minor is in fact over 18. An anthropologist doctor carries out the examination, which is exclusively based on physical assessment. The error margin established by the Forensic Medicine Institute and accepted by the authorities for this sort of examinations is 1 year.

Recent practice consists in determining the approximate age by way of the examination, followed by immediate appointment of a legal guardian, right after the applicant's declaration as to his being a minor is thus confirmed.

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

Age assessment so far was not in conformity with the SGP for the following reasons: unaccompanied children were not informed beforehand on the nature of the examination, its results and consequences; they were not assisted by their legal guardian; examination was not performed by a paediatrician, and the error margin is of only 1 year.

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

It is aimed at elaborating a guide of practice in the field, respecting the human dignity and preventing the traumatising of a child who undergoes such an examination; informing the unaccompanied child in advance on the nature of the medical examination; accepting a higher error margin (2-3 years).

6. DETENTION (SGP: C6)

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

Laws:

- UN Convention on the Rights of the Child, ratified by Law no. 18/1990;
- Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania

There are no provisions referring to detention of unaccompanied children. Asylum-seekers may have their right to free movement temporarily limited or conditioned; or they may be obliged to stay in the transit area for maximum 20 days before they are granted access to the territory, if they have no valid identity documents. According to the Romanian law, these measures are not considered detention. The 20 day-measure is not applied in the case of unaccompanied children.

Practice:

So far, there has been no case of detention of an unaccompanied child seeking asylum, nor of such persons being kept in a transit area or in a closed centre.

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

It conforms to the Statement, as unaccompanied children are not detained for reasons related to their immigration status.

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

No changes are needed.

7. RIGHT TO PARTICIPATE (SGP: C7)

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

Laws:

- Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania;
- Family Code;
- UN Convention on the Rights of the Child, 1989.

A legal guardian assists the unaccompanied child throughout the refugee status determination procedure and ensures that all decisions taken are in the child's best interests. The child has the right to an interpreter. In addition, a child over the age of 14, assisted by the legal guardian, may personally apply for asylum, complete the procedural acts himself/herself and appeal against an unsatisfactory decision. Upon request, he/she may be assisted by a legal or social counsellor appointed by a non-governmental organisation or by a lawyer.

Practice:

No unaccompanied child has been interviewed at the border so far. There have been cases when interviews took place before a legal guardian was appointed.

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

It came to conform to the Statement, as a result of a dialogue between the courts of law, the authorities, NGOs and UNHCR, which gradually led to an improvement of the practice.

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

No changes are needed. It is desirable that a system be developed for training of the interviewing officers in order to allow them to acquire the specific skills and techniques for interviewing of children.

8. FAMILY TRACING & CONTACT (SGP: C8)
&
9. FAMILY REUNIFICATION IN A EUROPEAN COUNTRY (SGP: C9)

8.a) & 9.a) Please describe relevant law, policy and practice in your country.

There is no relevant domestic legislation in this respect. The provisions of the UN Convention of the Rights of the Child, 1989, are applicable.

Practice:

The UNHCR Handbook is used as guidance. It is attempted to identify and, implicitly to reunite the families of the unaccompanied children who entered the Romanian territory, based on the information provided by the children themselves, with regard to their families and the place where they can be found.

In practice, there have been no cases of family identification and reunification of unaccompanied children granted refugee status in Romania, with their families, due mainly to their special situation and their countries of origin (Afghanistan, Sierra Leone, Bangladesh).

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

It does not conform to the Statement.

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

There are opinions according to which family reunification on the territory of a safe third country should be encouraged, taking into consideration the best interests of the child. Such opinions should translated into legal provisions meant to regulate the practice in the field.

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

Interim Care (SGP: C10.1)

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

Laws:

- Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania;
- Family Code.

According to Romanian laws in force, a person seeking asylum at the border, irrespective of his/her age, must remain in special centres in the transit zone for maximum duration of 20 days, while a decision regarding his/her asylum claim is made. The The National Refugee Office or the carrier company (whenever the case) is responsible for his/her care during this period. At the same time, an unaccompanied child may receive social assistance from foreign or Romanian NGOs. After granted access to the territory, the The National Refugee Office provides him/her with a state allowance for meals and accommodation, or may accommodate him/her in a state accommodation centre. The asylum-seekers who submit their claims on the territory are offered accommodation, and also primary and emergency health care services from the The National Refugee Office. Unaccompanied children are appointed a legal guardian, according to the Romanian Family Code.

Practice:

After his/her asylum application has been submitted, an unaccompanied child is accommodated in a reception centre together with nationals from his/her country of origin and has access to the services provided by the Romanian authorities in co-operation with non-governmental organisations (educational and recreational activities in the *children's room*, psychological assistance, etc.), being also assisted by a legal guardian.

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

It conforms in principle to SGP because the State authorities with responsibilities in the field of child protection are not involved in the care of unaccompanied children and young people, except the Ministry of Interior by the The National Refugee Office.

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

Changes are needed. It is necessary to improve the measures presently taken. This could be achieved through the development of a framework for the care of the unaccompanied children, in order to provide security, protection and a precise assessment of the child's cultural, linguistic and religious needs.

Health (SGP:C10.2)

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

- Ordinance of Romanian Government no. 102/2000;
- Law no. 145/1997 Relating to Health Social Insurance.

As per the law, unaccompanied children are entitled to free health care services.

Practice:

Reception and accommodation centres have facilities for basic health care and medical services as well as specialised staff. Other health care services than the primary and emergency ones are provided by non-governmental organisations, with UNHCR funding.

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

It conforms to the SGP, as the unaccompanied children have access to all health care services.

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

No changes are needed.

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

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

Laws:

- Romanian Constitution;
- Ordinance of Romanian Government no. 102/2000;
- UN Convention on the Rights of the Child, 1989;
- Education Law no. 84/1995

Practice:

Unaccompanied children attend one-year preparatory classes for Romanian language learning, approved by the authorities, and held by a teacher paid by the non-governmental organisations with UNHCR funding. After completion, they are given tests and are integrated in the mainstream classes of primary or gymnasium education level, as the case may be.

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

It partly conforms to the SGP. The exception consists in the fact that teaching in the mother tongue is not possible due to the reduced number of children per community and their countries of

origin.

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

The Romanian State should become directly involved in providing the preparatory classes for children in this situation.

11. REFUGEE DETERMINATION PROCESS (SGP: C11)

Access to normal procedures (SGP: C11.1)

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

Laws:

- Ordinance of Romanian Government no. 102/2000;
- UN Convention on the Rights of the Child, 1989.

As per the Romanian law, the refugee status determination procedure may take one of the following forms : the border procedure, the accelerated procedure, and the ordinary procedure.

Border procedure relates to applications for asylum submitted at the border. The asylum application is immediately conveyed to the National Refugee Office, which analyses it and makes a decision within 2 days from receipt. The authorities may decide as follows: a) to grant the applicant the refugee status or another form of protection, as well access to the Romanian territory; b) to grant the applicant access to the Romanian territory and to the ordinary refugee status determination procedure, if the case needs further documentation; c) to reject the application. Until granted access to the territory, an asylum-seeker will stay in the transit area for a period of maximum 20 days, while the authorities must take a decision regarding his/her asylum claim. The appeal against an unsatisfactory decision is also considered.

Accelerated procedure has shorter time limits and applies to the "manifestly unfounded" claims or to asylum claims submitted by persons coming from a country where, in general, there is no serious risk of persecution.

Ordinary (normal) procedure is the procedure whereby the asylum application is submitted at a different place than the border crossing point, is registered with the National Refugee Office, and is analysed by an officer of the National Refugee Office who makes a decision within 60 days.

Asylum applications submitted by unaccompanied children are analysed in the ordinary (normal) procedure. The Law specifically stipulates the impossibility for such asylum applications to be analysed in the accelerated procedure. They will also be exempted from the border procedure, having immediate access to the territory and the ordinary (normal) procedure.

Law stipulates that all asylum-seekers, including unaccompanied children, may receive temporary humanitarian protection if they are coming from conflict zones.

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

It partly conforms to the SGP. De facto the border procedure has shorter time limits related to the decision making process which leads to certain similarities with the accelerated procedure. As the law stipulates that the asylum application submitted by an unaccompanied child will not be processed in the accelerated procedure, it results that such an application will only be decided upon, in the ordinary (normal) procedure. In addition, if such an application is submitted at the border, there is also the possibility that the unaccompanied minor seeking asylum be granted access to the Romanian territory and the normal refugee status determination procedure, considering that the case needs further documentation

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

Specific provisions should be included in the Implementation Methodology relating to the Government Ordinance, to clearly explain the border procedure and out-line its accelerated nature, as well as to clearly stipulate exemption of asylum applications submitted by unaccompanied children from this type of refugee status determination procedure.

Legal Representation (SGP: C11.2)

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

Laws:

- Ordinance of Romanian Government no. 102/2000.

According to the law, every person who applies for the refugee status has the right to be assisted or represented by a lawyer throughout the refugee status determination procedure.

Relevant practice:

At present, asylum-seekers who cannot afford a lawyer may be provided one by a refugee-assisting NGO, usually with UNHCR funding. According to the legal provisions in force, upon request, the State may provide legal assistance *ex officio*, in Court.

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

It does not conform to the SGP because the unaccompanied children are not assisted by a legal representative, free of charge, in all stages of the refugee status determination process, but only in Court, in the event of an appeal against the decision taken by the National Refugee Office (administrative authority). The lawyer appointed *ex officio* does not have the necessary expertise specified by the SGP.

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

Since, at present, the appointment of a lawyer depends on the applicant's decision, it is considered necessary to generalise the principle according to which the *ex officio* appointment of a lawyer free of charge is compulsory in the case of an unaccompanied child.

Minimal Procedural Guarantees (SGP: C11.3)

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

Laws:

- Ordinance of Romanian Government no. 102/2000.

In the normal procedure, asylum applications are currently analysed by a trained officer of the National Refugee Office especially appointed by an order of the Minister of Interior, who makes a motivated decision to admit or reject the claim. Within 10 days from notification, the applicant can appeal against a negative decision made by the officer. Appeals must be filed with the Court of law in the district/sector where the National Refugee Office has its premises or where the appellant resides. The Court is an "independent judicial authority", complying with the criteria in the SGP. It delivers its motivated decision within 30 days; participation of a prosecutor is compulsory. An appeal against the Court decision can be made within 5 days from delivery (for the asylum-seekers present in the Court room) or from notification (for asylum-seekers who are not present in the Court room). The appeal is judged within 30 days from its registration and the decision is irrevocable, which means it cannot be disputed. In certain circumstances it is, however, possible to apply again for the refugee status.

In the border procedure, the time limits for a decision on an asylum application or for an appeal are even shorter and this is one of the reasons why applications submitted by unaccompanied children cannot be processed in this procedure.

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

In practice, it conforms to the SGP. Although there are no special provisions regarding treatment in a generous manner of asylum applications made by unaccompanied children, in fact their applications are treated like that.

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

The Implementation Methodology relating to the Government Ordinance 102/2000 shall specifically include a provision stipulating that asylum applications submitted by unaccompanied children cannot be processed in the border procedure.

Independent Assessment (SGP: C11.4)

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

Laws:

The Ordinance of the Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania has no special provisions in this respect.

Practice:

Psychological assessment is performed by a psychologist from Salvati Copiii (Save the Children Romania) and communicated to the asylum authorities.

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

It conforms to the SGP.

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

No changes are needed.

Interviews (SGP: C11.5)

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

Laws:

- Ordinance of Romanian Government no. 102/2000.

Every person seeking asylum in Romania has the right to be assisted or represented by a lawyer, to be advised and assisted upon request by a representative of a Romanian or foreign non-governmental organisation in any stage of the refugee status determination procedure. An interpreter is provided throughout the procedure.

Practice:

An officer of the National Refugee Office conducts the interview in a child-friendly manner. The legal guardian assists the unaccompanied child at this stage of the procedure.

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

It partly conforms to the SGP. Interviews are conducted in a non-threatening atmosphere, with breaks, in a child-friendly manner. Due to limited practice in the field, the officers who conduct the interviews have no appropriate training or expertise in working with children. At this stage, the presence of a lawyer is not compulsory.

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

Establishment of an appropriate training system for officers who interview unaccompanied children should be considered as well as introducing specific provisions regarding the compulsory participation of a lawyer at this stage of the procedure.

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

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

Laws:

- Ordinance of Romanian Government no. 102/2000.

The law makes no difference between assessing an asylum claim submitted by a child and one submitted by an adult. It is up to the interviewing officers of the National Refugee Office to decide. There are no special provisions relating to unaccompanied children in this respect. Refugee status is granted to a person who proves a well-founded fear of persecution for reasons related to his/her race, religion, national, ethnic origin or political opinions; is outside his/her country of origin; and cannot or will not enjoy the protection of that country.

Practice:

Recommendations in the UNHCR Handbook are followed in practice.

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

It conforms to the SGP.

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

Although the practice conforms to the SGP, legislation should be completed with provisions establishing a general framework for interviewing unaccompanied children; training courses should be organised for the officers involved in interviewing unaccompanied children.

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

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

Laws:

- Ordinance of Romanian Government no. 102/2000;
- Family Code

The only modification to the situation presented before, is that young people who become adults during the asylum procedure, no longer need a legal guardian.

Practice:

There is no relevant practice in this field.

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

It conforms to the SGP. Practice has not revealed any case of an unaccompanied child whose refugee status determination procedure has been prolonged in an unjustified manner, so that the child may become of age.

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

As there has been no relevant practice in this respect, we cannot suggest any changes.

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, policy and practice in your country.

Laws:

- Ordinance of Romanian Government no. 102/2000.

When eligibility for the refugee status is not met, the Romanian law stipulates that a person may be granted "conditioned humanitarian protection" if he/she can prove to have committed offences in the country of origin, for which he/she can be sentenced to death (if death penalty is provided by law in the country of origin and is applicable to him/her)), could be subjected to torture or inhuman/degrading treatment or he/she belongs to a disadvantaged category and thus may risk endangering of his/her life, body integrity or freedom. "Temporary humanitarian protection" may be granted to persons coming from areas undergoing armed conflicts.

In the event that an unaccompanied child is not granted the refugee status or any other form of humanitarian protection and his/her return to the country of origin is not possible, he/she is granted temporary residence permit in Romania and is subject to the general regime applied to aliens.

In **practice**, the refugee status is granted.

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

It conforms to the SGP, as the decision is based on the best interests of the child principle.

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

No changes are needed.

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

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

Laws:

- Ordinance of Romanian Government no. 102/2000;
- UN Convention on the Rights of the Child (Article 22).

Romanian law stipulates the refugee status is also granted upon request to the wife/husband and minor children, thus referring to the situation when one of the parents applies for, or has already been granted the refugee status. There is no reference to the situation when a child has been granted the refugee status and his/her parents subsequently apply as well. The same principle of family unity could be invoked, based on the provisions of the UN Convention on the Rights of the Child. However, asylum claims submitted by family members are processed in the normal procedure.

Relevant practice:

The normal procedure is followed for refugee status or a form of humanitarian protection. In the event that parents are identified and they apply for asylum in Romania, the merits of their claims are assessed. If not eligible for refugee status or humanitarian protection, they are granted temporary permission to stay.

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

It conforms to the SGP.

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

The Law should include several provisions to guarantee that the family of the unaccompanied child or young people will be granted the refugee status or any other sort of humanitarian protection based on a motivated application.

Integration (SGP: C 12.1.3)

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

Laws:

- Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania;
- Emergency Ordinance of Romanian Government no. 26/1997 Relating to the Protection of Children in Difficulty;
- Education Law no. 84/1995;
- Family Code;
- Law no. 61/1993 Relating to the State Benefit for Children;
- Law no. 145/1997 Relating to Health Social Insurance;
- Romanian Government Decision no. 217/1998 Relating to the Conditions for Obtaining the Certificate by, Certification Procedures for, and the Status of, Professional Foster Parents;
- 1951 Convention Relating to the Status of Refugees.

The Ordinance of Romanian Government no. 102/2000 stipulates that unaccompanied children granted conditioned or temporary humanitarian protection enjoy the same protection provided by the law as the Romanian children in difficulty, according to the provisions of the Emergency Ordinance of Romanian Government no. 26/1997.

As such, in the event that they have not been appointed a legal guardian, they can be placed with a person or a family, who may or may not be a relative, in order to be cared for and protected. That person/family should have a good material situation and demonstrate moral guarantees for a balanced development of the child. When such persons cannot be identified, the child is temporarily placed in a public institution or with a non-governmental organisation, as the policy in the field of child protection is oriented towards desinstitutionalisation.

A monthly state benefit is granted for every placed child. In addition, if the person or one of the members of the family where the child was placed has the statute of *professional foster parent*, is not a relative of the child up to the 4th degree of kinship, that person receives a monthly allowance equivalent to the monthly gross salary of a social worker with average education. The status of *professional foster parent* may also be obtained by the persons or families who have been granted the refugee status in Romania.

Local authorities are the ones that take the necessary measures for child protection through the Commission for Child Protection, a body subordinated to the County Council, deciding on the protection measures to be taken, and by the Child Welfare Public Service (the Department for Child Protection), a specialised public service subordinated to the same County Council. Children will have their residence at the persons or institutions they are placed with. When one of these measures is taken, the necessity for a rational continuity in child's education and his/her ethnic, religious, cultural and linguistic background should be considered (Article 7, item 2 of the Emergency Ordinance of Romanian Government no. 26/1997).

In **practice**, refugee children live in a reception and accommodation centre run by the Ministry of Interior and are assisted by a legal guardian, which excludes the intervention of the Department for Child Protection.

As soon as a legal guardian has been appointed, he/she has all the rights and obligations of a parent. In practice however, it is difficult to select a guardian for an unaccompanied child seeking asylum, and provide continuity in his/her activity. That is why, presently, as a temporary solution, individuals from among the staff of refugee-assisting NGOs are appointed guardians.

As per the law, children who have been granted the refugee status or another form of protection have access to free primary and gymnasium (lower secondary) education on an equal basis as Romanian children (Article 23, h, of the Ordinance of Romanian Government no. 102/2000) but no distinction is made between accompanied and unaccompanied children. Education may be in Romanian, or in the language of a national minority, or in a widely spoken foreign language. Refugee children may be granted scholarships, as provided by the domestic law.

Unaccompanied children are entitled to health care assistance in the conditions mentioned at point 10. In the event they have no other residence, unaccompanied children may be granted accommodation free of charge in a refugee reception and accommodation centre.

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

Partly. In spite of all the legal provisions, unaccompanied refugee children and Romanian children are not treated equally. Refugee children are denied access to the state child care benefit, for example, because they do not have a personal numeric code (a series of numbers written in the identity documents which every Romanian national has and which cannot be given to other nationals).

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

It is planned to ensure equal treatment of refugee children and Romanian children. Measures to maintain their cultural identity are also envisaged.

Adoption (SGP: C12.1.4)

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

Laws:

- Ordinance of Romanian Government no. 102/2000 Relating to the Status and Regime of the Refugees in Romania;
- Emergency Ordinance of Romanian Government no. 26/1997 Relating to Children in Difficulty;
- Emergency Ordinance of the Government no. 25/1997 Relating to Adoption;
- UN Convention on the Rights of the Child.

According to the Romanian law, an unaccompanied child cannot be adopted, because the consent of the natural parents is needed, which in this case is impossible to obtain. Parents' consent is not necessary when they have been withdrawn the right to exercise parental rights; are declared disappeared or dead; are under interdiction; or when child abandonment has been declared. For obvious reasons, such procedures cannot be initiated in the situation of an unaccompanied child with a refugee status.

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

There is no practice in the field. It does not conform to the SGP, because the Romanian law excludes adoption as an alternative for integration of an unaccompanied child granted refugee status or any form of humanitarian protection.

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

We cannot suggest any changes.

Identity and Nationality (SGP: C12.1.5)

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

Laws:

- Emergency Ordinance of the Government no. 25/1997 Relating to Adoption;
- Law no. 21/1991 Regarding Nationality;
- UN Convention on the Rights of the Child.

Considering the eligibility conditions acquisition of Romanian nationality, an unaccompanied child who has been granted the refugee status or any form of humanitarian protection cannot acquire Romanian nationality. It could in theory be acquired only through adoption by a national Romanian family or individual, or in the event that the child's natural or adoptive parents, who are not Romanian nationals, apply, together with the child, and are granted Romanian nationality. Alternatively, the child himself/herself can apply for Romanian nationality after the age of 18.

The domestic law includes no stipulation for stateless children. Romania has not signed the international instruments relating to nationality and statelessness.

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

It does not conform to the SGP. The general framework and approach are not in conformity with the SGP.

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

Special measures to ensure protection of stateless children should be established.

Family Reunification and Returns to a Country of Origin (SGP: C12.2)

Voluntary Return (SGP: C12.2.1)

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

Laws:

- Ordinance of Romanian Government no. 102/2000;
- 1951 Convention Relating to the Status of Refugees;
- UN Convention on the Rights of the Child.

The domestic law has no specific stipulations referring to this aspect. It only refers to the situation when the refugee status is withdrawn.

There is no **practice** in the field.

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

It does not conform to the Statement.

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

The law should include specific provisions relating to the conditions and procedures for voluntary return, particularly in the case of unaccompanied children.

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

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

Laws:

- 1951 Convention Relating to the Status of Refugees.

Practice:

There is no practice in the field.

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

Given that there is no practice in this regard, we believe it does not conform to the Statement, which considers return to the country of origin as an alternative.

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

Certain provisions relating to this situation, and in line with the SGP, should be adopted.

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

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

There is no such programme in place.

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

It does not conform to the Statement.

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

There is no framework for action in place.

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

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

Laws:

- 1951 Convention Relating to the Status of Refugees

There is no practice in the field.

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

It does not conform to the Statement, because there is no domestic law to regulate the matter and no practice.

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

A strategy should be first agreed in this respect, to pursue settlement of an unaccompanied child in a safe third country.

13. DATA COLLECTION

The National Refugee Office is responsible for data collection.

The first case of an "unaccompanied child" in Romania was reported in 1999. The country of origin was Sierra Leone.

So far, 55 unaccompanied children coming from Bangladesh, Afghanistan, Pakistan, Sierra Leone, and Somalia have been registered.

14. POLITICAL LEVEL - SUPPORT FOR CHANGE

"*Unaccompanied children*" is a subsidiary chapter in the Romanian State policy, due to the limited practice in the field. The National Refugee Office is now the main State authority with responsibilities in the field. The issue of the refugee children is included in the present strategy of the National Authority for Child Protection and Adoption whose presence is becoming noticeable.

However, the most involved structures in this field are the NGOs, supported in their demarches by UNHCR.

In working with unaccompanied refugee children, Salvati Copiii (Save the Children Romania) is in permanent contact with national and local public authorities. As the refugee children's issues are new in Romania, the responsibilities of the authorities in this respect are not sufficiently known. The novelty of the subject and the limited practice are the main reasons for the lack of thorough knowledge and awareness, resulting in a not very strong protection system for this category of refugees.

Applicable laws have shortcomings and sometimes are too permissive. On the other hand, there are aspects left out and not regulated.

However, the openness towards co-operation of all the structures concerned is worth mentioning.

The lobby and information campaign conducted by refugee-assisting NGOs and UNHCR helped remove some of the barriers and opened-up the dialogue to address the problems faced by this category of refugees.

At the same time, there are attempts to modify and complete the existing legal framework by including specific provisions relating to unaccompanied children seeking asylum, in line with the international standards in this regard.