

**PUBLIC RELIEF AND
SOCIAL SECURITY**

**PART I:
PUBLIC RELIEF AND HEALTH CARE**

1. International Standards

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

1951 Convention, Article 23, Public Relief

This mandatory provision seeks to ensure that recognized refugees are entitled to benefit from the national social assistance and welfare schemes enjoyed by nationals, even if they do not meet any of the conditions of local residence or affiliation which may be required of nationals.³³⁸ Such a provision is all the more important in light of the fact that the 1951 Convention allows for certain restrictive conditions regarding gainful employment by refugees.

The discussions of the Ad Hoc Committee responsible for drafting the 1951 Convention, confirm that this article must be given a broad interpretation, and includes, *inter alia*, relief and assistance to persons in need due to illness, age, physical or mental impairment, or other circumstances, as well as medical care. Thus, refugees without sufficient resources are equally entitled on the same conditions as nationals to social and medical assistance.³³⁹ The channels of distribution for such benefits may differ for refugees, so long as they receive the same benefits on the same terms as nationals.³⁴⁰ As the Convention does not contain a definition of public relief and assistance, the level of assistance that refugees, and indeed all beneficiaries, receive will depend on the situation of each Contracting State.

³³⁸ N. ROBINSON, *supra* note 11, at 104, referring to the understanding of this provision expressed by the Ad Hoc Committee during its drafting process.

³³⁹ A. GRAHL-MADSEN, *supra* note 8, at 89.

³⁴⁰ A. GRAHL-MADSEN, *supra* note 8, at 89.

In some states, unemployment benefits are provided from the national social security scheme, while in others they are dispensed from the public relief scheme. Though in the view of certain members of the Ad Hoc Committee this article does not deal with assistance to the unemployed, it is generally assumed that article 23 does cover the situation of unemployment as part of its relief mandate in those cases where unemployment benefits are not covered by insurance.³⁴¹ Moreover, the Convention precludes any possible difficulty in delimiting between public relief and social security by providing for the same treatment in both cases, thus effectively avoiding this problem, with the exception of article 24(1)(b)(i) and (ii).³⁴²

Given the high standard of treatment granted to recognized refugees with regard to public relief and social security in the 1951 Convention, for their purposes it should remain the basic instrument of reference in this field. However, these rights are also recognized in a number of international and regional human rights instruments, some of which offer the important advantage of supervisory mechanisms which can either serve to enforce these rights or better define them. Instruments which impose on Contracting States the obligation of progressive realization, and which stipulate specific requirements in relation to the content of these rights, are of course also useful to promote the general advancement of these rights.

Article 25 of the Universal Declaration provides that everyone has the right to a standard of living adequate for his health and well-being including the basics of life, medical care and social services, in the event of lack of livelihood due to unemployment, sickness, disability, widowhood, old age, or other circumstances beyond his control. Similarly, the Covenant on Economic, Social and Cultural Rights, stipulates the right of everyone to an adequate standard of living, mentioning adequate food, clothing and housing in particular.³⁴³ Yet, despite imposing an obligation on Contracting States to ensure the subsistence of those who cannot do so on their own, no definition or formula for measuring what constitutes an adequate standard of living is offered.

More specifically with regard to health, article 12 of the above-mentioned Covenant recognizes the right of everyone to the highest attainable standard of physical and mental health, which includes medical service and attention. The right to life contained in article 6 of the International Covenant on Civil and Political Rights has also been interpreted by the HRC as imposing an obligation on states to take positive measures, such as to eliminate malnutrition and reduce infant mortality.³⁴⁴

³⁴¹ N. ROBINSON, *supra* note 11, footnote 191, at 105.

³⁴² N. ROBINSON, *supra* note 11, at 105.

³⁴³ Art. 11, International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A (XXI), December 16, 1966.

³⁴⁴ J. A. Dent, *supra* note 111, at 82.

In addition to the fact that the personal scope of the human rights instruments mentioned above, extends to everyone and is not limited to nationals, these instruments also include a non-discrimination provision.³⁴⁵ It stipulates that the rights in these instruments are to be exercised without discrimination or distinction of any kind, including as to national or social origin, or any other status, proscribed grounds for discrimination which some commentators have argued may be interpreted to include nationality, though there is no consensus on this issue.³⁴⁶

Notwithstanding the above, article 23 of the 1951 Convention grants refugees the most definitive guarantee and highest standard, since the requirement to grant refugees the right to state social assistance at the level of national treatment is subject to immediate and unqualified realization, with no possibility of invoking differentiating treatment. By contrast, in interpreting the relevant provision under the ICESCR, the Committee and the HRC are likely to permit states latitude to differentiate in favor of their nationals with respect to social assistance benefits, though such differentiations may not be unreasonable. Moreover, although non-nationals benefit from the minimum core content of ICESCR rights, its monitoring Committee has not defined this content with regard to social assistance and the right to health.³⁴⁷ Hence, differentiation between nationals and non-nationals with respect to these rights would most probably be acceptable unless it was considered unreasonable or if it endangered the health of a non-national.³⁴⁸

The Convention on the Elimination of Discrimination Against Women which applies to women without any distinctions and therefore benefits refugee women, grants them both substantive rights and the right against discrimination in the area of social assistance, adequate living conditions, and equality in access to health facilities.³⁴⁹

The Convention on the Rights of the Child, which also applies to all children without distinction, requires that the state ensure to the extent possible the child's survival and development, and in a separate provision, provides for the right of the child to an adequate standard of living, which includes also the mental, spiritual, moral and social aspects of his or her development.³⁵⁰ While, according to article 27,

³⁴⁵ Art. 2, Universal Declaration of Human Rights, G.A. Res. 217 A (III), December 10, 1948; art. 2(2), International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A (XXI), December 16, 1966, entry into force January 3, 1976; art. 2(1), International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXI), December 16, 1966, entry into force March 23, 1976.

³⁴⁶ J. A. Dent, *supra* note 111, at 8.

³⁴⁷ J. A. Dent, *supra* note 111, at 63 and 80.

³⁴⁸ J. A. Dent, *supra* note 111, at 63 and 80.

³⁴⁹ Arts. 13, 14, 12, Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, December 18, 1979, entry into force September 3, 1981.

³⁵⁰ Arts. 6(2) and 27, Convention on the Rights of the Child, G.A. Res. 44/25, November 20, 1989, entry into force September 2, 1990.

parents have primary responsibility for the child's development, States Parties are to take appropriate measures to assist parents in this task and in case of need, are required to provide material assistance, especially with respect to such basic needs as housing, food and clothing.

The child's right to health is elaborated in article 24 of the same Convention, which due to its broad approach to health and specific requirements is considered to be a particularly progressive provision in international law, and surpasses the protection provided in the ICESCR.³⁵¹ Particularly noteworthy is its guarantee of access to health care services for the treatment of illness and for rehabilitation, its emphasis on the development of primary health care, information and preventive health services, the combat of disease and malnutrition, and measures to abolish traditional practices which are prejudicial to the health of children, such as female genital mutilation.

At the European level, the European Convention on Social and Medical Assistance,³⁵² provides for equality of treatment between nationals of a host country and nationals of other Contracting Parties on the condition that they are lawfully present and without sufficient resources. Refugees recognized under the 1951 Convention benefit from this protection by virtue of a Protocol to this Convention.³⁵³ Hence recognized refugees who are resident in a Contracting State, are entitled to receive national treatment with respect to social security in any other Contracting State.³⁵⁴

By contrast, the rights granted under the European Social Charter, including article 13 which grants the right to social and medical assistance on a reciprocal basis, are only of marginal relevance to refugees as they only extend to those refugees who are *nationals* of a Contracting State, which very few are likely to be.³⁵⁵ Indeed, the true relevance of the Charter for refugees lies elsewhere, namely in the fact that its Appendix entitled *Scope of the Social Charter in terms of Persons Protected* also imposes on Contracting States the obligation to grant refugees the same standards of treatment as required by the 1951 Convention. As a consequence, this Appendix,

³⁵¹ J. A. Dent, *supra* note 111, at 87.

³⁵² This Convention grants nationals of other Contracting Parties who are in need and who are lawfully present in the country the right to social and medical assistance on the same terms as their own nationals. It extends these rights to recognized refugees by virtue of article 2 of its Protocol. *See* J. A. Dent, *supra* note 111, at 40 and 77.

³⁵³ J. A. Dent, *supra* note 111, at 40. Article 2 of the Protocol reads: The provisions of Section 1 of the Assistance Convention shall apply to refugees under the same conditions as they apply to the nationals of the Contracting Parties thereto.

³⁵⁴ J. A. Dent, *supra* note 111, at 40.

³⁵⁵ J. A. Dent, *supra* note 111, at 74.

which incorporates into the Charter, all the economic, social and cultural rights of refugees contained in the 1951 Convention, therefore allows refugees to take advantage of the Charter's supervisory mechanisms in order to enforce these rights.³⁵⁶

Refugees also benefit from the guarantees provided under the ECHR, as this Convention is applicable to everyone within the jurisdiction of States Parties. And while the ECHR and its Protocols do not contain any provisions directly related to public relief as such, certain precedents have resulted from them which impact on these rights. One such precedent is a ruling by the Court of Human Rights, whose decisions are binding, to the effect that the right to a fair trial in the ECHR applies to social security and even social assistance rights, if these are protected as statutory rights at the domestic level, thus providing a safeguard against possible discrimination and arbitrariness in the allocation of such benefits.³⁵⁷

2. Comparative Analysis

*Public Relief*³⁵⁸

Legal Standard of Treatment Granted to Recognized Refugees

At the legislative level, all the selected countries in the region grant recognized refugees the right to access state public relief benefits on the same terms as nationals, with the possible exception of Slovenia. The Slovenian Asylum Law stipulates that recognized refugees may not receive financial assistance for longer than three years after asylum is granted. Given the lack of a long standing state practice in this regard and the very recent adoption of the new Asylum Law, it is still unclear whether this provision will be interpreted restrictively or favorably. However, the local UNHCR office believes that the three-year term is in fact intended by the Slovene Government as a positive measure, which is to temporarily guarantee refugees a more liberal access to these benefits than that granted to nationals, who appear to be subject to stricter conditions.

In the majority of the countries under consideration, refugees are granted the right to access national public relief benefits by virtue of a provision in the Asylum Law; a provision either referring to social assistance specifically or a more general provision broadly stating that unless otherwise specified by law refugees have the

³⁵⁶ J. A. Dent, *supra* note 111, at 22.

³⁵⁷ J. A. Dent, *supra* note 111, at 73-74.

³⁵⁸ In this study, the expression public relief benefits is used interchangeably with social welfare benefits or social assistance. By contrast, social security benefits are referred to only by that name.

same rights and obligations as nationals or permanent residents (who, in this region, are generally granted essentially the same rights as nationals), and which becomes the basis for their right to social assistance. In other countries, the secondary legislation relating to social assistance explicitly includes recognized refugees, such as is the case in Poland and Bulgaria for example, though in the case of the latter, the new Asylum Law also confirms that refugees have the same rights as Bulgarian citizens unless stipulated otherwise by law.

The variety of benefits and the level of assistance available under the national public relief scheme of each country vary considerably, and are subject to different conditions and methods of allocation. Readers interested in learning more regarding the details of these benefits in each of the countries under study may refer to the individual country profiles in this chapter.

Effective Access

If at the legislative level the countries concerned appear to be in compliance with international norms, the actual implementation of these rights has not always been as straightforward. The most notable exception is perhaps the Czech Republic, where generally speaking, access to state social assistance by refugees has not presented any significant problems for some time, and there appears to be a reliable state practice in this regard. In the case of Slovenia, the two recognized refugees have also had access to national social assistance but the practice is too limited to draw any significant conclusions, and in Hungary no obstacles to the exercise of these rights by recognized refugees have been reported either according to UNHCR, especially after the difficulties associated with the initial implementation period of the new Refugee Law in 1998 were resolved.

In the past, serious obstacles have impeded implementation of the right to public relief in Poland, Slovakia and Bulgaria. This difficulty stemmed from a variety of reasons including governmental transfers of responsibility, and the lack of identity/residency cards and social security numbers. For the most part, the problems in these three countries have either been resolved or are being successfully dealt with thanks to the assistance of NGOs, such that at the moment refugees appear to generally be able to exercise this right and access benefits on the same terms as nationals, except in Bulgaria, as explained below. Hence, to the extent that some difficulties in accessing certain benefits may still emerge in Slovakia and Poland, UNHCR is of the opinion that they are generally attributable to more widespread problems affecting the host population as a whole and relating to the limited financial resources of the states involved. This is particularly the case with regard to benefits which are of a discretionary nature and which, despite being provided for in the law, are not in practice actually distributed by the state.

Therefore, until relatively recently, recognized refugees in some host countries have experienced periods during which accessing national social assistance benefits in practice was either difficult or impossible for some, or all refugees.

However, the situation in Bulgaria and Romania, where to the knowledge of UNHCR, virtually no recognized refugees have received state welfare benefits as of yet, is of special note. Indeed, despite certain positive measures which have been taken by the Bulgarian Government in recent years, to UNHCR's knowledge only a very small number of refugees have received these benefits in practice, two of whom were chronically ill persons in 1999. UNHCR notes however, that despite the fact that very few refugees can be confirmed to have received these benefit, they have not received reports of cases where the applications for these benefits were actually rejected by government authorities. Despite this lack of conclusive evidence, it appears that general access to state benefits including by the host population still continues to be difficult due mostly to the financial limitations of the state. This has been manifested in problems, i.e., long delays in the distribution of benefits, and in a process of prioritizing which allows the state to allocate its limited resources to those it judges to be most in need, such as pensioners.

In practice it is UNHCR which continues to provide regular financial assistance to recognized refugees. This is perhaps due in part to the difficulties in access and lack of reliability of the state public relief system, but to a large extent it may still be attributable to the fact that only relatively recently have refugees had an effective right to access the state social assistance scheme. Indeed, prior to 1998, the lack of secondary legislation specifically granting recognized refugees these rights, the absence of knowledge about refugees on the part of the authorities, and the failure to issue social security numbers and identity cards for refugees until 1997, created a situation whereby refugees were effectively unable to exercise their rights with respect to the national social assistance system. At present, they could therefore be seen to be in a period of transition, during which UNHCR still provides assistance, but is simultaneously encouraging them and indeed, requiring, that they register with the social assistance and employment bureaus.

In Romania, according to UNHCR information, no refugee has as yet been able to access social welfare benefits. In lieu of these benefits, as of 1998, the Romanian Government implemented a new reimbursable loan scheme for recognized refugees that grants them six (maximum nine) months of financial assistance upon recognition. As stipulated in the Refugee Law, the amount of this loan was originally intended to match the full minimum salary per month, which is significantly higher than the assistance normally granted under the public relief system, but the loans were later reduced to nearly half of that amount. Unfortunately, this assistance was also provided with many months of delay, during which time, recognized refugees did not have access to either the national social welfare system or any other form of financial assistance from the state.

Apart from the current reimbursable loan scheme, the history of state financial assistance to recognized refugees in Romania did, in fact, not exist as of 1995, when the government stopped the little assistance they were granting to a few recognized refugees who were still living in Gociu, a building which served as an accommodation center for refugees and asylum-seekers. That same year, the government passed a provision granting recognized refugees nine months of assistance which included accommodation and board, but this provision was never implemented in practice and was later supplanted by the reimbursable loan scheme.

In the past, UNHCR has therefore been the only consistent, and virtually the sole source of financial assistance to recognized refugees in Romania. It remains to be seen whether this will continue to be the case with regard to the refugees who have exhausted their six to nine months of reimbursable loan, and whether these refugees will be granted effective access to benefits under the national public welfare system, though as of November 1999 UNHCR was not yet aware of any such cases.

Insufficient Levels of Assistance under National Public Relief Schemes

Beyond the issue of effective access which has improved significantly, especially since 1998, in most of the countries under study (with the important exception of Romania and Bulgaria) the matter of the level of assistance accorded under these national welfare systems is an equally crucial consideration in determining the present and future integration capacity of this region.

Although it can generally be said of *all* the countries under consideration that the current levels of assistance granted under the national public relief schemes are insufficient to survive on, the situation appears to be arguably more serious for persons in Romania and Bulgaria who are dependant on this assistance.

It is not possible within the scope of this study to provide an accurate economic analysis of the degree to which social welfare benefits in this region reflect or not the actual cost-of-living at the most basic level. Similarly, it is impossible to provide a comparative analysis that would rate the countries under consideration in this respect. In fact, it has been suggested that in some of the most prosperous of the selected countries, the level of these subsistence benefits are comparable (relative to the respective cost-of-living) to those granted in some western European countries, which have adopted increasingly restrictive policies in this regard in the last decade. What is clear even without such an elaborate analysis, however, is that the least prosperous countries, i.e., Romania and Bulgaria, offer only a very minimal, almost negligible, social safety net.

This situation is aggravated by the fact that the cost-of-living, especially in urban centers, is relatively high, as is the unemployment rate. Hence, while it is certainly

important as a crucial first step for the governments of Romania and Bulgaria to begin taking on the responsibility of granting recognized refugees effective access to their national public relief systems, most refugees will in all likelihood require additional assistance if integration in these countries is to be a viable option. Therefore, it appears clear that in the short-and medium-term future, securing access to national public relief benefits to refugees alone, will not greatly improve either the situation of individual refugees or the perception of these countries, which is still largely that of transit countries.

Moreover, as countries with economies still in transition and social assistance systems in the process of transformation, not only are the benefits very low but the conditions for receiving such benefits also appear to be increasingly subject to new and more restrictive regulations. As such, according to the legislation in some countries, considerations beyond simple individual needs or revenues may now be taken into account when determining eligibility or whether the amount of basic assistance can be reduced. In Slovenia and Slovakia, for example, competent authorities may take into consideration subjective reasons pertaining to the applicant and the factor of personal responsibility for his situation when deciding on the social benefits he should be granted.

Refugee-Specific State Financial Assistance Programs

In recognition of the fact that recognized refugees may initially have access to less personal and financial resources than nationals, the governments of Hungary, Romania and Poland have established refugee-specific financial assistance programs. In the case of Hungary, the benefits that may be granted under this program are in addition, rather than in *lieu* of national social welfare benefits. By contrast, the current refugee-specific program in Romania, which takes the form of a six-to nine-month reimbursable loan, and the former PIA program in Poland have had the effect of rendering refugee beneficiaries ineligible for national welfare benefits.

Established in order to temporarily grant refugees starting a new life in their host country better financial conditions than under the national social assistance system, this effort appears to have been essentially unsuccessful in Poland due, in the opinion of some, to the failure to adjust the level of assistance to inflation and the cost-of-living. This PIA program, which ran for a two-year period between 1996 and 1998, offered refugees financial assistance over a period of fifteen months. It was based on a system of voluntary agreements between the refugee and the implementing Government Center for Refugees, for which 85% of refugee applicants were accepted. Yet, the program's lack of success is reflected in the fact that nearly half of all refugee beneficiaries had their agreements dissolved, so that in total 55% of all recognized refugees (including the 15% of applicants to the program who were not included) were not covered by it.

In Romania, though no final conclusions are yet available on the impact of the reimbursable loan scheme, the very limited period of assistance and the fact that it is in the form of a loan, which must in principal be reimbursed rather than a grant, makes it very unlikely that this program will ever become a viable and successful alternative to public relief benefits. The lack of a state practice establishing an effective access to national public relief system for recognized refugees in Romania only serves to further highlight the fact that once the reimbursable loan is exhausted refugees will still face the potential problem of access to national benefits. Moreover, offering reimbursable loans as the only form of state assistance to recognized refugees with no other resources and no effective access to national public relief benefits, cannot be recommended as it merely places these persons in debt without offering them a durable solution. Offering both categories of state financial assistance, that is, both public relief and reimbursable loans or grants to refugees simultaneously would perhaps constitute a more promising, and indeed more acceptable strategy.

The program in Hungary, adopted just this type of strategy, namely of providing for a certain amount of time and under certain conditions, simultaneous access to both the benefits available under the national public relief system and under the special government Refugee Care and Maintenance program. The latter provides for a monthly stipend, a regular contribution to the cost-of-living, and a variety of other benefits such as local travel and school enrollment benefits, as well as benefits connected with housing or settlement costs which are of a more discretionary nature than the others. The access to these benefits by refugees in practice is good, according to UNHCR, though it is more difficult to obtain benefits which are discretionary.

Non-Governmental Financial Assistance

In the majority of the countries under consideration, with the exceptions of Bulgaria and Romania, non-governmental financial assistance and most notably that funded by UNHCR may generally be categorized as supplementary assistance, i.e., assistance which is granted in addition to any state benefits which refugees may also receive. As discussed above however, even countries currently providing refugees effective access to national social welfare benefits suffered gaps in the last few years during which state assistance was not accessible to refugees, and UNHCR was compelled to assume responsibility for the basic needs of those refugees. This emergency assistance in the past notwithstanding, at present the assistance provided by UNHCR and other non-governmental actors often takes the form of installation grants, one-time emergency assistance, and basic needs packages or other forms of material assistance.

One of the more crucial forms of assistance by refugee-assisting NGOs in this field is in fact non-material and non-financial; it is their role in facilitating access to

these rights. NGOs play an important function in providing training and in sensitizing the relevant local government centers to refugee rights and problems, and help refugees negotiate the bureaucratic procedures of the national public welfare system and what is often a rather complicated system of social benefits, either through counseling and orientation sessions for newly recognized refugees or by providing individual assistance when necessary.

By contrast, given the lack of a reliable state practice of granting refugees effective access to national social assistance benefits and the difficult economic and living conditions in Bulgaria and Romania, UNHCR has had to assume primary responsibility for the care and maintenance of refugees in need through the allocation of regular cash and material assistance. Due to the reasons discussed above, recognized refugees in Bulgaria still rely primarily on UNHCR's sliding scale program of financial assistance, despite the fact that UNHCR now actively requires that they register both with the government social departments and employment bureaux.

Prior to 1998, when the Romanian Government began implementing the reimbursable loan scheme, UNHCR also had to assume primary responsibility for providing recognized refugees with a monthly subsistence allowance, and on occasion even emergency food supplies. The latter was provided in 1995 and 1998 when the government cut or failed to provide any assistance to residents of the Gociu accommodation center for asylum-seekers, in which some recognized refugees were still living. Given the short duration of the loan program and the very low monthly payments which it provides, UNHCR continues still today to supplement this amount with their own regular financial assistance program.

Table 6:
Right to Public Relief for Recognized Refugees³⁵⁹

	PUBLIC RELIEF ^①			
	Right to access national relief public scheme on the same terms as Nationals	State-funded Refugee-specific financial assistance programs	Current state practice regarding effective access to public relief	Monthly subsistence allowance program by UNHCR
Bulgaria	✓	✗	Very few RRs confirmed to have received benefits	✓
Czech Republic	✓	✗	Access confirmed	✗
Hungary	✓	✓ Granted in addition to public relief	Access confirmed	✗
Poland	✓	✗	Access confirmed	✗
Romania	✓	✓ Began in 1998 in form of loans	No RR confirmed to have received benefits	✓
Slovakia	✓	✗	Access confirmed	✗
Slovenia	✓ Asylum Law states financial assistance limited to 3 years but no definitive interpretation of this provision exists as of yet	✗	Access confirmed	✗

✗ Yes ✓ No RR = Recognized Refugee

^① The term public relief is used interchangeably in this chapter as state social assistance or social welfare, and refers to the basic level of subsistence assistance granted by the state that is not contingent on contribution schemes.

³⁵⁹ The information in this chapter reflects the situation as of October 1999 and includes: the new Bulgarian and Slovene Asylum Laws which entered into force in August of that year; as well as, both the current Czech Refugee Law and the proposed draft Refugee Law.

Health Care

Legal Entitlement and Access to the National Health Care System

At the legislative level, recognized refugees are granted the right to health care on the same terms as nationals in all seven selected countries in this study, most often by virtue of the fact that they are granted permanent resident status and the accompanying regime of rights, or are granted the same rights as nationals in the country's Asylum Law.³⁶⁰

The national medical care systems of many of the countries under consideration in this region are undergoing major reforms however, and in many instances are in (what may be described as) a state of crisis, due to the inability of national governments to continue financing adequate medical services and facilities. As such, universal health care coverage is being gradually replaced by less comprehensive systems of health insurance coverage, both in terms of eligibility and benefits provided. Moreover, there is still considerable confusion at the level of implementation of these new health systems, as they are recent and do not appear to be fully operational as of yet in some countries.

Given this period of reform and the general complexity of these health schemes, the information provided in the individual country profiles in this study is therefore only intended to provide insight as to the standard of treatment granted to recognized refugees, their effective access to the national medical systems, and highlights of possible gaps in the laws and medical coverage which may negatively impact on this group of persons. The special arrangements that have been set up by either national governments or UNHCR to assist refugees in this regard will also be discussed. No comprehensive explanations of the national health insurance systems of the selected countries are possible within the scope of this study however.

As a result of these changes, as well as the general state of crisis in the health care sector, access to medical care can be a problem both for nationals and for recognized refugees, particularly if the new legislation and health insurance schemes contain gaps that leave certain groups of persons without any medical coverage. Due to the particular situation of newly recognized refugees, who are generally neither legally employed before nor immediately after their recognition, new health insurance systems granting coverage only to the employed or formerly employed persons still covered by their unemployment insurance may leave refugees without any medical coverage.

³⁶⁰ The latter type of provision also generally stipulates that the refugee has the rights or status of a citizen, *unless*, otherwise stipulated by law.

This is the situation in Poland, for example, where under the national medical insurance which came into effect on September 9, 1999, persons who have never been legally employed in Poland,³⁶¹ do not benefit from this medical coverage. Hence, for newly recognized refugees who are not likely to be eligible for this medical insurance, free medical care is only available under hospital emergency procedures.

In some countries, governments have taken precautions to provide medical coverage for recognized refugees who might otherwise not be eligible for it. In Slovenia, for example, recognized refugees are to be covered by the Law on Health Insurance and obligatory medical insurance, but in practice to date if the refugee is unemployed the Office for Immigration and Refugees covers the expenses. Refugees in the Czech Republic are entitled to benefit from national health care equally with nationals, but due to a gap in the law children of refugees who are born in the Czech Republic and who have therefore not yet been granted refugee status and the accompanying status of permanent resident are not covered, such that families may be required to cover the medical expenses of the child including those associated with the birth. This problem is addressed in the new Draft Refugee Law however, which stipulates that for the purpose of medical insurance, a child born to a recognized refugee is to be considered a permanent resident until his status is adjusted and he receives refugee status.

Despite being granted the same rights as nationals under the national health care system, ensuring access to medical care for recognized refugees in Bulgaria and Romania has required the special intervention of government authorities and/or UNHCR who established special arrangements with certain hospitals. This has been due to a number of reasons, including the general financial crisis of the medical care systems of these two countries, the fact that these systems are in a process of reform, and a lack of knowledge concerning the rights of refugees which has resulted in refugees being requested the same large fees as charged ordinary aliens —a problem which has also occurred in other countries under study. More details on these special arrangements in Bulgaria and Romania follow below.

As already stated, both countries are in the process of implementing new health insurance systems, which in the case of Bulgaria is notable for the protection it offers persons considered vulnerable under the law and who are not able to contribute to the national health insurance fund.

³⁶¹ With some exceptions such as students, who are covered.

Non-Governmental Health Care Assistance

As most of the countries in this study grant recognized refugees the same rights to medical care as nationals both in law and in practice, with the noted exceptions of Bulgaria and Romania where access is difficult, UNHCR has not had to implement their own programs of medical assistance. Hence, UNHCR and their implementing NGOs only provide occasional assistance, mostly by facilitating access to care, and by granting exceptional or emergency assistance on a case-by-case basis, particularly for types of medical services and for persons who would otherwise not be covered by the national health scheme.

In the Czech Republic, a health project for asylum-seekers funded by UNHCR and implemented by an NGO partner, OPU, is worth mentioning, particularly as it may relatively easily be adapted to other countries and to recognized refugees. Started in 1998 with a preliminary needs analysis, the project now provides material support, lectures and individual and group counseling on such health issues as, preventive health care, family planning, pre- and post-natal education, and substance abuse, by social workers and volunteer health workers to asylum-seekers at refugee camps. A database of expert health practitioners willing to cooperate on this project, and contracts or agreements with various medical institutions, such as the Nursery College in Prague, have been undertaken, and information pamphlets on the above topics, translated into various languages, are also to be provided. In-kind donations for this project have been obtained from a variety of companies and organizations, including items such as pre-natal vitamins, condoms, pregnancy tests, leaflets on health issues, and various children's items such as milk, toys, and clothing. To date, lectures on women's health and hygiene, prevention of drug abuse and addiction, which were translated into various languages, have been successful. Through this project, a need for training of health workers in the cultural norms, special needs, and sensitivities of the different ethnic and religious groups, particularly women, has also been identified.

In Bulgaria and Romania, the practical difficulties mentioned above have led to the establishment of special programs designed to facilitate access and improve the medical care provided to recognized refugees within the national health system.

More specifically, in the case of Bulgaria, UNHCR has sought to ensure better access to health care for recognized refugees by negotiating agreements with two major hospitals. These contracts provide that in return for yearly donations to improve their laboratory, emergency care equipment and purchase ambulances for example, the hospitals in question agree to grant medical treatment to asylum-seekers and refugees without payment. This arrangement reinforces the fact that it is the government's responsibility to provide health care to refugees, but at the same time Bulgarians benefit from assistance to their medical facilities.

Other special medical assistance provided by UNHCR and its implementing partners in Bulgaria includes coverage for medicine, dental care, and psychiatric counseling. With regard to medicine, in cases where the medicine required is not available free of charge or at a low cost in hospitals, UNHCR has an additional assistance scheme whereby they may fund 100% of the costs for medicine in certain defined cases (such as for chronic illnesses, children under five years of age, elderly persons and single parent families) and 50% of the costs for other categories of cases. Some special assistance for dental costs is also possible, since access to dental care under the national health care system is subject to long waiting periods. Finally, a doctor with the Sofia Psychiatric Clinic provides psychiatric counseling to refugees and asylum-seekers on the premises of the Bulgarian Red Cross, a UNHCR implementing partner, once a week, while a psychologist of the Agency for Refugees provides counseling at the government premises.

In the case of Romania, it was the Ministry of Interior that undertook to negotiate agreements with the Ministry of Health in order to ensure free treatment for refugees at nominated units of three hospitals in Bucharest. If the refugee must be sent to units other than those stipulated, UNHCR will usually provide some financial assistance and cover the cost of equipment or supplies which the hospital is unable to cover. In addition, UNHCR's care and maintenance project has provided for basic health care by employing one doctor full-time on the premises of their NGO partner.

Table 7:
Right to Health Care for Recognized Refugees³⁶²

	HEALTH CARE	
	Right to health care on the same terms as National	Special arrangements/programs for RR by state or UNHCR
Bulgaria	✓	✓
Czech Republic	✓	X
Hungary	✓	X
Poland	✓	X
Romania	✓	✓
Slovakia	✓	X
Slovenia	✓	X

X Yes

✓ No

RR = *Recognized Refugee*

³⁶² The information in this chapter reflects the situation as of October 1999 and includes: the new Bulgarian and Slovene Asylum Law, as well as both the current Czech Refugee Law and the proposed Draft Refugee Law.

3. Recommendations

Public Relief

Despite the fact that the legislation in the seven countries under consideration grants recognized refugees the right to access the national public relief systems on the same terms as nationals (with the qualification regarding Slovenia discussed above), refugees have essentially not yet had access to social assistance benefits in Bulgaria³⁶³ and Romania, and more generally, are experiencing important difficulties in starting a new life in their countries of asylum on the level of assistance currently provided by most host governments. This situation, in conjunction with the high unemployment rates and high cost of housing, will if left unattended, continue to impede the effective integration of recognized refugees in many of the countries under consideration. In some countries integration conditions and the level of financial assistance granted refugees is so low that it is even questionable whether recognized refugees who do not have the financial means to remain in their host countries in dignified conditions are in fact afforded effective international protection.

As a consequence, this situation of deep economic insecurity will only perpetuate the perception of some of these countries as economically non-viable asylum countries, thereby ensuring that despite safe third country agreements, they remain primarily countries of transit rather than destination, and that burden-sharing in Europe will ultimately not be successfully implemented in this region. Moreover, as is already being witnessed to some extent, the disparity in the reception and integration conditions within the seven countries under consideration is also likely to continue raising the level of irregular migration of asylum-seekers and perhaps even recognized refugees among these host countries.

The following are some preliminary suggestions with regard to the issue of public relief assistance, and on how to assist refugees in achieving a basic standard of life.

Supplementary rather than Alternative Regimes of Financial Assistance

Refugee-specific financial assistance, whether granted by UNHCR or the host state, should ideally be a supplementary program to national public relief benefits rather than a substitute or alternative regime. This approach offers several advantages. Not least of these is that it allows both social welfare bureaux and recognized refugees to gain experience and establish a practice with regard to the exercise of these rights before refugee-specific assistance is exhausted, so that the chances of

³⁶³ As mentioned above, UNHCR can only confirm access to public relief benefits by a small number of refugees, of whom, two were chronically ill persons.

delays and difficulties in gaining access to national public assistance later on are minimized. In Poland this transition from the refugee-specific PIA program to national welfare assistance was difficult in 1998, as it is also likely to be in Romania once the individual reimbursable loans are exhausted. When such difficulties and delays arise, refugees may effectively be left without any state assistance during this transition period, a problem which may be avoided with the above strategy of mainstreaming refugees into the national social assistance system as soon as possible.

Moreover, a supplementary financial assistance program allows refugees to know the exact amounts of the national welfare benefits and hopefully better prepare for when the supplementary assistance will come to an end. This advantage is lost with substitute programs, which may mean that refugees are less able to appreciate just how low or difficult access to national social assistance will be.

Both governmental and non-governmental programs of supplementary financial assistance should in principal also require that refugees show proof of registration with the relevant social welfare and employment bureaus, as well as its result. This will permit easy monitoring of access to these rights and the early identification of obstacles to it, which could be negotiated or resolved before supplementary assistance runs out entirely.

A minimum period of one year of supplementary financial assistance is recommended, though in Romania and Bulgaria a longer period may be required. Hungary offers an interesting model of refugee-specific state supplementary assistance, more details of which are available in the Individual Country Profiles, section IV, in this chapter.

Offering Continuation of Supplementary Assistance after Recognized Refugees Have Secured Employment

This supplementary assistance should also be temporarily continued for refugees who have found legal employment, as an incentive to become more financially self-sufficient and to gain work experience, but also as a supplement to wages, which in the case of recognized refugees are lower than the average national wage. Naturally, the decision, on whether to continue granting financial assistance must also take into account the persons actual revenues and wage earnings. This supplemental employment assistance should be made conditional on obtaining legal employment.

Indirect Forms of Assistance to Compensate for Low Level of State Public Relief Benefits

With regard to the low level of assistance granted under national social assistance programs, one of the ways in which this situation may be ameliorated is by

helping refugees secure affordable housing that is compatible with employment opportunities. In this way, housing costs are at least more comparable to the amount of social welfare benefits (as opposed to housing in the private sector which is not). If the prospects for employment are also increased, the period during which refugees will have to rely on social benefits will hopefully be kept to a minimum, so that the likelihood of a downward spiral towards marginalizing and poverty is avoided. Ideally, the period during which refugees receive social welfare benefits and search for employment will also be the period during which they receive supplementary financial assistance from either the state or UNHCR and secure affordable housing.

Government Guidelines and Period of Reprieve from Certain Conditions Affecting Eligibility for Public Relief

In countries where eligibility and access to benefits under the national social assistance scheme are subject to considerations such as those relating to subjective reasons and the personal responsibility of the applicant for his situation, (as appears to be the case in Slovakia and Slovenia, for example) refugees should be granted an initial period of reprieve from such conditions. At minimum, government guidelines should be issued to local social assistance offices instructing them about the special considerations to take into account in the case of newly recognized refugees.

One-Time Settlement Assistance by Host Governments

Where this is financially feasible, host governments should be encouraged to offer one-time settlement assistance within the framework of their refugee-specific integration/or financial assistance programs, in order to help newly recognized refugees with the initial costs of purchasing essential furniture and household items, and other expenses related to setting up a new home. At present this cost is generally borne by UNHCR, though in the Czech Republic, lobbying efforts by NGOs with the responsible government authorities have already been undertaken on this issue. As discussed in the recommendations in Chapter II on Employment, NGOs and UNHCR can also provide in-kind settlement assistance in the form of donated furniture for example, to supplement the government's one-time grant.

Monitoring the Implementation of the Slovene Provision Imposing a Three-Year Time Limit on State Assistance

In Slovenia, the favorable interpretation which according to UNHCR, appears to be attributed to the three-year time limit on state financial assistance to refugees under the new Slovenian Asylum Law (article 50), must be monitored and confirmed in practice by the relevant NGOs or UNHCR. Given the potentially misleading and restrictive

wording of this provision, the relevant government authorities should also be requested to provide clear instructions and training in this regard to their local social welfare offices to ensure that all apply a uniform and favorable interpretation of the provision.

Forgiving the Reimbursable Loans Granted to Refugees in Romania and Replacing this Form of State Assistance

In Romania, the government is urged to officially forgive the loans granted to recognized refugees to date. It is also recommended that this program of assistance be replaced by a more durable and realistic solution for recognized refugees, who are unlikely to be able to repay these loans in the near future. Beyond placing recognized refugees, who have no other resources or effective access to state public relief, in debt, this program of assistance through reimbursable loans may also have other detrimental effects. Faced with the inability to repay these loans, refugees may be weary of trying to access public relief benefits for fear of being requested reimbursement, and this may serve as an added incentive to leave the country.

Concerted Action Plans Required in Romania and Bulgaria

The dire financial and integration conditions of recognized refugees in Romania and Bulgaria perhaps require the greatest effort by all parties concerned, including possibly actors at the European level. As a first order of priority, national governments are urged to take the necessary measures to ensure effective access to state public relief benefits, including by issuing instructions and taking other steps that may be necessary to ensure effective access at the local level. UNHCR and NGOs should also monitor and facilitate access, both by providing support to recognized refugees undertaking this procedure and by offering training to government counterparts.

Perhaps most importantly, advocacy efforts are necessary in order to strengthen the government's political will in this regard, and innovative solutions must be identified in order to guarantee recognized refugees in these two countries an acceptable subsistence level. Such solutions are likely to require wider European and UNHCR cooperation, as well as a program of supplementary assistance, though this assistance could take various forms, including as mentioned above, housing assistance.

Evaluation of Financial Assistance Programs that Are Made Conditional on Integration Efforts

An analysis of the results and experiences with financial assistance programs which make assistance conditional on refugee integration efforts should be conducted, particularly by UNHCR offices which have been implementing such programs to

date, such as Romania, and the conclusions should be made available to other interested UNHCR offices in the region.

Health Care

Special attention must be paid to the situation of newly recognized refugees *vis-à-vis* their access to medical care, particularly as the medical insurance schemes, and indeed the entire health sector, in many of the countries under consideration is in a process of reform. Although nationals who are unable to contribute to medical insurance schemes may be in a similar situation, newly recognized refugees are especially affected since they have no past employment and contributions to an insurance fund on which to rely.

Adoption of Legal Provisions and Measures Ensuring Medical Coverage to Newly Recognized Refugees and their Families

In countries where reforms in the health sector have already or are likely to have a negative impact on recognized refugees, the relevant governments, NGOs and UNHCR are encouraged to identify and negotiate solutions specifically taking into consideration the situation and special needs of recognized refugees. In particular, national governments are urged to adopt legal provisions, as well as practical measures ensuring medical coverage for newly recognized refugees (and their close family members) who would otherwise not be eligible for it, either until they obtain coverage through employment, or for a length of time which is deemed reasonable for learning the language and securing employment. Vulnerable refugees, including persons unable to work and single parent families, for example, should also be granted special medical coverage.

Alternative Arrangements to Deal with Gaps Created by Legislative Reforms and Deteriorating Medical Services

Failing the adoption of such legal provisions, or as follow-up assistance once the period of this coverage is exhausted, creative arrangements such as those being implemented in Bulgaria and Romania are to be encouraged as a way to provide medical coverage to recognized refugees in other host countries, who would otherwise not be able to receive free medical care. For more details on these arrangements, readers should refer to the respective country profiles in this Chapter.

Providing Information on Changing Eligibility Rules for National Health Care

As part of their orientation sessions into their new host society, newly recognized

refugees, and especially refugee families, should receive general information and counseling on the rules relating to the national health care system and regarding the impact of work in the informal labor market on their eligibility for national health coverage. Such information sessions and accompanying written materials are particularly necessary in the context of the reforms taking place in this field and which in many countries are rendering the conditions for eligibility increasingly restrictive. Moreover, newly recognized refugees generally have little or no previous knowledge about the national medical system, since as asylum-seekers they are generally automatically granted full medical coverage or special assistance from UNHCR.

Preventive Health Support Program and Training on Cultural Aspects of Health Care Issues

Projects such as that provided to asylum-seekers in the Czech Republic in the area of preventive health care, family planning, pre- and post-natal education, and substance abuse, whereby asylum-seekers are provided pamphlets, individual counseling and material assistance, and lectures by volunteer health care workers and students, is also strongly encouraged for implementation in other countries with regard to recognized refugees, particularly when they are still easily reached as a group in integration or refugee camps, or during the period of initial orientation sessions arranged upon recognition.

In such projects, a special emphasis should be placed on the needs of women refugees and in providing training to health care practitioners involved in caring for asylum-seekers and refugees regarding the cultural differences and sensitivities attached to these topics by the various ethnic and religious groups. Such activities are particularly necessary for refugee families, women and youth as they have often lost their normal support systems, including familial support and the broader traditional cultural and social reference systems, which would normally have provided them with guidance on these sensitive issues. Moreover, the strain of the cultural and geographic dislocation, together with the demands of securing their survival in an entirely new environment frequently result in mental health problems and a reduced capacity of parents to guide their children on these vital matters. Indeed, this situation may even result in a breakdown in the traditional family roles, with children, (who learn the host country language more quickly) undertaking many of the parental roles and responsibilities, with no one to guide them in turn.

Programs such as that in the Czech Republic, if properly adapted to the refugee populations and country conditions in each of the selected host countries, could provide a much needed cultural bridge to these most delicate and personal issues, which affect the integration of refugees into their host societies in profound ways.

MAIN INTERNATIONAL STANDARDS

Convention Relating to the Status of Refugees of 28 July 1951 Article 24

Labour Legislation and Social Security

1. *The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:*
 - (a) *In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;*
 - (b) *Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national law or regulations, is covered by a social security scheme), subject to the following limitations:*
 - (i) *There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;*
 - (ii) *National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfill the contribution conditions prescribed for the award of a normal pension.*
2. *The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.*

3. *The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.*
4. *The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.*

International Covenant on Economic, Social and Cultural Rights of 16 December 1966

Article 7

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) *Remuneration []*
- (b) *Safe and healthy work conditions;*
- (c) *Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) *Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

Article 9

The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.

**PART II:
SOCIAL SECURITY AND LABOR LEGISLATION**

1. International Standards

1. *The Contracting States shall accord to refugees lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:*

(a) *In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities: remuneration, including family allowances*

where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

(b) *Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national law or regulations, is covered by a social security scheme), subject to the following limitations:*

(i) *There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;*

(ii) *National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfill the contribution conditions prescribed for the award of a normal pension.*

2. *The right to compensation for the death of a refugee resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.*

3. *The Contracting States shall extend to refugees the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.*

4. *The Contracting States will give sympathetic consideration to extending to refugees so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.*

1951 Convention, Article 24, Labor Legislation and Social Security

This article deals with official employment regulations and social security, and requires that refugees receive equal treatment with nationals. As seen from the enumerated items in article 1(a) and (b) above, employment regulations in this provision refer not to the right to employment as such but rather to the basic labor rights of legally employed workers. Likewise, social security in the sense of the 1951 Convention does not refer to a purely needs-based welfare assistance granted to destitute persons, but rather to state benefits such as unemployment, old-age, or disability benefits which are covered by social security systems, many of which (though not all) are actually based on contribution schemes rather than being drawn from public funds raised *via* tax revenues. These terms and concepts, and particularly the distinction between public relief and social security benefits, can be problematic, not only because these expressions themselves are often used interchangeably in every day language or have different meanings in different countries, but also because national assistance schemes are not necessarily based on the same neatly drawn categories of benefits as in the 1951 Convention.

Part of the rationale for the standard of treatment granted to refugees under article 24 of the 1951 Convention appears to have been, in addition to satisfying the demands of equity, protecting the interests of national wage-earners, since aliens who are generally treated as nationals with respect to remuneration, other working conditions and social security, will not represent serious competition to the local labor force.³⁶⁴ However, subsection 24(1)(b) provides for two situations in which the state may deal with refugees under special schemes.

The first exception corresponds to (b)(i) above and refers to the situation where the refugee comes under a bilateral or multilateral international arrangement that grants him the benefit of rights he acquired (or rights in the process of acquisition) in another country. In this case, the present country of residence does not have an obligation to maintain rights which he acquired elsewhere.³⁶⁵ However, according to one interpretation of this subsection, where no such international arrangements apply, refugees should benefit from the general rule according them the right to the same treatment as nationals.³⁶⁶

The second exception, i.e., (b)(ii), is in reference to the portion of social security benefits which stem entirely from public funds and the allowances which are granted instead of pensions (i.e., when the person has not yet earned his pension under domestic rules). In the case of these categories of benefits, Contracting States may

³⁶⁴ A. GRAHL-MADSEN, *supra* note 8, at 91.

³⁶⁵ See discussion of subsection 24(1)(b)(i), in A. GRAHL-MADSEN, *supra* note 8, at 94; and N. ROBINSON, *supra* note 11, at 107.

³⁶⁶ A. GRAHL-MADSEN, *supra* note 8, at 95. Such cases though, would normally come under the scope of subparagraph (b)(ii), which is the second exception to the rule prescribing equal treatment with nationals.

choose not to apply at all, or only apply in part, the usual regulations to refugees. However, though the result of this provision may mean that refugees will receive less benefits than nationals, it may not be taken to mean that States may on this basis, refuse all such benefits completely.³⁶⁷

In contrast to the two exceptions above, the second paragraph of article 24 provides for another exception which this time is favorable to refugees by granting surviving dependants compensation for the death of a refugee which has resulted from employment injury or occupational disease, even if they reside outside the country concerned. They also have the right to have these benefits transferred to them in their place of residence.

Noteworthy commentaries have also been made with regard to paragraphs 3 and 4 of this article. Paragraph 3 is in reference to the rights acquired in the Contracting State in which the refugee first was granted asylum, and which he would now like to enjoy in another Contracting State. According to this provision, the refugee is to benefit from the same treatment as a national of the country of his first refuge.³⁶⁸ The next paragraph deals with rights accumulated in a first country of asylum which is a non-Contracting State, and recommends to the second country of asylum, which is a Contracting State, to treat the refugee as if he were a national of the first country of asylum.³⁶⁹

Other international instruments granting non-nationals and refugees the right to social security include the 1962 Convention on Equality of Treatment of Nationals and Non-Nationals in Social Security,³⁷⁰ which stipulates in article 10 that the Convention is to apply to refugees as well as stateless persons without any condition of reciprocity. This Convention provides equal treatment of nationals and non-national workers, though non-contributory schemes are subject to residence requirements.³⁷¹ Moreover, to the extent that this Convention applies and offers more favorable provisions for refugees, it will take precedence over the present provision of the 1951 Convention.³⁷²

³⁶⁷ A. GRAHL-MADSEN, *supra* note 8, at 96.

³⁶⁸ N. ROBINSON, *supra* note 11, at 107-108.

³⁶⁹ N. ROBINSON, *supra* note 11, at 108.

³⁷⁰ ILO Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, No. 118, 1962, entry into force 25 April 1964.

³⁷¹ J. A. Dent, *supra* note 111, at 69.

³⁷² A. GRAHL-MADSEN, *supra* note 8, at 91.

ILO Conventions on the rights of migrant workers are another source of protection in the area of social security for refugees. These include the 1949 Convention Concerning Migration for Employment and the later Convention of 1975 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, which expands on the former by requiring that beyond national treatment for migrant workers, Contracting States must also pursue a national policy which promotes and guarantees equality of opportunity and treatment with regard to social security, trade unions and employment.³⁷³ Moreover, whereas the 1949 Convention defines social security narrowly as referring to contributory schemes, the latter requires that migrant workers benefit from equal treatment with nationals, even with regard to non-contributory types of social security.³⁷⁴ Both Conventions define migrant worker as a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.³⁷⁵ Refugees meeting this definition can therefore also benefit from the provisions in these Conventions.

The Universal Declaration, whose provisions apply to everyone without distinction, provides for the right of everyone to social security, public relief, just and favorable working conditions and the right to form or join a trade union.³⁷⁶

The International Covenant on Economic, Social and Cultural Rights, contains similar provisions relating to the right to just and favorable working conditions and the right of everyone to social security, including social insurance.³⁷⁷ The latter provision in the ICESCR, refers to specifically to insurance supported schemes towards which working persons have made contributions (including unemployment, sickness, old age, invalidity and maternity benefits, as well as medical care) and not public relief schemes for those in need.³⁷⁸ As compared to the right to social assistance benefits, the right to social security is well entrenched for non-nationals, such that not much latitude is likely to be granted to Contracting States with regard to differentiations between nationals and non-nationals.³⁷⁹ Moreover, the minimum core content of ICESCR rights are definitely guaranteed to non-nationals, though as already mentioned, the Covenant's monitoring Committee has not defined the content of such a right to either social security or to social assistance.

³⁷³ J. A. Dent, *supra* note 111, at 27.

³⁷⁴ J. A. Dent, *supra* note 111, at 69.

³⁷⁵ J. A. Dent, *supra* note 111, at 69.

³⁷⁶ Arts. 22 to 25, Universal Declaration of Human Rights, G.A. Res. 217 A (III), December 10, 1948.

³⁷⁷ Arts. 7 and 9, International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A (XXI), December 16, 1966, entry into force January 3, 1976.

³⁷⁸ J. A. Dent, *supra* note 111, at 63.

³⁷⁹ J. A. Dent, *supra* note 111, at 63.

Vulnerable persons, especially women and children, are of course subject to special protection in both International Labor Instruments as well as domestic legislation, and are granted special attention, in particular, with respect to social security. The CRC thus requires of States Parties to recognize and to take measures to achieve the full realization of the child's right to social security, in accordance with their domestic legislation, though unfortunately no minimum standards for such benefits are offered.

Article 11(1)(e) of the Convention on the Elimination of Discrimination against Women requires States to ensure that women enjoy the same right to (employment-related) social security as men, especially with respect to benefits connected to retirement, unemployment, sickness, invalidity, old-age, and other circumstances rendering them incapable of working, as well as paid leave. Article 13 further endeavors to ensure women equal right to social security which is not dependant on employment, such as access to family benefits, other types of financial assistance such as in the form of bank loans, and participation in recreational and cultural life. Rural women are specifically granted special attention and protected against discrimination in relation to social security programs available through the state, though these are not defined.³⁸⁰

The European Convention on Social Security that provides for multilateral co-ordination of social security legislation affirms the principle of equality between nationals of States Parties.³⁸¹ This Convention also extends its coverage to refugees recognized under the 1951 Convention who have been subject to the legislation and reside in the territory of a Contracting Party, as well as to their families and survivors.³⁸² It governs the following areas of social security: unemployment benefits, sickness, invalidity and maternity benefits, old-age and survivor's benefits, death grants, and family benefits. Moreover, it applies to all general social security schemes, and to special schemes, whether they are contributory or non-contributory.³⁸³ Thanks to the fact that this Convention extends its protection to refugees who are resident in a Contracting State, these persons are therefore entitled to receive national treatment with respect to social security in any other Contracting State.³⁸⁴

³⁸⁰ J. A. Dent, *supra* note 111, at 70 and 71.

³⁸¹ European Convention on Social Security, ETS No. 78, December 14, 1972, entry into force March 1, 1977. See Preamble and article 4.

³⁸² Art. 4(1)(a), European Convention on Social Security, ETS No. 78, December 14, 1972, entry into force March 1, 1977.

³⁸³ Art. 2 (1) and (2), European Convention on Social Security, ETS No. 78, December 14, 1972, entry into force March 1, 1977.

³⁸⁴ J. A. Dent, *supra* note 111, at 40.

As discussed in the previous section on public relief, the right to social security stipulated in article 12 of the European Social Charter³⁸⁵ as well as the other rights in the body of this Charter are only of marginal relevance to refugees since they must be nationals of a Contracting State, which only very few refugees are likely to be. The real relevance of the Charter therefore lies in the fact that by virtue of an Appendix the rights of refugees granted under the 1951 Convention are incorporated into the Charter, thus imposing these obligations also on the States Parties to the Charter, and granting refugees a potential venue for their enforcement via the Charter's supervisory machinery.

As previously mentioned, the ECHR and its Protocols, while not containing any provisions directly related to social security as such, have resulted in precedents that affect these rights. The relevant precedents include a decision, *Gaygusuz v. Austria*, confirming the rights of non-nationals to non-discrimination³⁸⁶ in relation to the right to peaceful enjoyment of possessions,³⁸⁷ i.e., social security benefits. The ruling by the Court of Human Rights to the effect that the right to a fair trial in the ECHR applies to social security and even social assistance rights (if these are protected as statutory rights at the domestic level, thus providing a safeguard against possible discrimination and arbitrariness in the allocation of such benefits) is also important.³⁸⁸

2. Comparative Analysis

Social Security

Legal Standard of Treatment of Recognized Refugees

Similar to public relief, all countries under consideration grant recognized refugees the right to social security on the same terms as nationals. Entitlement to access the national social security schemes is most often also derivative of the permanent residency status granted to recognized refugees, or of provisions granting refugees the same rights as citizens (unless otherwise provided by law), though on occasion refugees are specially granted this right by virtue of a special mention in relevant secondary legislation, such as legislation relating to unemployment insurance.

³⁸⁵ European Social Charter, ETS No. 35, October 18, 1961, entry into force February 26, 1965.

³⁸⁶ Art. 14, European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5, November 4, 1950, entry into force September 3, 1953.

³⁸⁷ Art. 1, Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 9, March 20 1952, entry into force May 18, 1954.

³⁸⁸ J. A. Dent, *supra* note 111, at 73 and 74.

The fact that recognized refugees benefit from the same standard of treatment as granted to nationals with regard to both the national public relief and social security systems is therefore not only in conformity with the 1951 Convention, but also resolves the potentially very complex issue of the technical distinction or a lack thereof between these two categories of state assistance in the domestic legislation of all seven countries.

Effective Access to National Social Security Schemes

According to information provided by UNHCR, at the time of writing this study, refugees in the majority of selected countries did not appear to experience significant difficulties in the exercise of these rights in practice. However, it must be noted that the state practice in this regard in many of the countries under consideration is still fairly limited, and to the knowledge of UNHCR, still appears to be virtually non-existent in both Bulgaria and Romania where they neither have reports of refugees receiving this assistance nor of any applications being rejected.

This limited or indeed lack of a state practice in some countries is due to a number of factors, including the fact that even refugees who have been legally employed may not be eligible for all social security benefits due to the conditions attached to these benefits. For example, only persons who have lost their job for the reasons specified under the law (reasons which are increasing restrictive in new legislation) or who worked for the legally stipulated amount of time, which often ranges between six months and one and half years, are eligible for unemployment benefits, such that in some countries, not very many refugees have yet fulfilled these conditions. In fact, we will recall from Chapter II on Employment that in many countries under consideration an effective right to legal employment has only be granted relatively recently to recognized refugees. Moreover, refugees working either independently or in the informal labor market will not have contributed to these social security systems and will of course not be eligible either.

Labor Legislation

Legal Standard of Treatment Accorded Recognized Refugees

All of the selected countries in the region grant recognized refugees the same protection as nationals with regard to labor legislation. In most instances, national legislation, i.e., the Labor Code, does not distinguish between nationals and non-nationals (including refugees) but merely requires that the person be legally employed. Moreover, in host countries where recognized refugees are granted permanent residence or the same rights as citizens, they are automatically covered by national legislation unless a more specific law or provision specifies otherwise.

In Practice

Little information appears to be available on the working conditions and protection granted to refugee workers in practice, though UNHCR has not reported any special difficulties on the part of recognized refugees in this respect.

Table 8:
Right to Social Security and Labor Legislation for Recognized Refugees³⁸⁹

	SOCIAL SECURITY ^①		LABOR LEGISLATION ^②
	Right to social security on the same terms as nationals	State practice granting effective access	Same rights as nationals
Bulgaria	✓	No known state practice to date	✓
Czech Republic	✓	✓	✓
Hungary	✓	✓	✓
Poland	✓	✓	✓
Romania	✓	No known state practice to date	✓
Slovakia	✓	✓	✓
Slovenia	✓	State practice too limited to draw conclusions	✓

X Yes ✓ No

^① Social security in the sense of article 24 of the 1951 Convention includes, *inter alia*, unemployment, old-age, disability, maternity, sickness, employment injury and disease-related benefits that are covered by the national social security scheme. For the basic subsistence assistance granted by the state to persons in need, please see the table on Public Relief.

^② Labor legislation in the sense of article 24 of the 1951 Convention refers to the official employment regulations relating to, *inter alia*, remuneration, hours of work, holidays with pay, minimum age of employment and so forth.

³⁸⁹ The information in this chapter reflects the situation as of August 1999 and includes the new Bulgarian and Slovene Asylum Laws that became effective that month, as well as the draft Czech Refugee Law.

3. Recommendations

Social Security

Continued Need for Monitoring, Facilitation, and Proactive Measures to Ensure Effective Access

Access to state social security benefits by recognized refugees must continue being monitored and facilitated by refugee-assisting organizations, and host governments must be encouraged to take proactive measures to ensure effective access to these benefits, particularly where there is very limited or no known state practice as of yet in this field, such as in Romania and Bulgaria.

Providing Information on Conditions and Rules Related to Social Security Benefits, Especially Unemployment Benefits

Given the increasingly restrictive nature of the general conditions and eligibility criteria for social security benefits, especially unemployment benefits, in the legislation of many of the countries under consideration, recognized refugees should be informed about these regulations during orientation sessions, preferably immediately upon the granting of refugee status.

Need for Advocacy, Cooperation and Guidelines on Accessing Benefits Acquired in the Refugees Country of Origin or Former Habitual Residence

Although it was not possible within the scope of this study to consider the complex issue of how to access benefits and rights acquired in the refugees country of origin, there appears to be a need for guidelines, and particularly UNHCR guidelines, on the treatment of such cases. In view of the general lack of experience by both host states and UNHCR in this field, guidelines are required on how to proceed (while maintaining confidentiality) in assisting recognized refugees to access these rights, especially invalidity or retirement pensions. In particular, such instructions should advise on the areas of cooperation and responsibility in this field between host governments, UNHCR and other interested actors.

Labor Legislation

Need for Information on Advantages of Legal Employment and Basic Domestic Labor Rights

Refugee-assisting NGOs and UNHCR should include basic information with regard to domestic labor rights and regulations in the orientation sessions provided to

newly recognized refugees. Consideration should also be given to the creation of an information pamphlet, which should be translated into various languages, on the advantages of legal employment (including medical insurance) and an explanation of basic labor rights in the host country, such as the minimum wage, regulations regarding maximum working hours, the rules on work safety, and special protection offered certain groups of persons including pregnant women.

**PART III:
INDIVIDUAL COUNTRY PROFILES**

1. Bulgaria

Public Relief and Health Care

Public Relief

Both under the previous regulations on social assistance of 1996³⁹⁰ and the new Law on Social Relief passed in 1998,³⁹¹ recognized refugees are explicitly granted access to the national public relief system on the same terms as Bulgarian nationals. According to the Law on Social Relief, recognized refugees legally residing in Bulgaria are entitled to the same social assistance as Bulgarian citizens, if it is stipulated in a law or in an international treaty to which Bulgaria is a contracting party.³⁹² More specifically, article 3 of that law provides that persons unable to ensure alone or with the help of others legally responsible for them, their own basic life necessities due to health, age, social or other circumstances, have a right to social assistance.

While regulations granting refugees the right to access the national public relief system existed in the past, this 1998 Law on Social Relief is one of the first pieces of secondary legislation to specifically provide for the rights of recognized refugees. Moreover, as of August 1, 1999, their right to the same standard of treatment as nationals has been further reinforced by the new Refugee Law, which provides that recognized refugees have the same rights and obligations as citizens, unless otherwise provided by law.³⁹³

In Practice

To UNHCR's knowledge, as of November 1999, only a very small number of recognized refugees had received social welfare benefits, most of whom appear to be exceptional cases in that at least some of them are known to have been chronically ill persons. Despite this virtual lack of a state practice, UNHCR notes that they have

³⁹⁰ Decree on Regulations Regarding the Application of Social Assistance, May 1996.

³⁹¹ Arts. 3 and 4, Law on Social Relief, State Gazette of the Republic of Bulgaria No. 56, 1998.

³⁹² Art. 4, Law on Social Relief, State Gazette of the Republic of Bulgaria No. 56, 1998.

³⁹³ Art. 28, Law on Refugees (unofficial UNHCR English translation), XXXVIII National Assembly of the Republic of Bulgaria, May 27, 1999, entry into force August 1, 1999.

no reports of refugees being denied assistance either. Indeed, it is believed that very few refugees have even applied for state public assistance as the great majority are still receiving UNHCR assistance, which is distributed by its implementing partner the Bulgarian Red Cross, and is roughly equivalent to the state social welfare benefit (although as explained below it is subject to a sliding scale). As of March 1999, the basic state public relief allowance was in the amount of 37,200 BGL (19 USD) per single adult and 133,920 BGL (67 USD) per family of four per month, including both parents and two children.

Prior to 1998, access to state benefits by recognized refugees was difficult for a number of reasons including: insufficient secondary legislation specifically including refugees, particularly with regard to social assistance, (a situation which as we saw was remedied with the 1998 law on Social Relief),³⁹⁴ a lack of knowledge about the rights of refugees by the relevant authorities; and other problems at the implementation stage, such as the fact that refugees were not issued social security numbers and identity cards (which are necessary in order to exercise their right to state benefits) by the state until 1997.

These problems have essentially been resolved however, thanks in part to the adoption of secondary legislation and to information and training workshops provided by both government authorities and the Bulgarian Red Cross to local municipalities and relevant Ministries in order to inform them about the general rights of refugees and relevant new legislation.

Despite these measures, access to these state benefits by recognized refugees, as well as for Bulgarian nationals appears to be difficult. Some reasons for this are that the national social assistance system does not appear to be functioning perfectly as of yet, and the number of persons in need in Bulgaria is simply too great for the limited financial capacity of the state, so that in practice, those judged to be in the greatest need such as pensioners are granted priority. There have been problems of distribution of benefits in the past, e.g., where benefits sometimes suffered a six-month delay, although refugees have not reportedly been affected.³⁹⁵ One of the greatest problems faced by persons relying on the national public relief system is that despite significant increases since 1996 it is still impossible to survive on the amount of the social welfare benefits alone, which is also the amount recognized refugees receive from UNHCR, albeit on the basis of a sliding scale.

³⁹⁴ Relevant laws, concerning social assistance for example, have not in the past included a specific mention of recognized refugees, but have rather relied on regulations for this. This has improved in 1998 however, when several key pieces of legislation, including the new Law on Social Relief of 1998 have specifically granted benefits to refugees in the law itself.

³⁹⁵ This problem seems to have mostly affected certain sectors of the Bulgarian population, such as the Roma.

Non-Governmental Refugee-Specific Assistance Programs

As there is as of yet no reliable state practice of granting public relief benefits to recognized refugees, UNHCR finances and distributes through its implementing partner, the BRC, a fixed monthly cash food allowance for asylum-seekers and refugees. In the case of recognized refugees this assistance, which is based on the same amount as the state public welfare benefits, is subject to a sliding scale whereby the amount of the allowance is reduced by 20% for the first six months after recognition, and by 50% for the second six-month period. This assistance is stopped entirely after one year, by which time recognized refugees are expected to be self-sufficient and to seek assistance only from the state, either through the Social Care Bureaux or Job Centers. The amount of the monthly cash allowance as of 1998 was approximately 8 USD per family member and 12 USD for a single person.

As of 1998, some refugees had already exhausted their year of sliding scale benefits and while some have shown considerable initiative, others had not found a solution or taken the necessary steps to receive state social benefits. As a result, UNHCR is now requiring that refugees provide proof during their year of sliding scale benefits that they are registered with social assistance and employment bureaux before they receive financial assistance. The current situation can therefore, perhaps be seen as a period of transition during which UNHCR will gradually work towards a transfer of this responsibility of financial assistance to its government counterparts.

As of the year 2000, UNHCR expects to replace the above sliding scale program with one that will offer recognized refugees three different financial assistance packages, directed at encouraging refugees to establish themselves outside of the capital city where the cost of life is much lower. The first is for refugees living in Sofia, and the second and third, which are more advantageous assistance packages, are to be granted to refugees who elect to live in towns outside the capital and in the countryside. This last package will offer the most generous amount of assistance, particularly with regard to the housing allowance, a new aspect of UNHCR assistance to refugees in Bulgaria. Whereas in Sofia a recognized refugee would only be granted a housing allowance for approximately three months, after which the sliding scale would commence, a refugee living in the countryside may potentially be granted housing allowance for a full two years. This proposed program will only be possible however, if government authorities are able to assist UNHCR in securing affordable housing for these recognized refugees, an issue which was still under negotiation at the time of writing.

Some additional in kind assistance in the form of transportation tickets to allow persons to attend language and vocational training courses for example,³⁹⁶ as well as medical care is also provided by UNHCR through its implementing partners and associated hospitals.

³⁹⁶ This assistance is only for residents outside Sofia as of 1998.

Health Care

According to article 33 (3) of the Law on Health Insurance recognized refugees, like Bulgarian citizens, are obliged to be insured through the national health insurance fund which was to start functioning as of July 1, 1999. Importantly, this law also provides some protection for persons who are not in a position to contribute to the national health insurance fund. It includes a list of vulnerable persons, i.e., the unemployed, pensioners, socially vulnerable, sick and pregnant persons, who are to be paid monthly healthy insurance from national or local budgets.³⁹⁷ Moreover, as mentioned earlier, the new Refugee Law also confirms more generally that refugees are to be granted equal rights with Bulgarian nationals. The previous regime, i.e., the regime in existence until the coming into operation of both the new Law on Health Insurance and the new Refugee Law, also entitled refugees to the same health care as Bulgarian citizens.³⁹⁸

In Practice

Despite their rights under the law, in practice the generally poor state of the country's medical services and hospitals, and the fact that cases have been reported where refugees were treated as aliens and requested to pay, has led UNHCR to enter into agreements with two major hospitals in order to better ensure access to health care for refugees. These contracts provide that in return for yearly donations to improve their laboratory, emergency care equipment and purchase ambulances for example, the hospitals in question agree to grant medical treatment to asylum-seekers and refugees without payment. This arrangement reinforces the fact that it is the government's responsibility to provide health care to refugees, but at the same time Bulgarians benefit from assistance to their medical facilities. In addition to this special arrangement, recognized refugees, like Bulgarian citizens, also have the responsibility to register with a general practitioner in their district outpatient clinic.

Other special medical assistance provided by UNHCR and its implementing partners includes, coverage for medicine, dental care, and psychiatric counseling. In the above-mentioned hospitals, medicine may be purchased by refugees at a very reduced cost, or if the patient is still interned they may be provided free of charge so long as the hospital has the medicine in stock. Otherwise, UNHCR has an additional assistance scheme whereby the BRC can fund 100% of the costs for medicine in certain defined cases (such as for chronic illnesses, children under five years of age,

³⁹⁷ Arts. 40 and 41, Law on Health Insurance.

³⁹⁸ The Ordinance on Refugees, which was replaced by the new Refugee Law (effective August 1, 1999), granted recognized refugees at minimum the same legal status as permanent residents who have essentially the same rights as citizens, including in the area of health care.

elderly persons and single parent families) and 50% of the costs for other categories of cases. Some assistance is also provided to refugees for dental costs, especially as the access to dental care under the national health care system is subject to long delays. Finally, a doctor with the Sofia Psychiatric Clinic provides psychiatric counseling to refugees and asylum-seekers on the premises of the BRC once a week, while a psychologist of the Agency for Refugees provides counselling on government premises.

Social Security and Labor Legislation

Recognized refugees have a right to social security and more specifically, unemployment benefits on the same terms as nationals, according to the Law on Protection against Unemployment of December 1997 and the accompanying 1998 Regulations.³⁹⁹ Article 8 of these Regulations specifically grants recognized refugees the right to unemployment benefits on condition that they are registered with the employment office.

As with state public relief benefits, UNHCR does not have any reports confirming whether recognized refugees have been granted effective access to social security assistance in practice, though no complaints have been received regarding rejections of applications by recognized refugees either. UNHCR estimates in any case, that very few, if any, recognized refugees have applied for these benefits to date.

With respect to labor legislation, refugees benefit from the same rights and benefits as Bulgarian citizens. Although recognized refugees are not specifically mentioned in particular sources of secondary labor legislation, no domestic legislation exists which contradicts the provision in the 1951 Convention granting them the same standard of treatment as nationals. Indeed, the provisions in the Labor Code protect employees and contain special protection for women and pregnant women, without mention of nationality.

³⁹⁹ Regulations on the Enforcement of the Law on Protection against Unemployment, 1998.

2. Czech Republic

Public Relief and Health Care

Although they are granted the same status as a Czech citizen under the Czech Refugee Law, article 19(2) of the same law further specifies that for the purposes of social security and access to national health care, recognized refugees are to be considered as foreigners with permanent residency. This distinction is irrelevant here however, since permanent residents in the Czech Republic have access to the national social security and assistance system on essentially the same terms as Czech nationals. While it is not explicitly specified, the right to public relief is to be included under the above-mentioned category of social security, which is the general term used for both types of benefits in the law.

Under the draft Refugee Law, recognized refugees are granted permanent resident status for all purposes, such that their rights with regard to public relief, health care and social security remain the same.⁴⁰⁰

With regard to medical care, this draft law also includes a provision which will significantly improve the situation of refugee families who have had children in the Czech Republic. This proposed provision stipulates that for the purposes of medical insurance, a child born to an asylum-holder in the Czech Republic, is to be considered an alien with permanent residence permit until the time that a decision granting him asylum or another residence status has been issued.⁴⁰¹ With the coming into effect of this provision therefore, refugee families will no longer have to assume the medical costs of their children during this interim period.

In Practice

Once they are granted refugee status, refugees must register with the Aliens police and the labor office. If the latter does not have a suitable job to offer them, they are then registered for social welfare benefits. In order to be eligible for these, a person's income must be beneath the prescribed minimum subsistence level. The basic social welfare allowance accorded is the equivalent of the difference between the person's income and this prescribed monthly minimum subsistence level at that time. As of August 1999, the maximum social welfare allowance for persons with no income was as follows:

⁴⁰⁰ Arts. 50 and 76, Draft Law on Asylum *supra* note 26.

⁴⁰¹ Art. 90, Draft Law on Asylum *supra* note 26.

Single Person: 3,430 CZK (98 USD).

Family consisting of two adults and two children aged six and under: 9,490 CZK (271 USD).

However, the total amount of welfare allowance granted to families will of course depend on the size of the household and any other income they may have.⁴⁰²

In addition to this basic social welfare allowance, persons receiving public relief may also be eligible for a variety of other social benefits if they meet the additional conditions attached to them. Some of these benefits include: an accommodation allowance; a parental allowance for single parents; a state equalization contribution for pensioners and persons eligible for child allowance; and one-time emergency assistance for pregnant women, dependant children and their parents.⁴⁰³ Students up to the age of twenty-six are also entitled to minimum social assistance benefits, if they can demonstrate that they are in need and have no other financial resources. Recognized refugees are entitled to the latter on the same terms as nationals.

This system of social benefits which can be requested from local government offices can however, be complicated, and social workers at PPI must often assist refugees in the application process by helping them write requests and going through the procedures. PPI conducts orientation sessions for newly recognized refugees on their social and economic rights, as well as information sessions on the same topic for the relevant social and local labor offices. In an integration survey conducted by PPI in 1998, 69% of recognized refugees responding to the study considered their facility in negotiating the social assistance system to be either good or adequate. The three institutions frequented most by refugees according to this study were, in order of frequency: the Municipal office; the Labor Office; and the division of regional offices responsible for the distribution of state social benefits, while 24% of respondents reported they did not frequent any of these state institutions.⁴⁰⁴

There have not been reports of any significant problems for recognized refugees in accessing social welfare benefits. The same applies with respect to access to the national health care system.

⁴⁰² In this respect, it should be noted that families with an income of up to approximately double the guaranteed minimum subsistence level may also be entitled to receive some social benefits.

⁴⁰³ This benefit was in the amount of 10,000 CZK (286 USD) as of 1998.

⁴⁰⁴ Refugees in the Czech Republic, *supra* note 172, at 21 and 23.

NGO Initiative: Preventive Health Program

A preventive health project for asylum-seekers funded by UNHCR and implemented by its NGO partner, OPU, is worthy of mention, even if it is not at present being implemented for recognized refugees. Started in 1998 with a preliminary needs analysis, the project now provides material support, lectures, and individual and group counseling by social workers and volunteer health workers to asylum-seekers at refugee camps, on a variety of health-related issues. These include: preventive health care; family planning; pre- and post-natal education and substance abuse.

A database of expert health practitioners willing to cooperate on this project, and agreements with various medical institutions, such as the Nursing College in Prague, have been undertaken, and information pamphlets on the above topics will be translated into various languages. In-kind donations for this project have been obtained from a variety of companies and organizations, including items such as, pre-natal vitamins, condoms, pregnancy tests, leaflets on health issues, and various children's items such as milk, toys, and clothing. To date, lectures on women's health and hygiene, and prevention of drug abuse and addiction, which were translated into various languages, have been successful in attracting participants. One of the conclusions of the needs analysis conducted under this project, was that there was a need for training of health workers with regard to the cultural norms, special needs, and sensitivities of the different ethnic and religious groups, particularly women.

Social Security and Labor Legislation

As stipulated above, according to article 19(2) of the Refugee Law, recognized refugees have the same rights with regard to social security as permanent residents, who themselves have essentially the same rights as nationals. The rights of recognized refugees with respect to social security are expected to remain unchanged under the Draft Refugee Law, which grants them permanent residence status.

In order to be eligible for unemployment benefits, which are based on a percentage of the person's average salary, the person must have worked for one year previously.

According to the Labor Code, recognized refugees have the same rights as nationals with regard to labor legislation.

3. Hungary

Public Relief and Health Care

Public Relief

Persons with refugee status in Hungary have access to the national social assistance system on the same terms as nationals. Article 17 of the Law on Asylum explicitly states that unless an Act or Government Decree provides otherwise, refugees have the same rights as Hungarian citizens.⁴⁰⁵

According to information provided by UNHCR, the major forms of social benefits available under the national welfare scheme in the relevant legislation⁴⁰⁶ include the following: a basic social welfare benefit which is granted to needy persons between the ages of eighteen and sixty-two who are both unemployed and ineligible for any other financial assistance; old-age allowance for persons over sixty-two years of age; housing allowance for persons/families who, *inter alia*, have housing costs exceeding 35% of their total monthly income; and temporary assistance granted in extraordinary circumstances.

Several types of child and nursing benefits are also available. These include: a child-raising allowance granted to a parent with at least three minor children whose monthly *per capita* income does not exceed 23,000 HUF (92 USD); regular child benefits for families whose income is below a prescribed minimum; and a nursing benefit for those providing home care to a disabled or permanently ill relative.

As can be seen from the above, while many of the benefits are calculated as a percentage of the minimum old age pension,⁴⁰⁷ others such as the regular contribution to the cost-of-living are conditional upon proving that the refugee does not own any property and does not have a monthly income that exceeds the minimum amount of the old-age pension.

⁴⁰⁵ Previous to the current Asylum Law and the 1998 Decree on the care and maintenance of refugees, the rights of European refugees were defined by Decree 19 of 1989, which provided that they be considered as Hungarian nationals, and have the same rights, notably with regard to labor legislation, social security, public relief, and medical treatment. Beyond access to the national social assistance system, the social welfare of European refugees who were mostly of Hungarian descent was covered by the Office of Refugee and Migration Affairs on the basis of the Government Decree 129/1996. Under this scheme, refugees in Hungary received only very limited social and financial assistance, most of which was intended to facilitate their search for employment and housing. Non-European mandate refugees, only benefited from the general rights of aliens and as such, were not included in either the national or refugee-specific social assistance schemes, could not benefit from the refugee settlement fund, and relied on UNHCR to cover their medical expenses.

⁴⁰⁶ Act on Social Welfare Administration and Social Services, No. III, 1993; and Act on the Protection of Children and the Administration of Guardianship Affairs, No. XXXI, 1997.

⁴⁰⁷ As of May 1999, the amount of the minimum old age pension was 15,350 HUF (61 USD).

Although certain difficulties in accessing these general state benefits were reported in the past, these appear to have been primarily due to the lack of information regarding the new Refugee Law and were subsequently resolved. Indeed, according to information provided by UNHCR in May 1999, no significant problems were reported in this regard.

Refugee-Specific State Assistance Programs

In addition to guaranteeing access to the national social welfare system, article 18 of the Law on Asylum also provides for supplementary refugee-specific assistance. It states that a refugee is entitled to care/maintenance and benefits within the sphere and under the conditions defined by the Act and a Government Decree. A variety of benefits are included under this scheme,⁴⁰⁸ including, *inter alia*: a monthly stipend which is granted to both asylum-seekers and refugees starting from the third month of their stay at the reception center; a regular contribution to the cost-of-living for which refugees without property and whose income falls below the prescribed amount, are eligible for five years following their recognition;⁴⁰⁹ and a variety of other benefits such as, local travel benefits for the purpose of attending language or vocational training courses (e.g., school enrollment benefits for children and adults), and reimbursement for the translation costs of certain documents.

A series of other benefits, which are of a more discretionary nature, are intended to provide special assistance to recognized refugees in the area of housing or settlement costs. Such benefits include a one-time settlement grant up to a maximum amount of 82,200 HUF (329 USD), and a residence benefit intended to help defray rental costs that is limited to a six-month period. Of particular interest is a home-creation benefit, which takes the form of an interest free loan for a period of one to fifteen years which can be used in order to either purchase, build or renovate a flat or house. The amount of the loan varies according to the size of the family, but may not exceed 70% of the total cost, so that a family of four is eligible for up to 700,000 HUF (2,800 USD), while a single person is eligible for 400,000 HUF (1,600 USD).⁴¹⁰ This benefit is only available to refugees if they apply within five years of receiving refugee status.

⁴⁰⁸ Government Decree Regulating the Care of Refugees, *supra* note 66.

⁴⁰⁹ As of the Spring of 1998, the amount of this contribution was approximately between 7,000 and 11,000 HUF (28 and 44 USD).

⁴¹⁰ The figures quoted in this paragraph are based on those provided in F. LIEBAUT, *supra* note 316, at 95-96.

As of May 1999, UNHCR reported that in practice access to these refugee-specific subsidies and benefits was generally good, though benefits in this category which are of a discretionary nature have proven more difficult to obtain.

Health Care

Refugees have access to the national health system, which is covered by the Social Security scheme, under the same conditions as Hungarian citizens.

Social Security and Labor Legislation

As with public relief, recognized refugees are entitled to national social security benefits on the same terms as Hungarian citizens. According to UNHCR, there do not appear to be any significant problems regarding access to these benefits in practice. Legislation on unemployment assistance requires that one work for a minimum of six months previous and contribute a percentage of one's wages to the central budget in order to be eligible for these benefits.

Hungarian labor legislation grants recognized refugees the same rights and benefits as nationals.

4. Poland

Public Relief and Health Care

Public Relief

Recognized refugees are entitled access to the national social welfare system on the same terms as Polish nationals by virtue of a specific mention in the Social Assistance Act.⁴¹¹ According to this Act social assistance is granted to persons or families in need, who have Polish citizenship and residence in Poland, as well as to foreigners with a permanent residence permit or holding refugee status, unless international treaties stipulate otherwise.

Both the distribution and the decision regarding the allocation of these benefits are the responsibility of the competent Social Assistance Units.

⁴¹¹ Art. 2 (b), Social Assistance Act, Journal of Laws No. 64, item 414, November 29, 1990, and subsequent amendments. *Also see* Social Insurance System Act, October 13, 1998, which may in certain instances also be applicable.

In order to be eligible for welfare benefits, a person's income must be below a prescribed minimum level that is reviewed periodically by the authorities. In 1999 the monthly public relief benefits for one person were as follows:⁴¹²

permanent allowance: 250 PZL (63 USD);
social pension: 250 PZL (63 USD);
supplement allowance: minimum of 10 PZL (2.50 USD);
temporary social assistance allowance: 275 PZL (69 USD).

The benefits are tailored to the beneficiary's material and family situation however, so that the amounts granted will differ accordingly. In order to place the above amounts in context, the minimum wage in Poland was 650 PZL (163 USD) as of January 1999.

Moreover, as can be seen from the figures provided below, the national welfare benefits are significantly lower than those granted under the PIA, the former government financial assistance program for recognized refugees which was terminated in 1998.

Health Care

Under the Act on Universal Health Insurance, recognized refugees have access to national health care and the obligatory insurance scheme on the same terms as permanent residents and nationals.⁴¹³ Persons registered as unemployed under the Law on Employment and Countering Unemployment are also covered by the Universal Health Insurance Act. During this time the Labor offices make the contributions.

In the case of persons deemed unable to work, but who are not yet eligible for retirement or to draw from their pension funds, their contributions towards the Health Insurance Scheme are made from the invalidity benefits they receive from the national welfare system.

However, as of September 9, 1999, when the new national medical insurance scheme entered into force, persons who have never been legally employed in Poland,⁴¹⁴ such as newly recognized refugees, do not benefit from national medical insurance coverage, which only applies to employed or formerly employed persons. Persons who are not eligible for this insurance coverage, may now receive free medical care only if it is under hospital emergency procedures.

⁴¹² Figures as stipulated in the latest amendment (No. 99-20-170) to the Social Assistance Act, Journal of Laws No. 64, item 414, November 29, 1990, and subsequent amendments.

⁴¹³ Act on Universal Health Insurance, March 26, 1997.

⁴¹⁴ With some exceptions such as students, who are covered.

Moreover, there are certain medical services which the national health care system does not cover at all, and which even Polish nationals must finance themselves. In the case of asylum-seekers and refugees in need of such treatment, UNHCR may provide exceptional medical support.

In Practice

According to UNHCR, the problems of access to national social assistance benefits which were experienced by recognized refugees in the past appear to have been resolved, so in practice refugees now enjoy effective access to them on the same terms as nationals.⁴¹⁵

However, the assistance provided under the national public relief scheme is generally not sufficient to cover the basic needs of recognized refugees in Poland, particularly as they do not benefit from any state housing and language assistance, and the financial limitations of the state also affect the distribution of certain benefits in practice.

Programs

Proposed Government Assistance Program

At the time of writing, March 1999, a draft Ordinance on an Integration Program for Recognized Refugees, which consists chiefly of a program providing for financial assistance to recognized refugees, was still under consideration.⁴¹⁶ UNHCR subsequently reported that due to the lack of an adequate enabling legal provision, this draft Ordinance was not endorsed on technical legal grounds. Nonetheless, given that

⁴¹⁵ From March 1996 to August 1998 (the date on which the last case under the PIA was started), a government assistance program under the Ministry of Interior, the Program for Individual Adaptation, provided financial assistance specific to newly recognized refugees. By the beginning of 1998, responsibility for integration-related programs and recognized refugees was transferred to the Ministry of Labor which was to start providing assistance under the national social assistance scheme to recognized refugees through its local welfare offices. However, the latter only began providing this assistance to refugees systematically as of September 1998. Thus, in practice, throughout most of 1998, newly recognized refugees relied solely on the material assistance provided by UNHCR and NGOs. This absence of support from the state led many refugees to spontaneously leave Poland during that period.

⁴¹⁶ Draft Ordinance on integration of refugees *supra* note 83. More recently, UNHCR has informed us that this draft Ordinance was not endorsed by the Legal Department of the Council of Ministers due to the lack of an adequate enabling legal provision. While the Social Assistance Act does contain a provision relating to integration, namely article 12, this provision was not considered sufficient for the purposes of the above-mentioned Ordinance. The government has since recommended an amendment to the Social Assistance Act which would provide a clear basis for government integration assistance to recognized refugees, and a legal foundation for the adoption of a future Ordinance on integration.

the draft Ordinance was not struck down on its merits, and that measures are being taken to adopt an adequate enabling provision in order to facilitate its adoption, this draft integration program merits mention.

Under this draft Ordinance, refugees would be entitled to monthly financial assistance for a period of twelve months, which like the former PIA would be subject to certain requirements, including signed individual agreements with refugees, and a number of specific conditions such as registration of one's residence and registration with the employment office. Also similar to the PIA, the draft program provides for a sliding scale whereby the assistance is reduced after the first six-month period.

The new proposed program does contain some significant differences with the previous program, as well as some entirely new aspects, however. For example, in addition to signing an agreement, assistance under the draft program would also be conditional upon graduating from a three-month intensive course in the Polish language taken at the refugee center. Also, the maximum amounts granted in benefits are considerably higher than under the previous PIA program, although the new proposed program does not provide for a settlement allowance. Equally significant is a provision in the draft Ordinance referring to the possibility that the facilitation of integration, as well as the implementation of this program, (which is also to include a housing, employment, legal, and psychological counseling component), could be delegated to government social assistance centers in the case of the latter, and to a variety of non-governmental organizations such as churches, foundations, associations, employers and individuals, in case of activities connected with integration more generally.

Refugees, who resided in Poland before January 1998, and who are deemed not to require integration assistance, or who are married to a Polish national, are excluded from this draft program. If such a provision were to eventually be passed, this exclusion could be considered to be in breach of article 3 of the 1951 Convention prohibiting discrimination *between* refugees, since it discriminates against refugees married to Polish nationals without taking their actual needs into account.

It would appear that refugees benefiting from this program would not simultaneously be eligible to apply for benefits under the national social assistance scheme.

The former PIA Program (1996-1998)

Following a two-year period during which time government collaboration with UNHCR to implement an integration program achieved less than satisfactory results, the Polish Government initiated a program providing financial assistance to recognized refugees. Known as the PIA or Program of Individual Adaptation, it lasted from March 1996 to August 1998 and entitled recognized refugees leaving government-

sponsored centers to fifteen months of assistance intended to cover the basic costs of accommodation, food and other essential needs. This was the principal means of assistance to the refugee population as few recognized refugees are permitted to remain in the five reception centers following their recognition. The PIA was financed entirely by the Polish state, under the Ministry of Internal Affairs and Administration and was implemented through the Center for Refugees at Debak near Warsaw.

This program of assistance was characterized by voluntary written agreements between the refugee and the center. As access to the program was governed by both a selection process and adherence to certain conditions, the assistance was not automatically available to all refugees. In addition, the grants to each participant were insufficient to meet housing costs. Thus, UNHCR funded several NGOs, namely, the Polish Humanitarian Action, Polish Red Cross and Caritas, in an attempt to complement this support with additional financial and material assistance, and counseling services. Though it appears that some local social welfare offices did grant financial assistance in some cases, in practice most refugees who agreed to participate in the PIA program were not eligible for benefits under the national social welfare system.

In order to benefit from the program, refugees had to apply to the PIA Commission, which decided whether to admit a refugee to the program and what scope of benefits to grant them upon admission. If accepted, as 85% of the applicants were, the applicants then entered into an agreement with PIA, whereby they would agree to adhere to three conditions for the duration of the fifteen-month period to: (1) stay in a duly registered legal place of residence; (2) initiate their search for employment, which should result in an actual job or registration with the local employment office; (3) cooperate with the supervisor designated by the PIA Commission. The participants were granted allowances for food and accommodation for nine months, which could then be prolonged another six months. The amount granted to each refugee depended upon his family situation and the length of time that he had benefited from the program. Each participant was potentially eligible for financial support to defray the initial costs of setting up a household, as well as to assistance particular to specific personal needs such as education and sickness benefits.

Under a sliding scale scheme, the basic monthly allowance granted under this program was gradually reduced after the first six months, one year and in the final three months. In addition, the participants in the program were entitled to a one-time settlement allowance.⁴¹⁷

⁴¹⁷ During the first six months the first and second family members received 450 PZL (113 USD) each, the third received 400 PZL (100 USD) and the fourth to sixth 350 PZL (88 USD). The one-time settlement allowance was of 300 PZL (75 USD) for the first and second family members. F. LIEBAUT, *supra* note 316, at 153-154.

Conclusions Regarding the Former PIA Program

Terminated after nearly two and a half years in operation, the figures below cast doubt on the effectiveness of the program. From 15 March 1996 to 28 February 1998, 329 applications were submitted and 285 approved, representing 85% of the refugees who were recognized in that period. Of the 285 applications originally accepted, 131 persons had their agreements dissolved. Together with the initial 15% of refugee applicants to the program whose applications were rejected, this means that the program was not able to assist successfully approximately 55% of all refugees. According to the government report on the PIA however, the financial assistance provided nonetheless allowed many refugees to start an independent life.⁴¹⁸ This was particularly true for refugee families who were able to aggregate each individual member's benefits in order to rent a cheap flat. Single persons, on the other hand, were forced to combine in groups or to rent space in a communal flat. In the same 1998 report the government acknowledged that the inability to raise the threshold of benefits established in 1995, by 15-20% in line with inflation and the cost of living, limited the program's effectiveness.

Social Security and Labor Legislation

With regard to social security and labor legislation, aliens, including recognized refugees, are treated on the same footing with nationals.

The Law on the Social Security System, provides that All employed persons are eligible to the social security system.⁴¹⁹

Furthermore, the Law on Employment and Countering Unemployment,⁴²⁰ which defines the tasks of the State with regard to alleviating the effects of unemployment and of employment, stipulates specifically that it applies to persons who have been granted refugee status in Poland. The same law in article 12 (paragraph 2), provides that employment-related services are performed free of charge by regional labor offices and are based on four operative principles including: accessibility of these services; voluntariness; equality or non-discrimination; and openness, meaning that every available job reported to the office is rendered public. According to this law recognized refugees, like nationals are therefore also to benefit from unemployment

⁴¹⁸ PIA Report, *supra* note 183, at 20.

⁴¹⁹ Art. 4, Law on the Organization and Financing of the Social Security System, Journal of Laws No. 137, item 887, November 25, 1998.

⁴²⁰ Law on Employment and Countering Unemployment, Journal of Laws No. 12, item 14, December 14, 1994.

benefits and training allowances.⁴²¹ In order to be eligible for unemployment benefits, a person must have been employed 365 days during the eighteen-month period before registering with the Labor Office. As of October 1999, the monthly unemployment benefits per person were 260 PZL (65 USD).

According to the Labor Code, labor legislation is to be applied to all categories of employees or workers in Poland who cannot be classified as illegal.⁴²² Thus, recognized refugees are to be treated as nationals, with the exception of a reservation made to article 24 (sec. 2) of the 1951 Convention. This provision deals with the right to compensation for the death of a refugee resulting from employment injury or from occupational disease, and stipulates that this right should not be affected by the fact that the beneficiary may reside outside the Contracting State, namely Poland. To date, this reservation has had no practical application.

5. Romania

Public Relief and Health Care

Public Relief

Since August 1995, recognized refugees have been legally entitled to social assistance on the same terms as Romanian citizens. This is by virtue of the Law Concerning Social Assistance, which grants access to welfare assistance to Romanian citizens, foreign nationals and stateless persons legally resident in Romania.⁴²³

As of June 1999, the amount of minimum subsistence assistance was 151,000 Lei (8.4 USD) per month for a single person and 476,000 Lei (26 USD) for a family of four. In practice, though, as of June 1999, no refugee had yet been able to access social welfare benefits, having access instead to a system of reimbursable loans described below. In fact, refugees are not entitled to receive social assistance benefits while participating in the reimbursable loan scheme for refugees, which offers them a greater amount of financial assistance, albeit on the basis of a loan and for a limited period.⁴²⁴

⁴²¹ Arts. 1(2), 15, 16, 23, Law on Employment and Countering Unemployment, Journal of Laws No. 12, item 14, December 14, 1994.

⁴²² Labor Code, Journal of Laws No. 24, item 141, 1974, with subsequent amendments.

⁴²³ Arts. 2 and 4, Law concerning Social Assistance, Monitorul Oficial (Official Gazette of Romania) No. 67, 1995.

⁴²⁴ As of June 1999, in order to be eligible for social assistance, a single person may not have an income of more than 151,000 Lei (8.4 USD) per month. (See, Arts. 1 and 7, Decision No. 173/1998 concerning Measures of Social Protection.) As the amount of the reimbursable loan exceeds this amount, and in practice, has been considered an income for the purpose of the rules governing social assistance, recognized refugees are not entitled to the national social assistance benefits.

Like nationals, refugees are in principle also eligible to receive a child allowance for children over the age of seven who are attending school. Under the law governing the national child allowance system,⁴²⁵ foreign and stateless children who are legally resident in Romania are entitled to the same financial allowance as Romanian children. However, there are practical difficulties in enrolling in this scheme. Unless the children are born in Romania or have one Romanian parent, most refugees lack some of the documents required to apply for these benefits, such as, birth certificates. It is also possible to receive these child allowance benefits from the school authorities where the child is enrolled. UNHCR and its NGO implementing partner have held discussions with the authorities of one school attended by most refugee children, in an attempt to facilitate the registration procedure for these benefits, despite the lack of some of the required documents.

Reimbursable Loan Program

Under the reimbursable loan program for recognized refugees, refugees are entitled to receive on request, within the State's financial possibilities, reimbursable aid established at the level of the minimum salary per economy, for a period of six months, if for objective reasons they lack the necessary means of subsistence; for well-founded reasons, this aid can be extended for a period of up to three more months.⁴²⁶ As of June 1999, the amount of the reimbursable loan was 263,000 Lei (15 USD) per month,⁴²⁷ as compared to approximately 151,000 Lei (8 USD) provided under the national welfare system. Nonetheless, the amount presently granted in loans represents a significant reduction of the original amount stipulated in the provision in the Refugee Law, which provides for loans equal to the full minimum salary per month, which as of June 1999 was approximately 450,000 Lei (25 USD).

These loans are approved on the basis of a social inquiry conducted by the Ministry of Social Protection, and must be reimbursed within a period of one year providing that the recipient earns sufficient income to permit this. As mentioned above, the loan may be extended for up to three months for well-founded reasons. Assuming that the refugee is not deemed unfit to work, this means that he must show that he has registered himself at the employment office and has not refused a job offer. At the beginning of 1998 the government received applications and signed loan agreements with about half of all recognized refugees (including nearly all of those living at the camps), after which the Ministry of Labor and Social Protection duly

⁴²⁵ Art. 2, Law governing the System of State Child Allowance, *Monitorul Oficial* (Official Gazette of Romania) No. 61, 1993.

⁴²⁶ Art. 15(i), Romanian Refugee Law, *supra* note 85.

⁴²⁷ Art. 12, Decision No. 173/1998 concerning Measures of Social Protection, provides for an increase of 2.5% for every month after April 1998.

completed the necessary social inquiries.⁴²⁸ However, the first payments were only made in July 1998 after a considerable delay due to the fact that payments were contingent on the passing of the national budget.

Thus, while by law refugees are entitled to have access to the national social assistance scheme on the same terms as nationals, in practice, the special reimbursable loan scheme seems for the time being to be the only form of financial state assistance effectively available to recognized refugees.⁴²⁹

In Practice

Given the difficult economic and living conditions in Romania, in the past UNHCR has had to assume, by default, considerable responsibility for refugee care and maintenance in general, most frequently by providing cash assistance which is distributed through its implementing NGO: CNRR. This assistance has been critical, most notably during periods when even the limited government assistance programs that were theoretically to be in place, were not actually operative in practice.⁴³⁰ And while UNHCR's efforts will continue to be directed at eventually handing over this responsibility entirely to the government, there are few indications at this stage that

⁴²⁸ According to information provided by UNHCR, recognized refugees who were informally living at the Gociu received only 150,000 Lei (8 USD) a month, which is the amount of the reimbursable loan after the rent was subtracted from the total.

⁴²⁹ It should be mentioned, that before the current Refugee Law of 1996, the arrangements for the reception of refugees and asylum-seekers were governed by the Decision No. 417/1991. Under this 1991 Decision, refugees were to be granted benefits for board and meals for up to nine months, with the possibility in exceptional cases of extending this benefit with regard to accommodation. In practice, however, this assistance was never implemented, and with the coming into force of the 1996 Refugee Law and a series of Ordinances and Decisions (such as, Decision No. 182/1996, Emergency Ordinance No. 47/1997, and Decision No. 173/ 1998) many of its provisions have been superseded. Those recognized refugees who were already living at the Gociu camp were allowed to continue living there for free but once the camp was closed, those recognized refugees, like the others, no longer had any right to free accommodation and were only entitled to receive the 263,000 Lei (15 USD) per month in the form of a loan.

⁴³⁰ Before the loan reimbursement program, which the government started implementing in practice in July 1998, assistance to refugees was even more limited, and in 1995 the Government ceased assistance entirely. Gociu, a hotel in Bucharest, served as the only accommodation center, available to both recognized refugees and asylum-seekers. Until the end of 1994, the Refugee Office paid for the accommodation of over 100 refugees and asylum-seekers, although the government offered no assistance to the approximately 900 living outside the camp in private accommodation. UNHCR, meanwhile, offered some supplementary assistance to both groups. In 1995, a provision was passed to grant recognized refugees nine months of state assistance with accommodation and board, but this was never implemented. Indeed, the same year, the government stopped all their assistance to the residents of the hostel and UNHCR stepped in, providing funds for both the rent and material assistance. While the government agreed to resume its responsibilities from the beginning of 1998, the initial few payments were made very late as a result of bureaucratic confusion and the failure to pass the national budget. Thus, UNHCR stepped in once again to provide emergency food supplies to the hostel residents who, while primarily asylum-seekers, also included some 75 recognized refugees who had continued living there on an informal basis.

the government (will without outside financial support) set up an adequate assistance program for the care of destitute refugees who (beyond the reimbursable loan scheme which only lasts six to nine months) had according to UNHCR not yet had effective access to the national public relief system as of July 1999.

As of November 1999, according to information provided by UNHCR, some recognized refugees had already received an official notification of sums owing to the government though no further action had been taken. As of the same date, UNHCR had no further reports on whether refugees who had exhausted their reimbursable loans were subsequently granted effective access to national public relief benefits.

UNHCR Financial Assistance

Until January 1998, UNHCR provided regular financial assistance to all recognized refugees in the form of a flat monthly allowance, which for a single person was approximately 60 USD. Since then however, the program was changed so that instead of a flat monthly sum, assistance is now granted according to certain fixed criteria, such as accommodation costs, the applicant's length of stay in Romania, whether he has employment, and other factors pertaining to the specific needs and situation of the individual or family. Moreover, this assistance, which supplements the government reimbursable loans, is made conditional on the refugee's demonstrated integration efforts (such as learning the language and seeking employment) into Romania society.

As an added incentive and supplement to the low wages generally earned by refugees, UNHCR also temporarily continues to provide some financial assistance to refugees who have found jobs, though this of course depends on the actual amount of the wages earned.

In the past UNHCR has also had to intervene with emergency assistance, such as in 1998 when it provided emergency food assistance to both asylum-seekers and recognized refugees, particularly families, at the Gociu accommodation center, who were no longer receiving any state assistance. And in May 1999, UNHCR provided financial assistance, equivalent to approximately three-months rent, on a case-by-case basis to recognized refugees, mostly vulnerable persons, who were evicted from the Gociu camp when it was definitively closed.

Health Care

The Refugee Law does not include any provision regarding access to the national health care system by refugees. However, Law No. 145/1997 provides that citizens and foreigners with residence in Romania are obliged to have social insurance, to

which their employers contribute an amount specifically intended for health insurance purposes.⁴³¹ The General Health Directorate has also issued an Order stating that refugees who pay their medical insurance are to benefit from free national health care. Yet, lack of knowledge concerning refugees has resulted in state hospitals and polyclinics charging them the same fees as other aliens. Moreover, the above-mentioned 1997 Law regarding compulsory health insurance did not yet appear to be fully implemented as of June 1999. This has resulted in some difficulties in accessing medical care, which in certain cases were only resolved upon the intervention of the medical staff of the UNHCR implementing NGO, the Romanian National Council for Refugees.

In order to provide assistance in this situation the Ministry of Interior undertook to negotiate agreements with the Ministry of Health to ensure free treatment for refugees at designated units of three hospitals in Bucharest.⁴³² If the refugee must be sent to other units, then UNHCR will usually provide additional financial assistance, and cover the cost of equipment or supplies, such as X-ray films, which the hospital is unable to cover. UNHCR has also provided for basic health care by employing a doctor full-time on the premises of their NGO partner.

Social Security and Labor Legislation

According to the Refugee Law, a recognized refugee has the right to be remunerated and benefit from other material rights deriving from activities undertaken, as well as from social security, under the conditions of the law.⁴³³ Moreover, social security legislation does not distinguish between Romanian citizens and resident foreigners.⁴³⁴

In practice, however, to UNHCR's knowledge, it cannot be confirmed that any recognized refugees as actually received such benefits. This is due in large part to the fact that because they were not able to work during their asylum procedure, newly recognized refugees are not able to fulfill one of the main conditions for such benefits, namely to have previously held legal employment for a determined period of time, or to have finished school. As the law stands, recognized refugees also fail to meet other conditions which would grant them access to state vocational training

⁴³¹ Art. 53, Law No.145, 1997. Art. 54 of same law relates to contributions by independent workers.

⁴³² According to UNHCR, outside of Bucharest, their NGO implementing partner has also been able to argue for providing recognized refugees medical treatment and medicine free of charge based on Decision No. 56/1974.

⁴³³ Art. 15(d), Romanian Refugee Law, *supra* note 85.

⁴³⁴ Law concerning the Social Protection of Unemployed Persons and their Reintegration, No. 1/1991.

courses and unemployment benefits, according to UNHCR.⁴³⁵ Only persons who, *inter alia*, have contributed to the unemployment fund and are not deemed responsible for losing their job, but rather lose it due to being rendered redundant through corporate restructuring for example, are eligible for the maximum nine months of unemployment assistance and accompanying vocational training courses.

In the limited experience to date though, it would appear that even refugees who have been in a position to claim such benefits have encountered a number of practical obstacles. UNHCR reports that they will therefore continue their negotiations with Romanian authorities regarding the modalities of access by refugees to unemployment benefits and vocational training courses under the national social security scheme.

According to the 1977 Law on Pensions and Social Assistance, recognized refugees, and indeed all aliens, who have worked in Romania under a work contract and whose company contributed to the state social insurance fund, have the right to receive a pension from the Romanian state.⁴³⁶

In keeping with the requirements of the 1951 Convention, recognized refugees enjoy the same rights and protection as Romanian citizens, with regard to labor legislation.⁴³⁷

6. Slovakia

Public Relief and Health Care

Public Relief

Article 20 of the Refugee Law provides that entitlement to social welfare for refugees living on the territory of the Slovak Republic is governed by a special regulation. No such special regulations have been adopted however, so that recognized refugees therefore have the same rights as citizens to public welfare benefits. Relevant legislation includes, *inter alia*, the 1988 Law on Social Security, the 1998 Law on the Life Minimum, and the Law on Social Help of the same year,⁴³⁸ which contains a provision expressly including refugees.

⁴³⁵ For further details on vocational training please refer to section entitled Employment Assistance Programs in Chapter II on Employment.

⁴³⁶ Art. 3, Law on Pensions and Social Assistance, No. 3/1977.

⁴³⁷ Law No. 10/1972 (Labor Code) does not distinguish between Romanian nationals and foreigners.

⁴³⁸ Law on Social Security, No. 100/1988; Law on the Life Minimum, No. 125/1998; art. 4(b), Law on Social Help, No. 195/1998.

There does not appear to be any authoritative interpretation as to whether article 20 of the Refugee Law refers to both public relief and social security within the meaning of the 1951 Convention. However, the fact that the above-mentioned laws do not provide a differing standard of treatment for refugees means that by virtue of article 18 which grants refugees the same rights as citizens, and article 20 of the Refugee Law, recognized refugees are entitled to access both these categories of benefits on the same terms as Slovak citizens.

As of September 1998, the basic social allowance was 3,000 Sk (71 USD) as the minimum for a single adult person, and 2,100 Sk (50 USD) for a second adult person. Other possible benefits include a family allowance for families with children below three years of age, as well as a child allowance.

Certain state benefits may be reduced if the authorities deem that there are subjective reasons pertaining to the applicant, for doing so. The Law on Social Help for instance, allows benefits to be reduced for these reasons, to 50% of the life minimum, although it also provides that benefits may be increased to 120% of the life minimum.

While some recognized refugees experienced difficulty in accessing state public relief benefits in the past due to the fact that they were not able to provide proof of a domicile address and obtain identity cards (an issue which was explained in previous chapters), UNHCR confirmed as recently as October 1999, that this was no longer an obstacle and they were not aware of any cases where refugees had been denied the right to public relief or social security.

Non-Governmental Assistance Programs

In addition to the benefits under the national social assistance scheme, some financial assistance specific to refugees is also provided by UNHCR through the Migration Office and NGO implementing partners. The assistance is provided chiefly in the form of a basic needs package for newly recognized refugees (which consists of some essentials such as a blanket, cutlery, and so on), an installation grant to help cover initial housing costs such as rent, and a one-time emergency assistance grant. University scholarships are also available and are discussed in Chapter IV on Education.

Health Care

Recognized refugees benefit from the national health care system on the same terms as Slovak nationals. The Constitution provides for the right of its citizens to free health care and medical equipment for disabilities through medical insu-

rance,⁴³⁹ a right which is extended to recognized refugees by virtue of article 18 of the Refugee Act. Moreover, the Act on Health Insurance stipulates that recognized refugees are obligatorily insured. In the event that the refugee is unemployed, the same Act provides that the state shall pay the health insurance premiums.⁴⁴⁰ According to UNHCR, it appears that in practice, with the exception of the problem experienced by some refugees in the past in obtaining identity/residency cards, no other significant obstacles have been reported regarding access by refugees to the national health care system.

Social Security and Labor Legislation

Social Security

Article 20 of the Refugee Act states that recognized refugees are subject to special regulations with regard to social welfare, providing as an example the Law on Social Security which covers state benefits which are contingent on contributions by the beneficiary.⁴⁴¹ Yet, the relevant laws on social security do not stipulate a different regime for recognized refugees, so that by virtue of article 18(1) of the Refugee Act granting them the same status as a citizen, they have the right to access social security benefits on the same terms as nationals. There are no special government social assistance schemes particular to refugees, so their social security and public relief benefits are paid out from the national state schemes.

In practice, UNHCR is not aware of any cases where refugees have been denied the right to social security.

Labor Rights

Recognized refugees have the same rights as nationals with regard to basic legal protection in the area of working conditions and other labor rights. The Labor Code does not differentiate between the rights of nationals and foreign employees. And the Slovak Constitution grants these rights equally to everyone, including the right to adequate safety standards at work, maximum number of working hours, collective bargaining and trade unions, and special protection offered to women, minors and disabled persons.⁴⁴² Moreover, as mentioned above, article 18 of the Refugee Law grants recognized refugees the same rights as citizens, unless provided otherwise by law.

⁴³⁹ SLOVAK CONST., September 1992, Art. 40.

⁴⁴⁰ / 3 and 10, Act on Health Insurance, No. 273/1994.

⁴⁴¹ Law on Social Security, No. 100/1988, and subsequent regulations.

⁴⁴² SLOVAK CONST., September 1992, Arts. 36-38, 41.

7. Slovenia

Public Relief and Health Care

Situation until 13 August 1999

According to article 39 of the Foreigners Act, recognized refugees have a right to the essential conditions of life, lodging, means of subsistence and medical protection for as long as they are incapable of earning their own living, for a maximum period of two years after recognition. Despite this stipulated time limit, the time period for these benefits may be unlimited for persons who are found incapable of earning their livelihood.

The Order of 1996 on the Implementation of the Rights of Recognized Refugees,⁴⁴³ as well as the Law on Health Care and Health Insurance are also relevant legislative measures. As of November 1998, refugees received a monthly social welfare allowance of approximately 60 USD per adult, which is also the legal minimum subsistence allowance granted to Slovene nationals.⁴⁴⁴

In addition to the basic social welfare allowance, recognized refugees are granted accommodation and medical care benefits. The eligibility criteria for access to the national medical care system and for financial assistance for the purposes of lodging, as well as the amounts granted are defined by the Executive Council of the Assembly of the Republic of Slovenia.⁴⁴⁵ While refugees are not required to prove that they are in financial need in order to receive medical care, the Order of 1996 makes the basic subsistence allowance and financial assistance for accommodation conditional on the refugee showing that he does not already have accommodation, income, assets or someone who would be able and/or obliged to support him.

Recognized refugees are covered by obligatory medical insurance, and if the illness or injury occurs to a refugee who is not employed, the Office for Immigration and Refugees covers the expenses.⁴⁴⁶ Other foreigners must cover their medical expenses out of their own insurance or through the bilateral agreements concluded between their country of origin and Slovenia. As is the case for citizens though, should refugees want supplementary medical coverage, they must pay from their own funds.

⁴⁴³ 1996 Order on the rights of recognized refugees, *supra* note 97.

⁴⁴⁴ Art. 4, 1996 Order on the rights of recognized refugees, *supra* note 97.

⁴⁴⁵ Art. 40, Foreigners Act, Official Gazette of the Republic of Slovenia, No. 1/91-I, entry into force June 25, 1991, *as amended* in July 1997.

⁴⁴⁶ Art. 7, Law on Health Care and Health Insurance; 1996 Order on the rights of recognized refugees, *supra* note 97.

The social assistance benefits to which refugees are entitled are part of a special arrangement, and though they are distributed through the normal state social assistance channels, i.e., by local social centers, they are paid out of the budget of the Office of Immigration and Refugees.

In Practice

In practice, the two recognized refugees remaining in Slovenia have been able to access social assistance from the state. However, given that this assistance is minimal and that it is not accompanied by any integration assistance, they have had to solve their situation chiefly by relying on their own resources and some limited supplementary assistance that has been provided by UNHCR and NGOs on an *ad hoc* basis.

New Law on Asylum Effective as of 14 August 1999

Under the new Law on Asylum, recognized refugees continue to be entitled to state financial assistance as well as to health care.⁴⁴⁷

More specifically, this law provides that refugees and their close family members are entitled to health care according to the general terms provided in the Law on Health Care and the Law on Health Insurance.⁴⁴⁸

With regard to financial assistance, while the Law on Asylum does indeed stipulate that refugees are entitled to public relief in accordance with the Law on Social Security, it also provides for some special conditions particular to refugees. Indeed, as in the past, the rights of recognized refugees to national public welfare assistance continue to be subject to some special conditions, and most notably article 50 which reads as follows:

(Extract)

A refugee who receives no income does not own property and has no persons who are obliged and capable of maintaining him in compliance with regulations of the Republic of Slovenia, shall have the right to financial assistance in accordance to the Law on Social Security.

⁴⁴⁷ Arts. 47 and 50, Law on Asylum, Official Gazette of the Republic of Slovenia, No. 61/99, July 30, 1999, entry into force August 14, 1999 (unofficial UNHCR English translation).

⁴⁴⁸ Art. 52, Law on Asylum, Official Gazette of the Republic of Slovenia No. 61/99, July 30, 1999, entry into force August 14, 1999 (unofficial UNHCR English translation).

A refugee shall have the right to receive financial assistance referred to in paragraph 1 of this Article throughout the period in which he does not receive any income, but for no longer than three years after asylum is granted. The provisions of this paragraph shall not apply to refugees who are unfit for work according to the Law on Social Security.

A refugee who refuses to take up employment which he has been offered, or refuses to be involved in other forms of active employment policy, shall lose the right to financial assistance.

Hence, according to this provision, recognized refugees may receive assistance for a period of three years, rather than the two-year period previously stipulated under the former law. This time limit is not applicable however, to refugees who are unfit for work according to the Law on Social Security.⁴⁴⁹ Article 50 provides further that close family members living with the refugee in Slovenia⁴⁵⁰ and possessing no property or other sources of income, are also entitled to financial assistance, but only at a rate of 60% of the financial assistance granted to the refugee. Moreover, the financial assistance allocated to the refugee's close family members depends on the entitlement and duration of the refugee's right to financial assistance.⁴⁵¹

In all cases, local social work centers are the competent authorities for deciding the refugee's entitlement to state welfare benefits.

As with the previous law, the special provisions relating to access to social assistance benefits by recognized refugees in the new Asylum Law, and particularly the stipulation relating to a maximum three-year period, would appear to be worthy of some concern. Indeed, this provision may be negatively interpreted as a basis for granting refugees fewer rights than nationals, and even other aliens. If so, it would constitute a breach to the standard of treatment required by articles 23 and 24 of the 1951 Convention, which provide that refugees are to be accorded the same standard of treatment as nationals with regard to public relief and social security.

However, according to information provided by UNHCR it appears that the provision relating to the three-year time limit on social assistance may in fact actually be intended to be favorable towards refugees; refugees would be granted a more generous access to financial assistance during that the first three years than nationals, who are subject to more restrictive conditions when applying for social assistance.

⁴⁴⁹ This provision refers to the Law on Social Security, Official Gazette of the Republic of Slovenia No. 54/92, November 14, 1992, with subsequent amendments.

⁴⁵⁰ According to UNHCR, this provision refers to family members who do not have refugee status.

⁴⁵¹ Art. 50, Law on Asylum, Official Gazette of the Republic of Slovenia No. 61/99, July 30, 1999, entry into force August 14, 1999 (unofficial UNHCR English translation).

Hence, rather than being a case of negative discrimination against refugees which would effectively render them ineligible for benefits after three years, according to this interpretation this provision would appear to temporarily grant better guarantees of assistance to refugees, who initially are generally not as competitive on the job market. It must be stressed nonetheless, that this interpretation of article 50 in the Asylum Law can only be confirmed in practice, which at present is insufficient to draw any conclusions.

In Practice

Please refer to the situation with regard to Slovenian practice described above, i.e., the situation until 13 August 1999, as no new information is available in this respect since the adoption of the new Refugee Law.

Social Security and Labor legislation

Situation until 13 August 1999

Recognized refugees are accorded the same rights as citizens with respect to social security benefits under the relevant legislation, including the Law on Employment and Insurance in Case of Unemployment.⁴⁵² In order to be eligible for unemployment benefits a person must have worked in Slovenia for the amount of time stipulated in the law, and must not be considered personally responsible for becoming unemployed. The maximum amount of time during which an unemployed person may receive unemployment benefits is twenty-four months.

Refugees also benefit from the same protection and benefits as Slovene nationals with regard to labor legislation.

New Law on Asylum: Situation as of August 14, 1999

The rights of recognized refugees with regard to social security and labor legislation remain unchanged under the new Asylum Law.

⁴⁵² Law on Employment and Insurance in Case of Unemployment, Official Gazette of the Republic of Slovenia, No. 5/91, with subsequent amendments.

MAIN INTERNATIONAL STANDARDS

European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950

Article 8

1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

International Covenant on Civil and Political Rights of 1966

Article 17(1)

1. *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

Executive Committee Conclusion of 1981

No. 24 (XXXII)

Family Reunification

*The Executive Committee,
Adopted the following conclusions on the reunification of separated refugee families.*

1. *In application of the principle of the unity of the family and for obvious humanitarian reasons, every effort should be made to ensure the reunification of separated refugee families.*
2. *For this purpose it is desirable that countries of asylum and countries of origin support the efforts of the High Commissioner to ensure that reunification of separated refugee families takes place with the least possible delay.*

[]

5. *It is hoped that countries of asylum will apply liberal criteria in identifying those members who can be admitted with a view to promoting a comprehensive reunification of the family.*
6. *When deciding on family reunification, the absence of documentary proof of the formal validity of a marriage or of the filiation of children should not per se be considered as an impediment.*

[]

8. *In order to promote the rapid integration of refugee families in the country of settlement, joining close family members should in principle be granted the same legal status and facilities as the head of the family who has been formally recognized as a refugee.*
9. *In appropriate cases family reunification should be facilitated by special measures of assistance to the head of the family so that economic and housing difficulties in the country of asylum do not unduly delay the granting of permission for the entry of the family members.*

UNHCR Handbook
Chapter VI

The Principle of Family Unity

186. *The principle of the unity of the family does not only operate where all family members become refugees at the same time. It applies equally to cases where a family unit has been temporarily disrupted through the flight of one or more of its members.*

**FAMILY UNITY AND
REUNIFICATION**

**PART I:
FAMILY UNITY AND REUNIFICATION**

1. International Standards

The issue of family life is key to the process of successful integration of refugees in their new society. The adoption by asylum countries of open policies, and adequate legal provisions and procedures which protect both the unity of the refugee family for family members already together in the country of asylum, and allow for the possibility of family reunification in the case of refugee families who are still separated, is therefore an integral part of the integration assistance which states should offer recognized refugees.⁴⁵³

The 1951 Convention itself does not include any specific provision providing for either form of protection to refugee families. No international or regional human rights instruments specifically recognize family reunification as a right either. However, some of these instruments do contain a provision protecting the more general right to family life, which is used to indirectly support claims for family reunification, and thereby becomes the basis for the authorization to family members to enter and reside in the host country. As elaborated below, the case law related to article 8 of the European Convention on Human Rights, which guarantees the right to freedom from interference in family life, has been especially successful in this respect. Based on this provision, the European Court on Human Rights, with its substantial case law on the topic, has gradually fleshed out the meaning and scope of the principle of family reunification, as well as the more general right to family life. It is of course of utmost importance that, like the ECHR, the provisions relating to the protection of the family in other international human rights instruments are equally applicable to resident aliens.

⁴⁵³ In this chapter we analyze the general principal of family unity from two perspectives, one regarding refugee families already together in the country of asylum (which hereinafter we simply refer to as the principal of family unity), and the other regarding families who are still separated and seek reunification in the country of asylum (hereinafter referred to as the principal of family reunification).

In addition to these instruments, several EXCOM Conclusions and other recommendations have been adopted which pertain directly to the issue of reunification and family unity for refugees. These often address particular problems in relation to these topics, and define the essential elements of these principles. Indeed, EXCOM Conclusions No. 9 and 24 are two such sources of soft law on the issue.

In particular, EXCOM Conclusion No. 24 makes several important recommendations for dealing with problems impeding the reunification of separated refugee families, including the following: that Contracting States exercise flexibility with respect to requirements of documentary proof of the formal validity of marriage or the filiation of children; make every effort to trace the parents or other relatives of unaccompanied minors before and after their resettlement; grant the close family members joining the recognized refugee the same legal status and facilities in order to encourage the rapid integration of refugee families in their country of asylum; and finally, provide special measures of assistance, when appropriate, to the head of the family in order to prevent that economic and housing problems impede or delay permission for the family members to join the refugee in the country of asylum.⁴⁵⁴ It makes further recommendations regarding the granting of exit visas by the country of origin, and the application of liberal criteria in the identification of the family members who may be admitted into the country of asylum so that receiving countries may promote a comprehensive family reunification.

The earlier EXCOM Conclusion No. 9 reiterates the fundamental importance of the principle of family reunification, and reaffirms the coordinating role of UNHCR with governments, as well as intergovernmental and non-governmental organizations.⁴⁵⁵

The Recommendation on the Principle of Family Unity, contained in the Final Act of the United Nations Conference that adopted the 1951 Convention, is another source of international endorsement for the protection of the refugee family. The Conference recommends that governments take the necessary measures to protect the refugee family, and particularly to ensure its unity and protect refugee children with an emphasis on unaccompanied children, girls, and cases of guardianship and adoption. It reads as follows:

Considering that the unity of the family, the natural and fundamental group of society, is an essential right of the refugee, and that such unity is constantly threatened, and

⁴⁵⁴ EXCOM conclusion No. 24 (XXXII), Family Reunification, 32nd Session, 1981, in Conclusions on the International Protection of Refugees, *supra* note 270, at 55-56.

⁴⁵⁵ EXCOM conclusion No. 9 (XXVII), Family Reunion, 28th Session, 1977, in Conclusions on the International Protection of Refugees, *supra* note 270, at 19.

Noting with satisfaction that, according to the official commentary of the ad hoc Committee on Statelessness and Related Problems the rights granted to a refugee are extended to members of his family,

Recommends Governments to take the necessary measures for the protection of the refugees family, especially with a view to:

(1) Ensuring that the unity of the refugees family is maintained particularly in cases where the head of the family has fulfilled the necessary conditions for admission to a particular country,

(2) The protection of refugees who are minors, in particular unaccompanied children and girls, with special reference to guardianship and adoption.⁴⁵⁶

[emphasis added]

The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (hereinafter Handbook) also reminds us that while the issue of family unity is not included in the 1951 Convention, the majority of States nonetheless observe the above-mentioned recommendation by the United Nations Conference. In fact, the Handbook, an interpretive text and practical guide to the 1951 Convention, provides itself important doctrinal support and guidance on this matter. In particular, the Handbook explicitly states that while the minimum requirement is that spouses and minor children benefit from the principle of family unity and be granted refugee status on this basis, other dependants who are living with the recognized refugee, such as aged parents, are normally also to be considered. The principle of family reunification proper, is equally endorsed in the Handbook in the following statements:

The principle of the unity of the family does not only operate where all family members become refugees at the same time. It applies equally to cases where a family unit has been temporarily disrupted through the flight of one or more of its members.⁴⁵⁷

⁴⁵⁶ / IV(B), *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, in *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Annex 1, at 55-56 (UNHCR, reedited January 1992) [hereinafter UNHCR Handbook].

⁴⁵⁷ UNHCR Handbook, *supra* note 455, para. 186, at 44.

Once dependants have been granted refugee status on the basis of family unity, they may generally retain this status, with the exception of persons affected by a cessation clause, persons who have no other reasons to retain refugee status except for personal convenience, and those who no longer wish to be considered as refugees.⁴⁵⁸

The Universal Declaration of Human Rights, the Covenant on Civil and Political Rights, and the United Nations Convention on the Rights of the Child are amongst the various international human rights instruments containing provisions protecting the family unit. The first two instruments contain provisions protecting all persons from arbitrary or unlawful interference with their family life, as well as granting the family the right to protection by society and the state. Of particular relevance to the rights of refugees, the Human Rights Committee has held that under the Covenant on Civil and Political Rights, the term family must be broadly interpreted in order to include all those comprising the family as understood in the society of the State Party concerned.⁴⁵⁹ It also held, in a separate Communication, that excluding a person from a country where the close members of his family live can amount to an interference within the meaning of Article 17(1). In principle, Article 17(1) applies also when one of the spouses is an alien.⁴⁶⁰ However, it is perhaps in its General Communication No. 19, of 1990 that the Human Rights Committee best defined the scope of the relevant provisions in the International Covenant on Civil and Political Rights. It held the following:

*The possibility to live together implies the adoption of appropriate measures, both at the internal level and, as the case may be, in cooperation with other states, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.*⁴⁶¹

In addition to a provision for special protection for refugee children,⁴⁶² the UN Convention on the Rights of the Child also grants the child protection of his or her family life. Indeed, article 9 stipulates that a child shall not be separated from his parents against his will, unless this separation has been appropriately determined to

⁴⁵⁸ UNHCR Handbook, *supra* note 455, para. 183-188, at 43-44.

⁴⁵⁹ General Comment 16/32 (Privacy), para. 5, *see* Plender, R.: The European Convention and Other Protection Instruments, in R. Da Costa (ed.), *The European Convention on Human Rights and Other International Protection Mechanisms: Selected texts from the Seminar, 20-22 November, 1996, Prague*, at 40 (1997).

⁴⁶⁰ Communication 35/1978 *Aumeeruddy-Cziffra v. Mauritius*, para. 9.2(b), *see* Plender, R., *supra* note 458, at 40.

⁴⁶¹ UNHCR Regional Bureau for Europe, *NGO Manual on International and Regional Instruments Concerning Refugees and Human Rights*, Vol. 4, No. 2 (1998) at 177.

⁴⁶² Art. 22, Convention on the Rights of the Child, G.A. Res. 44/25, November 20, 1989, entry into force September 2, 1990.

be necessary for the best interests of the child. Article 10 of the Convention further provides that in case of applications by either children or their parents to enter or leave a State Party for the purpose of family reunification, these shall be dealt with in a positive, humane and expeditious manner.

Regional human rights instruments offer another important source of protection of family life. Most notably, the above-mentioned article 8 of the ECHR stipulates that:

1. *Everyone has a right to respect for his private and family life, his home and his correspondence.*
2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.*

With respect to article 8, the European Court of Human Rights has established by its rulings in the *Golder* and *Airey* cases, that beyond the negative duty of non-interference in one's family life, the state also has, in certain circumstances, a positive duty to take measures so as to ensure that the exercise of this right is an effective one. On the other hand, this right is not absolute and may suffer exceptions in accordance with the terms of paragraph two of this provision.⁴⁶³

In the *Abdulaziz* case of 1985, the Court confirmed the validity of the principle of international law whereby states have the right to control the entry and residence of foreigners on their territory, and held that article 8 does not impose on the Contracting State the duty to respect the choice of married couples with respect to their common residence or to accept the non-national spouse for settlement in that country. However, the Court goes on to explain that in the present case, the applicants had not shown that there were obstacles preventing them from establishing family life in their home countries.⁴⁶⁴ Based on this reasoning, one could argue therefore, that in the case of recognized refugees, for whom it is not reasonable to return to their home country or any other country to reestablish their family life, it would appear that the state of asylum would in principle, according to article 8, have a duty to permit family reunification on its territory.

⁴⁶³ See Mucha, J.: Article 8 of the European Court of Human Rights: The Right to Private and Family Life, in R. Da Costa (ed.), *supra* note 458, at 47-48.

⁴⁶⁴ Mucha, J., *supra* note 462, at 51.

Concerning the same provision, the Court also held in the *Marckx v. Belgium* case, that family life includes the *famille naturelle*, making no distinctions between a legitimate family and a situation of cohabitation or illegitimate family. It further stated that family life under article 8 could include ties between near relatives such as between grandparents and grandchildren. Nevertheless, it adopted a more restrictive interpretation in the *S and S v. United Kingdom*, where it ruled that article 8 did not necessarily protect the relationship between adult children and their parents without evidence of dependency beyond the normal emotional ties.⁴⁶⁵

Much of the case law with regard to the application of article 8 to foreigners has emerged in relation to family reunification, immigration and extradition. It constitutes a promising tool with which to defend, develop and reaffirm the family rights of refugees, especially given the right of individual petition and the binding nature of the decisions of the European Court of Human Rights.

2. Comparative Analysis

Family Unity

The majority of the countries under consideration have officially recognized the importance of preserving the unity of the refugee family by adopting legal provisions granting the family members of the recognized refugee who are already in the country of asylum, essentially the same rights and legal residence in the host country as the latter. As we see below however, the principle of family reunification for those families who are still separated has not benefited from the same degree of recognition in law.

Although the provisions sometimes differ in significant ways, all of the countries in this study, except for Slovakia,⁴⁶⁶ protect family unity by granting refugee status and all the accompanying rights, either automatically or upon request, to close family members present in the host country. The wording of the provision in the Czech Refugee Law appears to allow more room for discretion, although in practice it also grants refugee status automatically to these persons.⁴⁶⁷ In all of these countries, the definition of the family for the purpose of family unity includes immediate family members, for instance, the spouse and minor children of the recognized refugee.

⁴⁶⁵ See Plender, R., *supra* note 458, at 38-39.

⁴⁶⁶ Although the Slovak Refugee Act does not grant family members refugee status based on the principle of family unity, article 7 of this same Act, which allows refugee status to be granted for humanitarian reasons, is nonetheless used for this purpose.

⁴⁶⁷ Article 3 of the Czech Law Concerning Refugees, provides that refugee status *may* be granted to the spouse or the minor children of an alien who has been granted refugee status [emphasis added]. The exception to this practice, applies to families of refugees who received refugee status based on humanitarian reasons. These dependents receive instead permanent residence.

Of particular note is the recent improvement with regard to the principal of family unity in the new Slovene Asylum Law of August 1999, which replaced an especially severe provision in the previous law whereby children of refugees were only entitled to the same rights as their parents until the age of eighteen, after which they fell under the aliens regime, thus placing the integrity of the family unit at risk. The new provision now stipulates that the right to asylum shall be recognized to close family members, for instance to spouses and minor children, and includes no termination clause for children who subsequently become of legal age.

In Slovakia, although the Refugee Law does not contain a legal provision explicitly granting the family of recognized refugees special protection and residence in this country, it does include the possibility of granting refugee status to an alien for humanitarian reasons, an example of which is for reasons of family unity. In practice, it is this provision that is used in order to grant spouses and minor children refugee status and permanent residence in Slovakia.

The Slovak Refugee Law would therefore benefit from the addition of a new mandatory provision specifically granting refugee status or another durable residence status to family members based on the refugee's right to family unity. Such a change would bring their legislation more into line with both international standards and regional practices.

Despite this legislative gap in the case of Slovakia, at the level of implementation, the application of the principle of family unity for refugee families already together in the country of asylum has been positive and no significant problems were encountered in any of the selected countries to date.⁴⁶⁸

Family Reunification

Specific Provisions

With the exception of Poland and Bulgaria, no legal provisions formally recognizing the principal of family reunification for recognized refugees have been adopted in any of the other countries under study. The Polish provision, contained not in the Aliens Law itself but rather in its accompanying Ordinances, states that competent authorities should offer assistance in obtaining permission to enter Poland to the spouse and minor children of recognized refugees to the extent of existing possibilities. Thus, the principle of family reunification is not formulated as a right

⁴⁶⁸ In the case of Slovenia, no state practice with regard to the principal of family unity exists as of yet due to its very low number of recognized refugees.

but simply as a good faith clause, imposing only a loosely defined and limited obligation on the state authorities to assist family members in gaining entry into Poland when permitted by circumstances.

Bulgaria has adopted the most explicit provision granting refugees the right to family reunification. Indeed, such a provision is contained both in the Refugee Ordinance effective until July 30, 1999 and the new Refugee Law, which is to replace the Ordinance after that date. One of the differences is that the new provision is worded even more affirmatively as an entitlement and contains less room for discretionary decisions.

Romania, whose Refugee Law does not include any provision clearly providing for family reunification, does nonetheless include two provisions from which such a right may be inferred. When combined, article 3, which states that upon request refugee status is granted automatically (as in case of a Convention Travel Document to allow them to enter and exit Romania) to the spouse and minor children of a refugee, and article 6, which allows for the possibility of applying for refugee status at an Embassy abroad, thus implicitly allowing for family reunification. While useful to invoke in practice, such a provision is nonetheless inadequate.

All other countries under study effectively use the provision granting refugee status to family members (which we refer to here as the provision protecting family unity) also as the legal basis for family reunification. While this provision has worked well enough in practice, it would nonetheless be preferable to have a provision which would explicitly impose an obligation on host countries to actually facilitate the family reunification process for families who are still separated. In the case of Slovenia, both the lack of a state practice in this regard and the very recent adoption of a new Asylum Law, make it difficult to determine definitively whether article 3 which grants close family members the right to asylum will be also be interpreted and used as a basis for family reunification.

Hence, while it is to the credit of the majority of these countries that the principle of family reunification is generally respected in practice, the absence of a legal provision and just as importantly the lack of a standard administrative procedure has meant that most individual requests are treated on an *ad hoc* basis. As we shall see below, this has on occasion marred the efforts of recognized refugees attempting to resume their family lives in their country of asylum.

The Definition of the Family

The definition of the family for the purposes of family reunification under the asylum regime is restricted to the spouse and minor children of the recognized refugee in all of the selected countries but for Bulgaria. Thus, the majority of the

countries in the region have regrettably not adopted the international recommendations including Executive Committee Recommendations, calling for more generous policies, which would allow a more comprehensive family reunification for refugees. As already noted, Bulgaria is the exception, and allows in its new law the extension of the principle of family reunification to include the dependant parents of each of the spouses. A similar provision based on humanitarian grounds was also proposed under the draft Slovenian Asylum Law, but unfortunately was not retained in the final text of the law.

Family Reunification Procedures

One of the seven countries under study, the Czech Republic, has adopted a streamlined family reunification procedure particular to refugee families providing a step-by-step approach for the reception and processing of such applications. This procedure can be considered as the best practice from among the study group. While other countries also clearly follow some procedure, it is often on an *ad hoc* basis. In the case of Bulgaria, a basic procedure is included in the Refugee Law itself. It stipulates that the Agency for Refugees, the refugee authority, is the agency responsible for granting permission for family reunification and for notifying the consular authorities abroad to grant visas to the family members in question. In principle at least, this notification by the Agency for Refugees to the consular authorities abroad renders the issuance of an entry visa for the family members in question mandatory, even though in practice entry clearance officers appear to have exercised some measure of discretion in the past.⁴⁶⁹

For Romanian recognized refugees, the law is such that their family members must first apply for refugee status to the consular offices where they continue to reside, and if they are accepted, which in principle they should be, they would then be issued a Convention Travel Document (hereinafter CTD) allowing them to enter Romania. This however, cannot be properly categorized as a family reunification procedure *per se*. The provision allowing persons to apply for refugee status in Romania from abroad is a useful mechanism for family members seeking to be reunited with their spouse or parent in the country of asylum, but it was not intended explicitly for this purpose. The lack of information on the part of consular authorities in this regard as well as on refugee law in general has resulted in past refusals to deal with cases of family reunification and to issue entry visas. In these cases, refugees have had to contact UNHCR in order to intervene on their behalf.

⁴⁶⁹ This may change under the new Refugee Law, since the provision in the previous Refugee Ordinance allowed more room for discretion in granting permission for family reunification by the Agency for Refugees.

In Poland, the general practice, which has taken place on *ad hoc* basis, is that the reunification procedure is initiated with the Refugee Department which in turn submits the request to the Border Guard authorities. Once these authorities obtain a positive opinion on the case, it is submitted to the competent Polish consul abroad who is responsible for issuing a visa and, in some cases, a travel document.

In contrast to the above procedures or the *ad hoc* treatment accorded to family reunification requests in the remainder of the countries, the Czech model of the family reunification procedure has much to its credit. Adopted by agreement by the relevant government departments in August 1998, this procedure covers all the stages of the procedure from the reception of the application to the communication and coordination that is to take place between the government departments, the Aliens Police, the diplomatic missions abroad, UNHCR, and finally, the recognized refugee and his family.⁴⁷⁰ Having now committed an administrative procedure to paper, after several years of successfully reunifying refugee families on an *ad hoc* basis, it is hoped that other countries in the region may also benefit from this model.

Cooperation by Authorities of Asylum Countries

With respect to the degree of cooperation rendered by national authorities in facilitating the reunification of refugee families (such as by issuing them entry visas) and the overall level of success of such applications, the practice in the Czech Republic has also been exemplary. Of particular note is the cooperation between UNHCR, the applicant and government authorities with regard to the procedure in general, including the transportation costs. When the refugee does not have the financial means to pay for the transportation costs of his family on his own, the cost is often shared between the Department of Administration of Refugee Facilities and/or UNHCR and the recognized refugee. Moreover, IOM has also been occasionally involved in such cases, providing the opportunity to purchase tickets at reduced rates. Although, it is not possible to obtain precise figures on the number of family reunification cases for all the countries

⁴⁷⁰ More specifically, adopted by agreement by the Department of Refugees, the Refugee Facilities Administration (refugee camps) and the Aliens Police in August 1998, this procedure provides for the reception of the application by the Department for Refugees, which then proceeds to forward it to the Aliens Police, and to inform the other relevant departments of the request. The same department also informs the applicant in writing that the case has been submitted to the Aliens Police and requests that he/she informs them of the expected date and time of arrival of his/her family. UNHCR offices in the family's country of residence may also assist in the logistics of the travel plans and schedule and in communicating this to the appropriate Czech authorities, though UNHCR Prague. Once they have received the application, it is the responsibility of the Aliens Police Directorate to issue an authorization for the issuance of the entry visas to the diplomatic mission concerned, requesting that they be informed of the details of the visas issued, such as to whom, when and what types of visas were granted. Importantly, at every step in this procedure, each department is to keep the other relevant departments informed, by being copied or otherwise, of the steps taken on the case thus allowing for proper follow-up.

under study, the Czech Republic would, according to UNHCR, appear to be undoubtedly one of the countries to have successfully reunified the greatest number of refugee families with an average of six cases per year.

The cooperation shown by the authorities in the remainder of the selected countries⁴⁷¹ with respect to family reunification can be categorized as generally fair to good as well, although the practice in many of them has been quite limited and those cases have on occasion revealed problems of various types, most often related to the issuance of entry visas. In Poland, for example, family members have experienced difficulties in obtaining entry visas for the purpose of family reunification from consular offices abroad and the processing of such applications by national authorities has typically been very slow. Together with the need to obtain travel documents and money for the travel costs (which are most often funded by UNHCR when the refugee family cannot afford it), these factors have resulted in considerable delays, sometimes in years, in the procedure

In Romania, although the government has generally been cooperative, it is often only once UNHCR has become involved in the case. And in Bulgaria, while the practice has more recently improved and the procedure has become fairly expeditious, the entry clearance officers were sometimes reluctant to authorize visas for these purposes in the past, even though they are in principle obligatory upon notification by the Agency for Refugees. In such cases, the intervention of UNHCR with the relevant consulate usually facilitated the process. With regard to Hungary, due to the geographic limitation in place until March 1998, the Convention refugees were European (mostly of Hungarian descent) and therefore their family members did not require an entry visa in order to join them. The new rules are more restrictive, however, it is still too early to comment on the practice of family reunification since the lifting of the geographic limitation. In Slovakia, the practice has been extremely limited, although in the three cases of family reunification known to UNHCR as of October 1999, government authorities appear to have been cooperative.

Cooperation with other Organizations and UNHCR

Essential to an expeditious and successful family reunification practice in many countries is the coordinating role and the assistance offered to government authorities by such organizations as UNHCR, IOM, and the Red Cross Tracing Units. Generally, the authorities in all the selected countries have welcomed such assistance, and have been cooperative when UNHCR has intervened on behalf of individual cases. The assistance offered by organizations such as the above may include tracing and contacting family members, ensuring the appropriate travel documents and

⁴⁷¹ With the exception of Slovenia, which has not had any cases of family reunification to date.

facilitating the issuance of the necessary exit, transit and entry visas, purchasing the travel tickets and making the travel arrangements, and coordinating with all the relevant authorities both abroad, in transit and in the country of origin during the procedure but also upon arrival in the host country.

In the majority of countries under consideration,⁴⁷² UNHCR continues to play an important role in the family reunification procedure by providing the type of assistance mentioned above and by intervening on behalf of the refugee family with the relevant government and consular authorities abroad. It also plays a vital coordination function through its offices in the country where the family members still reside, as well as by providing financial assistance for travel expenses when no other source is available. This coordinating role played by UNHCR is all the more necessary given the lack of an adequate administrative procedure to deal with family reunification cases in most of the countries in this study.

Most Common Obstacles to Family Reunification

Amongst the problems encountered in the family reunification process, the most common are the lack of a travel document or passport (which renders difficult both exit visas and entry into the asylum country), the lack of financial means to pay for the travel costs and in some cases to support the family in the host country, various difficulties resulting from the absence of a standard administrative procedure, and considerable delays, sometimes years, in processing applications. In the case of Poland, for example, the procedure appears to suffer from the latter three problems as well as from difficulty in obtaining entry visas for the family members abroad. As a result, the majority of recognized refugees wishing to be joined by their families have not been able to do so. However, as of June 1999, UNHCR reports that many cases were concluded more recently.

In some countries creative solutions have been found to some of these problems. For instance, in the Czech Republic and Bulgaria, when family members have not been able to secure a passport, or even a one-way travel document enabling them to travel to the host country, UNHCR has sometimes assisted them by issuing a UNHCR Provisional Travel Document. This document, which can hold an entry visa issued by the asylum country and expires after this single use, thus enables family members to travel to the host country where they could be issued a Convention travel document by the local authorities. As mentioned above, in the case of the Czech Republic, both government authorities and UNHCR have dealt favorably with

⁴⁷² With the exceptions of Slovenia and until recently, Hungary, since in the former there have been no cases of family reunification as of yet, and in the case of the latter, the Convention Refugees were mostly ethnic Hungarians and required little assistance.

the issue of the travel expenses, so that depending on the individual case, the Czech authorities together with UNHCR and/or the recognized refugee have often paid for the travel expenses jointly.

The lack of documentary proof of family ties also sometimes presents an obstacle to family reunification, if authorities of the host country do not exercise flexibility with respect to this requirement. The most common situations of this type relate to common law marriages and the filiation of children born out of wedlock and for whom birth certificates are not available. Moreover, documents of this nature may also be impossible to obtain if a country is at war or in a state of chaos, or because records have been destroyed in such circumstances, or even due to the precipitous flight of the family and the subsequent fear of contacting government authorities for these purposes. It is in recognition of these special circumstances that the EXCOM Conclusions recommend that governments be flexible with respect to such documentary evidence.

With some exceptions, most of the countries under study are reported to consistently respect this recommendation and generally accept other forms of evidence indicating family ties when documentary proof is either non-existent, as with common law marriages, or impossible to obtain. Slovenia and Poland present some problems in this respect, however. In the case of Poland, such documentary proof is a condition *sine qua non* for further processing of the application and the flexibility demonstrated in cases where it is not available has varied, depending most often on the discretionary power of Polish consuls abroad who are responsible for issuing entry visas to the family members. With regard to Slovenia, the potential problem lies at the legislative level where the provision relating to family unity (which is the provision likely to support a practice of family reunifications) restricts the applicability of this principal to spouses *only* if the marriage was entered into before arriving in Slovenia. It is hoped that this provision, and especially the use of the term marriage, will not be interpreted restrictively in order to also exclude the spouse in a common law marriage which existed prior to arriving in the host country.

Family Reunification under the Immigration/Foreigners Regime

We have seen that despite the fact that the majority of the countries in this study lack a provision specifically granting recognized refugees the right to family reunification, the practice has been to rely on the more general provision granting refugee status to close family members as the legal basis for the actual reunification in the host country of families who are still separated. In addition to this, recognized refugees may also make use of the general rules applicable to family reunification immigration under the foreigner regime. However, such immigration provisions can in many instances contain considerable obstacles for refugee families, as recognized refugees are usually not able to prove the required financial capacity to support their

family members in the country of asylum. A provision adequately facilitating family reunification within the framework of the asylum regime is therefore always preferable, though immigration rules may on occasion allow reunification with more extended family members.

Resettlement on Grounds of Family Reunification

Despite some of the problems and exceptions discussed above, the majority of the selected countries have generally respected the principle of family reunification in practice. UNHCR has therefore generally not deemed it necessary to submit cases for resettlement for reasons of family unity. They have, however, supported family reunifications outside the region in a few instances, although it must be stressed that this support was not granted due to particular difficulties in bringing family members to the country of asylum. Rather, in the Czech Republic, Bulgaria, and Hungary for example, the cases recommended for family reunion outside the host country were supported due to special individual circumstances. Such circumstances have included the following: when the country of asylum is considered unsafe for that particular family or one of its members; the case involves vulnerable persons or persons with special needs; or the family has elected to live in a third country where the remainder of the family members are residing. In such instances, the cases have usually been supported by UNHCR for consideration under the national immigration and resettlement programs of such countries as Canada, USA, Germany, Sweden, Holland, Norway, and Australia.

Concluding Remarks

The relatively few cases of family reunification in most of the countries in this region may be the reason for both the lack of adequate related legal and administrative provisions, but also for the relative flexibility with which these few applications have generally been treated in practice. As the numbers of such applications increase, however, the treatment of such requests on a case-by-case basis becomes impractical and subject to possible arbitrariness, thus rendering it all the more important to formalize the principle of family reunification in domestic law and to adopt suitable administrative procedures.

Table 9:
Right to Family Unity and Reunification⁴⁷³

	FAMILY UNITY				REUNIFICATION		
	Domestic provision expressly protects family unity of recognized refugees	Domestic provision granting refugee status to close family members automatically or upon request	State practice with regard to family unity	Definition of family: spouses and minor children	Domestic provision expressly grants right to family reunification	State practice with regard to family reunification	Definition of family includes extended family ^①
Bulgaria	✓	✓	pos	✓	✓	pos	✓
Czech Republic	✓	✓	pos	✓	✗	pos	✗
Hungary	✓	✓	pos	✓	✗	pos	✗
Poland	✓	✓	pos	✓	special provision ^③	mixed	✗
Romania	✓	✓	pos	✓	✗	mixed	✗
Slovakia	✗	✗	pos	✓	✗	pos	✗
Slovenia	✓	✓	pos	restriction ^②	✗	N/A	✗

✗ Yes ✓ No pos = positive N/A = not applicable

^① Extended family refers to family members beyond spouses and children under the age of eighteen.

^② Right to asylum only granted to a spouse if marriage entered into before arriving in Slovenia.

^③ Provision grants state assistance according to existing possibilities.

⁴⁷³ Please note that the information on family unity and reunification provided in the chart reflects the situation as of August 1999 and therefore includes the new Slovenian and Bulgarian asylum laws which came into effect during that month, as well as the current and draft Czech Refugee Laws.

3. Recommendations

Family Unity

Both in practice and in law, the principle of family unity is generally respected in all the countries under study and is usually implemented by granting close family members refugee status, thus affording them the same rights and protection as the recognized refugee. Nonetheless, the following are some recommendations relevant to the protection of family unity in the region:

1. With regard to the existing legislative gap in Slovakia,⁴⁷⁴ we would recommend the adoption of a provision in the Asylum Law specifically granting family members refugee status or an alternative durable status based on the principle of family unity rather than on general humanitarian grounds, which are of a more discretionary nature.

2. We would also recommend for all the countries under study to consider the adoption of special provisions in their relevant legislation which would facilitate the acquisition of an alternative and durable status, such as permanent residence, for family members of recognized refugees who do not require international protection or do not wish to hold refugee status. While obtaining such an alternative status may already be theoretically possible under the general aliens regime of the host countries, refugee families are often unable to meet the strict requirements attached to the acquisition of such residency statuses. The provision in the latest draft Foreigners Law in the Czech Republic, which provides that special consideration is to be granted to the request for permanent residency by the spouse or minor child of an asylum-holder even if they have not fulfilled the conditions of previous continuous stay in this country, would appear to be an example of such a provision.

Family Reunification

1. Save for Bulgaria, which explicitly incorporated the right to family reunification both in its previous Refugee Ordinance and in its new Refugee Law which came into effect August 1, 1999, none of the other selected countries specifically grant recognized refugees a right to family reunification in their legislation. The majority of countries appear to rely directly or indirectly on the provision granting refugee status to close family members (for example, the provision mentioned above as protecting family unity) as the legal basis for undertaking family reunification in the host country.

⁴⁷⁴ At present, Slovakia grants refugee status to family members based on a general provision relating to humanitarian reasons rather than reasons specific to the protection of family unity.

It would be preferable in these cases to supplement the above provision with one which would expressly grant recognized refugees a right to family reunification as such, i.e., the right for their close family members to enter and settle in the country of asylum on the same terms or similar terms as persons with refugee status. Indeed, while the family unity provision described above has been liberally interpreted as a basis for family reunification by most countries thus far, it is an inadequate provision which if subject to a more restrictive interpretation in the future, could be deemed applicable only to close family members already present in the country of asylum.

2. The right of recognized refugees to family reunification should, to the extent of the possibilities of each country, be accompanied by some financial assistance, particularly for travel costs. The Czech Republic provides a good example of such a practice where in cases of need the government has contributed together with UNHCR, and whenever possible also the refugee, to the travel costs of the family.

3. In keeping with international recommendations, a provision allowing for the possibility of a more comprehensive family reunification⁴⁷⁵ with family members other than spouses and minor unmarried children, especially when warranted by special circumstances (for example, as in the case of dependant or otherwise vulnerable close family members such as the aged parents of the spouses and their adult children), should also be included in the legislation of the countries under study. At present, only the new Bulgarian Refugee Law contains such a provision.

4. The adoption of more streamlined and standardized procedures for family reunification is another measure that would no doubt improve its implementation in the countries in this region. Such a protocol or provision should set out the various steps to be undertaken at each stage of the procedure, the communication and coordination to take place among the various relevant persons, institutions and government agencies, and clear lines of responsibility for each of the different actors involved in the process including that of the Ministry responsible for refugees, diplomatic missions or consular bodies abroad, and the Aliens Police. The Czech model detailed in the country profile section in this chapter is an example of a comprehensive family reunification procedure already established in the region.

A family reunification procedure should strive to offer a speedy resolution to such cases, as long delays have been a problem in some of the countries under consideration.

5. In cases where it is impossible to secure any other type of travel document to enable family members to travel to the host country, governments should consider accepting a UNHCR Provisional Travel Document which is issued by the UNHCR office in the asylum country, serves only to hold an entry visa and expires after a single use. Such a document has already been successfully used in some countries.

⁴⁷⁵ This provision should be included under the asylum rather than the immigration regime.

6. Despite the clear benefit of having an explicit right to family reunification in the Bulgarian law, the provision in the new Refugee Law contains restrictions, which, in spite of the fact that they have not been implemented to date, would appear to be of concern. These are detailed in the country profile on Bulgaria in this chapter. It would therefore be recommended that UNHCR Sophia and the relevant Bulgarian authorities meet on this issue in order to clarify the interpretation to be given to this provision in the future and to consider adopting measures or decisions which would lift or mitigate the effect of some of these restrictions on refugee families wishing to reunite in Bulgaria.

**PART II:
INDIVIDUAL COUNTRY PRACTICES**

1. Bulgaria

Situation until July 31, 1999

In the interest of preserving the unity of the refugee family, article 30 of the Refugee Ordinance, in effect until the end of July 1999, provides that the family members accompanying the asylum-seeker and refugee shall have the same rights and obligations as that person.

Article 29 of the same Ordinance also explicitly recognizes the principle of family reunification for recognized refugees with their spouses and unmarried minor children, i.e., under the age of eighteen.⁴⁷⁶ It states that the refugee has the right to reunite with family members in Bulgaria with the permission of the Director of the Agency for Refugees.

The issuance of visas by the Bulgarian consular authorities to these family members for the purposes of family reunification is obligatory upon notification and permission by the Agency for Refugees. However, in the past entry clearance officers were sometimes reluctant to authorize such visas and while they were eventually granted upon instruction from the center, two or more visits by UNHCR or its implementation partner were often required to the consulate before the travel arrangements were completed. More recently, this situation has improved, so both the Bulgarian authorities and the sending countries are at present generally cooperative with regard to such requirements as entry and exit visas for the purposes of family reunification.

Bulgarian authorities have been equally flexible with respect to the requirements relating to documentary proof of family ties. At present, therefore, no significant obstacles either in law or in practice have been perceived with regard to family unity within the country or to family reunification with family members still living outside Bulgaria. Indeed, with the exception of one complicated case that took two years, most cases of family reunification in Bulgaria have taken only a few months, a much shorter waiting period than many western countries.

⁴⁷⁶ Family members for the purposes of family reunification, are defined in the No. 4 of the Additional Provisions to the Ordinance.

On a related matter however, it should be mentioned that refugees have at times experienced administrative difficulties in marrying in Bulgaria for lack of proper documentation.⁴⁷⁷

During 1997 and 1998 UNHCR assisted with the reunification of eight refugee families in Bulgaria, totaling seventeen persons. In one case elderly parents were allowed to reunite despite not being technically eligible. Recognized family members from Afghanistan, Lebanon and Iran joined refugees, though the majority were refugees from Afghanistan who had found refuge in Pakistan or in Iran and finally joined their family members in Bulgaria.

UNHCR does not in principal resettle recognized refugees for reasons of family reunification given that family reunion is possible in Bulgaria. However, for refugees with family ties in other countries, UNHCR has on occasion supported cases of family reunion outside Bulgaria under the national immigration or resettlement programs of such countries as Canada, USA, Denmark and Sweden.

Finally, the Bulgarian Constitution contains two potentially relevant provisions protecting the right to family life. These are article 14, which stipulates that the family, motherhood and childhood shall enjoy the protection of the state, and article 32, which provides, *inter alia*, that everyone is entitled to protection against any illegal interference in his private or family affairs.⁴⁷⁸ A general provision in the Constitution regarding the fundamental rights and obligations of foreigners residing in Bulgaria specifies that they are to benefit from the fundamental rights in the Constitution except for those for which Bulgarian citizenship is required by law or the Constitution itself.⁴⁷⁹ As no special problems have been encountered with regard to the principle of family unity contained in the legislation relevant to refugees, these provisions in the Constitution have never been tested in relation to the rights of recognized refugees in this field.

⁴⁷⁷ Refugees have reported facing particular problems obtaining permission to marry a Bulgarian citizen in Bulgaria, as they are not in a position to prove that they are single. According to the Agency for Refugees, discussions have been held with Municipal authorities who are responsible for issuing substitute documents in cases where originals of such documents as birth certificates and marriage certificates are not available. According to the Agency for Refugees, in one case a document certifying that an Afghan refugee had never been previously married, was secured on the basis of his statement to that effect, in order to allow him to marry. However, it seems that in practice in most cases, the issuance of such substitute documents has been extremely difficult if not impossible to obtain.

⁴⁷⁸ The text of article 32 of the Bulgarian Constitution, is ambiguous with regard to its applicability to non-citizens, since the first sentence refers to citizens, whereas the second sentence confers protection from interference in family life to everyone. Given the broader terms used in the second sentence, one could argue that it is also applicable to non-citizens. The article reads as follows: The privacy of citizens shall be inviolable. Everyone shall be entitled to protection against any illegal interference in his private or family affairs and against encroachments on his honor, dignity and reputation. BULGARIAN CONST., July 1991, Art. 32(1).

⁴⁷⁹ BULGARIAN CONST., July 1991, Art. 26(2).

The New Refugee Law, Effective 1 August 1999

The new Refugee Law, which comes into effect August 1, 1999, continues to recognize the principle of family unity by stipulating that the spouses and minor children of refugees who satisfy the definition in article 2(1) are also considered recognized refugees unless special circumstances dictate otherwise.⁴⁸⁰

Similarly, the new law maintains the right to family reunification for those families who are still separated. Furthermore, unlike the previous provision that made family reunification conditional on the permission of the Director of the Agency for Refugees, the wording of article 32 of the new law affirms family reunification as an entitlement or right and makes it less discretionary. Article 32 reads as follows:

A refugee who has been granted refugee status shall be entitled to receive permission from the Chairman of the Agency for Refugees to reunite with his family in the territory of the Republic of Bulgaria. The Bulgarian diplomatic or consular authorities shall issue entry visas to the members of the refugee's family after having received the permission of the Agency for Refugees provided that the grounds under Article 13, paragraph 1 of this Law do not exist.

According to this provision, the only grounds for refusing family reunification would therefore appear to be those under article 13, paragraph 1 of the Refugee Law, which include the following situations: where the grounds normally associated with exclusion under the 1951 Convention are found to exist; where that family member committed a crime against Bulgaria or another serious crime, or benefits from the protection of another UN body; where the family member has permanent residence in Bulgaria or in another third safe country, or is a national of two or more countries; the family member has had his refugee status refused, discontinued or withdrawn in Bulgaria or another third safe country, or has refugee status guaranteed in a third safe country or another country by virtue of a treaty.

These grounds also serve as grounds for refusal or exclusion from refugee status in the Refugee Law. Nevertheless, if strictly applied to family members and the principle of family reunification, the last four grounds in particular can be of concern. Indeed, according to these provisions visas for the purposes of family reunification in Bulgaria can be refused simply because the family member has ties to another country (ties which are neither necessarily secure, nor necessarily entitle the recognized refugee to resettle with family members there) or has been refused or lost his refugee status, a situation which can easily occur if family members make separate refugee claims and one is refused and returned elsewhere.

⁴⁸⁰ Art. 2(2), Law on Refugees (unofficial UNHCR English translation), XXXVIII National Assembly of the Republic of Bulgaria, May 27, 1999, entry into force August 1, 1999.

On the other hand, the enlargement of the family members eligible for family reunification under the new law is a welcomed change. In addition to spouses and unmarried minor children, the law now also includes the parents of each spouse who are not able to take care of themselves due to old age or serious illness, or confusion and need to live in the same household with their children...⁴⁸¹ Moreover, even before the new law came into effect of the new law, this extension to elderly parents was in some cases, already implemented in practice.

For further details regarding the practice concerning family unity and reunion, please see the situation until July 31, 1999 described above, as no new information is as yet available regarding the practice under the new Refugee Law.

2. Czech Republic

Article 3 of the Law Concerning Refugees specifically provides that refugee status may be granted to the spouse or the minor children of an alien who has been recognized as a refugee.⁴⁸² By granting immediate family members the same status and rights as the recognized refugee, this provision ensures the preservation of family unity for refugee families who are already present in the Czech Republic.

Refugee families who are still separated do not benefit from any provision in any related law explicitly granting them the right to family reunification. However, in practice, article 3 mentioned above is also used as the legal basis for family reunification.

Furthermore, under the aliens regime, article 7 of the current Foreigners Law foresees the possibility *inter alia* of granting permanent residence on humanitarian grounds for the purpose of uniting a family provided that the foreigner's spouse, direct relative or sibling resides permanently in the Czech Republic. As such, family reunion with more extended family members may also be possible under this provision since recognized refugees are granted permanent residence in the Czech Republic.

Neither the draft Refugee nor draft Foreigners Law currently under consideration provide for a specific right to family reunification. The draft Refugee Law does continue to ensure family unity by providing that the spouse of an asylum-holder and his/her unmarried children under the age of eighteen shall also be granted asylum

⁴⁸¹ / 8, Additional Provisions, Law on Refugees (unofficial UNHCR English translation), XXXVIII National Assembly of the Republic of Bulgaria, May 27, 1999, entry into force August 1, 1999.

⁴⁸² Due to the wording of this provision however, it does not apply to those persons who under a previous provision no longer in effect, were granted refugee status based on humanitarian grounds. In such cases, family members are granted permanent residence instead.

even if they cannot establish reasons as per article 12, (i.e., the provision stating the reasons for normally granting refugee status) if either the family member or the asylum-holder requests this. However, they must reside in the Czech Republic during the whole time of the asylum proceeding.⁴⁸³ The new draft Foreigners Law for its part provides that special consideration is to be granted to the request for permanent residence by the spouse or minor child of an asylum-holder, even if they have not fulfilled the condition of previous continuous stay required by the law. Thus, while specifically mentioning the situation of refugee families and giving them special consideration, this provision, unlike the current law, does not provide that this is to be applied for the purposes of family reunification, i.e., where the refugee's family members are not yet in the Czech Republic. It would appear instead to simply be protecting the integrity of the family already present in the host country. Though one may anticipate that the provision protecting family unity in the new draft Refugee Law is likely to be used as the basis for family reunification in the same manner as it is under the current law, it would be preferable and therefore recommended that a specific provision on family reunification as such be included in the new law.

In Practice

In practice, no problems have emerged with regard to family unity for families already present in the Czech Republic. Czech authorities have also been cooperative on the matter of family reunification including with respect to the issuance of entry visas, financial assistance, and in granting refugee status to dependant family members who have joined the refugee in the Czech Republic. Indeed, it should be mentioned that Czech authorities frequently contribute towards the transportation costs of the refugee's immediate family members to Prague either by sharing the cost with UNHCR and/or the refugee. Persons from a variety of countries have come to join their families in the Czech Republic including Ghana, Nigeria, Congo, and Bosnia. UNHCR, Prague, estimates that there are an average of six cases of family reunification in the Czech Republic per year.

Moreover, a streamlined procedure concerning family reunification for recognized refugees was set up by the relevant government authorities in August 1998.⁴⁸⁴ Under the terms of this inter-departmental agreement, the Department for Refugees, which first receives the application for family reunion, is to forward it to the Aliens Police Directorate together with copies to other related departments.⁴⁸⁵

⁴⁸³ Art. 13, Draft Law on Asylum *supra* note 26.

⁴⁸⁴ The procedure was set up during a meeting between the Department for Refugees and the Integration of Foreigners, the Refugee Facilities Administration, and the Aliens Police.

⁴⁸⁵ These related departments include the Department of State Administration (the unit dealing with Integration of Asylum-Holders), the Refugee Facilities Administration, and UNHCR.

At the same time the Department for Refugees is to inform the applicant in writing that the application was forwarded to the Aliens Police and request that they be informed regarding the expected date and time of arrival of his family members as soon as possible. UNHCR will cooperate in trying to obtain the same information from the refugee's family members through their offices in that country. The authorization for issuance of a visa is then sent by the Aliens Police Directorate to the relevant diplomatic mission (with a copy to the Department for Refugees for proper follow-up), with the request that they be informed regarding when, to whom, and what types of visas were issued on the basis of this authorization.⁴⁸⁶ In this fashion, all relevant departments are informed of events and share a common standard procedure instead of treating each case on an *ad hoc* basis.

The level of cooperation between the Czech authorities and UNHCR regarding family reunification can generally be described as excellent. Based on their joint efforts and coordination, the travel costs are often shared between them and when possible also the recognized refugee himself with IOM arranging on occasion for tickets at reduced rates.

The problem of the lack of passports or alternative travel documents by family members wanting to join the recognized refugee has also been overcome on a few occasions by the willingness on the part of the Czech authorities to accept a UNHCR Provisional Travel Document. Used only when it has proven impossible to secure any other travel documents, including Red Cross or one-way travel documents, this UNHCR provisional document which is created by the local office on computer, serves to hold an entry visa and expires after a single journey.

In a limited number of cases, the UNHCR office has also assisted with cases of family reunions outside the Czech Republic. The decision by UNHCR to support such cases has been based on a variety of exceptional reasons including the vulnerability or special needs of family members, special circumstances resulting in an inability to integrate in the Czech Republic, and the choice of the family to reunite in a third country where some of the family members are already residing. To date family reunions outside the Czech Republic have been to countries such as Australia, Norway, Holland and Canada, and have been mostly by refugees from the former Yugoslavia. In no instance has it been necessary to resettle a family outside the Czech Republic due to difficulties in securing family reunification in the country of asylum.

⁴⁸⁶ Notes on the agreement reached at the meeting between the Czech Department for Refugees, the Refugee Facilities Administration and the Aliens Police Directorate, regarding Streamlining of the procedure of the above-mentioned offices in the process of family reunion in the case of recognized refugees, August 13, 1998.

3. Hungary

Family Unity

With regard to family members already in the country of asylum, the Asylum Law protects the principle of family unity by including a provision granting refugee status to the immediate family members of a recognized refugee upon his request. Immediate family members are defined for the purposes of this law as the spouse and minor child of a foreigner and in the case of an applicant who is a minor as his parents.⁴⁸⁷

Family Reunification

As was the case with Hungary's previous Asylum Act, no specific provision granting the right to family reunification to refugees exists in the current Asylum Law. Follow-up of this issue has been included in joint EU and UNHCR planning. The Asylum Law and the Aliens Act should be reviewed to be able to apply the principle of family reunion in the most efficient way. However, the limited practice to date (given that because of the geographic limitation in effect until March 1, 1998 only European refugees received refugee status) has meant that immediate family members of Convention refugees are allowed to enter Hungary to be reunited.⁴⁸⁸

Moreover, though a family tie must be proven, in practice so far, Hungarian authorities have shown flexibility in this respect and indirect evidence has often been taken into consideration. The Office of Refugee and Migration Affairs and the Local Eligibility Refugee Offices are the competent authorities in the matter of family reunification along with the Hungarian Red Cross Tracing Units, and the Hungarian Helsinki Committee which also assists sometimes. Once they have been granted refugee status on the basis of family unity, these family members have the same rights as recognized refugees and are permitted to travel to Hungary.

Concerning the issuance of visas for the purposes of family reunification, this issue has not arisen frequently, given that until March 1, 1998 (when the geographic limitation was lifted) Hungarian authorities only dealt with European refugees, most of whom did not need to obtain a visa in order to enter Hungary. The exceptions to this were Albania and Turkey, with the reunification process being especially lengthy for family members (who are Afghans and Iraqis in most cases) wishing to continue to Hungary from Turkey. No significant information on the practice of refugee family reunifications is available since March 1, 1998.

⁴⁸⁷ Arts. 2(a) and 2(f), Act on Asylum, No. 1997: CXXXIX, December 9, 1997, entry into force March 1, 1998.

⁴⁸⁸ In a few cases, mandate refugees as well as beneficiaries of temporary protection, were also granted the benefit of family reunification despite the absence of any legal provision granting them this right.

Despite the lack of a specific provision on this matter in the Asylum Law, under the aliens regime the Foreigners Law contains a provision explicitly referring to the family reunification of aliens, which although not particular to, is also used by recognized refugees. Article 17(4) on immigration permits, which authorizes applications for permanent residence in Hungary after a three-year stay in Hungary, provides that an exemption from this requirement may be granted to an alien who applies for an immigration permit as a family member for the purposes of family unification. The family members in this case include spouses, minor children, dependant parents and grandparents as well as dependant children over the age of eighteen. Article 19 of the Foreigners Law requires various supporting documents to be attached to the applications as well as some evidence regarding the livelihood and housing situation of the alien. While some flexibility exists both in practice and in the law itself with regard to such documents as birth and marriage certificates and criminal records, for example,⁴⁸⁹ the requirements regarding proof of housing and means of livelihood continue to be obstacles in applications by recognized refugees. Indeed, financial difficulties in general present the most persistent obstacle to family reunification in the case of recognized refugees.

In addition to the above provisions, the Hungarian Constitution guarantees the protection of the institutions of marriage and the family.⁴⁹⁰ However, some legal provisions relating to aliens may be of concern with respect to the preservation of family unity, despite the fact that they do not appear to have resulted in any problems to date. In particular, the Aliens Act foresees under article 23 an entry and residence ban as well as a prohibition of entry and stay for foreigners under certain circumstances. Thus, by virtue of this provision a foreigner may be banned from entry and residence if, for example, he is under expulsion orders, or has been involved with drugs, smuggling of persons or terrorist activities. They may also be prohibited entry and stay for having violated or attempted to violate other rules such as: the entry and exit rules of the country; the work rules; or in case they have made false declarations for the purpose of staying in the country; or if they are deemed to jeopardize in any manner national security.

There may be cases where these provisions may negatively affect both the preservation of family unity and the possibility of family reunification. In such cases, we are reminded of the protection offered by article 8 of the ECHR, which demands that the right to respect for one's family and private life be balanced against the state's interests of public order, and that interference by the state must be deemed justified as necessary in a democratic society.

⁴⁸⁹ Art.19 (1)(2), Act on the Entry, Stay, and Immigration of Aliens to Hungary, 1993 (unofficial UNHCR English translation).

⁴⁹⁰ HUNGARIAN CONST., December 1990, Art. 15.

As concerns resettlement, UNHCR has not deemed it necessary to submit cases for resettlement outside Hungary due to difficulties in securing family reunification in that country. In a couple of instances UNHCR has nonetheless supported the cases of refugees who wished to join their family members living outside Hungary, namely in Austria and Germany.

4. Poland

Article 44 of the Aliens Law provides that on condition that they are living with the recognized refugee in Poland, the spouse and minor children of the recognized refugee shall also be granted refugee status, issued a travel document and be granted residence permits for a specified period. The refugee's family, like himself, also benefits from the same guarantees against withdrawal of their residence permit, according to article 45.

However, the Aliens Law does not address the issue of family reunification if the refugee's family members are still living outside Poland. Instead, a limited obligation on the part of the Polish authorities is contained in article 45 of the Ordinances Concerning the Aliens Law, which states that competent authorities should, according to existing possibilities offer to spouses and minor children of refugees assistance in obtaining the right to enter Poland. Yet, the fact that the Aliens Law does not mention the principle and the Ordinances include only a good faith clause that calls on authorities to cooperate only when circumstances permit, means that while this provision is a positive step it is nevertheless inadequate.

As neither the right nor a procedure for family reunification is formally provided for in the law, only *ad hoc* action is taken. In practice to date, it appears that the reunification procedure is initiated with the Refugee Department which in turn submits the request to the Border Guards. Once these authorities give a positive opinion on the case, it is submitted to the competent Polish consul abroad who is responsible for issuing a visa and in some cases a travel document.

According to UNHCR, the majority of recognized refugees wishing to reunite with their families in Poland have been unable to do so, though this appears to have improved more recently. Indeed, as of June 1999, UNHCR reported that most of the outstanding cases of family reunification had been recently concluded. In general however, the lack of success with respect to family reunification has been attributed to a number of reasons, most notably to the high travel costs involved. Most often, UNHCR offices in the family's country of residence have had to provide assistance in locating funds for travel costs. According to UNHCR, there have also been reports of difficulties experienced by family members in obtaining entry visas to Poland from Polish consular offices abroad. For example, documentary proof of family ties is a condition *sine qua non* for the further processing of family reunification, although

due to the discretionary power of consuls in this regard the flexibility shown with respect to this requirement has varied from country to country.

In the cases of family reunifications that have taken place to date, the procedure has been characterized by a long waiting period, as the processing of the necessary documentation for admitting family members seeking reunion by national authorities has generally been slow. In the cases to date the UNHCR office in Poland with the cooperation of their Headquarters and field offices as well as NGOs, have provided assistance to the individuals in the form of counseling, and by assisting them ensuring the necessary documentation, travel arrangements, and permission for the family members to leave their country of origin (or a third country). They have also assisted them to locate travel funds and gaining access to consular offices in order to obtain entry visas to Poland.

No statistical data is available regarding the number of successful or unsuccessful cases of family reunification in Poland.

UNHCR did not assist in the resettlement of any recognized refugees during 1997 and 1998 including for purposes of family reunification.

5. Romania

To protect family unity, article 3 of the Romanian Refugee Law provides that refugee status is automatically granted, upon request, to a refugee's spouse and minor children except in cases where the exclusion clause, namely article 4, may apply.⁴⁹¹ Article 26 of the Romanian Constitution also provides for the right to have one's intimate family and private life respected and protected. In practice, no obstacles to family unity have been reported for family members already in Romania.

In cases where the family is outside the country of asylum, however, the Refugee Law does not provide for assistance with family reunification. In particular, article 15, which refers to the rights and obligations of recognized refugees, does not mention the right to family reunion.

⁴⁹¹ The category of persons who cannot be granted refugee status according to the Romanian Refugee Law includes *inter alia* persons who have committed an intentional offense in Romania punishable by more than three years of imprisonment; who have committed a serious common law offense outside Romania; as well as persons who have several citizenships and lacking a well-founded reason did not request the protection of one of these countries. Art. 4, Romanian Refugee Law, *supra* note 85.

Despite this lack of a specific provision, a right to family reunion may be inferred from articles 3 and 6 of the Refugee Law. According to article 6, an application for refugee status may be made at a Romanian embassy abroad. At the same time, as mentioned above, article 3 provides that refugee status is automatically granted, upon request, to a refugee's spouse and minor children and a recognized refugee is entitled to a Convention Travel Document allowing him/her to enter Romania. Thus, it follows that the spouse and minor children of a recognized refugee may obtain family reunion by applying for refugee status at a Romanian embassy abroad. The minor disadvantage of such a procedure being that the spouse and children can only obtain family reunion by being recognized as refugees when, in fact, they may not need or desire international protection.

However, in practice, in the few cases known to UNHCR, refugees have been obliged to seek the assistance of UNHCR either in the country of origin or in Romania, due to the fact that no formal procedure has been set up to facilitate the process. The Romanian diplomatic missions abroad are often unaware of the provisions of the Refugee Law granting the possibility to lodge asylum applications or to request and issue entry visas on grounds of family reunification, and have refused to deal with the matter in the past.⁴⁹² In Romania, the authorities of the Ministry of Interior have often referred refugees to UNHCR mostly for financial assistance to facilitate the reunification.

The fact that there have been few cases of family reunification to date may account for the lack of an established procedure to facilitate this process. Nonetheless, there is now a need for the authorities to elaborate a standard procedure for family reunification independent of its economic aspects. In particular, there is a need for the Ministry of Interior and the Ministry of Foreign Affairs to coordinate and agree upon a common procedure for handling such requests including one that would be valid for diplomatic missions abroad. Information or training sessions for diplomatic missions on relevant provisions of the Romanian Refugee Law would also be beneficial.

Notwithstanding the above, in the limited number of family reunification cases that UNHCR is aware of to date the authorities have shown goodwill and been generally cooperative once UNHCR intervened to assist the refugee, financially or otherwise, with his case. Similarly, Romanian authorities have been flexible with regard to the need for documentary proof of family ties and have in certain cases issued substitute letters to be used *in lieu* of a missing marriage certificate, for example.⁴⁹³

⁴⁹² The first case of family reunification to Romania in spring 1997 was illustrative of the gaps in the procedure. The case involved an Iraqi woman who applied for refugee status at the Romanian embassy in Amman, Jordan, and was subsequently recognized as a refugee and allowed to join her husband in Bucharest. The UNHCR Liaison Office in Romania intervened with the Ministry of Foreign Affairs because the woman was allegedly at first turned away by the embassy which was not familiar with the asylum procedure. The costs of travel to Romania in that case were paid by UNHCR.

⁴⁹³ The Refugee Office issued such substitute letter when no other documentary proof of marriage was available to an Afghan refugee couple.

No major problems have been reported with respect to the general cooperation of sending countries (for example, with regard to the issuance of exit visas) in cases of family reunifications to Romania.

As of June 1999, UNHCR was aware of a total of four cases of family reunification to Romania since 1996. To date the office has not submitted any cases for resettlement outside Romania due to difficulties reuniting families in that country.

6. Slovakia

The Slovak Refugee Act⁴⁹⁴ does not explicitly provide for the right of recognized refugees to the protection of family unity or to family reunification. However, article 7 of this Act states that the Ministry of Interior *may* grant refugee status to an alien for humanitarian reasons, an example of which according to a 1996 Decree of the Ministry of Interior is the principal of family unity (parents and their children).⁴⁹⁵ Thus, based on this provision the spouses and minor children of recognized refugees, may also be granted refugee status and permanent residency in Slovakia. This is indeed what has occurred in practice to date, though under the current law such decisions remain entirely at the discretion of the state.

With regard to family reunification, the authorities may grant exit/entry visas on a case-by-case basis in order to allow family members to enter the Slovak Republic and be reunited with their family members. UNHCR has generally intervened with the competent authorities in such cases.

The Slovak Aliens Law further provides that permanent residence permits may be granted to an alien for the purpose of family unification on the condition that the spouse or an underage child (under eighteen years of age) are citizens of the Slovak Republic and have a permanent stay in the country, or if this is reasonable according to the political interests of the Slovak State.⁴⁹⁶ However, this provision is not likely to have a practical application to recognized refugees, unless it is invoked in order to reunite with their families once they have acquired Slovak citizenship, or because their immediate family members wishing to reside in Slovakia do not wish to be granted refugee status.

⁴⁹⁴ Refugee Act, No. 283/1995, November 14, 1995, entry into force January 1, 1996 (unofficial UNHCR English translation).

⁴⁹⁵ Art. 9(2), Decree of the Slovak Ministry of Interior No. 4/1996 which regulates the course of actions of Police Departments and the Migration Office at the execution of the Refugee Act No. 283/1995, entry into force January 16, 1996 (unofficial UNHCR English translation).

⁴⁹⁶ Part II, art. 7, Law on Stay of Foreigners on the Territory of the Slovak Republic, No. 73/1995, April 5, 1995, entry into force June 1, 1995 (unofficial UNHCR English translation).

As of October 1998, UNHCR had monitored at least three cases of family reunification in Slovakia. To date the Slovak Government has been found to be cooperative with regard to the issuance of visas for family members outside Slovakia and flexible regarding the required documentary evidence of family ties. As such, UNHCR has not found it necessary to submit cases for resettlement outside Slovakia due to any difficulties in securing family reunification in that country. According to UNHCR, one of the practical obstacles to family reunion in the limited practice to date has been the lack of passports by family members outside Slovakia, though no information is available regarding whether or how these obstacles have been overcome.

It is hoped that future amendments to the Slovak Refugee Law will include provisions specifically protecting family unity and the right of recognized refugees to family reunion in Slovakia.

7. Slovenia

Situation until August 13, 1999

Article 36 of the Foreigners Act is the only provision that, in accordance with the principle of preserving family unity, specifically extends the rights of recognized refugees, albeit in a limited manner, to their family members. It provides that children of foreigners with refugee status are entitled to the same rights as their parents. Yet, not only is this provision limited in that it only extends to minor children but once they reach the age of eighteen they are to be treated in the same manner as other foreigners with temporary residence in Slovenia.

Moreover, Slovenia has not adopted any domestic provisions specifically providing for the reunification of refugee families who are still separated. Neither is there any institutional structure or procedure in place to deal specifically with such applications by refugees so that cases would have to be treated on an *ad hoc* basis. The Law on Temporary Refuge by contrast explicitly grants persons under this regime the right to family reunification with spouses, minor children and their parents.

Nevertheless, under the alien's regime, two provisions in the Foreigners Act may to some extent assist refugees with respect to maintaining family unity. The first such provision states that the spouse and the minor children can obtain the same status as the foreigner who was granted a legal status in Slovenia. Accordingly, a permanent or temporary residence may be issued to children younger than eighteen years old or to a person married to a foreigner who has a permanent or a temporary residence permit.⁴⁹⁷ This provision is applicable to recognized refugees as they are granted a

⁴⁹⁷ Art. 17, Foreigners Act, Official Gazette of the Republic of Slovenia, No. 1/91-I, entry into force June 25, 1991, as amended in July 1997.

permanent residence permit. However, this provision, which allows for migrant rather than asylum family reunification, applies to all foreigners instead of only to refugees, and as such the Ministry of Interior implements it in a strict manner. Thus, whether the family members are already in Slovenia or still in their country of origin, the recognized refugee must show that he has sufficient financial means to support the stay of his family members in Slovenia.

The second provision, article 18 of the Foreigners Law, provides for the possibility of granting temporary residence for humanitarian reasons, where there is otherwise no other reason for granting either a temporary or a permanent residential permit and when immediate departure from Slovenia would jeopardize the personal safety of the foreigner in question. The applicant must submit evidence regarding his means of subsistence during the time for which the permit would be issued. In theory, this provision could be used either for reunification or simply the preservation of family unity with extended family members such as elderly parents, although as a guarantor for the parents, the refugee would have to prove his financial capacity to support them. As of September 1998, the financial capacity required was 35,000 SIT (184 USD) for each family member per month.

Beyond the lack of adequate legal provisions and the financial obstacles, the family members lack of travel documents has been mentioned as another possible obstacle to family reunification. To date, there have not been any cases of family reunification for recognized refugees in Slovenia.

New Law on Asylum Effective as of 14 August 1999

The right of recognized refugees to the protection of family unity is significantly improved in the new Law on Asylum, which provides in article 3 that the right to asylum *shall* be recognized to close family members as well. Close family members according to this same provision include immediate family, namely, the spouse and minor unmarried children, and parents of minor children. This definition of the family is qualified in the second paragraph of that provision however, which states that the right to asylum is recognized to a spouse of a refugee only if the marriage was entered into before arriving in the Republic of Slovenia.

Family members who receive the right to asylum are thereby granted the right to stay in the Republic of Slovenia, the rights granted to refugees on the basis of the Geneva Convention, as well as the rights guaranteed in [the 1999 Law on Asylum].⁴⁹⁸

⁴⁹⁸ Art. 2, Law on Asylum, Official Gazette of the Republic of Slovenia No. 61/99, July 30, 1999, entry into force August 14, 1999 (unofficial UNHCR English translation).

Given the lack of state practice in relation to family reunification of refugee families in Slovenia and the recent adoption of the new Law on Asylum, it is not possible to know with certainty whether article 3 in this new law, i.e., the right to asylum which is used in this provision as a legal basis both for protecting the principal of family unity (by granting immediate family members the same rights and legal status as the recognized refugee), will also be interpreted and used as a basis for family reunification. This can only be confirmed in practice, as unfortunately no right to family reunion is expressly granted to recognized refugees in the new law.

Also regrettable is the restrictive interpretation of a spouse in the second paragraph of article 3, particularly if it is interpreted as excluding proof of a common law marriage which was entered into before arriving in Slovenia.

MAIN INTERNATIONAL STANDARDS

Convention Relating to the Status of Refugees of 1951

Article 27

Identity Papers

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

Article 28

Travel Documents

1. *The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.*
2. *Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.*

Executive Committee Conclusion of 1978

No. 13 (XXIX)

Travel Documents for Refugees

The Executive Committee

[]

- (b) *Urged all States parties to the 1951 Convention and/or the 1967 Protocol to issue to all refugees, lawfully staying in their territory and who wish to travel, travel documents as provided for in the 1951 Convention (article 28, schedule and annex);*

(c) *Recommended that such Convention Travel Documents should have a wide validity, both geographically and in time, and should contain — as provided for in paragraph 13 or the schedule — a return clause with the same period of validity, in the absence of very special circumstances, as that of the travel document itself;*

(d) *Recommended that in order to avoid unnecessary hardship a refugee requesting an extension of validity or renewal of his Convention Travel Document should not be required to return to the issuing country for that purpose and should be enabled to secure such extension of validity or renewal of the Convention Travel Document, also for periods beyond six months, by or through the diplomatic or consular representatives of the issuing State;*

[]

(f) *Expressed the hope that bilateral and multilateral arrangements, concluded with a view to facilitating travel by their nationals, e.g. as regard the simplification of visa formalities or the abolition of visa fees, be extended by Contracting States also to refugees lawfully residing in their respective territory;*

**IDENTITY PAPERS AND CONVENTION
TRAVEL DOCUMENTS**

**PART I:
IDENTITY PAPERS**

1. International Standards

The Contracting States shall issue identity papers to any refugee in their territory who does not possess a valid travel document.

1951 Convention, Article 27, Identity Papers

Commentaries to the 1951 Convention provide some useful insights into the general meaning and effect of the provision on refugee identity papers as well as the particular relevance of these for the post-communist states that comprise the subject of this study.

In contrast to other articles in the 1951 Convention, article 27 is applicable to any refugee in their territory indicating that a refugee's presence in a country need not be legal in order for him to have the right to an identity paper. The issuance of an identity paper does not obligate the state to keep the refugee within its borders. Unlike travel documents, the identity papers provided for in article 27 do not confer any rights on the bearer but serve simply to show the identity of the refugee. The intent behind this provision being that any refugee, whether staying legally or illegally in a country, should hold at the very least a provisional document stating his identity, in case he is requested to produce it by the police for example, or if he should require it for another purpose. Such identity papers simply enable the refugee to conform to laws and regulations that may require inhabitants of a country to carry such papers, or to prove their identity in certain circumstances.⁴⁹⁹

Moreover, the Convention does not require that the identity papers assume any particular form or serve any purpose other than simply establishing the identity of the refugee.⁵⁰⁰ Thus, in countries not having a practice of identification papers, a driving

⁴⁹⁹ A.GRAHL-MADSEN, *supra* note 8, at 114-115.

⁵⁰⁰ N. ROBINSON, *supra* note 11, at 114.

license, immigrant's record of landing or even a postal identity card may suffice, rendering a separate identification card unnecessary. In other countries, especially in Europe and particularly in the countries under study, there is a long-standing practice, and sometimes an obligation under law to carry an identification card. In such cases, these identification papers have an official character and must generally conform to specific regulations. Therefore, the degree of obligation imposed on the state by article 27 depends largely on whether or not there is a general practice of issuing identity papers in that country. In countries where the law provides that all persons must carry an identity paper, the duty of states to provide documents which meet this obligation is absolute, whereas in other countries this obligation can be met simply by providing the refugee with some type of document that may also serve the purpose of identifying him when this proves necessary.⁵⁰¹

As seen below, most countries in this study not only have a practice of issuing identification papers to nationals, aliens and refugees, but often such papers also serve as residence permits or proof of one's legal residency status in the country. Hence, they are more formal and serve a wider purpose than the basic identification papers required by the 1951 Convention, which are not intended to confer any right of residence or other legal entitlements.

The obligation to issue the identification papers described in article 27 is imperative where the refugee does not possess a valid travel document. The term travel documents used in this provision has a much wider meaning than only the Convention Travel Document provided for in the 1951 Convention.⁵⁰² It includes the following: an alien's passport if it contains the required visa; another valid travel document issued by the authorities of the state in which the refugee is present, or another foreign state; or even a travel document issued to a refugee under previous international agreements by parties to the 1951 Convention.⁵⁰³

In this connection, a refugee is deemed not to possess a valid travel document in the following cases: if no such document has been issued to him; if it has expired; if it is not valid either because it has expired or is not considered valid in the territory concerned (usually due to the absence of a required stamp or visa); or perhaps, even if he has temporarily surrendered his travel document in order to have it extended to obtain a visa.⁵⁰⁴

⁵⁰¹ A.GRAHL-MADSEN, *supra* note 8, at 114.

⁵⁰² Arts. 11 and 28, Convention relating to the Status of Refugees, UNTS No. 2545, July 28, 1951, entry into force April 22, 1954; para. 6, Schedule to the Convention relating to the Status of Refugees, July 28, 1951.

⁵⁰³ A.GRAHL-MADSEN, *supra* note 8, at 116.

⁵⁰⁴ A.GRAHL-MADSEN, *supra* note 8, at 115-116.

2. Comparative Analysis

In contrast to the minimalist requirement of the 1951 Convention which requires that identity documents be issued for the sole purpose of certifying a refugee's identity, the actual practice in the region confers a greater and more substantive role to identity cards. In this region, citizens and foreigners are generally required to carry identity papers, which are necessary for a number of purposes in every day life, thereby imposing an absolute obligation on Contracting States to issue these documents to refugees. As importantly, identity cards in the selected countries also serve as proof of the bearer's legal residency status and his entitlements and rights under the law, such as the right of access to employment and to social assistance benefits. They may in addition include social security numbers essential for the exercising of the above-mentioned rights. Given this double function, we refer to them as identity/residency cards.

Hence, in a context where identity cards also function as legal residency cards which must be produced as proof when exercising a number of basic rights, situations in which refugees experience difficulties in obtaining such cards in a timely manner must be treated as a serious matter going beyond the inability to simply ascertain the identity of the person.

Legal Provisions on Identity Cards

The long standing general practice of issuing identity cards in this region is reflected in the fact that all the selected countries in this study contain an explicit legal provision in their asylum laws or/and other related legislation providing for the right of recognized refugees to such cards. At the legislative level, all countries under study are therefore in accordance with the requirement in the 1951 Convention. Moreover, in practice, most of the problems, which have resulted in delays and other difficulties in obtaining identity cards in the past, have been resolved recently.

Difficulties in Obtaining ID Cards: Impact of the Problem and Recent Solutions

In Slovenia, identity cards were finally issued to recognized refugees in 1998, i.e., after a delay of several years due to a lack of knowledge and experience on the part of the relevant authorities regarding refugee matters. In Hungary the problem experienced by some refugees in obtaining identity cards which reflected their actual residency status (permanent residence) was also resolved recently (in March 1999) via an amendment to a Government Decree on Identity Cards exempting recognized refugees from submitting originals of birth and marriage certificates.⁵⁰⁵ Some

⁵⁰⁵ Those refugees who could not meet the requirement for original birth and marriage certificates, received temporary instead of permanent residency/identity cards.

refugees were unable to satisfy this requirement. In Bulgaria, recognized refugees only received identity cards in 1997 due to a problem with issuing social security numbers, which are to be placed on the card itself and are necessary for the purposes of legal employment and state benefits.

In Slovakia, the inability of some refugees in the past to provide proof of an official address of domicile (a problem particular to the private housing market), a common requirement for the issuance of identity cards in the region, meant that the identity/residency cards were not issued in those cases. Refugees could not exercise certain fundamental rights such as the right to work and to receive social benefits without them. According to UNHCR, this problem appears to be successfully managed at the moment thanks in large part to the assistance of NGOs with the process of obtaining identity/residency cards, and to the temporary and permanent housing assistance program. Moreover, as of 1998 the numbers of asylum-seekers admitted into the refugee status determination procedure have decreased, as have the total number of recognized refugees (which represented forty-nine persons in 1998), which has resulted in a greater facility in ensuring that they all have housing. Should the numbers of recognized refugees rise significantly, the problems related to housing and identity/residency cards may once again resurface, especially in view of the limited capacity of the current housing assistance program.

Period of Validity

This aspect of the identity cards varies considerably from country to country. Under the new Slovenian Law on Asylum, for instance, the relevant provision states that the identity card is to be valid throughout the period the person enjoys refugee status, which suggests that it is to be issued for an indefinite time period, though the law is too recent to know whether a further requirement of periodic renewal will be imposed. In Hungary, the validity of the card depends on the age of the person so that for persons between twenty and fifty years of age the card is valid for fifteen years, and for persons above fifty it is valid indefinitely. The shortest period of validity is six years and this is granted to recognized refugees less than twenty years of age.

In contrast to these two examples of long validity periods, which we note are properly reflective of the status of permanent residents granted to recognized refugees in those two countries, the majority of countries under study grant relatively short duration periods. In the Czech Republic and Slovakia, these cards are generally renewable annually, while in Poland they are renewable every two years. In Bulgaria, the new Asylum Law simply mentions that they may be valid for up to three years, though there is as of yet no practice to comment on in relation to this new regime. Of note is the fact that under the draft Czech Refugee Law, the period of validity is to be prolonged to two years. However, the most restrictive practice of all is in Romania where these identity cards are renewable every six months.

While these validity periods are fairly uniformly applied in some countries, in others the relevant government authorities at the local level exercise a certain degree of discretion with regard to the term which is granted on these cards. In some cases, individual refugees may therefore be granted a longer term than the minimum period which is generally applied to others.

Nonetheless, short validity periods, especially of one year or less, have been shown to have a detrimental effect on recognized refugees, not least because of the time limit this imposes on employment contracts which generally cannot be made out for longer than the time period indicated on the identity/residency card. This also promotes a continued psychological state of insecurity for refugees, and imposes *de facto* reporting requirements as well as continuous bureaucratic requirements on them, such as proving one's domicile. Short validity periods also render long-term initiatives, including business activities in their host country potentially more difficult as creditors and business partners may demand assurances regarding the refugees' continued residence in the country. Perhaps for all of these reasons, the new legislative trend in the region has been to allow for longer validity periods, such as appears to be the case with the recent Slovenian and Bulgarian laws on asylum (which will hopefully also be interpreted liberally at the implementation stage) and the draft Czech refugee law.

3. Recommendations

As stated above, all the selected countries in the region have adopted legal provisions entitling recognized refugees to identity/residency cards, and despite some problems in the past, at present there appear to be no significant problems in practice in obtaining these cards.

However, the responsibility of Contracting States with regard to identity cards must also take into account the special importance attached to identity cards in this region. This importance is clear from the fact that countries in this region have a general practice of issuing identity papers, of requiring them as a matter of course for the implementation of a number of basic rights, and of using them also as proof of the legal residency status of recognized refugees.

Identity/residency cards are therefore critical for the exercise of basic rights by recognized refugees in most of the selected countries in this study. It is in this context that the following recommendations are made:

Facilitating the Requirements for Identification Cards

Despite the generally good practice at the moment of most of the selected countries, both state authorities and NGOs must continue ensuring that recognized

refugees receive identity/residency cards immediately, or at the earliest possible time upon recognition. In order to do this, attention must be paid to situations causing undue delays or rendering impossible the issuance of these cards. In particular, no requirements for obtaining identity cards which recognized refugees cannot objectively meet (such as original birth certificates) should be imposed. If such requirements are imposed alternative solutions such as waivers and substitute documents must be made available to refugees. As importantly, special assistance in meeting requirements which may prove difficult for refugees to satisfy, such as proof of a domicile, must also be readily available. Given the chronic housing problems in the region, assistance in securing accommodation and formal proof of residence must therefore continue to be a priority area of integration assistance for refugees.

Long Validity Periods for Identification Cards

Because identification cards in this region also function as proof of a refugee's legal residency status in the host country, their term of validity may affect other areas such as employment. Employment contracts are usually restricted to the term specified on the residency/identification card. This fact not only limits job security but may also be an obstacle to potential employment opportunities since, for bureaucratic reasons, some employers may not be able to hire refugees on short-term employment contracts. Refugees who have only a short time remaining on their identification cards will, of course, be especially affected. We also know that the validity period of these cards may also affect other areas of a refugee's life, including his sense of belonging in the host country, and his ability to engage in certain long-term initiatives and projects, as these may be limited to the term of legal residency indicated in the identification card.

Moreover, it may be argued that where recognized refugees are granted permanent residence or another long-term residency status, they should also be granted identity/residency cards with validity terms which are reflective of that long-term status. Such as is the case in Hungary for example.

Hence, it is recommended that State Parties issue identity/residency cards with long validity periods, i.e., with at least a two-year term. In particular, Slovakia and Romania, which presently grant only a one-year and six-month validity period respectively, should amend their practice as soon as possible in order to extend these terms. The Czech Republic for its part is already undertaking such steps under their new Draft Refugee Law, which grants a validity period of two years for identification cards. In this connection, Slovenia and Bulgaria are also urged to adopt a liberal implementation of the relevant provisions in their new asylum laws, which in themselves appear to be satisfactory.

Legal Provision Specifying a Minimum Period of Validity

Provisions in relevant legislation, such as that relating to identification cards, should indicate the minimum period of validity for which the card should be issued in the case of recognized refugees in order to minimize the refugee's situation of insecurity, as well as the discretionary and potentially arbitrary nature of such decisions which are often made at the local level, thus increasing the potential for discrepancies in practice.

**PART II:
TRAVEL DOCUMENTS**

1. International Standards

1. The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

2. Travel documents issued to refugees under previous international agreements by Parties thereto shall be recognized and treated by the Contracting States in the same way as if they had been issued pursuant to this article.

1951 Convention, Article 28, Travel Documents

The first obligation of States Parties under the first sentence of article 28 is to issue a travel document to every refugee lawfully staying in their territory who wishes to travel abroad. This obligation is subject to an exception, namely, if compelling reasons of national security or public order require that it not be issued. In practice, this exception means that states may prevent the departure of a refugee from their country by refusing to issue him a travel document (without which one would normally not be able to leave a country), if this refusal is based on grounds of national security or public order. However, such exceptions must be exercised only for compelling reasons of national security and public order, which must be understood as defining the degree of seriousness necessary to justify such a refusal. Only very serious cases involving national security and public order may be subject to the exception.⁵⁰⁶

The second sentence of article 28 contains not an obligation, but rather an authorization to issue travel documents to other refugees on their territory, i.e., to refugees who are there illegally or temporarily. For such refugees, the decision regarding the issue of a travel document is left to the discretion of each state. Nonetheless, there is a special mention for refugees who are in need of a travel document but are unable to obtain one from the country of their lawful residence, suggesting that sympathetic consideration be given to such cases.

⁵⁰⁶ N. ROBINSON, *supra* note 11, at 115.

Paragraph two widens the scope of article 28 to include travel documents issued to refugees under previous international agreements by Parties to the 1951 Convention.⁵⁰⁷ The purpose of this provision was to avoid having to replace all the old travel documents already issued. As an alternative to this, States Parties therefore have an obligation to recognize and treat these travel documents in the same manner as if they had been issued under article 28.

As referred to in the provision itself, article 28 is made complete with the Schedule to the 1951 Convention, which provides specifications governing, *inter alia*, the content, form, geographical and temporal validity, renewal, extension, and recognition by Contracting States of the CTD.⁵⁰⁸ One such requirement in the Schedule is that the document be made out in at least two languages, one of which must be French or English. In all but exceptional cases, the document shall also be filled out with a large geographical validity, and be valid for either one or two years. Diplomatic or consular authorities abroad shall be authorized to extend the validity of the documents for a period not longer than six months. The Contracting States visited by the refugee shall recognize the CTDs issued by the host countries, and affix visas when applicable to the refugee's document. Further, the host country shall readmit to its territory the refugee at any time during the validity of the document.

In addition to the provisions in the Schedule, the EXCOM Conclusions listed below reaffirm the importance of travel documents for refugees who wish to travel temporarily outside their country of residence or for resettlement in other countries, and encourage Contracting Parties to abide by article 28 and the various specifications included in the Schedule and Annex, frequently highlighting the more important of these. The 1978 EXCOM Conclusion No. 13 provides as follows:

Extract

The Executive Committee,

(c) Recommended that such Convention Travel Documents should have a wide validity, both geographically and in time, and should contain —as provided for in paragraph thirteen of the schedule — a return clause with the same period of validity, in the absence of very special circumstances, as that of the travel document itself;

⁵⁰⁷ Such agreements include the 1922 Arrangement concerning the Nansen certificates for Russian refugees, the 1924 Arrangement for Armenian refugees, and many others. For further details see N. ROBINSON, *supra* note 11, at 114. Also refer to the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, which in sec. IV, A., urges governments to continue recognizing, and issuing travel documents under agreements in place previous to the 1951 Convention (such as the Inter-governmental Agreement on Refugee Travel Documents signed in London 15 October 1946), as well as to extend such travel documents to refugees recognized under the 1951 Convention, until they have undertaken their obligations under art. 28 of the Convention.

⁵⁰⁸ See in particular the requirements mentioned in the text above, namely those corresponding to paragraphs 1, 4-9, and 13 of the Schedule to the Convention relating to the Status of Refugees, July 28, 1951.

(d) Recommended that in order to avoid unnecessary hardship a refugee requesting an extension of validity or renewal of his Convention Travel Document should not be required to return to the issuing country for that purpose and should be enabled to secure such extension of validity or renewal of the CTD, also for periods beyond six months, by or through the diplomatic or consular representatives of the issuing State;

(e) Recommended that, with a view to avoiding divergent interpretations of paragraphs six and eleven of the schedule and the resulting hardships to refugees, Contracting States make appropriate arrangements, including the adoption of bilateral or multilateral agreements, concerning the transfer of responsibility for the issue of Convention Travel Documents;

(f) Expressed the hope that bilateral and multilateral arrangements, concluded with a view to facilitating travel by their nationals, e.g., as regards the simplification of visa formalities or the abolition of visa fees, be extended by Contracting States also to refugees lawfully residing in their respective territory;

The recommendation relating to visa requirements in this last paragraph is not mentioned in the Schedule to the 1951 Convention, but is of particular importance to refugees in the selected countries in the region, given that visa requirements render travel difficult even within Europe.⁵⁰⁹ In addition to this recommendation to grant refugees with CTDs the same conditions regarding visas as nationals of the same country, the 1959 European Agreement on the Abolition of Visas for Refugees also provides for the exemption of visa requirements for refugees subject to the terms of that Agreement and to reciprocity.⁵¹⁰

In 1987, EXCOM Conclusion No. 49 was adopted, recalling the previous recommendations of Conclusion No. 13 above, and noting that while the great majority of Contracting States have followed or exceeded the provisions in the 1951 Convention and EXCOM Conclusion, various problems with regard to CTDs persisted in some countries. The problems and recommendations stated in the extract of the 1987 EXCOM Conclusion NO. 49 reproduced below, are especially relevant to the problems which we have noted in this region.

⁵⁰⁹ As of 15 June 1998, all thirteen EU member states had a mandatory visa requirement for refugees recognized under the 1951 Convention and 1967 Protocol, with the exception of Germany which did not require mandatory visas for persons issued with travel documents by a country whose nationals are not required to possess visas. *Migration News Sheet*, No. 184/98-07, July 1998, list C, at 6 (Brussels).

⁵¹⁰ Art. 1, European Agreement on the Abolition of Visas for Refugees, ETS No. 31, April 20, 1959, entry into force September 4, 1960. As of August 1999, the Czech Republic was the only of the countries under consideration that had ratified this Agreement.

Extract

The Executive Committee,

(c) Noted, however, that in some countries problems concerning Convention Travel Documents continue to exist as regards arrangements for their issue, their geographical and temporal validity, the return clause, their extension or renewal, the transfer of responsibility for their issue and the obtaining of visas;

(d) Urged all States parties to the 1951 Convention and/or the 1967 Protocol which have not yet done so to *take appropriate legislative or administrative measures to implement effectively the provisions* of these instruments concerning the issue of Convention Travel Documents (Article 28, Schedule, Annex), including the *giving of clear instructions to national authorities* competent to issue, renew and extend travel documents and grant visas to holders of Convention Travel Documents; [*Italics added*]

2. Comparative Analysis

Existence of Legal Provisions Regarding CTDs

As with identity papers, all countries under study provide for the right of recognized refugees to a CTD in their legislation, which in most countries is to be granted upon request of the refugee. Some countries such as Hungary and Bulgaria have further stipulated that this document is to be issued in accordance with the requirements of the 1951 Convention and the Schedule contained therein.

Granting CTDs in Practice

In practice, according to the information available to UNHCR offices in the region, no cases of refusals to issue CTDs have been reported. In Slovenia, however, recognized refugees experienced difficulty in obtaining this document in the past due to the fact that the relevant government offices had not received instructions on the matter. Nevertheless, this problem has now been resolved. On occasion delays have also been a problem, such as in Poland.

Aside from occasional delays therefore, state practices regarding the issuance of CTDs in the countries under consideration do not appear to present any significant difficulties.

Compliance with the Requirements of the Schedule to the 1951 Convention

The Schedule requirements, which are of particular interest in terms of regional compliance, are those relating to the temporal and geographical validity of the document, the language specifications, recognition by other Contracting States of the CTDs, the extension of CTDs by diplomatic or consular authorities abroad, and the readmission by host countries of refugees with a valid CTD.

While the majority of countries in the region do appear to be in compliance with most of the above Schedule requirements, the more notable difficulties have included: a particularly restrictive temporal and geographical validity in the case of the Czech Republic (a problem which is expected to be rectified under the proposed draft Refugee Law); a problem with the language requirement in the case of Slovakia; and the continued lack of either legal provisions or state practice in several countries which would authorize diplomatic and consular authorities abroad to extend CTDs. Further details regarding the practice in the region are provided below.

Temporal Validity

With regard to temporal validity of CTDs, all the countries in the region with the exception of the Czech Republic currently meet the Schedule requirement of a minimum validity of one or two years. Indeed, Slovakia, Poland and Hungary issue them with a validity of two years, a practice which is expected to soon be followed by the Czech Republic as proposed under its draft Refugee Law. Until recently, a two-year duration was also granted by Bulgaria. Its new Asylum Law now stipulates that CTDs are to be issued with a validity period of no longer than the identity papers, namely, a maximum three-year validity. In Romania, the validity of CTDs is one year. This coincides with the one-year renewable residence visa stamped in this document.

The most generous validity period for CTDs is now granted by Slovenia under its recently adopted Law on Asylum. It provides that the document is to be valid for the period during which the person enjoys refugee status and that it is subject to renewal every ten years. By contrast, the most restrictive practice is under the current Czech Foreigners Law that limits the temporal validity of the CTD to the time necessary for the purposes of a specific journey to a maximum of 180 days. At present therefore, the Czech practice regarding the validity of CTDs is the only one in the region, which is contrary to the standard stipulated in the Schedule and the recommendations in the relevant EXCOM Conclusions, although as mentioned above, this situation is expected to be rectified under the proposed draft Refugee Law which is expected to enter into force in early 2000.

Geographical Validity

At present, the Czech Republic also imposes the most restrictive geographical validity on its CTDS, which like its temporal validity, is limited for the purpose of a specific journey. According to UNHCR, the practice in this respect in Slovenia to date, has also been problematic indicating some degree of confusion and some administrative mistakes. However, in accordance with the requirement in the Schedule, all the remaining countries have a general practice of issuing CTDS with a wide geographical validity, which in most instances is formulated as being applicable for all countries in the world with the exception of the refugee's country of origin. With the coming into force of the draft Refugee Law, the Czech Republic is also expected to come into line with this practice.

Language Requirements

The CTDS issued by the countries under consideration are made out in at least two languages, one of which is French or English (sometimes both) as stipulated in the Schedule. In the case of Slovakia however, some problems have resulted due to the fact that CTDS were only filled out in Slovak, which made it difficult for border police abroad to understand certain provisions such as the stipulation regarding the geographic validity of the document.

Recognition of CTDS by Other States, and Readmission of Recognized Refugees into the Territory of the Host Country

To the knowledge of UNHCR, no problems have been reported with regard to recognition of the CTDS issued by the selected host countries in this region by other states, including Contracting States. Similarly, to date no problems have been recorded with regard to the readmission by host countries into their territory of recognized refugees with valid CTDS.

Authorization of Diplomatic and Consular Authorities Abroad to Extend CTDS

Information was difficult to obtain with regard to this requirement. This may be due in part to the problem inherent in obtaining reliable information on individual cases, the limited state practice in the region on this issue, and the absence of legal provisions explicitly authorizing this procedure in most of countries under consideration. Indeed, the Bulgarian Asylum Law is the only such law to specifically provide for this, in a provision allowing for a maximum six-month extension after consultation with the Ministry of Interior. According to UNHCR, however, Hungary, Slovenia and the Czech Republic also have an established practice in this regard. In

this connection, it is interesting that in the case of the Czech Republic, the draft Refugee Law, while not specifically providing for extensions of CTDs while abroad, does nonetheless contain a provision for issuing Travel Identification Documents by diplomatic and consular authorities abroad in case of loss of CTDs.

With respect to Slovakia and Romania, there appears to be no discernable practice or recorded cases of such requests to diplomatic missions abroad to date, according to the information available to UNHCR. As regards Poland, UNHCR has confirmed that as of yet there is no legal basis for granting extensions of CTDs by consular or diplomatic missions abroad, and that in the limited practice to date, it appears that while the entry itself back into Poland may be facilitated on a case-by-case basis through the use of a provisional one-way travel document, no extensions of CTDs or other Polish identity papers have been obtained while abroad.

General Problems Related to Travel by Recognized Refugees

The most common problem related to travel by recognized refugees is clearly the difficulty in obtaining the requisite visas from destination countries. Most countries still require visas from persons traveling from this region, so that even traveling within Europe itself is difficult. Furthermore, the recommendation in the EXCOM Conclusion No. 13 to extend to refugees holding a CTD the standard of treatment granted to nationals with regard to visa requirements, the experience in some of the countries under study reveals that refugees are sometimes required to obtain entry visas even when no such requirement exists for nationals of the host country, and that in general refugees experience more difficulties than nationals in actually obtaining visas. The former is confirmed by the fact that as of June 1998, all EU member states, with the exception of Germany, had mandatory visa requirements for CTD holders.⁵¹¹ This restrictive practice is most often attributed to a fear on the part of destination countries that refugees will ask for asylum or otherwise remain illegally in that country.

CTDs with short-term validity periods, especially those which are only valid for one year as is presently the case in Romania, further aggravate this problem for refugees, since some European countries do not issue visas on travel documents which are due to expire within three months.

In addition, in Slovakia, some difficulties have also been reported with the use of CTDs due to the fact that some documents were improperly filled out by Slovak authorities.

⁵¹¹ *Migration News Sheet*, No. 184/98-07, July 1998, list C, at 6 (Brussels).

Table 10:
Identity Papers and Convention Travel Documents⁵¹²

IDENTITY PAPERS AND CONVENTION TRAVEL DOCUMENTS				
	Identity Papers		Convention Travel Documents	
	Legal provision granting ID	Validity period ^①	Legal provision granting CTD	Validity period of CTD
Bulgaria	✓	Up to 3 years	✓	No longer than validity of ID card
Czech Republic	✓	Current RefLaw: 1 year Draft RefLaw: 2 years	✓	Current RefLaw: Max. 180 days + limited to time necessary for purpose of specific journey Draft RefLaw: 2 years
Hungary	✓	Dependant on age: under 20 = 6 years 20-50 = 15 years 50 + = no time limit	✓	2 years
Poland	✓	2 years	✓	2 years
Romania	✓	6 months	✓	1 year
Slovakia	✓	1 year	✓	2 years
Slovenia	✓	valid during period enjoys refugee status (though unknown whether this is to be qualified in practice)	✓	10 years

X Yes ✓ No

RefLaw, refers to Refugee Law.

^① The validity period indicated refers to the general practice and does not take into consideration possible differences in some individual cases. This term is extendable for all countries.

⁵¹² This chart reflects the situation as of October 1999 and includes therefore the new Bulgarian and Slovenian Asylum Laws which entered into force in August 1999 and the Draft Czech Refugee Law (version dated May, 1999).

3. Recommendations

While all selected countries have adopted legal provisions regarding the issuance of CTDs, the following recommendations are intended to address some of the existing inconsistencies with the requirements contained in the Schedule to the 1951 Convention, and other problems relating to the use of CTDs by recognized refugees.

Long Validity Periods

In order to facilitate travel for recognized refugees, CTDs should be issued with a long period of validity, i.e., for a minimum of a two-year term. The majority of the selected countries in the region already follow this practice. Shorter terms of validity have been found to cause undue inconvenience and may impede a refugee's ability to travel. In particular, the Czech Republic and Romania are urged to amend their legislation in order to increase the validity period of their CTDs, a step already envisioned under the draft Czech Refugee Law.

Wide Geographical Validity

For similar reasons, CTDs should offer a wide geographical validity, namely, for all countries of the world, with the exception of the refugee's country of origin. While many of the selected countries have already adopted this wide formulation, this recommendation is particularly intended for the Czech Republic, whose draft Refugee Law we are pleased to note already includes such an amendment, and Slovenia where the practice has revealed some problems in this respect.

Completing CTDs in an International Language

While the CTDs themselves appear to satisfy the language specifications in the Schedule, national authorities in charge of filling out these documents should ensure that any blank sections, such as the geographical validity, are completed in an international language (English or French), and not only in the local language. This is particularly relevant to Slovak CTDs as refugees have reported problems in this regard in the past.

Adopting Provisions Authorizing the Extension of CTDs While Abroad

Potentially, the most serious problem facing recognized refugees traveling with a CTD in several of the countries under consideration is the lack of legal provisions and an established practice which would provide for the possibility of extending or

renewing their CTDs while abroad. Indeed, at the moment the Bulgarian Asylum Law is the only such law to provide for this procedure, even though a number of other countries also have a good practice in this respect. Given the grave consequences for recognized refugees who may find themselves unable to return to their country of asylum due to an expired CTD, it is recommended that like Bulgaria, all the selected countries in the region adopt a specific provision, preferably also included in their Asylum Law, providing for the right to the extension or renewal of travel documents while outside the country of asylum. As recommended in the Schedule to the 1951 Convention and the EXCOM Conclusions, diplomatic and consular authorities should also be dully informed or trained in this regard.

Moreover, as recommended in EXCOM Conclusions No. 13 and 49, it is important that CTDs be renewable from abroad even when their term has already expired, at the very least for the purposes of allowing the refugee to return to his country of asylum. In addition to fulfilling their obligations towards persons they deemed deserving of asylum and their protection, such a *bona fide* practice would at the same time be likely to facilitate the issuance of visas for these persons, as countries of destination would be assured that the original asylum country would agree to the return of the recognized refugee, including in the event of an expired travel document.

Satisfaction of Other Recommendations

In this connection, governments are also urged to implement the more detailed recommendations in this regard in the EXCOM Conclusions No. 13 and 49, especially those relating to a return clause in CTDs, the extension and renewal of CTDs, and the transfer of responsibility for the issuance of these documents.

More Liberal Visa Requirements

With regard to the imposition of visa requirements, we suggest to UNHCR, NGOs and host country authorities to urge Contracting States to apply the relevant recommendation contained in EXCOM Conclusion No. 13, namely, to extend to refugees with a CTD the same standard of treatment granted to nationals of that country with respect to visa requirements.

**PART III:
INDIVIDUAL COUNTRY PROFILES**

1. Bulgaria

Identity Papers

Situation until 31 July 1999

Under the Ordinance on Refugees, in effect until the end of July 1999, refugee identification papers are issued for a one-year period, and can be renewed annually for three years. At the expiration of three years though, the identification document is then issued for a term of five years.⁵¹³ The extension of the identity document is facilitated by the Agency for Refugees, or by the passport and visa office of the Ministry of Interior, if the Agency for Refugees does not operate in a location where the refugee resides.

Identity papers are important in Bulgaria as they contain social security numbers, thereby making them necessary in order to exercise many rights, including the right to work and to receive social assistance. In practice, it was not until 1997 that recognized refugees received personal identity cards, a delay which was due to the fact that Bulgarian authorities had not issued social security numbers (which must be affixed to the cards) to refugees. As a result, refugees who had no opportunity for legal employment prior to that date turned to the informal economy instead. As of 1997 however, no problems have been reported in obtaining identity papers, including by recognized refugees who are also stateless.

Situation as of August 1999: New Refugee Law, Effective 1 August 1999 and New Law on Bulgarian Identity Documents, Effective 1 April 1999

Under the terms of the new Refugee Law, a refugee identity card is to be issued by the Ministry of Interior with a validity of up to three years. According to the same law, the fees charged for the issuance and extension of a refugee card may not exceed the scale of charges for national identity documents.⁵¹⁴ Moreover, the new Law on

⁵¹³ Art. 25, Refugee Ordinance *supra* note 28.

⁵¹⁴ Arts. 72(1) and 74, Law on Refugees (unofficial UNHCR English translation), XXXVIII National Assembly of the Republic of Bulgaria, May 27, 1999, entry into force August 1, 1999; arts. 59(4) and 60, Law on Bulgarian Identity Documents, XXXVIII National Assembly of the Republic of Bulgaria, entry into force April 1, 1999.

Bulgarian Identity Documents is to regulate the issuance, content, use, seizure and other details of these documents.⁵¹⁵

Convention Travel Documents

Situation until 31 July 1999

The CTD provided for in article 26 of the Refugee Ordinance, which entitles the refugee to exit and return to Bulgaria during the term of its validity, is valid for two years but may not exceed the validity of the identification document. Travel documents are extended by the Agency for Refugees. If the refugee is abroad, article 26 also authorizes the Bulgarian diplomatic and consular representations there to extend the CTD in coordination with the Agency for Refugees. The document is made out in English and French and is usually issued for all countries of the world. To date, other countries have recognized and respected the validity of the Bulgarian CTD, though recognized refugees do experience difficulties in obtaining visas even within Europe, where most countries require them of Bulgarians.

Convention Travel Documents have only been issued by the Bulgarian Government since May 1997. Since that date however, recognized refugees, including those that are stateless,⁵¹⁶ have had no problems obtaining CTDs.

Situation as of August 1999: New Refugee Law, Effective 1 August 1999 and New Law on Bulgarian Identity Documents, Effective 1 April 1999

Article 73 of the new Refugee Law provides that a refugee travel abroad certificate shall be issued in accordance with the Annex to the 1951 Convention [...] to a refugee who has been granted refugee status in the Republic of Bulgaria... This certificate is to be for no longer than the term of validity of the refugee identity card which, as stated above, may be issued with a validity of up to three years. The certificate entitles its holder to enter and leave Bulgaria on the same terms and conditions applicable to Bulgarian nationals.

⁵¹⁵ Articles 4, 9, 14, 59, and 61 are particularly relevant to aliens and recognized refugees. Art. 14 lists refugee cards and foreign travel refugee certificates as identity documents which may be issued to aliens. Law on Bulgarian Identity Documents, XXXVIII National Assembly of the Republic of Bulgaria, entry into force April 1, 1999.

⁵¹⁶ Between January and August 1997, of the 117 cases recognized during that period, 33 were stateless Palestinians. No obstacles have been reported regarding the issuance of identity papers and CTDs to them.

In keeping with the requirements in the 1951 Convention, article 73 further provides that the term of the certificate may also be extended for up to six months by Bulgarian diplomatic and consular authorities abroad upon consultation with the Ministry of Interior. The fees charged for the issuance and extension of this refugee travel document must not exceed the scale of the charges for national identity documents.⁵¹⁷

As with the refugee identity cards, the Law on Bulgarian Identity Documents further regulates some aspects of the issuance, use and seizure of refugee travel documents.⁵¹⁸

2. Czech Republic

Article 18 of the Refugee Law provides that the Ministry of Interior shall issue an identity document, and upon request, a travel document for the purpose of travel abroad to recognized refugees.

Identity Papers

Current Refugee Law

Identity cards for refugees, as well as for other foreigners and citizens, are granted only upon proof of a domicile, which can be demonstrated upon showing a valid rental agreement. A refugee's first identification card is issued free of charge, often while the refugee resides in the integration center. Each subsequent identification card is renewed annually and upon a change in residence and must be paid by the refugee at a cost of 1,000 CZK (29 USD).

In practice, refugees have not experienced any significant problems obtaining identification cards. Moreover, the procurement of identification papers for refugees has been facilitated by the housing assistance offered through the Czech Government's integration centers and housing scheme, which ensures that refugees have access to housing and the necessary documentation to prove an official residence/domicile.

⁵¹⁷ Art. 74 (2), Law on Refugees (unofficial UNHCR English translation), XXXVIII National Assembly of the Republic of Bulgaria, May 27, 1999, entry into force August 1, 1999.

⁵¹⁸ Art. 14, Law on Bulgarian Identity Documents, XXXVIII National Assembly of the Republic of Bulgaria, entry into force April 1, 1999; art. 71 (1), Law on Refugees (unofficial UNHCR English translation), XXXVIII National Assembly of the Republic of Bulgaria, May 27, 1999, entry into force August 1, 1999.

Under the Draft Refugee Law

Under the draft Refugee Law, the recognized refugee's identification card is also to be used as a residence card, and is to contain information such as his name, date and place of birth, family status, citizenship, his asylum status and permanent address in the Czech Republic. It is to be valid for a period of two years and may be repeatedly extended by two years.⁵¹⁹ The draft Foreigners Law provides for the extension of this permanent residence permit card at the same fee as is currently charged, namely, 1,000 CZK (29 USD).⁵²⁰

Convention Travel Documents*Current Refugee Law*

CTDs are issued for a maximum of 180 days according to the Foreigners Law.⁵²¹ They are written in Czech, as well as two international languages, and are limited in their territorial and time validity for the purpose of the specific journey. These limitations are noteworthy as they are far more restrictive than the standard provided in the Schedule to the 1951 Convention and the recommendations of the relevant EXCOM Conclusions.⁵²²

No problems have been noted by UNHCR with regard to the recognition of the CTD by other states, even though some refugees have experienced difficulties in obtaining visas. There have been no reports of refugees with a valid CTD being unable to return to the Czech Republic. Moreover, to the best of UNHCR's knowledge, the practice by Czech diplomatic and consular authorities abroad has confirmed that they are authorized to issue extensions of CTDs.

Under the Draft Refugee Law

Most noteworthy however, is the liberalization of the terms of the CTD in the new draft Refugee Law, which promises to meet international standards by increasing the period of validity of the document to two years (which can be extended repeatedly

⁵¹⁹ Art. 59, Draft Law on Asylum *supra* note 26.

⁵²⁰ Art. 183, note 4, under the rubric of administrative fees, Draft of the Law on Stay of Foreigners, version of May 1999, still under consideration as of October 1999.

⁵²¹ Art. 30(a), Act on Foreigners' Stay and Residence in the Czech and Slovak Federal Republic, No. 123/1992, March 4, 1992, *as amended by* the Law No. 150/1996, April 26, 1996, entry into force August 1, 1996.

⁵²² Arts. 4 and 8, Act Concerning Travel Documents and Travel Abroad, No. 216/1991, May 15, 1991.

on the same terms)⁵²³ and extending its territorial validity to all countries of the world with the exception of the refugee's country of origin.⁵²⁴ The same provision also stipulates that the CTD is to be issued in Czech and two international languages, which the corresponding provision in the current Refugee Law does not explicitly provide.

CTDs are issued and extended by the local office of the Aliens and Border Police where the refugee's permanent residence is registered, and while the first issuance is to be free of charge, a fee is charged for all subsequent replacements or extensions.⁵²⁵ Although the draft Refugee Law does not contain a specific provision allowing for the extension of CTDs by Czech diplomatic missions abroad (i.e., for situations where the CTD would expire while the refugee is still abroad), it does provide for the replacement of a CTD with a Travel Identity Document by diplomatic missions abroad in cases where the refugee has lost his CTD.⁵²⁶ One would imagine that either the same or an analogous procedure would therefore also be used where the refugee's CTD has expired in order to allow the person to re-enter the Czech Republic without any difficulties, although an explicit provision in this regard would be preferable.

Nonetheless, with the expected adoption of the above-mentioned provisions in the draft Refugee Law, it appears that the Czech Republic is to generally come more into line with the relevant international standards relating to refugee identification cards and CTDs.

3. Hungary

Article 18(a) of the Hungarian Asylum Law grants refugees an identity card, as defined in a separate legal rule, and to a bilingual travel document, as defined by the Geneva Convention.

Identification Papers

The separate rule regarding identification papers, which is applicable to nationals also, is a 1993 Government Decree, which stipulates, *inter alia*, that an identity card shall be issued to recognized refugees.⁵²⁷ The period of validity of the

⁵²³ According to this same provision the time period for the validity of the CTD can, however, be limited to the period of validity of the refugee's residence card if this one is due to expire earlier.

⁵²⁴ Art. 61, Draft Law on Asylum *supra* note 26.

⁵²⁵ Art. 62, Draft Law on Asylum *supra* note 26.

⁵²⁶ Art. 65, Draft Law on Asylum *supra* note 26.

⁵²⁷ Art. 2(4), Government Decree on the Issuing and Registration of Identity Cards, No. 147/1993 (X.26). The cards are issued by the competent county police.

identity card depends on the age of the person, as follows: under twenty years of age, a validity of six years; twenty to fifty years of age, a validity of fifteen years; and for those above fifty years of age, there is no time limit. The same rules regarding identification cards apply to Hungarian nationals, the only difference being the color of the card issued, and the fact that under the rubric special remarks on the card, the term refugee is indicated.⁵²⁸ The identity cards verify the refugee's identity, his right to stay in the host country and at the designated place of accommodation, and prove that he is entitled to participate in the national as well as the refugee-specific assistance programs.

In practice, recognized refugees have in the past experienced difficulties in meeting some of the requirements for obtaining identity cards such as the general requirement to submit original birth and marriage certificates. Those refugees who were unable to fulfill this requirement were therefore only issued a temporary residence permit. However, this problem appears to have been solved by a March 1999 amendment to the Government Decree on the Issuing and Registration of Identity Cards, exempting recognized refugees from the obligation to submit original birth and marriage certificates. Instead, refugees are now required to complete a standard form and submit along with it photos, a copy of the decision granting refugee status, any available birth certificates in the case of minors (i.e., under fourteen years of age), and any available document confirming the name of the person. When the latter is not available, a statement by the refugee is considered acceptable. To the knowledge of UNHCR, no difficulties in obtaining identity cards have been reported since the recent adoption of this amendment.

Convention Travel Documents

As mentioned above, the Hungarian Asylum law provides that recognized refugees are entitled to a bilingual travel document. The Law on Traveling Abroad, in force since September 1998, stipulates that the CTDs issued to recognized refugees in Hungary must satisfy the requirements set by the 1951 Convention.⁵²⁹ Thus, in keeping with the requirements in that Convention and attached Schedule, the Hungarian CTD is issued upon the request of the refugee for a period of two years, and has a large geographical validity which includes all countries with the exception of the country of origin. At the level of implementation, refugees have reported no problems with obtaining CTDs.

⁵²⁸ Art. 16(2)(3), Cabinet Decree No. 101, 1989; art. 18, Act on Asylum, No. 1997: CXXXIX, December 9, 1997, entry into force March 1, 1998.

⁵²⁹ Art. 5(3), Law No. 1998:XII on Traveling Abroad.

The Hungarian CTD also meets the requirements with regard to the ability of diplomatic and consular authorities abroad to extend the period of validity of the CTD. Indeed, consular staff are trained by ORMA before taking up their posts. No information was available regarding whether any recognized refugees had experienced difficulties in returning to Hungary with a valid CTD.

4. Poland

Identity Papers

According to article 43 of the Polish Aliens Law, persons recognized as Convention refugees in Poland are granted residency permission for a specified time (hereinafter temporary residence status), which entitles them to a temporary residence card which also serves as an identification card.⁵³⁰

The temporary residence card is valid for two years and may be extended.⁵³¹ It must be noted that the permission to reside for a specified period and the residence card, which are granted to recognized refugees, benefit from special characteristics intended to afford refugees additional guarantees which are not accorded to other aliens with the same residency status. According to information provided by UNHCR, these guarantees include the following: the residency permission of recognized refugees may not be withdrawn without prior withdrawal of their refugees status;⁵³² the prolongation of this permission may not be refused; and the maximum ten-year period on this type of temporary residence permit applicable to other aliens⁵³³ is not applicable to recognized refugees. Moreover, unlike other aliens, refugees are issued and extended this residence permission by the Minister of Internal Affairs and Administration, rather than by a voivod.⁵³⁴

In practice, recognized refugees have not experienced any problems obtaining temporary residence cards.

⁵³⁰ Arts. 20, 21, Act on Aliens, Journal of Laws No. 114, item 739, June 25, 1997, entry into force December 1997 (unofficial UNHCR English translation).

⁵³¹ Art. 18, Act on Aliens, Journal of Laws No. 114, item 739, June 25, 1997, entry into force December 1997 (unofficial UNHCR English translation).

⁵³² Art. 45, Act on Aliens, Journal of Laws No. 114, item 739, June 25, 1997, entry into force December 1997 (unofficial UNHCR English translation).

⁵³³ Art. 18, Act on Aliens, Journal of Laws No. 114, item 739, June 25, 1997, entry into force December 1997 (unofficial UNHCR English translation).

⁵³⁴ Art. 85, /6, Act on Aliens, Journal of Laws No. 114, item 739, June 25, 1997, entry into force December 1997 (unofficial UNHCR English translation).

To be granted permission to settle (hereinafter permanent residence) and permanent residence cards however, recognized refugees must prove their eligibility for this residency status on the same terms as other aliens. As of yet, UNHCR is not aware of any applications for permission to settle by recognized refugees ever being granted. Indeed, while the first recognized refugees in Poland automatically received permanent residence cards,⁵³⁵ this practice was discontinued, after which refugees had to apply for this status under the Aliens regime. Unfortunately, it appears that the present requirements under this regime are such that they render it virtually impossible for a recognized refugee to benefit from this provision.

Convention Travel Documents

The Foreigners Law provides that upon recognition of their status, refugees shall be issued a Convention Travel Document.⁵³⁶ Article 44 of the same law extends refugee status and also grants travel documents to the spouse and under-age children of the recognized refugee so long as they are living with him in Poland.

In practice, there have been no cases of refusals to issue CTDs, though in some instances delays in issuing this document required the intervention of UNHCR.

Based on information provided by UNHCR, the Polish CTD appears to generally be in accordance with article 28 of the 1951 Convention and its Schedule. In keeping with those standards, the travel document is made out in English and Polish, is valid for two years, and has a geographic validity which includes all countries of the world with the exception of the refugee's country of origin. According to UNHCR, there are no recorded cases where recognized refugees experienced problems returning to Poland with a valid CTD.

However, there is no practice and no legal basis for granting extensions of CTDs by consular or diplomatic missions abroad, as neither the aliens nor the consular laws contain any stipulation with regard to the possibility of such extensions. According to UNHCR, in the limited practice to date, it appears that the return to Poland may be facilitated on a case-by-case basis but no extensions of CTDs or indeed, other Polish identity papers may be obtained while abroad.

⁵³⁵ Permanent residence cards are issued for an unspecified period of time and benefit from the same special protection against withdrawal of this status as afforded refugees with temporary residency. Arts. 19 and 45, Act on Aliens, Journal of Laws No. 114, item 739, June 25, 1997, entry into force December 1997 (unofficial UNHCR English translation).

⁵³⁶ Arts. 43, 85, / 6, Act on Aliens, Journal of Laws No. 114, item 739, June 25, 1997, entry into force December 1997 (unofficial UNHCR English translation).

It does not appear that there have been any problems with respect to the recognition of Polish CTDs by other countries, which have generally applied consular agreements regarding visas to refugees on the same terms as Polish nationals.

5. Romania

The rights of recognized refugees to identification papers and CTDs are guaranteed under article 15(a) of the Refugee Law, which provides that a refugee has the right to remain in the territory of Romania and to obtain the documents necessary for proving his identity and crossing the border. The limitation of refugee status to a period of three years with the possibility of a two-year extension⁵³⁷ imposes the same limitations on the duration of refugee identification and travel documents.

Identity Papers

No problems have been recorded to date in obtaining identity papers for recognized refugees, although these must be renewed every six months, which is the shortest validity period for such documents granted by any of the selected countries in the region.

Convention Travel Documents

Upon request, refugees are issued a CTD which is made out in Romanian and French, and in which a one-year renewable residence visa is stamped. The issuing fee is 21,000 Lei (1,2 USD), and is paid by the refugee.

While there is no other legal provision stipulating specific details regarding the format and content of the Romanian CTD, UNHCR and the Romanian Refugee Office have elaborated a document entitled Working Methodology relating to the Receipt of Refugee Claims in Romania, which provides, *inter alia*, for the following: the travel document is valid for one year and will contain a one-year multiple exit/entry visa; refugees without the necessary financial means to pay the CTD fees may request an exemption from such payment; and a stipulation to the effect that the document enables the refugee to travel to all countries with the exception of his country of origin, provided that he is allowed entry into the territories of such countries.⁵³⁸

⁵³⁷ For further details on the practice relating to such extensions of refugee status please refer to the Romanian Country Profile section in Chapter I on Legal Residency, Naturalization and Assimilation.

⁵³⁸ Arts. 38 and 39, Working Methodology relating to the Receipt of Refugee Claims in Romania, issued in August 1998.

UNHCR is not aware of the existence of any cases or general practice to date, which would indicate a policy allowing for the extension of CTDs by Romanian diplomatic missions abroad. To UNHCR's knowledge however, there have been no reports by refugees of problems in returning to Romania with a valid CTD.

No complaints have been received either regarding the recognition by other states of the Romanian CTD, though the main obstacles to travel for recognized refugees are the visa requirements of most Central and Western European states.

6. Slovakia

Identity Papers

According to article 17 of the Refugee Law, refugees are granted permanent residence cards which in practice also serve as identity papers. Immediately following recognition, refugees are required to register with the foreigners' police who upon proof of a domicile address then issue this card. As described in the provision below, the card certifies the identification of its bearer both as a refugee and permanent resident:

*If an alien finally/lawfully granted refugee status, the competent OCP [police authority] shall issue a residence permit for the alien where in the section The kind of residence the word PERMANENT shall be written. [...] In the control card of the alien is marked in the right upper part by word REFUGEE .*⁵³⁹

The personal data regarding the refugee includes such information as his name, nationality and address, to which any change must be communicated by the refugee to the competent police authorities within three days.⁵⁴⁰

The Aliens Law provides that these cards (or permits) may be issued with a renewable maximum validity period of five years.⁵⁴¹ In practice, however, permanent

⁵³⁹ Art. 18(1), Decree of the Slovak Ministry of Interior No. 4/1996 which regulates the course of actions of Police Departments and the Migration Office at the execution of the Refugee Act No. 283/1995, entry into force January 16, 1996 (unofficial UNHCR English translation).

⁵⁴⁰ Art. 17(4), Refugee Act, No. 283/1995, November 14, 1995, entry into force January 1, 1996 (unofficial UNHCR English translation).

⁵⁴¹ Art. 10(2), Law on Stay of Foreigners on the Territory of the Slovak Republic, No. 73/1995, April 5, 1995, entry into force June 1, 1995 (unofficial UNHCR English translation). The article reads as follows: A card for a stay is prepared with a validity for a period determined by a permit for long-term stay or for a period of five years, if this is a permit for permanent stay, no longer than the validity of the travel document of the foreigner. No later than 14 days before expiration of validity of this card the holder is obliged to ask a police section for a prolongation of a long-term stay and to prepare a new card for this stay.

residence cards of recognized refugees are renewable yearly, which imposes a *de facto* reporting requirement on them as they must regularly get their cards extended. While this practice may allow authorities to keep track of which refugees are still living in Slovakia, refugees point out that it places them at a disadvantage in the job market.

Indeed, a one-year residence card may constitute a barrier to employment opportunities and security, since employment contracts cannot in principal exceed the period of validity of the identity/residency cards, and employers cannot necessarily have the expectation that refugee workers will remain in Slovakia after the expiration term on their identity cards. Furthermore, employers are sometimes limited in the allocation of short-term contracts, which is unfortunate for refugees who may only have a few months remaining on their identity papers. In the same manner, a one-year validity period on identity cards may also prevent refugees from undertaking other activities including business initiatives, for which they may have to furnish proof of a secure and long-term stay in Slovakia. Further details regarding this issue are provided in Chapter II on Employment.

In the past, some refugees have experienced difficulties in obtaining these identity/residency cards due to the fact that they were unable to provide the required proof of domicile from uncooperative landlords in the private housing sector. Unfortunately, identity cards in Slovakia, as in the remainder of the countries under consideration, are necessary in the implementation of basic rights such as the right to legal employment and to access social benefits. Without these cards, refugees were effectively unable to exercise many of their rights under domestic and international law. The requirement that these identity papers be renewed on an annual basis further aggravates this problem, as it arises repeatedly every year.

According to information provided by UNHCR, during 1998 as well as in 1999 up to the time of writing, all recognized refugees had obtained identity cards or successfully renewed them thanks in part to the assistance provided by NGO implementing partners, and in part to the housing assistance program which provides temporary accommodation for newly recognized refugees and some permanent housing opportunities. Hence, at the moment, the problem appears to be being successfully managed with the assistance of refugee-assisting NGOs which assist refugees to address the different aspects of this problem.

For further information on this issue please refer to Chapter III on Housing. It is worth noting that the new Law on Permanent Residence, adopted on July 1, 1998, appears to provide for some exceptions to the standard of evidentiary requirements regarding proof of domicile, as well as for procedures for dealing with the situation of persons born outside Slovakia, although this law is not expected to enter into force until the after the year 2001.

Convention Travel Documents

The Ministry of Interior upon the written request of the recognized refugee issues CTDs,⁵⁴² unless there is a serious reason relating to state security or the public order to refuse the request. According to article 20 and 21 of Decree No. 4/1996 of the Ministry of Interior however, the issuance of a refugee travel document can also be rejected for a number of other reasons such as for not satisfying alimony payments ordered in a legal decision. A travel document may also be withdrawn or withheld for legal reasons.⁵⁴³

These exceptions aside, CTDs are issued with a validity period of two years and a wide geographical scope.⁵⁴⁴

Refugees claim to have experienced difficulties resulting from travel documents that have been improperly filled out, as is the case when "SR" instead of "SVK" is incorrectly used as an abbreviation for Slovakia. Furthermore, the travel documents have often been filled out only in Slovak so that provisions such as the geographical scope of document (i.e., where the document entitles the refugee to travel) are unclear to border police officers abroad.

With regard to whether diplomatic or consular authorities abroad are authorized to extend the validity of refugee travel documents, the local UNHCR office was unaware of any practice or requests for such extensions to date, and could not confirm whether Slovak representatives abroad were formally authorized to issue them. UNHCR was not aware of any reports of refugees with valid CTDs who had experienced difficulties returning to Slovakia.

As is the case also in other countries in the region, obtaining visas for travel is a common problem for Slovak recognized refugees traveling with a CTD, particularly as the border police of foreign countries (e.g., in the Czech Republic) sometimes require refugees to obtain entry visas although they are not required of Slovak citizens.

⁵⁴² Art. 17(5), Refugee Act, No. 283/1995, November 14, 1995, entry into force January 1, 1996 (unofficial UNHCR English translation). *See also* art. 19(1)(d), Decree of the Slovak Ministry of Interior No. 4/1996 which regulates the course of actions of Police Departments and the Migration Office at the execution of the Refugee Act No. 283/1995, entry into force January 16, 1996 (unofficial UNHCR English translation). This provides that the OCP (police authority) is obliged to issue the travel document to the refugee within 30 days since [*sic*] the application was submitted.

⁵⁴³ Art. 20, 21, Decree of the Slovak Ministry of Interior No. 4/1996 which regulates the course of actions of Police Departments and the Migration Office at the execution of the Refugee Act No. 283/1995, entry into force January 16, 1996 (unofficial UNHCR English translation).

⁵⁴⁴ Art. 19(5), Decree of the Slovak Ministry of Interior No. 4/1996 which regulates the course of actions of Police Departments and the Migration Office at the execution of the Refugee Act No. 283/1995, entry into force January 16, 1996 (unofficial UNHCR English translation).

7. Slovenia

Identity Papers

Situation until 13 August 1999

Recognized refugees, like other foreigners, are to be issued identity cards according to their residency status.⁵⁴⁵ Recognized refugees, who are granted permanent residency automatically, are issued identity cards with a validity of ten years if they are between eighteen and fifty years old, a validity of five years if they are under the age of eighteen, and permanent validity if they are over fifty years old. The Foreigners Law requires that foreigners carry valid identity cards with them.⁵⁴⁶

According to information provided by UNHCR in July 1999, the two recognized refugees still in Slovenia had been able to obtain all necessary documents including identity documents. However, it should be pointed out that the two first refugees to be recognized in 1995, were issued identity cards and CTDs in 1996, as there was no system in place to deal with this procedure. Indeed, this difficulty in obtaining documents was largely due to the fact that the Order on the Implementation of Rights of Recognized Refugees was only issued after the first recognition, as well as to the inexperience and lack of information on refugee rights on the part of responsible administrative agencies. Given that there are still very few recognized refugees and the experience on the part of the authorities regarding their rights continues to be limited, UNHCR will therefore have to follow this matter closely with future recognized refugees.

New Asylum Law Effective as of 14 August 1999

The new Law on Asylum also provides for a refugee to be given a personal identification card, which is to be valid throughout the period in which he enjoys refugee status.⁵⁴⁷

⁵⁴⁵ Art. 50, Foreigners Act, Official Gazette of the Republic of Slovenia, No. 1/91-I, entry into force June 25, 1991, as amended in July 1997.

⁵⁴⁶ Art. 51, Foreigners Act, Official Gazette of the Republic of Slovenia, No. 1/91-I, entry into force June 25, 1991, as amended in July 1997.

⁵⁴⁷ Art. 56, para. 2, and art. 60, Law on Asylum, Official Gazette of the Republic of Slovenia No. 61/99, July 30, 1999, entry into force August 14, 1999 (unofficial UNHCR English translation).

Convention Travel Documents

Situation until 13 August 1999

Recognized refugees are entitled to receive a CTD with a validity of one year, which may be extended for up to five years.⁵⁴⁸ Although the problem with obtaining identity papers has now been resolved, in the past the delay in issuing these papers also applied to CTDs.

As per the regulations contained in the Schedule, this refugee travel document has been issued in two languages, namely Slovene and French, and diplomatic or consular authorities abroad have been authorized to extend the validity of the document for a maximum period of six months. However, some confusion and administrative mistakes have taken place with regard to the geographic validity⁵⁴⁹ of the travel documents issued to date. Furthermore, recognized refugees have also been limited in their freedom to travel due to the fact that the validity of the CTD is only of one year and European countries do not issue visas on any travel document which is due to expire in the next three months. This fact, in addition to difficulties experienced by these refugees in obtaining visas, has had the cumulative effect of seriously hampering their freedom to travel.

New Asylum Law Effective as of 14 August 1999

The new Law on Asylum improves the situation of refugees with regard to their travel document by providing that the refugee passport is now to be valid during the period in which the refugee enjoys refugee status, and subject to renewal only every ten years. It further stipulates that a refugee shall be issued a refugee passport upon submission of an application, and provides for passport procedures for persons less than eighteen years of age, and persons otherwise devoid of legal capacity.⁵⁵⁰

For further details on the practice, and other aspects of the Slovene identity cards and refugee travel documents the reader may refer to situation until August, 13 1999 as described above, as no changes in this regard have taken place since the coming into force of the new legislation.

⁵⁴⁸ Art. 16, Foreigners Act, Official Gazette of the Republic of Slovenia, No. 1/91-I, entry into force June 25, 1991, *as amended* in July 1997.

⁵⁴⁹ Para. 4, Schedule to the Convention relating to the Status of Refugees, July 28, 1951.

⁵⁵⁰ Art. 56, para. 2, and art. 59, Law on Asylum, Official Gazette of the Republic of Slovenia No. 61/99, July 30, 1999, entry into force August 14, 1999 (unofficial UNHCR English translation).

**GENERAL CONCLUSIONS AND
RECOMMENDATIONS**

While the latest round of legislative amendments brings most of the selected countries closer to meeting international norms with regard to integration rights, it is imperative that integration programs and infrastructure now receive concerted attention and investment.

Central European States, even the most prosperous among them, are still perceived by the majority of asylum-seekers as transit points rather than target countries. While barriers to access to EU asylum systems discourage this practice, it will continue for as long as this region is not perceived to offer long-term integration possibilities. CE states, UNHCR, the EU as well as its member states all have shared interests in this regard and must collaborate to make this region a refugee hosting area. That this does not absolutely require that salaries in Central Europe be on par with EU states is reflected by the irregular movement from Bulgaria, Romania, Hungary and Slovakia of thousands of asylum-seekers, as well as several cases of recognized refugees, to the Czech Republic where they attempt to reside permanently.

Moreover, the need to harmonize integration policies and, at the local level, opportunities, becomes even more critical as the Associate States move closer to accession to the EU. As the EU external border moves east, the volume of asylum-seekers entering the region and subsequent irregular movement can only be expected to increase unless reception conditions and the economic aspects of integration conditions are improved. Increased investment and efforts in the field of integration are also timely due to the harmonization mechanism preceding accession. Prior to accession, the EU has both the leverage to advocate continuing legislative improvements as well as the resources to contribute significantly to related infrastructure projects. Thus, funds such as the PHARE National Program should attempt to strike a balance between integration/reception infrastructure and the (until now) emphasized asylum determination-related programs.

Legislative Framework: Regional Trends

The governments of CE countries must be commended for the progress they have achieved at the legislative level with regard to securing the integration rights of recognized refugees in recent years. In particular, the new wave of asylum laws in Hungary, and more recently in Bulgaria and Slovenia, as well as the draft law in the

Czech Republic all contain significant improvements reflecting a political willingness by governments in this region to promote better integration conditions for recognized refugees through a more liberal legal policy.

While these achievements and positive trends merit note, it must be underlined that many of these improvements are quite recent and in some cases there is still insufficient information regarding the details of the implementation of these new provisions. This study has also identified remaining legislative gaps, some of which are highlighted below. A more thorough analysis, including a comparative survey of the legislation and the accompanying recommendations specific to each topic are provided in the individual Chapters.

Within a legislative framework for integration, certain rights are particularly critical to the integration process. Socio-economic rights and the broader regime of residency rights granted to recognized refugees are especially good indicators of the degree to which the legislation >enables= or makes possible integration in the asylum country. Provisions relating to the conditions for naturalization and general legal statements recognizing the responsibility of the state to facilitate the integration process are other types of provisions indicating the degree of commitment of the host country to a long-term and inclusive integration policy.

Socio-Economic Rights

Currently, all countries under consideration, if one takes into account the draft Czech Refugee Law, grant recognized refugees the right to work on the same terms as nationals without requiring a work permit, with the exception of Slovenia with regard to the latter condition. Similarly, the issues of housing and state social assistance, which at the practical level present some of the most important challenges to integration in this region, are not problematic at the legislative level. Indeed, all countries under consideration in this region grant refugees access to these rights on the same terms as nationals.⁵⁵¹ Unfortunately, even good legislation in the areas of employment, housing, and state welfare, which affect the actual living conditions and economic aspects of integration, is insufficient in and of itself to address the difficulties inherent to these sectors in countries with economies in transition. Furthermore, as is briefly discussed below, state practices in some countries in the region still do not, or have only relatively recently, granted effective access to some of these rights.

⁵⁵¹ In the case of Slovenia, please note the qualification to the right to access public relief contained in the new asylum law.

Residency Status and Related Rights

Significantly, most countries in this study automatically grant recognized refugees permanent residency status and/or citizens legal rights, the latter being formulated as a general default provision assimilating recognized refugees to citizens in their rights, unless otherwise provided by law. In this connection, it is important to note that in the countries in this region rights are often associated with residency status rather than citizenship. Taking into account the draft Czech Refugee Law, all countries under consideration grant recognized refugees permanent resident status, with the exception of Romania and Poland.

As discussed in Chapter I, this policy of granting refugees a comprehensive regime of rights, (in addition to other rights which they continue to enjoy by virtue of the fact that they are recognized refugees, such as protection against loss of refugee status and non-refoulement) has numerous advantages. Not only does it grant refugees a secure and durable form of stay in the host country, but it is efficient in that it is a status with which the host population and local government officials are more familiar, thus facilitating the implementation of these rights. Provisions granting recognized refugees such an inclusive regime of rights can also be used as a default or interpretive provision when the law is otherwise silent or unclear regarding the standard of treatment to be granted, or when a practice is discriminatory towards refugees. Seen as a statement of principle by the host state about the general standing of the refugees in that society, such provisions may also be used as a standard by which to evaluate and lobby against new amendments if these are deemed incompatible with this status or regime of rights.

At the moment, Romania and Poland offer recognized refugees the least favorable regime of rights and residency status. Of most concern is the situation of insecurity of recognized refugees in Romania with regard to their stay and their refugee status, which is subject to an automatic expiration period of three years with a possible extension of two years, and which renders most refugees ineligible to apply for naturalization.

In Poland, it appears that recognized refugees who are automatically granted permission to reside for a specific period and who have applied for permission to settle, a more durable residency status (i.e., equivalent to permanent residence) have not been successful in obtaining this status even though they are eligible to apply after three years in the country. They appear to be unable to satisfy the other stringent requirements necessary to obtain this status. Amongst other things, this difficulty in acquiring permission to settle in Poland renders recognized refugees ineligible to apply for Polish citizenship.

Naturalization

With regard to facilitating naturalization for recognized refugees, Bulgaria and Hungary deserve special mention, as their reduced residency requirements allow

refugees to apply for naturalization after three years, instead of the eight years required of other aliens. Slovenia continues to impose the harshest requirement, namely, ten years. All the other countries in the region, Romania, Poland, the Czech Republic, and Slovakia require a residency period of five years. While five years is considered a reasonable residency requirement for the purposes of naturalization, including by Council of Europe standards, the status/terms of stay of recognized refugees in Romania and Poland are incompatible with that required for naturalization. As a consequence, the acquisition of citizenship is a distant prospect and inherently problematic for recognized refugees in these host countries.

The legislation in Slovenia, Romania and Poland therefore continues to reveal a certain degree of resistance to using a durable residency status and naturalization as a tool for the integration of recognized refugees. Other criteria for naturalization which present a problem for refugees in particular, such as the requirement of release from a former citizenship, or a clean criminal record from the refugee's country of origin, have been the subject of special legal exceptions for refugees by some countries though others such as the above-mentioned three countries, continue to impose these legal requirements even if in practice they may be waived in certain cases.

Legal Statements Recognizing the Integration Responsibilities of the State

In a positive trend reflecting a political commitment to the integration of refugees, the latest round of legislation in most of the selected countries includes general legal statements explicitly recognizing the state's role or specific responsibility to facilitate this process. The new asylum legislation in Bulgaria, Hungary, and Slovenia includes such provisions, as does the draft Czech Refugee Law, thereby establishing a new trend in regional state practice, which is expected to soon be followed in Poland.⁵⁵² This acknowledgment of responsibility with regard to integration is important in that it constitutes a legal framework for the establishment and/or improvement of refugee integration programs and practices. Furthermore, statements to this effect impose on local offices and municipalities dealing with refugees a legal obligation to facilitate the implementation of their rights and their integration process into the local society. In countries where government services and authorities are decentralized, resulting at times in significant discrepancies in state practice, it is useful that the moral obligation be also a legally binding one to assist refugees in their integration process. The governments of other countries under consideration should, therefore, be urged to make explicit their intentions to facilitate and promote the integration of recognized refugees.

⁵⁵² A provision in the Polish Social Welfare Act already mentions the state's obligation to facilitate integration, albeit more indirectly, by stating that one of the tasks of the municipalities is to coordinate activities in the area of integration of recognized refugees.

Legal Provisions Regarding Collaboration between Governments and NGOs

This study confirms that to be effective, the implementation of integration programs for recognized refugees requires collaboration of governmental and non-governmental organizations. Hence, the recent indications of an emerging trend in this region which supports and strengthens this collaboration is especially welcome. It is visible in the increasing willingness by some governments to engage in and even formally provide in their legislation for government-NGO joint ventures in the areas of integration assistance to refugees, most often through agreements whereby governments contract out the implementation of their integration-related programs to refugee-assisting NGOs and other organizations, or provide these with funding for some of their activities. The Czech Republic and Hungary are leaders in this respect, though Poland has also shown signs that it is considering going in this direction.

Moreover, implementation of integration activities by NGOs rather than government offers some important advantages, including more flexibility in their responses, access to potentially more diverse sources of funding for complimentary activities, a stronger rapport of trust with their clients, and a more comprehensive, less bureaucratic approach, which the departmentalization of government services usually cannot provide.

Family Unity/Reunification and Education

Integration rights relating to family unity and reunification, education, as well as identification documents and Convention Travel Documents, have also been strengthened by legislative changes, though further recommendations are provided in the relevant chapters in this study.

With regard to protecting the unity of the refugee family, the most obvious lacuna in the legislation is the lack of a provision specifically providing for the right to family reunification for refugee families who are still separated. The new Bulgarian asylum law contains the most explicit provision to this effect. We hope this example will be followed by other countries, which at present generally use the provision by virtue of which close family members of recognized refugees are granted refugee status as the basis for facilitating family reunification. While this may be an acceptable practice, a provision specifically providing for the right to family reunification, and for measures and streamlined procedures by which the state could facilitate this process would be preferable, especially in view of the difficulties still experienced in some countries in this regard.

Of most concern in the realm of education is the fact that refugee children in Romania and Poland do not have the legal right to access secondary education on the same terms as nationals, thereby potentially placing these children at a distinct

disadvantage in the job market and increasing the risk of marginalization and social exclusion. Moreover, because school fees can be extremely high, such as in Romania where the fees average 250 USD per month (which is equivalent to approximately eight times the national minimum wage) refugees may be considered to be effectively denied legal access to mainstream educational facilities. In Romania this problem is exacerbated by the fact that elementary education consists only of four years, which is less than the European norm. While tuition fees may not be required in practice at the moment, the governments of Poland and Romania should harmonize their laws with both regional and Europe-wide state practices by granting refugee children the right to access the normally available level of education on the same terms as nationals.

State-funded language training, one of the more fundamental types of integration assistance, should also be explicitly provided for recognized refugees in the Romanian, Bulgarian, Slovak and Polish asylum laws as well as in state integration programs. Governments must be encouraged to assume responsibility for such essential categories of integration assistance and should provide at least a basic language course, which could then be supplemented by more advanced language training offered by other organizations.

IDs and CTDs

Though all the countries under consideration currently provide for the right of recognized refugees to identity cards, both in law and in practice, special attention must be paid to any obstacles (including those related to housing) impeding the issuance of these cards, particularly given the fact that in this region these cards also serve as proof of the refugee's residency status and are of central importance to exercising basic rights such as the right to work and to access state social assistance benefits. Legislative changes prolonging the period of validity of these cards is also strongly encouraged in countries where it is presently of one year or less, such as in Romania and Slovakia. In addition to the *de facto* reporting requirements and bureaucratic procedures that short validity periods impose on refugees, they also place them at a disadvantage in the employment market.

The right to CTDs is included in the relevant legislation of all countries in this study, though legislative changes granting a longer period of validity are recommended in the case of Romania and the Czech Republic. The latter, we are pleased to note, replaces an especially restrictive provision in the current law with one granting a larger temporal and geographic validity in its draft Refugee Law. Given the regime of visa requirements, especially for persons travelling with CTDs within Europe,⁵⁵³ a

⁵⁵³ As of July 1998, all EU countries, but Germany, require visas for CTD holders, even if issued by a country whose nationals enjoy visa free travel. Source: Migration News Sheet/July 1998, No. 184/98-07, at 6, List C: Situation of stateless persons and recognized refugees and the visa requirements for first entry into the territory.

temporal validity of less than two years can render travel by recognized refugees quite difficult.

An area still suffering from the lack of legal provisions and a reliable state practice in many of the countries under consideration is that pertaining to the assistance to be granted to recognized refugees outside their host countries, and more specifically with respect to the right of return and of extension or renewal of their CTDs by diplomatic and consular authorities abroad. Explicit provisions granting recognized refugees these rights are strongly encouraged to be adopted as an integral part of domestic asylum laws, as the new Bulgarian Refugee Law is the only such legislation at present to contain such a provision. Due to the lack of a discernable state practice granting the extension of CTDs in the case of Slovakia, Romania and Poland, the governments of these countries are strongly encouraged to take the appropriate measures in this regard as soon as possible, particularly in view of the vulnerable position of recognized refugees in such situations.

Regional Obstacles to Integration

Among the factors posing the most serious obstacles to integration in this region and more specifically to the capacity of recognized refugees to secure a basic standard of living and reach self-sufficiency, are housing, employment and state social assistance. As seen above, in general there are no longer any legislative barriers to these rights, which by law are accorded to recognized refugees on the same terms as nationals. With a few exceptions, effective access to these rights has also been secured in practice in the majority of the countries under consideration, though it must be borne in mind that in many cases these are recent achievements. Thus, even the most basic integration conditions enabling refugees to secure a livelihood have, in some countries, only been in place in the last three to four years, and with respect to state social assistance cannot yet be considered to be fully effective in Romania or Bulgaria.

Furthermore, given the economic reforms in these countries and the nascent stage of integration in this region, these three sectors of socio-economic rights are at the heart of the practical difficulties in creating viable integration conditions.

Housing

Housing, and especially affordable housing compatible with employment possibilities, is undoubtedly one of the most pressing problems for recognized refugees in the region, affecting their very capacity for self-sufficiency and mobilizing much of their energy and resources, as well as those of the organizations assisting in their integration process. Even when employed, the high cost of housing relative to their wages means that refugees are generally unable to secure a livelihood. Moreover,

while recognized refugees have access to housing on the same terms as nationals, and are eligible in principle to apply for state-regulated or low-income housing in all seven countries being considered, in practice, the shortage of such housing, a situation which exists throughout the entire region, means that refugees actually have little chance to obtain affordable housing on their own.

Without state-regulated or other types of affordable housing, refugees are often faced with the conundrum of either trying to secure housing in urban centers where they have the most opportunities for finding employment but where their income will almost certainly be insufficient to meet their basic needs due to high rents, or of securing housing in smaller towns and rural areas where the cost of living including accommodation is considerably lower but where there are few or no foreseeable employment opportunities.

Unlike nationals, who often either continue to benefit from flats with regulated rents or who have the advantage of a network of family and friends on whom they can rely for assistance and accommodation in case of need, refugees have no such pre-existing housing arrangements or support systems. Thus, even for refugees who are employed, achieving economic self-sufficiency continues to present a nearly impossible challenge if they cannot also secure affordable housing.

Although housing, together with employment, is one of the most chronic problems plaguing the integration of refugees in this region, there is relatively little state assistance provided by governments in this field. Though most countries may provide some temporary accommodation assistance to newly recognized refugees, the Czech Republic, Slovakia and Hungary are the only countries to date, which have permanent housing assistance programs. The state program in the Czech Republic, now implemented by an NGO specializing in the integration of recognized refugees, appears to be the most direct, long-standing and best practice in the region. It bears noting, however, that even in the Czech Republic securing housing compatible with employment is still considered a serious problem by refugees despite the fact that accessing affordable housing alone is not.

Given the shortage of housing, without well-defined and effective state and/or non-governmental housing assistance programs in the region, the very institution of asylum might be in jeopardy in many of the countries under consideration with asylum-seekers and recognized refugees continuing to use the region simply as a transit area westward. Hence, it is imperative that affordable housing be treated as a priority objective of the refugee policy of these countries if their status as destination asylum countries is to be secured in the near- and medium-term future.

One suggested measure to initiate a policy of affordable housing for refugees is the commissioning of a comprehensive needs analysis and study on sustainable refugee-specific housing strategies in the region. Such a study should offer strategies

for approaching the housing issue in each country based on the local situation and suitable best practices elsewhere, as well as suggest funding sources. More details are provided in Chapter 3 on Housing.

Donors and governments should require that proposals for housing assistance projects automatically include an employment analysis and/or strategy in order to ensure a proper evaluation of the suitability of the proposal for the purposes of long-term integration. Special attention must be paid prior to investing to avoid housing projects and sites which are likely to marginalize and ghettoize refugees. Once engendered, the process of marginalization and social exclusion are typically difficult to undo and impose heavy costs on societies in the long-run. When refugees are involved, the asylum institution also suffers. Programs which contribute to local communities and garnish local support are also to be encouraged. Thus, renovation projects which create housing rather than take housing away from local residents, or programs such as that in the Czech Republic which include a contribution to cooperating municipalities for their infrastructure and make local officials aware of the existence of refugees, rather than direct financial assistance to refugees are good examples of such strategies. This is an especially important consideration in this region as the housing shortage is acutely felt by host populations.

While employment and access to state welfare assistance are also fundamental to the economic and social integration of refugees, as described above, housing plays an especially pivotal role in this region. For this reason, these three fundamental aspects of integration must be approached with a holistic and comprehensive assistance strategy, in which housing is compatible with employment opportunities and rents are (to the extent possible) at par with state social assistance benefits and minimum wages.

Employment

Despite the generous employment provisions currently or soon to be in force in all the countries under study, in a number of these countries an effective right to work has only been available to recognized refugees fairly recently, i.e., in the last three years.

Moreover, at a more general level it must be borne in mind that the selected countries in the region have only begun recognizing refugees under the 1951 Convention status in the last ten years, (in fact, only as recently as the last five to seven years in some of the countries). As such, recognized refugees have only had a short time to establish themselves in their countries of asylum, to work towards self-sufficiency and to develop patterns of employment and supporting networks.

Nonetheless, some lessons may be drawn from the limited experience to date with respect to the employment of recognized refugees in this region. Some of the more common obstacles include: limited skills in the language of the host country;

generally high rates of national unemployment and more specifically, the problem of securing housing compatible with employment; and a lack of appropriate qualifications for the current labor market.

Certain conditions also encourage employment in the informal economy, a situation which leaves refugees vulnerable to exploitation and which renders them ineligible for many state benefits. In the past, these conditions have included objective barriers to work which persist even after refugees were recognized, such as, heavy bureaucratic procedures, and, until relatively recently, the inability to secure the relevant papers (identification documents, work permits or social security numbers) which were necessary for legal employment.

Other circumstances which push refugees to pursue employment in the informal economy exist prior to the issuance of refugee status. In countries where asylum-seekers face both a prohibition of legal employment and long asylum determination procedures during which they are granted inadequate or no state assistance, some refugees will inevitably have no other alternative but to engage in areas of the informal economy, in which they build contacts and tend to remain for some time even after receiving refugee status. This situation continues to be particularly acute in Romania and Bulgaria. Insufficient language skills to compete effectively in the labor market; eagerness by some employers to hire foreigners off the books to avoid paying the employers share of contributions; and the low level of wages remaining after taxes, are other causes for engaging in the informal labor sector.

More preventive measures need to be identified to discourage participation in the informal economy. These include of course, better reception conditions for asylum-seekers. Counseling should also be provided to refugees regarding the legal, social and financial consequences (in terms of their eligibility for certain types of state assistance and benefits, such as health care) of working in the informal labor market, as well as on alternative modes of legal employment, some of which carry lower rates of taxation than wage-earning employment.

Employment assistance programs provided by UNHCR and NGOs, include the following: employment counseling services; refugee-specific vocational training courses; small business grants or micro-credit schemes; apprenticeship and job-placement assistance programs, some of which offer employers incentives for hiring or training refugees; and special business courses relating to management or the legalities of establishing legal corporations.

While many of these programs have proven useful, the refugee-specific vocational training programs and the business grants and micro-credit schemes in particular, have not been deemed effective or successful in some countries. One of the reasons for the low success rate of some of the businesses initiated under the business loan/grant program for example, have been the problems inherent to the small

business sector in certain countries, such as the inability of small enterprises to cope with strict reporting requirements and high taxation rates. Providing employer incentives for training or hiring refugees has shown more promise. Thus, local business conditions in each country must be assessed first in order to determine the type of employment assistance programs most suitable to the business environment and labor market.

A common reality of the process of identifying and securing jobs is that informal networks of friends, acquaintances, as well as family and community members, are often vastly more effective than institutional procedures and contacts. Hence, efforts should be concentrated on supporting the development of such networks. This may be achieved in a number of ways, including by promoting opportunities for social and professional contacts between refugees and with immigrant communities and the host population. The establishment of refugee and immigrant organizations and community structures, including community assistance centers may be helpful in this regard.

Organizations involved in employment assistance to recognized refugees should be encouraged to consider the particular needs of women refugees. Refugee women, often the primary caregivers in families, may face greater obstacles in entering the workforce, such as affordable child care and lower skills and educational levels. Appointing a gender focal point within employment programs may be a valuable step towards identifying and responding to such issues. Families with two incomes and whose children attend school from an early age rather than remaining at home, are more likely to avoid social exclusion and economic marginalization often affecting immigrant or minority communities.

State Assistance/Supplementary Assistance

Until relatively recently, recognized refugees in many host countries have experienced periods during which accessing national social assistance benefits in practice was either difficult or impossible. Of special note are the situations in Bulgaria and Romania, where to the knowledge of UNHCR, virtually no recognized refugees have received state welfare benefits as of yet.

UNHCR continues to be the only consistent, and essentially the sole source of financial assistance to recognized refugees in Bulgaria, and until recently also in Romania, where a system of reimbursable loans by the state now provides refugees with some temporary assistance.

Beyond the issue of effective access which has improved significantly for refugees, especially since 1998, the matter of the level of assistance accorded under these national welfare systems is an equally crucial consideration in determining the

present and future integration capacity of this region. While certainly the least prosperous countries, i.e., Romania and Bulgaria, offer only a very minimal social safety-net, even in the more affluent countries of this region those persons not able to adjust to the current economic transformation are quickly being marginalized. As stated above, one of the ways in which this situation can be ameliorated, albeit indirectly, is by assisting refugees to secure affordable housing, which is to the extent possible compatible with employment opportunities, so that rent is more at par with either wages or social assistance benefits.

In recognition of the fact that recognized refugees may initially have access to less personal and financial resources than nationals, the governments of Hungary, and Romania (the last being problematic in its implementation) have established refugee-specific financial assistance programs. UNHCR also has made contributions in this regard. Such supplementary financial assistance programs, whether granted by UNHCR or the host state, should avoid becoming a substitute or alternative to national public relief regimes. They should, rather, remain supplementary to the national state assistance scheme. In part, such an approach allows both social welfare bureaux and recognized refugees to gain experience and establish a practice with regard to the exercise of these rights before refugee-specific assistance is exhausted, so that the chances of delays and difficulties in gaining access to national public assistance later on are minimized.

In some countries however, it is ultimately at the political level, both domestic and Europe-wide, that more comprehensive and creative policy decisions must be reached in order to ensure refugees have not only a basic subsistence level but also an opportunity to become self-sufficient.

Areas Where Integration Related Assistance at the Asylum Stage Would Help Eventual Integration of Recognized Refugees

Among the factors most commonly responsible for encouraging asylum-seekers to go west are the long refugee status determination procedures and inadequate reception conditions, as well as poor economic prospects in the long-term and the lack of existing community structures and support groups. The first two factors while not directly related to the integration capacity of these countries will nonetheless continue to affect refugee flows and patterns in Europe and the credibility of the very institutions of asylum in this region.

The second set of factors have a more direct relation to integration and the perception of these countries as viable countries of settlement. All four areas, however, appear to be crucial sectors for investment by EU member and candidate states working towards the harmonization of European asylum institutions and burden-sharing.

Conditions at the stage of reception may also have lasting effects on the eventual integration patterns of recognized refugees. For example, segregated living conditions or collective accommodation in relatively isolated refugee camps for asylum-seekers, when accompanied by long RSD procedures and periods of inactivity are known to result in a deterioration of their emotional and mental health, which may be manifested as depression, dependency syndrome, apathy and general lack of confidence and feeling of helplessness the effects of which will often persist after their recognition and remain as psychological obstacles hindering their capacity for successful integration in their host country. Their employment and social or communication skills are also sometimes significantly diminished during this time.

Hence, where such collective reception centers are the only economically viable facilities for asylum-seekers, creative strategies for promoting independent living conditions and a balanced lifestyle of both work and leisure activities must continue to be sought. Work therapy, vocational training and volunteer work, as well as arts and crafts groups and language courses are examples of skills-related activities that may replace legal employment if this is prohibited for asylum-seekers in the host country. Refugee camps and reception centers should have well stocked libraries, including literature in the mother tongue of the major refugee groups, playrooms for children, and exercise facilities. Donations, including by volunteer campaigns render these objectives easily attainable.

Community support and cultural groups are also necessary at the reception phase, as they not only provide a support system for the asylum-seeker during a critical period of insecurity in his life, but help establish contacts which will be helpful for his eventual integration as a recognized refugee. Women, children and youths, need support and social groups of their peers, as well as increased opportunities for contact with the host population and culture.

Offering language lessons and vocational training or work therapy, if not direct access to employment, during the asylum procedure would greatly further integration efforts of those eventually recognized as refugees. This is especially true due to the lengthy status determination procedures common in this region. Such activities facilitate the contacts with the host society which after recognition can be important sources of support to refugees. Job-related skills also shorten the process of becoming self-sufficient. Finally, these skills will serve to promote the reinsertion of asylum-seekers whose applications for asylum have been rejected and who return to their countries of origin, and thus are not wasted efforts.

Refugees, torn from their family and community support networks and dislocated from their cultural context, may no longer have access to behavioral guidance or familiar structures which normally promote a healthy lifestyle. Thus, measures related to the prevention of substance abuse, family planning, pre- and post-natal, as well as preventive health care, and cultural orientation, will improve the

potential of refugees to successfully adapt to their host society by empowering them to make better-informed choices in their personal lives. Such activities should ideally commence during the asylum procedure as residence in camps provides the only efficient opportunity to reach a large number of persons of concern. Persons involved in these activities must of course be themselves familiar with and trained in the cultural, religious, and other background of refugee groups in the host country.

The implementation of many of the aforementioned activities, such as the cultural orientation, preventive health activities, social and community support groups, work therapy, and policies promoting a balanced and independent lifestyle during the period of the asylum procedure, particularly if asylum-seekers are accommodated in collective centers, need not necessarily require substantial financial inputs. They do require the mobilization of volunteer groups, NGOs and asylum-seekers themselves. In this connection, a needs-analysis based, for example, on a periodic survey every one or two years among the asylum population would provide a clearer picture of what services and activities are most needed. Such surveys should of course be carefully formulated, and translated so as not to raise expectations about results.

Measures Immediately Post Recognition

Several activities of value in facilitating integration should be undertaken immediately post-recognition of refugee status, primarily by NGOs in the field. Orientation sessions on socio-economic rights, including information on labor rights, accessing social assistance, and health care should be arranged including whenever possible information in writing in the language of the country of origin.

Information and counseling relating to preventive health care, family planning information, and cultural orientation programs should also be made available at this stage, if it has not already been done during the asylum determination process. Providing intensive language programs and related support, immediately upon recognition is also absolutely essential. Directories and referrals to existing community/ethnic, and other support groups or centers should be made available to refugees. In addition, the field worker should identify any special needs a refugee may have, and with the refugee draft a *curriculum vitae* or an equivalent type of personal and work history, for use in planning employment strategies.

At the same time, this information should be registered in an NGO monitoring mechanism, as discussed below, to analyze the profile of refugee populations in the host country and better respond to their integration needs. Lastly, it may be helpful to distribute a newsletter for recognized refugees so that new information on relevant legislation, employment, educational opportunities, and other services is distributed to as wide an audience as possible in a timely fashion.

Long-Term Investments: Structural Support towards Integration

Capacity building activities pertaining to asylum institutions in this region have focused on the establishment of legal and administrative frameworks for refugee status determination procedures and basic reception conditions for asylum-seekers. Despite the progress in these areas, not all the objectives with regard to these essential aspects of asylum have been achieved, so that in some countries, resources must continue to be balanced between status determination/reception and integration. Particularly, governments must continue being assisted in both improving and shortening lengthy RSD procedures and some governments also continue to require special assistance with securing basic reception conditions for asylum-seekers.

At the same time, refugee populations in most countries under consideration have now reached a level which requires that integration programs be in place, especially given the context of the difficult economic situation and the existence of few effective refugee community support structures. The process of joining the EU also adds a special impetus to establishing adequate integration structures in this region since refugee flows and migration patterns will likely respond in the near future to the economic and visa free travel possibilities accompanying EU accession.

As seen above, the second wave of asylum legislation in this region generally reflects more open policies towards integration, particularly with regard to socio-economic rights. The third stage in the development of integration-capacity in this region now requires investment in appropriate infrastructure. Some resources have already been invested in this area by the national governments in some host countries, especially in the context of the integration programs in the Czech Republic, Hungary and to some extent also in Slovakia. For the most part however, UNHCR has been the primary source of funding of integration programs.

Some attempts by UNHCR have been and continue to be directed towards increasing the long term integration capacity of governments, such as by contributing to housing schemes for recognized refugees and utilizing refugee government agencies as local implementing partners, as well as by advocating legislative frameworks which are open to integration. Institutional capacity building has also, of course, included funding the activities of local refugee-assisting NGOs, though as a general rule these do not yet specialize in the integration of recognized refugees, with the notable exception of PPI in the Czech Republic.

However, it is now time in the countries under consideration for all interested actors to invest in long-term and sustainable integration structures and programs, which may include the following:

A monitoring mechanism for refugee-assisting NGOs which will provide reliable data on the integration progress of recognized refugees. Records must be kept

by these organizations of their clients, and a mechanism for maintaining the contact information as up-to-date as possible of recognized refugees who are not regular clients should also be devised, at least for the first five years. Newsletters, useful get-togethers, cultural events, student awards and other incentives can be utilized to maintain active contact with the refugee community. This monitoring mechanism would enable actors in the refugee field to periodically evaluate the integration process in the host country.

A survey of the population of recognized refugees is also highly recommended in all the countries under consideration, with the exception of Slovenia. This survey should be conducted as soon as possible, as the relatively manageable numbers of recognized refugees in most host countries means that the establishment of the tracing mechanism discussed above is still possible. The survey should endeavor to further identify their needs, demographic characteristics, the degree of use and effectiveness of informal rather than institutional/organizational support networks, details regarding their living conditions and in particular housing, income and employment. Such surveys are beneficial not only for the purposes of needs analysis but, as importantly, also to evaluate the services and priority areas of NGOs and to decide where to allocate resources. One example of such a survey, done by PPI in the Czech Republic, is provided as an Annex to this study for further reference.

Efforts to provide affordable housing to recognized refugees continue to be a priority in most countries, as discussed above, and require a significant investment, as well as improved policy positions. The latter is especially necessary with regard to housing project guidelines, such as those relating to an integrated strategy of housing compatible with employment opportunities, and rules regarding the selection and distribution criteria, including the suitability of proposed sites for long-term integration.

Investing in structures providing community support and representation to the various refugee groups in the host country will allow for pro-active strategies on the part of the populations of concern, employment opportunities, and a long-term source of psychological, cultural and material support to newly recognized refugees. Such structures are essential to the initial transition and adaptation phase of integration and to the well-being of these communities in the long-run, as they play an invaluable role as informal networks for the purposes of work and a myriad of essential community services. While it was not possible within the framework of this study to provide a survey of the extent and quality of such community structures and refugee or immigrant organizations in the region, it would be very useful to compile this information as well as support materials for assisting in refugee community development.

With the exception of Slovenia, consideration should be given to whether it would increase effectiveness to promote more specialized services and organizations whose mandate would focus exclusively on the integration of recognized refugees. This decision will depend on the situation and programs in each host country, but

mechanisms allowing for more specialized integration services could include the establishment of NGOs which deal only with recognized refugees, or the creation of a focal point for integration within existing NGOs. What PPI, an integration NGO focusing strictly on recognized refugees in the Czech Republic, has made clear however, is that efficiency and effectiveness of integration programs can be greatly increased if these are implemented by specialized organizations. Monitoring of the integration process, quality counseling services, identification and responsiveness to integration problems, fund-raising, and advocacy efforts on behalf of recognized refugees are all areas which could benefit from the comprehensive and more focused approach of specialized organizations.

Regional discussions and exchange of information would be beneficial to the development of integration programs in this region, whether it be refugee-assisting NGOs, UNHCR or relevant actors at the wider European level. For funders, and especially for UNHCR and European level actors, such meetings present an opportunity to prioritize regional objectives in this sector, evaluate medium- and long-term needs and allocate resources accordingly. Persons involved in capacity-building and programming in these organizations and implementing NGOs, would also have the opportunity to exchange and benefit from the experiences, programs, and best practices of neighboring countries, often presenting similar integration challenges. Mechanisms for greater involvement and assistance to the integration and asylum effort by both individual Western European countries and the EU as such should also be sought, as EU accession procedures draw closer and change the pattern of refugee and migration flows.

Public attitudes to foreigners and refugees, while deemed more appropriate for a separate type of study than the one at hand, is another sector which deserves special attention in this region for several reasons, including its impact on integration and irregular migration. Negative attitudes towards visible minorities are often exacerbated in societies under going transition, and in fact, xenophobia is often cited as the rationale for recognized refugees seeking resettlement outside Central Europe. Many local NGOs, such as the Partnership for Democratic Change in the Czech Republic, Poland, and Slovakia can be engaged to provide training in the area of inter-cultural understanding and communication to police, local administrators, and other host country actors.

All of the above can be discussed with local Delegations of the European Commission in order to engage European Union support for UNHCR, government and NGO initiatives.

Use of International Instruments beyond the 1951 Convention

More familiarity with the 1951 Convention as an integration instrument should be encouraged. In addition, UNHCR staff and other refugee advocates should

continue to be offered training regarding the use of other international and regional instruments when advocating or enforcing refugee integration rights. These instruments are sometimes more generous in terms of rights afforded to refugees than under the 1951 Convention and, as importantly, often benefit from supervisory and enforcement mechanisms.

QUESTIONNAIRE USED FOR PPI STUDY, CZECH REPUBLIC,
DECEMBER 1998¹

Research Questions

1. What helped you most to get used to living in the Czech Republic?
2. What was the most difficult thing for you after receiving refugee status in the Czech Republic?
3. How do you feel in the Czech Republic?
 I am satisfied I am dissatisfied

Interviewer: The following question is to be answered only by respondents who choose the second option.

4. What changes would make you feel better in the Czech Republic?
5. Do you have enough friends amongst Czechs?
 Yes No
6. Is it important for you to have friends among Czechs?
 Yes No
7. Do you have enough friends among your fellow countrymen here in the Czech Republic?
 Yes No

¹ Refugees in the Czech Republic: Research Questionnaire Report, (December 1998) (unofficial UNHCR English translation).

8. Is it important for you to have friends among your fellow countrymen here in the Czech Republic?
- Yes No
9. How well do you understand Czech?
- Well Not well
10. Have you taken a Czech language course after being granted refugee status?
- Yes No

The following question is answered only by those respondents who answer YES to question No. 10.

11. Which Czech language courses did you take after being granted refugee status?

Interviewer: Read the options given, circle all courses taken.

- Course financed by state —School Office
- Course financed by OPU
- Course financed by Czech Helsinki Committee

The following question is answered only by those respondents who answer NO to question No. 10.

12. If you did not take a Czech language course, why?
- I did not want it or did not need it
- I was not offered one, I did not know it was possible

13. Which of the following ways of learning Czech was most effective for you?

Interviewer: Read the options given, circle only one answer.

- Language courses in refugee camp
- Language course in integration residential center
- Language course by OPU, @HV, other
- Studying at school
- Watching TV, listening to radio, reading newspapers, magazines
- Intensive communication with Czechs
- Other, what? _____

14. What assistance have you so far received as a refugee and from whom?

Interviewer: Tick and write who provided you with the assistance.

15. Assistance with solving accommodation problems:

from whom: _____

16. Financial assistance

from whom: _____

17. Other assistance.

The following question is answered only by respondents who choose the last option.

18. What other form of assistance did you receive?

19. Information

from whom: _____

20. Language course

from whom: _____

21. Legal counseling

from whom: _____

22. Material help

from whom: _____

23. Solving difficulties with official institutions

from whom: _____

24. Other: _____

25. Which of the following forms of assistance was the most useful to you?

Interviewer: Mark one of the options according to the classification in questions 12 and 13.

26. Which form of assistance would be useful for you now?

Interviewer: Mark one of the options according to the classification in questions 12 and 13.

27. How well are you oriented in the system of institutions, social benefits, Labour Offices, insurance, etc.?

Interviewer: Read the given options.

- Well
- Satisfactorily
- Only partially
- I m not oriented at all

28. How easy is it for you to settle claims and benefits?

Interviewer: Read the given options.

- Easy
- Not very easy, but I usually manage
- Difficult, sometimes I need help
- Very difficult, I cannot manage by myself

The following question is answered only by those respondents who choose option 3 or 4.

29. If it is difficult for you, what is the main problem?

30. What institutions do you use/do you frequent?

31. What is your original occupation?

Interviewer: Reply in detail, cite your title and job description.

32. How long was the time period between being granted refugee status and starting working?

Interviewer: Give the time period in months.

33. Who helped you in finding employment after you were granted refugee status?

Interviewer: Circle one answer. If you choose option 3, please specify.

- Myself, friends
- Labor Office
- Other organization: _____

34. What is your present state?

Interviewer: Circle one answer.

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> Student | <input type="checkbox"/> Retired |
| <input type="checkbox"/> Unemployed | <input type="checkbox"/> Housewife (maternity leave) |
| <input type="checkbox"/> Employed | <input type="checkbox"/> Businessman, Entrepreneur |

Interviewer: Three following questions are answered only by those respondents who select options 5 or 6 in the previous question.

35. What is your present occupation?

Interviewer: Reply in great detail, cite the title and job description.

36. Does your present occupation correspond to your qualifications?

- Corresponds
- Partially corresponds
- Does not at all correspond

37. Are you satisfied with your occupation?

- Satisfied
- Dissatisfied

38. If you are unemployed, what do you think is the main reason for your unemployment?

- Inability to find any kind of work
- Inability to find work in my field
- Other reasons: _____

39. Tell me, please, what type of apartment do you live in:

Interviewer: Circle one answer.

- My own apartment, cooperative apartment, my own house
- Long-term lease —regular apartment
- Sublease (room, apartment, or house)
- Hostel
- Integrated apartments —offered by the Ministry of the Interior

- Residential integration center
- My company's apartment
- Other: _____

Interviewer: The following question is answered only by those respondents who select options 5 or 6.

40. How long was the time period between receiving refugee status and moving into an integrated apartment?

Interviewer: State in months.

41. Size of apartment:

Interviewer: Circle one answer.

42. Class of apartment:

Interviewer: Circle one answer.

- Class I
- Class II
- Class III

43. Are you satisfied with your accommodation?

Interviewer: Circle one answer.

- Satisfied
- Dissatisfied

44. Are you satisfied with your financial situation?

- Satisfied
- Dissatisfied

Interviewer: Circle one answer.

45. Who helps you most often in times of sudden financial crisis?

Interviewer: Circle one answer.

- Myself
- Neighbors
- Friends (Czechs)
- NGOs
- Church
- Relatives
- Friends (foreigners)
- Colleagues
- Town Hall
- Other agent

46. Which expenses are the largest burdens on your family budget?

Interviewer: Circle one answer.

- | | |
|--|---|
| <input type="checkbox"/> Accommodation | <input type="checkbox"/> Food |
| <input type="checkbox"/> Clothes | <input type="checkbox"/> Education, Culture |
| <input type="checkbox"/> Other: _____ | |

Now some personal information for statistical purposes:

47. Sex

- | | |
|-------------------------------|---------------------------------|
| <input type="checkbox"/> Male | <input type="checkbox"/> Female |
|-------------------------------|---------------------------------|

48. How old are you?

49. What country do you come from?

50. When did you receive refugee status?

51. Have you filed an application for Czech citizenship?

Interviewer: If yes, write the date (e.g. 0297).

52. Have you been granted Czech citizenship?

Interviewer: If yes, write the date (e.g. 0297).

53. What is your highest level of education?

- Elementary, no vocational training
- Vocational training
- Secondary school
- University

Interviewer: Circle one answer.

54. Family status

- | | |
|-----------------------------------|----------------------------------|
| <input type="checkbox"/> Single | <input type="checkbox"/> Married |
| <input type="checkbox"/> Divorced | <input type="checkbox"/> Widowed |

Interviewer: Circle one answer.

55. How many people including yourself live in your household?

56. How many children are in your household?

57. Size of place of residence

Interviewer: Circle one answer.

- Villages of up to 999 inhabitants
- Settlements of 1 000 to 1 999 inhabitants
- Settlements of 2 000 to 4 999 inhabitants
- Towns of 5 000 to 19 999 inhabitants
- Towns of 20 000 to 99 999 inhabitants
- Towns over 100 000 inhabitants

**CURRENCY CONVERSION
RATES¹**

1 USD	35 CZK	(Czech Crowns)
1 USD	42 SK	(Slovak Crowns)
1 USD	250 HUF	(Hungarian Forint)
1 USD	2,000 Leva	(Bulgarian Leva) ²
1 USD	4 PZL	(Polish Zloty)
1 USD	18,000	Lei (Romanian Lei)
1 USD	190 SIT	(Slovenian Tolar)

¹ For all currencies except the Bulgarian Leva, the rates are based on situation of November 20, 1999. The exchange rates may fluctuate during the year due to the transitional phase of economies of the selected countries. Please also note that the figures for 1998 and 1999 provided in the original currency have in addition been converted into US dollars for easy reference in the text. However, only the average November 1999 exchange rate was used for this purpose, such that US dollar equivalencies may not always correspond precisely to the original amounts at a particular time. Readers should therefore be aware that only the figures provided in the original currency are exact.

² Bulgarian Leva was devaluated on July 5, 1999 so that 1,000 leva became 1 leva, which equals approximately 2 USD. However, all information in this study was provided to us before July 5, 1999 and therefore, the old rate, i.e., 1 USD = 2,000 Leva, is used when converting the currency.

RATIFICATION OF INTERNATIONAL INSTRUMENTS BY THE SEVEN SELECTED COUNTRIES

THE INSTRUMENT	DATE OF RATIFICATION						
	BULGARIA	CZECH REP.	HUNGARY	POLAND	ROMANIA	SLOVAKIA	SLOVENIA
Convention on the Elimination of All Forms of Discrimination Against Women (1979)	8-Feb-1982	22-Feb-1993	22-Dec-1980	30-Jul-1980	7-Jan-1982	28-May-1993	6-Jul-1992
Convention on the Rights of the Child (1989)	31-Jun-1991	22-Feb-1993	7-Oct-1991	7-Jun-1991	28-Sep-1990	28-May-1993	6-Jul-1992
Convention relating to the Status of Refugees (1951)	12-May-1993	11-May-1993	14-Mar-1989	27-Sep-1991	7-Aug-1991	4-Feb-1993	6-Jul-1992
International Covenant on Civil and Political Rights (1966)	21-Sep-1970	23-Dec-1975	17-Jan-1974	18-Mar-1977	9-Dec-1974	28-May-1993	6-Jul-1992
International Covenant on Economic, Social, and Cultural Rights (1966)	21-Sep-1970	22-Feb-1993	17-Jan-1974	18-Mar-1977	9-Dec-1974	28-May-1993	6-Jul-1992
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) ¹	—	—	—	—	—	—	—
Convention (No. 97) concerning Migration for Employment (1949)	—	—	—	—	—	—	9-Jun-1992
Convention (No. 143) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (1975)	—	—	—	—	—	—	9-Jun-1992
European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)	7-Sep-1992	18-Mar-1992	5-Nov-1992	19-Jan-1993	20-Jun-1994	18-Mar-1992	28-Jun-1994
European Social Charter (1961)	—	3-Nov-1999	8-Jul-1999	25-Jun-1997	signed 4-Oct-1994 ²	22-Jun-1998	signed 11-Oct-1997 ³
European Convention on the Legal Status of Migrant Workers (1977)	—	—	—	—	—	—	—
European Convention on Social Security (1972)	—	—	—	—	—	—	—
European Convention on Social and Medical Assistance (1953)	—	—	—	—	—	—	—
European Agreement on the Abolition of Visas for Refugees (1959)	—	9-Mar-1999	—	—	—	—	—

¹ Not in force (See Article 87).

² Have, however, ratified European Social Charter (Revised) (May 3, 1996) on May 7, 1999.

³ Have, however, ratified European Social Charter (Revised) (May 3, 1996) on May 7, 1999.

