



Czech Republic
Organization for Aid to Refugees
Submission to the Human Rights Committee (HRC)
127th session (14 October-8 November 2019)

Introduction

The objective of this submission, written by the Organization for Aid to Refugees¹, is to provide the Human Rights Committee (HRC) with alternative information regarding following main issues: 1. immigration detention of families with children, minors and vulnerable persons in the Czech Republic, 2. expulsion orders issued to asylum seekers in the Czech Republic, and 3. lack of protection for stateless persons. We believe that these practices are in violation of the International Covenant on Civil and Political Rights (ICCPR) and should be abolished immediately.

I. DETENTION OF FAMILIES WITH CHILDREN:

1) Automatic practice of immigration detention in disregard of available alternatives

We disagree with the statement of the state party that „*Detention is always used as a means of last resort*“(par. 89 of the state party report).

Despite the fact that the Law on Foreigners allows for alternatives to immigration detention (§ 123b of the Law no. 326/199 Coll.), from our practice we observe that detention continues to be used quasi-automatically by the police and that also in respect of families with children.

The Czech Law on Foreigners knows four alternatives to detention: (1) staying at an address announced to the police and being present at this address at given times for the purposes of control, (2) reporting one-self regularly to the police, (3) financial deposit, and (4) staying in a place designated by the police.

¹ The Organization for Aid to Refugees (OPU) is a nongovernmental organization with more than a 25-year-long experience in providing free assistance to refugees and migrants in the Czech Republic. OPU lawyers provide free on-site legal counselling for refugees and migrants in all detention, reception and accommodation centres in the Czech Republic and ensure that policies do not violate human rights. OPU lawyers litigate at domestic courts, ECHR and UN-bodies. OPU is a member of ECRE, of Consortium of NGOs working with migrants, and is a UNHCR implementing partner. OPU is active in cross-Europe dialogue and aims to support democratization and to strengthen civic society. OPU is an expert source for media and has carried out campaigns to encourage discussion on human rights, racism and tolerance.

The police do assess alternatives when issuing a detention decision. However, when assessing possible alternatives, the police typically rely on very similar argumentation which appears to be to a large extent copy-pasted from one decision to the other without a proper assessment of individual circumstances of each case.

Typically, alternatives are denied due to the fact that a person does not have stable (or permanent) residence in the Czech Republic. Alternatively, already by the fact of having entered Czech Republic irregularly, a person is considered unreliable to be able to report themselves regularly to the police. The alternative of offering a financial deposit is not applied in practice. During a conference organized by the Ombudsperson relating to recent developments in asylum and immigration law in September 2019, the police personnel explained the financial deposit alternative cannot be put in practice due to prevailing technical obstacles (i.e. lacking bank accounts to store the deposit). At the same time, the financial deposit is calculated on the basis of the expected costs of deportation in company of police personnel. Even for destinations within Europe this sum amounts on average up to 200 000 – 300 000 CZK per person (between 7.700– 11.000 EUR). It is hardly imaginable how any of the persons concerned, let alone families with several children, would be in a position to pay such deposit without further due. In practice, the financial deposit alternative remains illusory. The last alternative has been introduced with the new amendment to the Law on Foreigners which is in force since July 31st 2019 and we have not observed it being applied in practice yet.

Overall, on the basis of the observed practice it could be argued that the police do not use detention as ultima ratio, the measure of last resort, but, rather, the measure of *first* resort. Arguments that police does not have accounts to store the deposit cannot be accepted as a valid explanation as methodology for collecting the deposits and returning them to the individuals should have been developed when the alternative was introduced in the law. While we do not have concrete figures available, from our experience it appears that the police conclude in majority of the cases that alternatives cannot be applied or would prove void in practice and decide to proceed with detention.

2) Artificial distinction between detention and “placement” in the detention center

We must resolutely disagree with the statement of the state party that *"The Czech Republic spares no effort in its attempts to prevent families with children from being detained"* (par. 90 of state party report). We are also troubled by the statements of the state party that *„Children are not detained, but staying in facilities together with their detained parents if care for them cannot be arranged outside the facility“*(par 89 of state party report).

The state authorities continue to wrongly argue that children are not being detained in the Czech Republic, since in situations where adult family members are detained, a child does not obtain an own detention order but is merely “placed” in the detention facility together with the adult family members. This “placement” is typically argued to be in the best interest of the child in order not to separate them from the detained family members. However, we consider these statements incorrect and in fact, misleading vis-a-vis the realities on the ground.

First of all, the Czech Law on Foreigners allows for minors beyond 15 years of age to be detained. In situations where a child is beyond 15 years of age, the child can receive an own detention order or be placed in the detention facility together with adult parents. In practice both types of cases arise.

Yet secondly and more importantly, the distinction between “detention” and “placement in the detention” remains artificial and in fact, misleading. Children “placed” in detention together with their parents are “not detained” only on paper. In practice they are *de facto* detained as little to nothing changes for them in the daily practice. They are for example, not allowed to leave the facility on their own will. At the same time, it should be noted that most parents would probably not consent to their child leaving the facility even if they would be allowed to, as the detention facility Bělá Jezová is located in the middle of a forest with a road with relatively busy car traffic next to it. As a result, children “placed” in the detention facility have to endure the conditions of the detention to the same degree as any other adult person in the facility.

The non-detention of children is thus merely rhetorical and, in our opinion, an attempt at disguising the fact that families with children, even children as small as 4 years old, do continue being detained in the Czech Republic.

3) Questionable assessment of the best interest of the child

In most cases the police authorities seem to be aware of their obligation to consider the best interest of the child in all decisions relating to children though some problems pertain in relation to children beyond 15 years of age (s. below). However, there appears to be no clear methodology as to how this assessment is done in practice and the police tend to be at times highly creative in the assessment of what the best interest of a child is in a particular case.

As noted above, in cases of detention of families with children, police authorities continue to argue that detention is in fact in the best interest of the child. Usually, the police authorities argue the detention is necessary as a matter of protecting family unity, since in a situation where adult family members are detained, any other measure would result in the separation of the family. In some situations, police ask adult family members and in some cases the children themselves whether they wish to be placed together in one facility. It is only logical that in situations where family members are offered the alternative of either being separated or staying together in the detention facility, they agree to the child being placed together with the rest of the family. In this practice, the police neglect that best interest of the child would also imply releasing the family altogether, or placing them together under an alternative measure.

We came across at least one decision where police authorities argued that detention is, among others, in the best interest of the child due to the fact that the detention facility is placed in the protected natural area of Kokořínsko and hence the child will be on fresh air. Such arguments illustrate that there is limited understanding among police personnel of the paramount importance of the best interest of the child as a guiding principle which should be decisive in all decisions relating to children, as well as on the impact of any detention on the development and well-being of children. While the material conditions in the detention facility Bělá-Jezová have been improving over time, it should be noted that high securitization prevails and even though leisure and social activities are offered, children are taking part in them in a highly securitized surrounding which is impacting them and their parents.

Finally, another problem arises in respect of the weight of the consideration of the best interest of the child should play in the detention decisions. While international human rights law is unequivocal that the best interest of the child should be of primary consideration in all decisions relating to children and overriding any other concerns such as those relating to the

immigration status of the child or that of his parents, the opposite seems to be the case. The security perspective of the police in respect of the immigration situation of the adult family members tends to prevail and take precedent over considerations relating to the best interest of the child. In practice, the children are being punished for the irregular residence status of their family members.

4) Reluctance to afford special protection measures to children beyond 15 years of age

While the police as well as Czech courts seems to be aware of the importance of the principle of the best interest of the child in all detention decisions, there seems to be some level of reluctance to afford special protection measures to children beyond 15 years of age.

Since October 2018, we noted at least one case where a 15 year old minor has been detained together with his adult family member with no assessment whatsoever being made in the respective detention order of the fact that the detainee is a child and hence, special protection safeguards should apply. Despite this clear procedural mistake on the side of the police authorities, the Regional Court in Brno dismissed the case (judgement of the Regional Court in Brno no. 41A 30/2019-35 from 7.5.2019).

Likewise, recent judgements of the Highest Administrative Court as well as several Regional Courts suggest that there is little willingness to afford special protection to children who are nearing the age of adulthood. OPU's claim that detention for 90 days for children between 15 to 18 years of age who come from conflict-ridden areas of Iraq or Afghanistan in order to seek international protection in Europe should be considered disproportionate have been dismissed in a recent judgement of the Highest Administrative Court (judgement of the Highest Administrative Court no. 10 Azs 316/2018 – 60 from 21. 3. 2018), as well as the Regional Court in Ústí nad Labem (judgement of the Regional Court in Ústí nad Labem no. 41 A 16/2018-23 from 13. 11. 2018 and judgement of the Regional Court in Ústí nad Labem 75 A 13/2019-37 from 15. 4. 2019).

This jurisprudence together with the police practice keeps putting in question to what extent minors beyond 15 years of age fall under the protection of the international law on the rights of the child despite the fact that the UN Convention of the Rights of the Child is unequivocal that a child is a person below 18 years of age.

5) Separation of families following release of some family members

We have also observed some cases where a court proceeding resulted in the separation of a family following release of some family members, causing heightened stress for the family members concerned.

Between October 2018 and January 2019 we were intervening in a case pertaining to a family of four sisters of 17, 18, 19 and 24 years of age, one brother of 22 years of age and a child of 8 years of age. They were all Iraqi Yazidis from Mosul fleeing continued violence and persecution from the side of the Islamic State. The child was "placed" in the detention with his mother, the sister of 24 years. The 17 year old sister was "placed" in the detention with her 22 years old brother as her guardian. The Regional Court in Ústí nad Labem annulled the detention decision pertaining to the 24 year old sister and the 22 year old brother upon the considerations relating to the 8 and 17 year old children "placed" in the detention with them (judgement of the Regional Court in Ústí nad Labem 75 A 1/2019-57 from 22. 1. 2019). Upon the annulment, the police released both of the children together with the 24 year old sister and the 22 year old brother as their legal guardians. As a result, however, the 18 and 19 year

old sisters were separated from their siblings, remained in the detention and their detention was subsequently further prolonged by another 90 days. This caused them heightened stress and anxieties, as the older sister and brother were of important support structure for them during the journey. A decision from the Highest Administrative Court on this matter is still pending (case no. 8 Azs 45/2019).

In addition to the above, we have in the past witnessed cases where grandparents were separated from parents with children upon the parents' release.

In our opinion, in situations where a court annuls the detention decision relating to some family members, the police should proceed with releasing the family altogether in order to preserve family unity. This should be specifically the case in situations relating to close family members, such as grandchildren or siblings.

6. No redress for victims of ill-treatment

It is a matter of great concern that families and their children detained in the immigration detention in Czech Republic have very limited access to compensation. This is so even in the situation, when their detention had been found unlawful by the domestic courts.

The State Liability Act (no. 82/1998) provides for a possibility to seek redress for ill-treatment, including claiming compensation of non-pecuniary damage. There is, however, very strict statute of limitation period to file such claim - the right to seek compensation for non-pecuniary damage expires after six months which sharply contrasts with 3 years limitation period for similar civil law claims.² The Committee against Torture in 2012 recommended Czechia to extend the time limit for filing claims³ but there was no change in this respect. Moreover the calculation of this limitation period is being interpreted in a rather restrictive manner (e.g. the statute of limitation starts to run from when the victim learns about the ill-treatment and not from when the investigation authorities or courts confirm that there was ill-treatment which may take years and the victims loses the possibility to lodge the compensation claim).

Even if the victims manage to file such a claim, the responsible Ministry usually denies providing compensation and the victim has to file a court action. Whereas such actions used to be free from court fees, as of 2017 it is no longer so and victims claiming compensation for damage caused by State are subject to court fee of equivalent to ca. 80 euros.⁴ In addition, in case of loss they are to bear the legal costs incurred by the authorities. The court proceedings are very lengthy and usually take years. Further delays are cost by the relatively recent practice of the Czech courts to open separate proceedings to establish whether the court action is "in the interest of the children". All these barriers deter victims of ill-treatment from seeking redress.

In 2015, during the so called "refugee crisis" in Europe, the Bělá-Jezová detention centre was severely overcrowded. While the official statistics are not available, but the centre was visited twice by the monitoring group of the Public Defender of Rights – during their first visit in August 2015 there were 659 persons placed in the centre, during their second visit in October 2015, there were 397 persons, out of which 100 children (!). The capacity of the

² Compare Section 32(3) of the State Liability Act (no. 82/1998) and Section 629 of the Civil Code (no. 89/2012).

³ CAT, Concluding Observations - Czech Republic, 13 July 2012, CAT/C/CZE/CO/4-5, § 13.

⁴ Act no. 549/1991 Coll. on court fees, Item 8a.

centre was 270 persons at that time. The heavy overcrowding and very poor material conditions in the detention centre were fiercely criticised by the Public Defender of Rights who found severe cases inhuman and degrading treatment.⁵ The persons, including families with children, were accommodated in the gym and temporary containers premises, lacking privacy, food and adequate clothing, sharing sanitary facilities, with almost no leisure activities and education. The ombudsperson also pointed out that they had very limited information about the reasons of their detention and further destiny. The access to legal aid was restricted. Most of them spent months in these terrible conditions that undoubtedly constituted inhuman and degrading treatment. As to our knowledge, the authorities offered no redress to the victims of 2015 overcrowding, not even in the form of official apology, financial compensation or criminal (or at least disciplinary) prosecution of those responsible for the management decisions causing such a severe overcrowding.

II. DETENTION OF UNACCOMPANIED MINORS:

Questionable practice of age assessment

Despite the fact that a qualified age assessment is paramount to establishing these minors as rights-holders and accordingly deciding on the place of their detention either in an adult facility, in the facility for families with children or in the facility for unaccompanied migrant minors, several problems prevail in the assessment of age by police in respect of minors who seems to be nearing 18 years of age from their external appearance.

In the past years, the age assessment continued to be conducted primarily on the basis of bone scanning. This practice is starting to change only recently as it has been criticized as unreliable for identifying calendar (as opposed to biological) age of a person by the experts, as well as successfully challenged in courts. The understanding seems to be growing that a bone scan should be, at the least, accompanied by a psychological assessment of the person's maturity.

In two recent cases observed between August and September 2019, we noted that the police strived to improve the practice and requested a psychological assessment in addition to the traditional tests based on bone scanning and that also in situations where the bone scans suggested age of 19 or even more. While waiting for further tests to be made, the individual was placed in the facility for families with children. This in itself is an improvement compared to the previous practice where such children were automatically placed in the adult facility without further due and we hope this practice will pertain in the future. However, other problems of practical nature are coming up in respect of psychological assessment. By law, when an individual is detained due to doubts relating to his age, the police is required to proceed immediately to establish the age of the person. In the cases observed, while the police did contact the Ministry of Interior the day following the placement of the individual in the detention facility, the Ministry of Interior replied that due to current holiday period, they are lacking trained psychologists who would be available to travel to the detention facility

⁵ The reports from August and October 2015 are available online in English together with picture documentation showing heavy overcrowding and poor material conditions:

August 2015 report:

https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/Report_Bela-Jezova-august-2015.pdf

October 2015 follow-up report:

https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/Report_Bela-Jezova.pdf.

Bělá-Jezová. The persons concerned thus needed to stay in the detention without any other assessment being made for about a month in each case before being released on the basis of a court judgement or before the psychological tests could be conducted where it was eventually proven that they are indeed, minors. We consider that the lack of psychologists “due to holiday period” is not a sufficient ground for continuing the detention even in situations where the age of a person cannot be established. In such situations, the detainee should profit from the benefit of the doubt and be placed in the facility for unaccompanied migrant children until psychologists are available.

As noted, the argument of unavailability of psychologists has been dismissed as not acceptable in one of the judgements (decision of the Regional Court in Brno 41 A 57/2019-38 from 23. 8. 2019). In another judgement issued in the same period, however, the court upheld the detention decision regardless of the fact that the best interest of the child was not taken into consideration and that the person continued being detained without any further steps taken towards establishing their age (decision of the Regional Court in Hradec Králové – branch Pardubice 50 A 1/2019-20 from 12. 9. 2019). This suggests that the domestic jurisprudence is not unified on the matter.

III. OTHER GROUPS IN DETENTION:

1) Detention of applicants for international protection

The state party notes that *„By law, applicants for international protection belonging to vulnerable groups, including families with children cannot be detained. “* In our opinion, this statement is inaccurate.

The Asylum Law, no. 325/1999 Coll allows in art. 46a (3) for detention of vulnerable adult applicants for international protection in situations where these repeatedly and severely infringe the obligations imposed on them in a decision requiring them to follow an alternative to detention. In practice, this means that the Ministry of Interior, who is the authority issuing detention decisions in cases relating to individuals applying for international protection, would need to first apply an alternative to detention and could only subsequently issue a detention order in a situation where the conditions above are met. In 2019, we have observed at least one case where a pregnant applicant for international protection was detained without the alternatives being applied. The detention decision was subsequently annulled in a court (judgement of the Regional Court in Prague 49 A 9/2018-37 from 30. 11. 2018).

In practice individuals found transferring the Czech Republic without required travel documents and visa are at first issued a deportation order and placed in a detention facility where they can apply for asylum within 7 days from receiving the information on asylum procedure from the police.

Many vulnerable persons who are solely transiting through the Czech Republic do not apply for international protection in the detention facility. However, this does not change the fact that many of them do have well-founded reasons for fleeing their countries of origin and although they are not formally applicants for international protection, they are coming to Europe in order to seek international protection.

2) Detention of asylum seekers at the Prague Vaclav Havel airport transit zone, lack of identifying their vulnerability

Individuals applying for asylum at the Prague Vaclav Havel airport transit zone reception center, were routinely subjected to detention at this reception center. The detention decisions were routinely reasoned by lack of documents to enter the country which was perceived as a threat to public order. The decisions were issued without assessing vulnerability of the detainees adequately, contrary to the Section 74(1) of the Asylum Act which obliges the Ministry not to detain vulnerable asylum seekers at the airport reception center. This section is not applied correctly, as the Ministry lacks mechanisms to identify vulnerability of the applicants in the detention procedure. Upon appeals, the courts typically overturned detention decisions, confirming that the Ministry failed to recognize vulnerability of the detainees or that the Ministry did not have enough reasons to assume threat to public order, such as in decisions of Municipal Court Prague Nr. 1 A 93/2016, 1 A 94/2016, 1 A 82/2016, 2 A 90/2016, 2 A 94/2015. In 2016. The Supreme Administrative Court decided that the authorities failed to assess vulnerability of a female victim of torture in the decision 9 Azs 19/2016. In spite of this jurisprudence, the Ministry did not change its practice.

Moreover, the Section 74(1) was amended in a way that currently allows for detention of certain vulnerable groups at the airport reception center, namely persons with “physical disability which does not prevent stay in reception center or in a detention facility”. This amendment is problematic, considering the Ministry does not conduct any individual assessment on vulnerability of detainees at the Airport center, nor does it conduct assessment of whether a particular disability prevents stay in detention.

The absence of a mechanism to identify vulnerable asylum seekers at the Prague airport reception center is hardly justifiable, especially considering the relatively low numbers of asylum seekers at this facility, with around 15-20 applicants monthly at the maximum.

The periodic review of detention is lacking at the airport reception center. Regarding this, most recently in September 2019, the Czech Supreme Administrative Court in its decision 9 Azs 193/2018 ruled in a case of a psychically vulnerable woman detained at the airport reception center whose health condition worsened dramatically in course of the detention, claiming the worsening of her condition justified an ex-nunc judicial review in line with Art.5 par.4 of the European Convention of Human Rights.

3) Lack of proper vulnerability assessment and lacking re-assessment during detention

In respect of vulnerable groups in detention we have observed problems relating to vulnerability assessment and re-assessment of the situation as the detention continues.

We notice that when a person mentions in the original interrogation relating to their immigration status reasons suggesting vulnerability (i.e. previous experience with violence in the country of origin, experience with harassment, persecution of family members), the police does not follow up with any further questions in order to establish vulnerability. As a result, the protocols from the police offer very little information in order to assess proportionality of the detention decisions. This makes it difficult to later fight unlawful detention in court and obtain legal remedy, as courts need to decide within 7 days from receiving the police file and hence do not have the possibility to conduct proper investigation or hear the individual. Often, courts are also reluctant to assess the lawfulness of the detention *ex nunc*, that is to consider newly submitted information or circumstances arising after the original detention decision has been made. Although this practice has been recently successfully challenged in front of the Highest Administrative Court, a properly conducted

interview when a detention decision is made remains crucial for guaranteeing the person's right to effective legal remedy.

Furthermore, it is not clear to what extent the police itself receives and requests information from the detention facility on the changes in the health and other status of the persons concerned. The police has proven reluctant to consider newly arising circumstances as grounds for releasing a person where this information has been submitted by the person, the medical personnel or their legal representatives. This was the case even in situations where these were of acutely severe nature, such as repeated psychological and psychiatric assessments proving a person is showing signs of schizophrenia, suffering from PTSD, might have a mild mental disability or has a proven eating disorder. While the police would not be obliged to release the person upon receiving information of their health status deteriorating, they should at the very least carefully look in these circumstances and, in case of doubts, request further health checks.

Additionally, the decisions of the police relating the request to formally re-assess the grounds for continued detention and decisions for prolonging detention are in our experience often poorly reasoned. They tend to rely on arguments put forward in the first detention decision, without a proper assessment of the newly arising circumstances or information. In our opinion the police itself should be proactively seeking information about changes in health status of the person from the Refugee Facilities Administration in order to assess whether the detention is still proportionate. It is however, even more concerning that the police refuses to adequately assess this information when it is directly provided to them by the legal representatives of the persons concerned.

4) Length of detention

We must also disagree with the statement of the state party that „*In view of the settled case-law of national courts, the detention period is always shorter than the maximum statutory time limit*“ (par. 89 of the state party report).

The average length of detention awarded in detention orders in relation to families with children is the legally allowed maximum of 90 days in situations where a family is detained for the purpose of deportation. The average length of detention in situations of detention for the purpose of a Dublin transfer under the EU Dublin Regulation is 30 days in the initial decision where the state party awaits the response from another EU member state. Depending on the response, the detention is subsequently prolonged up to 86 days in total.

In our experience, only persons who express the will to return voluntarily to their countries of origin, who come from countries within Europe and who have a valid travel document obtain detention orders for less than 90 days (usually around 30 days).

In practice, the minimum length of detention for families with children is at least between two to three weeks from entering the detention in cases where a lawsuit is successful, as the families are typically released following the decision of a court. In the meantime, it should be noted that for example the European Court of Human Rights has found violations of art. 3 and art. 8 of the Convention in respect of children and at times their parents in situations where the length of the detention was substantially shorter, often lasting several days only.

5) Questionable assessment of the likelihood to fulfill the purpose of the detention

In detention decisions relating to detention for the purpose of deportation, we also noted questionable assessment of the likelihood to fulfill the purpose of the detention. When issuing a detention order, the police is obliged to make an assessment as to whether the purpose of the detention can be at least theoretically realized in practice. That is, the police should assess on one hand whether there are any prima facie legal obstacles which would prevent the deportation, such as non-refoulement or severe risk of harm in case of return. Additionally, the police should look into any practical obstacles towards materializing the return, such as missing travel documents and the likelihood of obtaining them during the maximum length of detention period.

However, this assessment appears again a sole formality by the police, as the police seems to always come to the conclusion that the purpose of the detention can be fulfilled. Meanwhile, from their own practice the police must be aware of the fact that in situations where a person is coming without a travel document and from country with weak bureaucratic apparatus (Afghanistan, Iraq), the local embassies – if these are at all located in the Czech Republic – will not be able to identify this person, let alone have their travel documents issued and have them deported before the statutory 180 days maximum period of detention passes. Needless to mention, conducting the deportation to many of these countries would be in flagrant violation of international law.

Accordingly, persons are being detained although from the start of the detention the police knows or should know that it will not be possible to conduct the purpose of the detention both, legally and practically.

2. EXPULSION ISSUED TO ASYLUM SEEKERS

1) Imprisonment and deportation of asylum seekers arriving via airport in 2015-2017

In 2015, 2016 and 2017, OPU monitored asylum seekers who were imprisoned in regular prisons after arriving at the Prague international airport. The imprisonment was a criminal procedure sanction for presenting themselves with forged documents. This procedure was clearly contrary to the non-penalization clause in Article 31 of the Convention Relating to the Status of Refugees. According to the statements of imprisoned asylum seekers who arrived with forged documents, their requests to submit an asylum application at the airport transit zone were ignored or directly rejected⁶.

Instead of registering their asylum applications at the airport transit zone and their subsequent transfer to the airport reception center, the authorities initiated a criminal procedure leading to imprisonment in regular prisons. The fact that they were refugees and tried to apply for asylum was not taken into consideration by the criminal judges. The testimonies of affected imprisoned refugees as collected by OPU included a victim of torture and sexual violence refugee from Sri Lanka who was imprisoned for 8 months in Prague 6 prison. The total number of imprisoned refugees is not systemically tracked as the access of prison inmates to legal aid is severely limited and there is no organization providing regular legal aid to refugees in prisons.

An individual complaint submitted by OPU to UN-CEDAW in 2017, Nr. 121/2017, pending as of 2019, concerned a vulnerable woman who was unable to lodge her asylum application at the Prague Airport, in whose case CEDAW issued an interim measure obliging Czech authorities not to deport the applicant to her country of origin.

⁶ Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member States , p.8, 2017, <http://www.ecre.org/poland-bulgaria-czech-republic-hungary-and-slovenia-pushed-back-at-the-door/> (Hungarian Helsinki Committee, 2017)

Moreover, even the asylum seekers who arrived at the Prague airport transit zone with valid documents to enter the country reported similar obstacles to submit their asylum application. The authorities cancelled their valid visas while ignoring or rejecting asylum application request, preventing the asylum seekers from leaving the airport transit zone and attempting their deportations without assessing possible obstacles to return, contrary to the *non-refoulement* rule of Art. 33 of the Convention Relating to the Status of Refugees. Testimonies collected by OPU included a female asylum seeker from Azerbaijan with valid visa, travelling with her two small children in 2015, and a family of Iraqi Yazidi asylum seekers with valid visa, arriving to the Prague airport transit zone with four young children in 2016. As a result of this policy of deterrence right upon arrival, the Prague airport reception center which is intended for an initial registration of asylum seekers arriving via the airport transit zone remained typically empty in 2015-2017 with an average monthly occupancy around 0-2 persons.

While the number of asylum seekers in the airport center increased in 2019 to approximately 15-20 persons present monthly in average, the practice of an unsupervised and uninterpreted procedure on denying access to territory, conducted by Czech police, did not change, as there is no supervising mechanism to monitor whether a person whose access to territory was denied, actually wished to apply for asylum.

2) Expulsion issued to asylum seekers in the airport transit zone in 2018 and 2019

In 2018 and 2019 as the number of persons at the airport reception center increased moderately, OPU monitored a routine practice of issuing administrative expulsion orders to all persons applying for asylum immediately upon landing at the Prague Václav Havel airport transit zone. While the airport transit zone serves precisely for persons who applied for asylum in the transit zone without valid passport or visa, it is routinely exactly this reason – lack of passport or visa – which triggers issuing of the administrative expulsion. The police typically concludes that arriving without proper documents constitutes a reason to issue an administrative expulsion, and/or represent a risk to public order, while the risk to public order is often presumed precisely from the lack of documents to enter the Czech territory. Such practice is in breach of Art.31 of the Refugee Convention.

Alarming, the most recent novelization to the Aliens Act which entered in force in July 2019⁷ narrowed down possible obstacles to deportation (“obstacles to return”) to only include breach of Art.3 of the European Convention of Human Rights. In September 2019, OPU monitored two cases of Yemenite asylum seekers (husband and a pregnant wife) at the Prague airport reception center who arrived from the war zones of Yemen with the intent to apply for asylum in the Czech Republic, who were issued administrative expulsion due to the absence of valid visa. In the administrative expulsion procedure, the police marked them as “able to return”, indicating that no breach of Art.3 ECHR is present and thus no obstacle to return is present, as the deportation to a war zone is currently not a reason to suspend deportation under the Aliens Act. While their expulsion appeal procedure as well as their asylum procedure is still pending, which indeed temporarily causes the expulsion to not enter in force, should they not succeed in their appeals, they will no longer be protected against deportation.

3) Expulsion issued at the in-land reception center of Zastavka u Brna

When a foreigner arrives at the Foreign Police offices at the in-land reception center (Zastavka u Brna) to file an application for international protection while not having valid

⁷ Law Nr. 176/2019 Sb., amending the law 326/1999 Coll, Aliens Act, §179.

visa/residence permit and/or valid passport, the procedure on administrative expulsion is automatically initiated, regardless of the circumstances of his or her the arrival to the Czech Republic. The decision on administrative expulsion, accompanied with an entry-ban to EU territory, is then usually issued within few hours or days (it can be prior to registering the asylum application or later during the asylum proceedings). The entry ban usually varies between 6 months and 3 years, mostly depending on the length of previous illegal stay of the individual in the Czech Republic. We believe that this practice of the Foreign Police does not sufficiently reflect obligation under article 31 of the Refugee Convention.

While the administrative expulsion indeed cannot be enforced while the asylum proceeding is still pending, the quality of asylum procedure is low in the Czech Republic, thus not always safeguarding an adequate protection. Only in those minimum cases in which asylum is granted, the expulsion decision is annulled. If subsidiary protection is granted, the expulsion decision is annulled only in case that the protection was granted for a period 1,5 times longer than the duration of the entry-ban.

Another problem in this regard may arise when a foreigner is caught by a Police while transferring the Czech Republic to a different member state without valid travel document and/or visa. In this case, foreigners are placed into detention right after they are issued an expulsion decision and they are allowed to apply for international protection only within 7 days from the moment they were informed by the Police about such possibility. Filing an application after this time limit is possible only if there has been a significant change in circumstances relating to possible persecution or threat of serious harm claimed by the foreigner. Otherwise the application filed after this deadline is not considered to be effective and the Ministry of Interior does not initiate the asylum procedure.

3. LACK OF PROTECTION FOR STATELESS PERSONS

There is still no dedicated statelessness determination procedure provided by law. A mention is made in the asylum act (§ 8 letter d), that the Ministry of the Interior decides upon requests made under the Convention on the status of stateless persons from 1954 (introduced by an amendment of asylum act in December 2015). The law, however, lacks any particular procedural rule the Ministry should follow when a foreigner files an application under the Statelessness Convention.

There were few applications filled after the mentioned amending legislation came into force. Even though the Ministry registered those application, it has remained completely inactive for years following the registration and no steps were taken to on its part to take a decision. During this time, the applicant were left in an irregular situation, often without any valid ID which resulted in their sanctioning for illegal stay and repeated detention.

Recently some progress has been made thanks to the jurisprudence of Czech courts and the interventions of the Public Defender of Rights. Referring to Art. 25 of the Statelessness Convention the Supreme Administrative court ruled that the Ministry should properly identify persons that filed an application under the convention by issuing them an identification card similar that is the one issued to asylum seekers. The courts also ruled that since there are no special procedural rules that would apply in the procedure on statelessness determination, the provisions on asylum proceedings shall be applied by analogy to the necessary extent (including provisions on time limits for issuing a decision).

However, the Ministry disrespects this case law and problems still arise as regards the procedure of stateless determination and the status of the person during the procedure as well as after he or she is recognized as being stateless.

Nowadays, after a foreigner files an application for statelessness determination, he or she is issued only a statement (A4 format paper without any photograph) declaring that this individual has applied for stateless status. At the same time, there is no explanation of the legal consequences of the statement for its holder which can easily cause problems and misunderstandings when dealing with authorities. Practically, the applicant is left in a legal vacuum whilst his or her stay in the territory of the Czech Republic is not illegal, but neither is it legal. The positive aspect is that the issued statement, in theory, should prevent sanctioning of its holder for illegal stay and related detention. On the other hand, no other rights are guaranteed. Unlike asylum seeker that can benefit from certain reception conditions including access to accommodation in reception or residential facilities, social benefits or medical insurance, foreigners in statelessness determination procedure are provided no such guarantees

In 2019 after years of inactivity the Ministry adopted first decisions and recognized few persons as being stateless. Unfortunately, this did not entirely solve their problems. No particular residence permit is granted to these persons following the recognition of their statelessness status. In practice they are referred to the nearest Foreign Police which issues them a new decision on administrative expulsion for their illegal stay. The difference is that this time, the Ministry of Interior adopts a binding opinion declaring that departure of the foreigner is not possible (due to the statelessness status). The police thus adopt a decision on administrative expulsion that is not enforceable. Based upon this decision the foreigner is allowed to apply for tolerance visa for up to one year, which can later be changed for tolerated stay (form of long-term residence permit).

Since the Czech Republic made reservations to articles 27 and 28 of the Statelessness Convention, issuing of identity card and travel documents to those recognized as being stateless remains a question.

We seek clear guarantees for applicants for statelessness status as well as for recognized stateless persons, such as a legal residence permit, identification documents and other means of assistance.

Also, there is no legally binding facilitation of acquisition of citizenship for stateless persons. This only depends on discretion of the Ministry, which can waive the conditions of 5 years of permanent residence to acquire citizenship (article 15 of Citizenship Act). We ask facilitation of naturalization for stateless persons.

RECOMMENDATIONS:

- **Immediately stop detaining families with children in the closed immigration detention centre.**
- **Adopt legislation banning the immigration detention of families with children.**
- **Introduce feasible and accessible alternatives to detention, including non-custodial accommodation for migrant families with children and ensure legal, social and psychological services for these families.**

- **Divert resources currently dedicated to detention to non-custodial solutions carried out by competent child protection actors and ensure that these solutions do not imply any kind of child or family deprivation of liberty and are based on an ethic of care and protection, not enforcement.**
- **Supervise the police procedure on denying access to territory to transparently prove whether persons whose access to territory was denied were attempting to lodge asylum application**
- **Set up an effective mechanism to identify vulnerable persons in detentions including the Prague airport reception center, including provision of psychological counseling.**
- **Stop detaining vulnerable refugees at the Prague airport reception center completely**
- **Review grounds of detention periodically**
- **Make the compensation procedure accessible for victims of ill-treatment**
- **Introduce a transparent procedure on granting status for stateless persons, including issuing an I.D. during the procedure pending as well as granting a status affirming I.D.**

In Prague, 27th September 2019
Organization for Aid to Refugees

Contact person:
Hana Frankova
hana.frankova@opu.cz