

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES
*Délégation Régionale
pour le Benelux
et les Institutions Européennes*



VERENIGDE NATIES
HOOG COMMISSARIAAT
VOOR DE VLUCHTELINGEN
*Regionale Vertegenwoordiging
voor de Benelux en de
Europese Instellingen*

Rue Van Eyck 11B
B – 1050 Bruxelles

Téléfax : 627.17.30
Téléphone : 649.01.53
Email : belbr@unhcr.org

UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
*Regional Office
for the Benelux
and the European
Institutions*

Van Eyckstraat 11B
B – 1050 Brussel

Telefax : 627.17.30
Telefoon : 649.01.53
Email : belbr@unhcr.org

Background Note on the Protection of Asylum Seekers and Refugees in the Czech Republic

Legislative Framework and Practice

The Czech Republic acceded to the 1951 Convention on the Status of Refugees and its 1967 Protocol in 1993, as a legal successor to the Czech and Slovak Federal Republic.

The 1999 Asylum Act was amended in 2002 by the Act No. 2/2002 Coll., which came into force on 1 February 2002. The amendment was made to address the deficiencies observed in the Czech asylum system in the years 2000 and 2001, as well as to establish an independent second instance in order to further harmonise the national legislation with the EU *acquis* on asylum. The amendment act has, *inter alia*,

- introduced restrictions on the access to labour market for asylum seekers for a period of twelve months following the submission of asylum applications;
- extended the list of grounds upon which asylum applications will be rejected as manifestly unfounded;
- limited the provision of financial assistance to those staying outside accommodation centres to three months;
- introduced a two-year ban for lodging repeated asylum applications (this ban can be lifted by the Ministry of Interior in exceptional cases on the basis of grounds deserving special consideration) and
- established a special accelerated asylum procedure at the Prague airport.

Following the airport procedure, a first instance decision must be issued within five-days. The appeal against a negative decision has to be made within a maximum seven days to the City Court in Prague. The Court is supposed to issue its decision within 30 days. During the ongoing airport asylum procedure, asylum seekers are not allowed to leave the reception centre of the transit area of the airport. If, however, any of the above mentioned deadlines for issuance of decision is not observed, asylum seekers must be issued an entry visa and moved to one of the residential centres for asylum seekers established in the Czech territory. With the assistance of its implementing partner Caritas, UNHCR has been providing legal, social and psychological assistance to asylum-seekers at the airport.

Other Relevant Changes to the Czech Asylum Law

In addition to the above-mentioned Act No. 2/2002 Coll., the Asylum Act was in 2002 further amended by other three amendments: Act No. 217/2002 Coll., Act No. 320/2002 Coll., and Act No. 519/2002 Coll., which came into force on 1 January 2003.

Act No. 217/2002 Coll. defines the conditions for residence and the rights of asylum seekers appealing to the Supreme Administrative Court in Brno against decisions of Regional Courts. The Act allows asylum seekers to wait for the final decision of the Supreme Administrative Court in the Czech Republic on the basis of a one-year toleration visa, if the Court permits so. The visa can be extended by the local Aliens Police departments in order to cover the period of the judicial proceeding, if needs be.

The next amendment to the Asylum Act, Act No.320/2002 Coll. is a part of a complex legislation related to the ongoing reform of the Czech administrative system and transfers the responsibility for the implementation of the State Integration Program for recognised refugees from the district offices to regional offices and local municipalities.

In December 2002, the Asylum Act was amended once more. Act No. 519/2002 Coll. established a new structure of the Czech asylum proceeding, which became fully operational as of January 2003. Under the new rules, Regional Courts are responsible for issuing decisions on appeals lodged by asylum seekers against negative decisions of the Department for Asylum and Migration Policies. Also, a cassation complaint can be made to the Supreme Administrative Court on an exceptional basis, against an asylum decision issued by the Regional Court.

The Asylum procedure in the Czech Republic commences at the moment of submission of the asylum application. The asylum application can only be submitted after the asylum statement is made. The asylum statement can be made at the land border crossings and at the airport, but also within the territory, by approaching the local police offices, in the reception centre facility, in the prisons and establishments for detention of aliens and in the hospitals. There is generally no time limitation for an alien to apply for asylum, except for those who apply in the detention facilities.

The legal deadline established for a duration of a regular procedure is 90 days, however, in practice the first instance procedure takes usually much longer. Manifestly unfounded claims must be processed by the first-instance authority within a period of 30 days.

The Ministry of the Interior has been entrusted with the responsibility of the asylum procedure in the first instance. As of 1 January 2003, regional courts are responsible to deal with appeals ensuring thereby an independent judiciary review.

Following these important changes, UNHCR has developed a close co-operation with the Minister of Justice in view of assisting and training the regional judges. UNHCR has become an important partner of the Czech Judicial Academy integrating asylum courses into the curricula of the Academy.

Statistics

In the year 2002, the total number of new asylum applications was 8481 which represents 53% less with respect to the year 2001. From February until December 2002, an average of 650 persons per month submitted new asylum applications in the Czech Republic. No major changes have been observed regarding the most frequent countries of origin of the asylum seekers, with the exception of Slovakia and China. The asylum applications of the above-mentioned nationals have significantly increased in the second half of 2002. The same applies to asylum seekers from the Russian Federation.

In 2002 the number of applicants originating from the former Soviet Union countries and particularly Ukraine, had considerably decreased compared with the previous year (*4416 new applicants from Ukraine in 2001 against 1674 in 2002*). Therefore, in the year 2002 nationals from Ukraine represented 20% of the total number of newly submitted applications while in 2001, they represented 24%. Other main countries of origin in 2002 were Vietnam (new applicants from Vietnam represented 11%) followed by Slovakia (10%), Moldova (9%), Georgia (8%), Russia (7%) and China (6 %).

From 1 January to 30 September 2003, an average of 898 new asylum applications per month have been submitted in the Czech Republic. The biggest group is composed by asylum seekers from the Russian Federation -mostly Chechen nationals- (3.063). This group is followed by nationals from Ukraine (1.359), Slovakia (915) and China (753).

In the course of the year 2003, an increase of applications from Chechen asylum seekers arriving from Poland has been noted. In January 34, February 77, March 53, April 705, May 447, June 294 (Russians - number of Chechens not available), July 273, and 544 in August. The exact number of new applications made by Chechen nationals arriving from Poland in September is not available although, the official statistics reported a total of 478 new asylum applications made by Russians.

Specific Issues

The institutional and administrative capacity is not yet sufficient to deal with asylum procedures in a timely and efficient manner. The Department for Asylum and Migration Policies would need additional staff to be fully operational.

The situation of separated minors who apply for asylum in the Czech Republic remains an issue of concern. The new foster care law No. 109/2002 Col. is in force since 1 July 2002. The opening of a special centre for foreign separated minors, under the Ministry of Education, is foreseen for later this year. For the time being separated children remain accommodated in a special area for vulnerable individuals within the reception facility of Kostelec, which is run by the Refugee Facilities Administration (Ministry of the Interior).

In the first six months of 2003, the notions of 'safe third country' and 'safe country of origin' have been mainly used to process in accelerated manner the new applications submitted by Slovaks, Ukrainians and Russians.

As a result of the arrival of Chechen asylum seekers from Poland, UNHCR has been closely co-operating with the Czech Ministry of the Interior to promote and facilitate a suitable solution to this problematic among all parties concerned. On 9 June, a Tripartite meeting took place facilitating an exchange of information between the Czech and Polish delegations and UNHCR. A representative of the Austrian Embassy in Prague participated in the meeting as well. During the Tripartite meeting the parties agreed to continue giving due attention to the Chechen caseload. UNHCR emphasised that all procedural safeguards should be respected and recommended that standard procedure should be used to process those individual cases. A leaflet with objective information on the conditions offered to asylum seekers in the Czech Republic was produced by UNHCR Prague and shared with competent authorities.

According to the Amendment to the Asylum Law No. 2/2002 Coll., aliens placed in detention facilities for the purpose of expulsion or clarification of their identity, when asking for asylum shall remain in the detention facilities. The detained can ask for judicial review of the detention order. Following a recent Instruction issued by the Aliens and Border Police Directorate, the asylum seeker has to be released after lodging an appeal against the negative decision issued in first instance, or after a period of 90 days if no decision has been taken as yet by the administrative authority. The detained can ask for judicial review of the detention order. Since 2002 UNHCR Prague has managed to ensure the regular presence of its implementing partners in the detention facilities. The regular presence of our partners permits to monitor

the general situation, as well as to assist the asylum seekers who are kept in those facilities. Particular emphasis is being put on vulnerable cases as families with minor children, elderly persons and single women.

Points for Consideration

- To continue providing support to the regional courts to assist them in their new task in order to promote a fully operational and independent second instance;
- To continue monitoring the administrative decisions taken in the regular asylum procedure plus the judicial decisions;
- To support efforts of the Department for Asylum and Migration Policies to get additional human resources to deal with the applications within the deadlines established by the Asylum law;
- To support the implementation of the integration programme for recognised refugees;
- To monitor the problem of disappearances of separated children.

UNHCR

October 2003