

NATIONS UNIES

HAUT COMMISSARIAT
POUR LES REFUGIES

*Délégation Régionale
pour le Benelux
et les Institutions Européennes*

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
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VERENIGDE NATIES

HOOG COMMISSARIAAT
VOOR DE VLUCHTELINGEN

*Regionale Vertegenwoordiging
voor de Benelux en de Europese
Instellingen*

Van Eyckstraat 11B
B – 1050 Brussel

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Telefoon : 649.01.53
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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 concept of asylum found in Article 43 of the Czech Republic Charter on Basic Rights and Freedoms, is incorporated into the Act No 325/1999 Coll., on Asylum (the Asylum Act) as amended by Act No. 2/2002 Coll., Act No. 217/2002 Coll., Act No. 320/2002 Coll., Act No. 519/2002 and Act No 222/2003 Coll. Also relevant to asylum-seekers and refugees is the Law No. 326/1999 Coll., on the Residence of Aliens on the Territory of the Czech Republic (the Aliens Act) as later amended, which entered into force on 1 January 2000

The 1999 Asylum Act as amended in 2002 by the Act No. 2/2002 Coll., which came into force on 1 February 2002 intended 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.

Concerning 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.

Other relevant changes to the Czech Asylum Law

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 to be.

The 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 latest amendment to the Asylum Act No 222/2003 Coll. was adopted on June 26, 2003 and came into force on August 1, 2003. The amendment is primarily aimed at combating abuse of the asylum procedure. Under the Amendment, the first instance asylum authority has no more duty to offer an asylum seeker the opportunity to express his/her view regarding the grounds of the decision concerning his/her asylum application. Furthermore, it defines the rights of "aliens" during the period for submission of a judicial appeal against the first-instance RSD decision. This category of persons is to be considered as

asylum-seekers for the purpose of provision of medical care, food, accommodation and basic sanitary needs. These persons have also the right to ask the Ministry of Interior to be included into the government-sponsored programme of voluntary return either to the alien's country of origin or any third country willing to admit him/her.

On 26 June 2003, the Czech Parliament adopted a new Act No 221/2003 Coll., on Temporary Protection of Aliens aimed at granting temporary protection to people fleeing their country because of war, natural disaster or human rights violation. This is, in fact, transposition into the Czech law of the EU Directive on minimum standards for granting temporary protection in the event of a mass influx of displaced persons, adopted on 20 July 2001. The Act defines categories of persons eligible for temporary protection, establishes specific procedure for granting temporary protection, sets up the legal status of applicants as well as aliens benefiting from the temporary protection and also defines the role of UNHCR in the relevant administrative procedure. During a transitory period, the Czech Government will, by its Decree, decide on quotas, the duration and nationality of potential temporary protection beneficiaries. Following the Czech Republic accession to the EU, this responsibility is entrusted to the European Council. The law entered into force on January 1, 2004.

Another legislative change affecting asylum-seekers was introduced by the 222/2003 Amendment to the Aliens Act, which was approved in June 2003 and came into force partially on 1 January 2004. This amendment extends the category of cases, in which aliens are entitled to ask for the residence permit on humanitarian grounds in the Czech Republic. This category also applies to rejected asylum-seekers, under condition, that they have stayed in the Czech Republic continuously for at least five years and that they do not originate from so called "safe country of origin". Furthermore, the amendment establishes a special procedure for cases of rejected asylum seekers with obstacles to departure staying at the reception centre in the transit airport area. The amendment does not, however, address the issue of an inadequate legal status attached to toleration status. Its beneficiaries have only access to free medical treatment within the scope of treatment defined by the Act 48/1997 Coll., about Public Medical Insurance, as later amended.

Following the accession to the EU, new proposals of amendments to the Asylum and Aliens Act are being prepared by the MOI to harmonise the Czech legislation on asylum and migration with the EU. End of July 2004, the Office has been drafting comments to a Proposal of amendment to the Asylum Law that intends to harmonise the current provisions with the Council Regulation (EC) No. 343/2003 of 18 February 2003 (Dublin II), with the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, and with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

As of 1 May 2004, a Dublin Unit was set up within the Department of Asylum and Migration Policies of the Ministry of Interior. The responsibility for managing the EURODAC system has been entrusted to the National EURODAC Unit established at the Criminology Department in Prague. However, despite the fact that Dublin and EURODAC systems are operational, it is too early to assess their impact in the Czech asylum system. Further it is difficult to predict the impact that the ongoing harmonisation process with the EU legislation is going to have in the Czech asylum legislation and practice. Before the accession, many asylum seekers applied for asylum in the Czech Republic to ensure temporary legal stay prior to their migration to another country. The abusive use of the procedure observed in previous years led to the introduction of restrictive measures in the Asylum Law in 2002, including the two-year ban for submission of subsequent asylum applications. The Office continues discussing with the authorities the need to abolish a provision of the two-year ban, which in UNHCR's view, also needs to be waived to allow the full implementation of the Dublin II Regulation.

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 (7 days from the moment the alien was informed by the Police about the possibility to request asylum).

The Ministry of the Interior has been entrusted with the responsibility of the asylum procedure in the first instance. The legal deadline established for duration of a regular procedure is 90 days; however, in practice the first instance procedure takes usually much longer. It should be noted that in 2003 and 2004 the average length of first instance decisions has been reduced (first instance decisions have been often issued 6 months after the date of application). Manifestly unfounded claims must be processed by the first-instance authority within a period of 30 days.

As of 1 January 2003, Regional Courts (8) are responsible to deal with appeals ensuring thereby an independent judiciary review. Following this important change, UNHCR developed a close co-operation with the Minister of Justice in view of assisting and training the regional judges. Currently, the Regional Courts are operational and have been benefiting from UNHCR's support on a regular basis. UNHCR Prague played a leading role in the preparation of a joint training event that took place in Prague on 16 February 2004 gathering all responsible decision making authorities of the MOI, the Regional Courts, the Supreme Administrative Court and the local NGOs, which constitutes a good example of the important role currently played by UNHCR to improve the capacity and competence of partners in the field of asylum while promoting and facilitating

dialogue and co-operation. This event was an excellent training opportunity for all the key players dealing with asylum but served also as a unique occasion to constructively exchange experiences and views on how the system in place could be improved. The Office is following-up the recommendations of the Roundtable and preparing a publication which will include the presentations made during the Roundtable and the final conclusions.

UNHCR has been promoting a more consistent legal reasoning in accordance with international standards and Czech relevant laws, while encouraging a systematic reference to the COI in the decision-making process. In the first half of the year, the Office paid close attention to reviewing and analysing the first-instance decisions and the decision-making process, with focus on particular/selected asylum-seeker groups (e.g. Chechens, Iraqis and women).

Statistics (2004 / 2003)

In comparison with 2003, the overall number of asylum seekers decreased about 40% in the first half of the year 2004. According to the official statistics issued by the Ministry of Interior (Moi), a total of 3,822 new applications were submitted in the Czech Republic from January to July 2004. The biggest group is composed of asylum seekers from the Russian Federation - mostly Chechen nationals, followed by nationals from Ukraine, Vietnam, Georgia, China and Belarus. A total of 88 asylum seekers were granted refugee status between January and July. Out of them, 23 persons originated from Russia, 20 persons from Belarus, 6 persons from Afghanistan and 6 persons from Armenia. The recognition of applicants from certain countries of origin seems to be much lower than in other countries in Europe.

Following the country's accession to the EU, several changes have been observed in terms of the number and nationalities of asylum applicants. The total number of new applications has decreased from 988 in March and 602 in April to 420 in May and 317 in June. In particular, the number of applications made by Russian nationals has decreased significantly in the past 5 months. While 516 and 287 applications were submitted in March and April respectively, the figure dropped to 18 in June and 22 in July. Similarly, the number of applications made by Slovak citizens has also dropped from 39 in January and 1 in May. On the other hand, no significant change has been observed concerning the number of asylum seekers from other traditional major countries of origin such as Ukraine, Viet Nam and Belarus. Consequently, in June and July, nationals from Ukraine constitute the biggest group of asylum seekers.

It should be recalled that in 2003 that a total of 11.396 asylum seekers applied for asylum in the Czech Republic, according to the Annual Statistical Report issued by the Ministry of Interior. Russians, mainly Chechen nationals, constituted the main group of asylum seekers (4.853). Ukraine (2044), Slovakia (1055), China (854), Vietnam (566) were the other most frequent countries of origin.

A total of 208 persons were granted asylum in the Czech Republic in 2003. The largest group were Russians (62 cases) followed by Afghans (30), Armenians (26), and Belorussians (20). Also in the year 2003 a total of 187 persons were granted asylum in the first instance and 21 in the second instance. In addition, a total of 42 persons were having their asylum claim rejected but established that there are obstacles for their departure from the Czech Republic.

Specific issues:

Chechen asylum seekers:

As of April 2003 a dramatic leap occurred in the number of Chechen nationals seeking asylum in the Czech Republic arriving from Poland. With few statistical swings up and down again, the citizens of the Russian Federation formed the largest group of asylum seekers registered in the Czech Republic in 2003 (about 40%). A large number of these applicants crossed the Czech-Austrian border shortly after their arrival in the Czech Republic, often trying to proceed to further West, through Austria, mainly to France and Belgium. According to the MOI, 90% of the applicants used to stay no longer than 35 days. Therefore, it was rather difficult to evaluate their real chances to obtain asylum in the Czech Republic. The recognition rate as far as the meritorious assessment is concerned was 5,2% for this group in 2003, which is still much higher than for other nationals. In 2004, the Office continues following the situation of Chechen asylum seekers and monitoring whether the decision making process is in line with UNHCR Guidelines while promoting regional/cross-border meetings.

Asylum seekers at the airport:

The Office has paid close attention to the situation of asylum seekers accommodated at the reception centre in the Prague-Ruzyne international airport. Our implementing partner is regularly present in the reception centre to provide legal, social and psychological assistance to asylum seekers placed in this closed facility. However, still limited NGOs' access to the transit zone at the airport remains an issue of concern.

Asylum seekers in detention including minors:

UNHCR has paid close attention to the situation of asylum seekers in detention facilities which have a strict regime similar to prisons. 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 shall remain in the detention facilities when asking for asylum. The detained can ask for judicial review of the detention order. Since 2002, UNHCR has managed to ensure the regular presence of its implementing partners in the detention facilities, which 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.

In particular, the Office is concerned on the placement of minors under the age of 18 in detention. The issue has been repeatedly raised with the responsible authority (Aliens Police) by UNHCR and NGOs; yet, so far, no practical change has been observed except for a few special cases. Given this background, UNHCR through its NGO partner implements a pilot project focusing on monitoring and providing social/legal counseling to minors in detention facilities. The project also has a training component targeting the authorities dealing with minors in detention.

Separated children seeking asylum:

The Office has paid close attention to the specific situation of separated children seeking asylum. From 1 January to 30 July 2004, a total of 50 separated children requested asylum in the country and were assisted by our implementing partners who also provided legal representation (guardianship) for the purpose of the asylum procedure. As an important development, on 15 June 2004, the Ministry of Education opened the "Home for Foreign Children" in Prague as a pilot diagnostic facility to accommodate separated children, including asylum-seekers, for a period of about eight weeks. After this period, a more adequate form of child's accommodation/treatment will be considered.

Refugee women

In line with the High Commissioner's Five Commitments to Refugee Women, the Office has been focusing on Sexual and Gender-Based Violence (SGBV) issues in cooperation with its NGO partners. Our partners have implemented pilot projects targeting female asylum seekers in one refugee facility and one detention center with the specific focus on SGBV issues.

Integration of recognized refugees:

The integration of recognized refugees is one of UNHCR priorities. Through our implementing partners we ensure provision of legal/social assistance to recognised refugees including social and physical handicapped living in private accommodation. In practice, limited employment opportunities and access to scholarship for higher education remain issues of concern for successful integration.

The Czech Government implements a State Integration Program for recognized refugees, which focuses mainly on Czech language courses and assistance for accommodation. The 2004 State Integration Program has introduced, among other changes, the possibility for refugees to receive rent subsidies for accommodation identified by themselves, in addition to the provision of integration flats as a first option. Yet, the actual implementation of the housing program was delayed and the administrative process remains complicated and time consuming. Also, in 2004, the Ministry of Labour and Social Affairs (MoL) started funding projects which aim to assist integration of foreigners, including refugees, in the area of employment. These are the first concrete re-qualification projects for foreigners that are funded by the MoL. The Office has been

recommending to the MoL to design specific re-qualification courses; thus, welcomes this positive development and encourages the continuation of the projects.

Points for consideration

- To continue providing support to the regional courts while facilitating the exchange of experience and views among all partners in the field of asylum to improve the current system;
- To continue monitoring the administrative decisions taken in the regular asylum procedure plus the judicial decisions;
- To continue to be actively involved in the ongoing legislative process (EU harmonisation/transposition of Directives) and monitor its impact in the asylum practice.
- The two-year ban for lodging repeated asylum applications; in UNHCR's view this provision should be abolished to allow the full implementation of the Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (Dublin II).
- To develop further co-ordination at the regional level to address current practices observed in some EU Member States where the recognition of applicants from certain countries of origin or nationalities seems to be much lower than in other EU countries
- Support the implementation of the integration programme for recognised refugees; emphasis on successful integration of women with dependents and physically handicapped refugees. Special consideration should be paid to refugee students, including the possibility of scholarship / financial assistance.
- To ensure that separated children seeking asylum have access to legal assistance and protection (particular focus on advocating the placement of separated children in adequate and open facilities).
- To promote unrestricted NGO access to the transit zone at the international airport of Prague.

UNHCR

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