

National Policy Brief – the Czech Republic

- 1) Detention or deprivation of the foreigner's freedom of movement is basically acceptable in the immigration context for two main reasons defined in the article 5 f) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is to prevent an unauthorised entry of a foreigner into the country or detain a person against whom action is being taken with a view to deportation or extradition. The United Nations Human Rights Committee, a UN supervision body in frame of the International Covenant on Civil and Political Rights, has recognized other reasons of immigration detention such as a state's fear of possible escape of foreigners or a fear of lack of cooperation of foreigners. These two reasons are often mentioned by states when defending detention of foreigners.
- 2) Asylum seekers in the Czech Republic are detained at the beginning of the asylum procedure in the closed reception centers at the Prague Ruzyně airport or in the closed reception center in Zastávka closed to the city of Brno. OPU believes that this practice contradicts the non-penalization rule embedded in Art. 31.2 of the 1951 Geneva Convention. In the Czech practice, the detention at the entry cannot exceed 120 days. Certain vulnerable categories of asylum seekers are exempted from this rule (unaccompanied minors, families with children, torture victims, etc.) and they should not be detained whatsoever. However, the identification mechanism of vulnerability is under-developed and in practice only minors and families with children are quickly released to open reception centers for asylum seekers. From the selected partner project countries (Czech Republic, Slovakia, Estonia, Latvia and Lithuania), the detention of asylum seekers in Lithuania, Slovakia and Estonia is rather an exemption while in the Czech Republic and Latvia a rule. The Czech and Latvian authorities have been even condemned by the European Court for Human Rights for non-complying with the provision 5/f of the European Convention.¹
- 3) Concerning the procedural safeguards in detention procedures for asylum seekers at the entry to the Czech Republic, the main problem exists at the international airport in Prague. Almost automatically, every asylum seeker arriving at the airport is not allowed to leave the center, the detention (non-entry) decisions are very similar in all cases without taking into consideration individual circumstances or non-visible vulnerabilities of the person seeking asylum. As of 1 January 2011, courts have fixed deadlines to review the detention decisions. However, according to the Czech legislation the court does not have the power to release the person but only cancel the detention decision. We believe that this is in breach of the Article 5 para 4 of the ECHR. In the Czech Republic, even after the court cancels the MOI's detention decision, the Interior Ministry can keep the person in detention using another legal reason to do so. OPU believes that detention of asylum seekers should never become a rule but an exception. Detention of asylum seekers arriving without proper documentation must be considered as another form of trauma after the persecution in the home country. Naturally, genuine refugees have no other option than to leave their home country and enter the host country without proper documentation since the home

¹ Longa Yonkeu v. Latvia from 15 November 2011, Rashed v. the Czech Republic from 27 November 2008.

country persecutes them and host countries are almost never willing to issue visas to them. In Prague airport, we observed a significant number of asylum seekers from dangerous-refugee-producing countries like Iran, Syria or Russia being detained although they arrived in Prague directly from a country where they had been in risk of persecution or *refoulement*.

- 4) OPU is concerned that even in the future EU legislation and later national legislation could detention of asylum seekers at the entry without a time limit become a rule. The latest initiative of the Polish presidency concerning the amendment to the EU Reception Directive proposes to add two new grounds for detention to the exhaustive list of detention grounds in Article 8 of the amended COM Proposal. One of them is the following ground: “(d) when he/she is detained in order to prepare the return and/or carry on the removal process and it can reasonably be considered that he/she makes an application for international protection merely in order to delay or frustrate the enforcement of that return or removal process;” A similar provision referring to illegal entry is already part of the basic concepts of the new Czech Aliens Act which will be further specified next year. Unfortunately, the latest decisions of the European Court for Human Rights in cases *Saadi against the UK* or *Longa Yonkeu against Latvia* did not specify any maximum time period for detaining asylum seekers at the entry to the host country territory. However, it is too early to make a conclusion because the negotiations concerning the Asylum Procedures Directive and the Reception Directive are still going on and we cannot exclude that the airport procedure could be substantially changed.
- 5) Last point of concern regarding the detention of asylum seekers at the entry to the Czech Republic’s territory is the worrying practice of the Czech Aliens Police at the airport. The Aliens Police uses the so called order at place procedure (very accelerated procedure if the person concerned agrees with the administrative order or sanction) and returns third country nationals in expedited manner from the airport directly to countries from which they arrived in the Czech Republic. The practice could be in obvious breach of the *non-refoulement* principle and has been already condemned by the Czech Ombudsman (Public Defender of Rights). Furthermore, neither NGOs nor private lawyers are able to access the Aliens Police cells located in the transit zone of the airport. Our lawyers, even with the help of UNHCR and Ombudsman, have so far never been able to gain access to people locked in the transit zone. At least 70 cases of orders at place have been documented by Ombudsman only in 2011.
- 6) The second typical situation, in which foreigners are detained in the Czech Republic is to execute the administrative expulsion, which he or she has been imposed for the illegal stay in the Czech Republic. In the past, the police often approached insensitively to administrative expulsion even in cases of very integrated foreigners with deep roots in the Czech Republic. The expulsion order means radical turning point in their lives and in fact it also prevents their stay not only in the Czech Republic but also in other countries of the European Union. In the Czech Republic, the decision on administrative expulsion is compulsory connected with the determination of the period of the so called re-entry ban. If the detained person applies for asylum, he or she is still kept in detention. Unaccompanied minors can be detained only for the maximum period of 3 months. We often argue that minors shall not be detained whatsoever. In the immigration context, OPU suggests to introduce a regularization program for well integrated persons in irregular situation.
- 7) Concerning the procedural safeguards for asylum seekers in the expulsion procedure, again, there are newly fixed deadlines for regional courts to deal with action on review of detention orders but the courts does not have the power to release the person from detention. There is a legal avenue to release based on legal action submitted to the competent district court (in Mlada Boleslav covering

the detention/expulsion center in Bela Jezova) but it is not efficient. The quality of the Mlada Boleslav court's decisions has been very poor and the length of the court procedure unacceptable in view of the ECHR requirements.

8) Regarding the alternatives to detention, the latest amendment of the Aliens Act, in force from 1.1.2011, has introduced two alternatives to detention to the Czech law, i.e. special measures taken in order to carry out departure of a foreigner (Article 123b and 123c of the Aliens Act). A special measure taken in order to secure departure of a foreigner can be:

- obligation of foreigner to inform the police on the address of their residence, sojourn there, inform the police about each change the following day and personally report to the police on a regular basis in a limit stated by the police;
- payment, in freely convertible currency, of the amount of estimated costs related to administrative expulsion (financial guarantee). The financial guarantee may be paid by a Czech citizen or by a foreigner with long-term residence or permanent residence in the Czech Republic.

There have been registered cases of the reporting obligation imposed on foreigners in irregular situation in the Czech Republic but so far no cases of the financial guarantee. However, we observed that the Aliens Police is increasingly taking into consideration the possibility of imposing the alternative to detention. Furthermore, voluntary return in the form of exit order with fixed deadlines is often preferred by the Aliens police before a decision on or an alternative to detention.

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Co-funded by the European Refugee Fund

Project "Steps to Freedom. Monitoring detention and promoting alternatives to detention in Latvia, Lithuania, Estonia, Slovakia and the Czech Republic" coordinated by the Latvian Centre for Human Rights and implemented in co-operation with the Lithuanian Red Cross Society, the Jaan Tõnissoni Instituut, the Human Rights League, the Organization for Aid to Refugees OPU and the UNHCR Office in Stockholm