

NGO information - the Czech Republic

**Joint submission by Organization for Aid to Refugees (OPU)
and Forum for Human Rights (FORUM)**

**to the Universal Periodic Review of the Czech Republic
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INTRODUCTION

In the last years, there were around 500.000 foreign nationals residing in the Czech Republic, which is app. 4.4 % of the overall population. They come mostly from Ukraine, Slovakia and Vietnam. In 2015, the Czech Republic granted asylum to 71 persons and subsidiary protection to 399 persons.¹ In 2016, of 1478 applicants, 148 gained asylum and 302 subsidiary protection.² The Czech government maintains a rather hostile attitude towards migrants and asylum-seekers, having impact in both legal and institutional framework and practical implementation of those on the ground.

This written submission provides information on several issues regarding the rights of migrants and asylum seekers in the Czech Republic from the perspective of two non-governmental organizations working in with migrants, the Organization for Aid to Refugees (OPU) and the Forum for Human Rights (FORUM). The issues covered in this submission are the following: (i) discrimination of migrants from third countries in the access to health care; (ii) access to, length and quality of the asylum procedure including obstacles to access to the asylum procedure at the Prague international airport transit zone; (iii) denial of access to visa and residence application and family reunification; (iv) new amendment proposal to the Alien's Act, which, if accepted, would be in breach of the international human rights law.

***The Organization for Aid to Refugees (OPU)** is a nongovernmental organization with a 25-year-long experience in providing free assistance to refugees and migrants in the Czech Republic. OPU lawyers provide free on-site legal counseling for refugees and migrants in all refugee accommodation facilities 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.*

***Forum for Human Rights (FORUM)** is an international human rights organisation working in the Central European region. It provides support to local NGOs and leads their domestic and international litigation. FORUM has been supporting number of cases pending before domestic judicial authorities, among others on access to justice or on the protection of vulnerable groups against torture and ill-treatment in different settings. FORUM conducts international advocacy before the UN bodies, especially to promote rights of vulnerable persons, and co-authored number of alternative reports, inter alia for the UN Committee on the Rights of Persons with Disabilities, UN Committee on the rights of the Child, UN Committee on Elimination of Discrimination against Women, the Council of Europe Committee of Social Rights.*

¹ Ministry of Interior of the Czech Republic, Statistical report about international protection in the Czech Republic in 2015, available at: <http://www.mvcr.cz/clanek/statisticke-zpravy-o-mezinarodni-ochrane-za-jednotlive-mesice-v-roce-2015.aspx>.

² Ministry of Interior of the Czech Republic, Statistical report about international protection in the Czech Republic in 2016, available at: <http://www.mvcr.cz/clanek/souhrnna-zprava-o-mezinarodni-ochrane-za-rok-2016.aspx>

LAWS, POLICIES, PRACTICES

I. Discrimination of migrants in the access to health care

1. Certain groups of migrants, depending on the type of their residence permit,³ are not covered by the public health insurance system, but are bound by law to rely on the **private health insurance** which does not cover all necessary health care, despite being considerably costly. Commercial health insurance in the Czech Republic is not specially regulated and it is subject to the general provisions of the Civil Code regarding the insurance contract. As a result of this lack of regulation and control, especially migrant women often find themselves in a very difficult life situations associated with the arbitrary behaviour of particular insurance companies, exclusions and limitations in insurance contracts, especially in connection with childbirth or healthcare for the new-born with disabilities/birth-defects.
2. As a consequence of exclusion clauses, migrants are often left indebted because the private insurance company refuses to pay for the provided healthcare. Although these persons are properly insured, the healthcare is not covered by insurance and the high cost of this treatment may have serious existential consequences for the whole family. The arbitrary insurance policy of the private health insurance companies has created a category of “**uninsurable migrants**”. Most often, private health insurance companies refuse to insure most vulnerable persons, like migrant children born prematurely or with disability, migrants suffering from severe illnesses or psychiatric condition. Uninsured migrants may then access only emergency healthcare and they have to pay all expenses from their own pocket (often in advance). Uninsurable persons also automatically breach the migration laws (which require health insurance) and risk losing their residence permit and being deported.

Case study no. 1. – Uninsurable baby

Married couple legal reside and work in the Czech Republic, thus contribute to the public health insurance scheme. Their baby was born prematurely and had to be placed in the incubator. The parents contacted number of commercial health insurance companies in the effort to insure the baby. However, none of the companies insured the baby due to economic disadvantage of such contract. The baby could not be included in the public health insurance scheme, even though both parents have been participating in this scheme. The parents were left with the debt towards the hospital in the amount of 1.850.000 CZK (69.0000 EUR).

Case study no. 2 – A girl with cancer

The daughter of two Australian researchers working for the Institute of Molecular Genetics suffered from severe form of cancer. Despite both of her parents were working in the Czech Republic and thus contributed to the public health insurance from their salaries, they had to pay private health insurance for their daughter. But the insurance limits were exhausted very quickly due to costly cancer treatment and they had to cover all treatment from their pockets.

3. In its last 2016 concluding observations, the UN Committee on the Elimination on Discrimination of Women (CEDAW) urged the Czech Government to “*expeditiously undertake the legislative amendments necessary to ensure that migrant women and girls*

³ The Czech legislation excludes from public health insurance the following three groups (i) self-employed persons, (ii) family members of non-EU nationals, including children up until the age of 18, parents and partners who are not EU citizens and do not have a permanent residence permit in the Czech Republic, (iii) students who are not covered by international agreements. We talk about approximately 100,000 persons.

residing in the State party have the same access to public health insurance as nationals.”⁴ In 2014 the UN Committee on Economic, Social and Cultural Rights recommended the Czech government to “open its contributory health insurance scheme to everyone without discrimination.”⁵ Despite these explicit calls and fierce critique from national human rights bodies and non-governmental sector⁶, the Czech Government was not able to solve this problem. In 2016, some groups of migrants were still systematically discriminated **in the access to health care**, including care connected with giving birth.

4. The solution of this unacceptable situation is to amend the legislation in order to **include all foreigner nationals** (with long-term residence permit for more than 90 days) **into the public health insurance scheme**. We therefore invite the Council to adopt the following recommendation:

The Council recommends that all foreign nationals enjoy a fair and effective access to health services and adequate standard of health care, and that all foreign nationals residing in the Czech Republic on a long-term basis are included in the public health insurance scheme.

II. Access to, length and quality of asylum procedure

5. Between 2015-2017 asylum seekers faced obstacles to access the asylum procedure at the transit zone of the Prague International airport. The Czech Asylum act contains special provisions on transit zone procedure in section 73 et al.⁷ and for that purpose, the airport Prague has a special reception center for asylum seekers in the airport building. But practically, this procedure is completely dysfunctional and almost none of the refugees have a possibility to use it. The numbers of newly admitted asylum seekers at the Prague airport in 2015 and 2016 were often in average between 0-2 persons monthly. At the same time the transit zone police issued every month in average 30-40 decisions on entry refusal for persons from countries including Democratic Republic of Congo, Sri Lanka or Iraq.⁸
6. OPU monitored the practice of immediate imprisonment of asylum seekers arriving at the Prague international airport with forged documents, contrary to the non-penalization clause in Article 31 of the Convention Relating to the Status of Refugees, while their requests to submit an asylum application were ignored or directly rejected.⁹ Moreover, even the asylum seekers who arrived at the Prague airport transit zone with valid documents to enter the country reported obstacles to submit their asylum application. The authorities cancelled their valid visas while ignoring or rejecting asylum application requests 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.

⁴ Committee on the Elimination of Discrimination against Women, Concluding observations of on the sixth periodic report of the Czech Republic, 14 March 2016, CEDAW/C/CZE/CO/6, § 33.

⁵ UN Committee for Economic, Social and Cultural Rights, Concluding observations on the second periodic report of the Czech Republic, 23 June 2014, E/C.12/CZE/CO2, § 15.

⁶ This situation is constantly criticised by other actors, for example, NGOs, Government Council for Human Rights (2013), Public Defender of Rights (2012) as well as international organisations such as the European Network against Racism (2012).

⁷ Section 73 et al. of the Asylum Act Nr.325/1999 Coll.

⁸ 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)

⁹ Ibid.

Case study no. 1. – Victim of Torture from Sri Lanka could not apply for asylum

A refugee from Sri Lanka who was a victim of torture and sexual violence attempted to apply for asylum at the Prague international airport transit zone in December 2015, but the border police did not understand his attempts and detained him due to the fact he arrived with forged document. In a police interview, the man repeated he was a refugee and could not return to his home country, but the police interpreter told the man it was not possible to ask for asylum in the Czech Republic. The man was escorted to prison on account of his forged document, and was confined to 8 months imprisonment.¹⁰

Case study no. 2 – Refugee family with four children from Iraq arriving with valid visa faced obstacles in applying for asylum

A family of Yezidi Kurds from Iraq with children aged 2, 6, 11 and 15 years old attempted to apply for asylum at the Prague international airport transit zone in December 2016. They arrived with a valid visa issued by the Czech embassy in Iraq. At the airport, the border police cancelled their visa and wanted to deport them. They tried to explain they were refugees and couldn't return, but the police did not understand. Fearing immediate deportation, the family waited many hours in the transit zone. Ultimately, the family destroyed all their passports to avoid the deportation otherwise they would have been deported.¹¹

7. There are considerable delays in processing asylum applications. The Asylum Act sets the time to decide in Section 27 of the Asylum Act in a vague way enabling repeated extension of deadlines. The initial 6 months deadline can be extended for another 9 months if the case is “materially or legally difficult” (Section 27 (2)(a)), or there is “a high amount of applications for international protection submitted simultaneously” (Section 27 (2)(b)). Even this extended deadline can be extended for another 3 months if it is “exceptional” and “necessary to establish factual findings without reasonable doubts”. This means the procedure can take up to 18 months according to the Asylum Act Section 27. In practice, the asylum procedure is often extended even beyond 18 months with repeated reasoning of necessity to establish factual situation without reasonable doubts (Section 27 (2)(a)), leaving some applicants to wait for their asylum decisions for 3 years or more.
8. Asylum procedure delays contribute to psychological problems of asylum seekers who are forced to live in protracted uncertainty. Moreover, the quality of the asylum decisions does not correspond to the extensive time Ministry spends on assessment of the cases. Often, the decisions try to deter all persons from certain countries, rather than containing individualized assessment of each individual asylum reasons. For example, in 2016 and 2017, the Ministry stopped issuing subsidiary protection to all asylum seekers from eastern Ukraine and Afghanistan, in spite of country of origin information confirming the intensity of conflicts in these countries and impossibility to safely return or internally relocate.
9. Asylum decisions of low quality can be challenged before regional courts. But even if a court quashes an asylum decision, the procedure can only be returned back to the Ministry which often issues a repeated negative asylum decision contrary to the court decision. In June 2015, the deadline for transposing the EC Procedural Directive passed. In line with Section 46 of that Directive, the Czech Republic should have an asylum procedure in which the appeal organ is able to directly grant international protection. However, the Czech Republic did not transpose this provision into the legal order. The Ministry of Justice initially suggested a plan about arranging special asylum tribunals as a way to provide effective second instance remedy but this plan never materialized. In

¹⁰ Ibid.

¹¹ Markéta Žižková : Tahle země není pro vás, Info.Cz, 2017 <http://www.info.cz/cesko/tahle-zeme-neni-pro-vas-zpatky-do-letadla-ceska-policie-vyhani-uprchliky-v-ohrozeni-zivota-tvrdi-pravnici-4368.html>

addition, there are doubts to be raised about the independency of proposed asylum tribunals, as those would, according to the Ministry, not consist of independent judges.¹²

We invite the Council to adopt the following recommendations:

- to set up an effective mechanism to identify refugees at the Prague airport transit zone;
- to stop imprisonment of refugees arriving via the Prague airport transit zone with forged documents;
- to amend the legislation in order to contain precisely defined deadline to decide decisions on international protection and to adhere to the set time limits;
- to adopt measures to ensure higher quality of asylum decisions;
- to enable courts deciding on appeals against negative asylum decision the competence to directly grant international protection in line with the EC Procedural Directive.

III. Denial of access to visa and residence and family reunification

10. The right of migrants (in particular from Ukraine and Vietnam) to family reunification and access to public authorities for the purpose of applying for visa or residence in the Czech Republic was in the past few years significantly affected by the non-functioning consular system intended to make appointments at the embassies of the Czech Republic, called "*visapoint*". To allow a person or their family member to come to the embassy and apply either for a tourist visa or for a visa for the purpose of family reunification or long-term residence permit for the purpose of family reunification, they must register via the web system (*visapoint*). This system generates the officially authorised date of appointment at the embassy. Without this appointment, authorised via *visapoint*, it is impossible to apply for any kind of visa or permit.
11. However, this online-based system (*visapoint*) have been virtually non-functional for a number of years and makes it nearly impossible for families to get the appointment and thus, to live together. The situation has been repeatedly criticized by the Office of the Public Defender of Rights, who has been closely monitoring the situation since 2014. The data published in 2016 shows that it is still extremely hard if not completely impossible to obtain appointment to apply for long-term residence for persons from Ukraine and to apply for most types of visa and residence for persons from Vietnam. In some cases, visa for the purposes of research or study are better accessible, whilst family reunification purposes are very inaccessible.¹³
12. The predominant reason is that the *visapoint* system is traded with by local handlers. Families / women / children then do not have any other option than to buy the date of appointment on the black market. This information has also been confirmed by the Czech Intelligence Service.¹⁴ Not only they are literally forced to participate in this illegal business, but they have also no guarantee that the appointment is real. Due to this dysfunctional system, insufficient capacity of the embassies, and illegal activities connected to possibility to apply for visa/permit, many migrants remain alone without seeing their children and spouses in the Czech Republic for even several years.¹⁵

¹² Robert Malecký, Migrační vlna: Odmítnuté žadatele o azyl posoudí nově zřízené "nezávislé tribunály", 2015, <http://hlidacipes.org/migracni-vlna-odmitnute-zadatele-o-azyl-posoudi-nove-zrizene-nezavisle-tribunaly/>

¹³ POŘÍZEK, Pavel. *Gate or a fence – the problematic aspect of Visapoint system's functioning* (Brána nebo zábrana – problematické aspekty fungování systému Visapoint). In: Office of The Public Defender of Rights. Actual problems of asylum and aliens law, 2016, pp. 14-17. Online:

http://www.ochrance.cz/fileadmin/user_upload/Publikace/Azylove_pravo_konference.pdf

¹⁴ Ibid, p. 18.

¹⁵ The Public Defender of Rights, *Deficiencies of VISAPOINT contradict the international obligations of the Czech Republic*, September 2012, Office, available at: <http://www.ochrance.cz/aktualne/tiskove-zpravy-2012/nedostatky-systemu-visapoint-odporuji-mezinarodnim-zavazkum-cr/>. See also: The European Commission has opened proceedings against the Czech Republic because of VISAPOINT, September 2013 The Public Defender

13. The Supreme Administrative Court of the Czech Republic issued a decision in 2016 which states that previous registration at *visapoint* system is not a lawful condition to submit application for visa or residence.¹⁶ Despite this jurisprudence, the authorities require every applicant to register via *visapoint* system and thus continue the above-described practice.

The Council recommends to secure the access to *visapoint* system to all persons and to ensure that persons applying for visa/permit have real possibility to make an appointment via this system within a reasonable time.

The Council further recommends to process visa/permit applications submitted without *visapoint* system registration, in line with the domestic jurisprudence.

IV. Proposed amendment to the Aliens Act

14. At the moment of the submission, the Chamber of Deputies of the Parliament is discussing a legislative proposal (no. 990) to the Aliens Act, which, if adopted, would not only unreasonably restrict the rights of foreigners in the Czech Republic regarding their residence status, but also represent a clear breach of the Czech Constitution, European legal framework and other international commitments. If adopted, the amendment would discriminate against the family member of EU and Czech Republic citizens, as it would disable the possibility to change working permit into a residence based on being a family member (e.g. in case of an employed foreigner, who would become pregnant with her Czech husband, and thus leave her job) or the possibility to apply for a family reunion if the resident foreigner already obtained a decision on the obligation to leave the country based on other reasons. The amendment would also unreasonably restrict the access of migrants on the labour market.
15. Most importantly, though, the amendment would cancel the possibility of a court overview over the Ministry of Interior administrative decisions on residence issues, and thus virtually deny access to justice to foreigners residing in the Czech Republic. All of the mentioned would be in breach of the European Union legislation and the European Union Court of Justice jurisprudence.¹⁷ Regarding the denial of access to courts would be in clear breach of the Czech Constitutional Court jurisprudence.¹⁸
16. We call on the Czech government to denounce the legislative proposal, which, although filed by a Deputy Václav Klučka from the leading government party, was demonstrably prepared by the Ministry of Interior and therefore sponsored by the government.¹⁹ By presenting the amendment by a private member of parliament rather than by the Ministry, the Ministry bypassed the regular legislative process and avoided discussion about this amendment between other State bodies and civil society. The parliament is scheduled to vote on this amendment at the beginning of April 2017. If adopted, the amendment would be an unprecedented interference with the rights of foreign residents in the Czech Republic.

of Rights, available at: <http://www.ochrance.cz/aktualne/tiskove-zpravy-2015/evropska-komise-zahajila-rizeni-proti-cr-kvuli-visapointu/>.

¹⁶ Supreme Administrative Court decision no. 2 Azs 128/2016 – 54, 11. 8. 2016.

¹⁷ Directive no. 2004/38/ES and related CJEU jurisprudence: C-459/99 MRAX; C-127/08 Metock; 48/75 Royer; 30/77 Bouchereau; C-348/96 Calfa; C-482/01 a C-493/01 Orfanopoulos a Oliveri; C-33/07 Jipa; C-127/08 Metock; C-491/13 Ben Alaya; C-413/99 Baumbast.

¹⁸ Constitutional Court decisions no. Pl. ÚS 27/97, 26.5.1998; no. III. ÚS 35/99, 14. 10. 1999.

¹⁹ „[The proposal] was submitted by solely one member of parliament Vaclav Klucka (CSSD). But he bragged at the plenum of the parliament that he is not the author of the changes. Even more so, he described in what a rush were the unseen changes prepared close before the second reading [of the original law amendment]. “We worked on it very much in details with the Ministry of Interior up until this morning. I submitted the proposal in the A.M. hours”, he said to his colleagues on 22. February.” Source: http://www.lidovky.cz/vnitro-pritvrzuje-vuci-cizincum-chovancuv-urad-obesel-legislativni-kolecko-1wq-zpravy-domov.aspx?c=A170301_141500_in_domov_ELE

We therefore kindly ask to Council to urge the Czech Government to denounce the legislative proposal to the Aliens Act, which would unprecedently restrict the rights of foreign nationals and their access to courts in residence issues.

Thank you for your attention to this submission. For further information, please contact:

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