# Input by civil society to the 2022 Asylum Report

Dear Colleagues,

The production of the *Asylum Report 2022* is currently underway. The annual Asylum Report series present a comprehensive overview of developments in the field of asylum at the regional and national levels.

The report includes information and perspectives from various stakeholders, including experts from EU+ countries, civil society organisations, UNHCR and researchers. To this end, we invite you, our partners from civil society, academia and research institutions, to share with us your reporting on developments in asylum law, policy or practice in 2021 (and early 2022) by topic as presented in the online survey.

Please note that the Asylum Report does not seek to describe national systems in detail but rather to present key developments of the past year, including improvements and challenges which remain. Your input can cover practices of a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

All submissions are publicly accessible. For transparency, 2022 contributions will be published on the EUAA webpage. For reference, contributions to the 2021 Asylum Report by civil society organisations can be accessed here, under 'Acknowledgements'. All contributions should be appropriately referenced. You may include links to supporting material, such as analytical studies, articles, reports, websites, press releases or position papers. If your organisation does not produce any publications, please make reference to other published materials, such as joint statements issued with other organisations. Some sources of information may be in a language other than English. In this case, please cite the original language and, if possible, provide one to two sentences describing the key messages in English.

The content of the Asylum Report is subject to terms of reference and volume limitations. Contributions from civil society organisations feed into EUAA's work in multiple ways and inform reports and analyses beyond the Asylum Report.

Your input matters to us and will be much appreciated!

*****Please submit your contribution to the 2022 Asylum Report by **Monday, 21 February 2022.***

## Instructions

Before completing the survey, please review the list of topics and types of information that should be included in your submission.

For each response, only include the following type of information:

- ✓ New developments and improvements in 2021 and new or remaining challenges; and
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2021.

Please ensure that your responses remain within the scope of each section. Do not include information that goes beyond the thematic focus of each section or is not related to recent developments

## Contributions by topic

### 1. Access to territory and access to asylum procedures (including first arrival to territory and registration, arrival at the border, application of the non-refoulement principle, the right to first response (shelter, food, medical treatment) and issues regarding border guards)

In 2021, the detention center in Bělá-Jezová continued to serve as a facility with three purposes. Besides continuing to be a detention center for women, families, and vulnerable groups, the residential center persists to be the official quarantine facility for foreigners (including isolation for proven Covid cases). The quarantine was applicable to both, asylum-seekers as well as foreigners who were identified as staying in the country irregularly. Asylum seekers had to file their asylum application in Bělá-Jezová and following the quarantine, which took between several days to two weeks, they were transferred to the Zastávka Reception Centre. Foreigners staying irregularly in the country were transferred to one of the three detention centers following the quarantine.

As the "default" reception center for new coming asylum-seekers has changed effectively from the Zastávka Reception Centre to the Bělá-Jezová Reception, Accommodation and Detention center it became problematic to file an application for international protection for some asylum seekers. The Bělá-Jezová center is hardly accessible – it is located in the middle of the woods, 5 km from the nearest village with very difficult access by public transport. The best way to reach the reception center is by car or taxi, which, however, many asylum-seekers cannot afford. The second-best option is to walk from the nearest village, which is problematic, especially in winter, as the route is intended for cars only and does not even include a pedestrian pathway. However, the practice has changed during the last year. There was no need to apply for international protection in Bělá-Jezová center in every single

case. Persons who submit an official EU vaccination certificate of completed vaccination against COVID-19, a negative RT-PCR test result performed in the Czech Republic that is no more than 72 hours old, or a certificate of COVID-19 history or a written medical certificate in the English language are allowed to apply for the international protection in the Zastávka Reception Center. The environment of the quarantine facilities does not offer sufficient safeguards against ill-treatment.

The policy of imposing an administrative expulsion was applied in 2021, the same as in previous years. The Foreigners police started a procedure of administrative expulsion with the new coming asylum seekers while they wanted to apply for international protection in the Czech Republic. We believe that this practice is not in accordance with art. 31 of the 1951 Refugee Convention. Also, the administrative expulsion is issued based on Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic. However, this law is excluding asylum seekers from its scope. [1] Therefore, we are convinced that administrative expulsion procedures shall not be initiated at all.

In 2021, OPU (Organization for Aid to Refugees) continued alerting UNHCR about unsupervised decisions on denial to access territory at the Prague airport transit zone. The quasi-procedure of denial of access to territory lacks any procedural guarantees, such as the presence of interpreters, processing a casefile, or access to legal aid. OPU monitored a complaint by a refugee from Iran who stated he was repeatedly trying to apply for asylum at the Prague airport transit zone but the police in the transit zone did not accept his request, pretending to not understand and urging him to travel back. After the Prague Airport reopened after the Covid closure, there have been approximately 20-30 decisions on denial to access the territory or administrative expulsions monitored monthly, including to persons from countries like Iran, Iraq, Syria.

## 2. Access to information and legal assistance (including counselling and representation)

At the beginning of 2021, the conditions of entry to the facilities were changed. It was required to submit either a negative COVID-19 test which is no older than 48 hours or a confirmation of COVID-19 history. It was challenging to enter the facilities for all OPU lawyers and social workers as the capacities of COVID test sites were limited. It is worth noting that while the facilities have encountered several cases of Covid-outbreaks, however, none of this has been caused by OPU workers. On the contrary, the staff of the facilities, while also having contact with the outside world, are not required to get tested before entering the facility. Later in 2021, COVID vaccination certificates were added among possible requirements of entry. As of February 2022, it is still necessary to present with any of the above-mentioned documents to be allowed to enter the facility.

Due to epidemic measures, access to legal counseling in reception, accommodation, and detention centers was sometimes restricted and the consultations had to take place over the phone. Despite quarantine at facilities and so the lack of access to legal counseling, the deadlines in asylum and detentions proceeding were still applicable.

[1] Section 2 Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic

In February 2021, the reception and accommodation center in Zastávka was imposed to quarantine due to a continuous spread of COVID-19. The legal counseling was provided indirectly through social workers at the center. The Ministry of Interior issued fewer decisions than usual; however, some asylum seekers obtained their decision. The OPU lawyer had not to chance to consult directly with clients and all details were passed by the center's social workers.

### 3. Provision of interpretation services (e.g. introduction of innovative methods for interpretation, increase/decrease in the number of languages available, change in qualifications required for interpreters)

The quality of interpretation in the asylum proceedings continued to be low. The interpreters translating the interviews continued to not have the obligation to undergo special training to work with asylum seekers and vulnerable persons. This problem closely correlates with the insufficient communication and information provision by the authorities in the asylum procedure in general.

### 4. Dublin procedures (including the organisational framework, practical developments, suspension of transfers to selected countries, detention in the framework of Dublin procedures)

The Dublin transfers were affected by Covid in 2021 as well. However, compared to the previous year the transfers were realized. Detention of asylum-seekers awaiting Dublin transfer is still more or less automatic if these are found irregularly on the Czech territory. Alternatives to detention are rarely found effective and are indeed unavailable for this category of asylum-seekers (see point 8).

### 5. Special procedures (including border procedures, procedures in transit zones, accelerated procedures, admissibility procedures, prioritised procedures or any special procedure for selected caseloads)

As mentioned above – in 2021, OPU (Organization for Aid to Refugees) continued alerting UNHCR about unsupervised decisions on denial to access territory at the Prague airport transit zone. The quasi-procedure of denial of access to territory lacks any procedural guarantees, such as presence of interpreters, processing a casefile or access to legal aid. OPU monitored a complaint by a refugee from Iran who stated he was repeatedly trying to apply for asylum at the Prague airport transit zone but the police in the transit zone did not accept his request, pretending to not understand and urging him to travel back. After the Prague Airport reopened after Covid closure, there have been approximately 20-30 decisions on denial to access the territory or administrative expulsions monitored monthly, including to persons from countries like Iran, Iraq, Syria.

The issue of insufficient procedural guarantees in the border procedure remains. There is still no option to appeal to the Supreme Administrative court in cases of applications filed at the Prague International

Airport. This is particularly problematic as that is our only external border, often applications filed there are well-founded and the quality of the first instance decisions is very low.

## 6. Reception of applicants for international protection (including information on reception capacities – increase/decrease/stable, material reception conditions - housing, food, clothing and financial support, contingency planning in reception, access to the labour market and vocational training, medical care, schooling and education, residence and freedom of movement)

Asylum seekers continued to receive insufficient support and often end up living in poverty. The situation is worsened by the fact that the **asylum proceedings last unreasonably long** - often years.[2] During the asylum proceedings, asylum-seekers live in uncertainty about their future and cannot assess most of the services facilitating their integration. This often results in the loss of hope, inability to integrate in the host society and the loss of ties with the home country (which makes it impossible to return in case of negative decision in the asylum proceedings).

Asylum seekers who cannot afford their own accommodation have a right to live in one of the state-funded accommodation centres. All these centres **are residential institutions with collective housing** where it is extremely hard to lead a normal family life, in particular on a long-term basis. Families are accommodated in rooms, sometimes with their own sanitary facilities but many times with sanitary facilities common for the entire corridor. Not all the centres offer possibilities for cooking and in some centres, meals are provided centrally which strengthens the institutional character of these centres. The centres are guarded by a private security company and have special rules (e.g., for washing clothes, language classes, legal aid) that secure co-habitation of asylum-seekers from different cultures. The centres are not designated for the families with children only, which results in children being witnesses of undesirable behaviour such as fights, alcohol and drug abuse, police controls.

Many asylum-seeking families with children also face serious problems in the **access to medical care** for their children despite having full health insurance and being in theory entitled to the same medical care as nationals. There are no medical services in the accommodation centres and the asylum-seekers must seek medical attention in the nearest hospitals, practitioners, or specialists. Not all doctors in the vicinity of the accommodation centres are willing to accept patients from among asylum-seekers (often due language barriers, cultural or other prejudices, or simply insufficient capacity). Families whose children are often sick thus spend their scarce finance resources on travel expenses to reach medical care for their children.

**Asylum-seekers with disabilities** are in an extremely challenging situation. The accommodation centres, except for the one in Zastávka, are not designed to accommodate persons with disabilities. Even the centre in Zastávka where most persons with disabilities are accommodated, faces serious

[2] Section 27(1-3), Act No. 325/1999 Coll., on Asylum provides for 6 months' time limit to issue a decision in asylum proceedings. This time-limit may be prolonged by additional 9 months in complicated cases. There are no official statistics on delays in asylum proceedings, which are, however, notoriously known.

challenges to provide medical and other care for this target group. They face unwillingness of doctors to find medical professionals to accept asylum-seekers with disabilities as patients. They also struggle to find professional nurses who would be willing to provide even basic care services within the centre.

In 2021, there is still going systemic problem with the **access to housing of asylum seekers in the final stage of their asylum process**. Housing for asylum seekers is generally guaranteed in accommodation centres during the first and second instance of the asylum proceedings. At the final stage of the asylum proceedings, i.e. before the Supreme Administrative Court, asylum seekers have no longer a right to housing in the accommodation camps, regardless of whether or not they have the possibility to ensure their own housing. This is very problematic especially for vulnerable asylum seekers (families with small children, single mothers, persons with disabilities) who have limited possibility to earn a living and therefore very limited possibility to find and fund their own housing.

The law allows the authorities to allow in exceptional cases to provide housing in the accommodation camps. In the past, this exception was used more or less automatically for all asylum seekers in the final stage of their asylum claims mainly due to free capacities of accommodation camps. However, in 2020 the situation has changed and almost no asylum seeker is provided accommodation during the final instance of the proceedings. Even in the most urgent cases (families or single parents with kids), the housing is provided only for a couple of days after the decision in the second instance and then they have to leave accommodation camps and find a place to live elsewhere. This may be very problematic, especially in cases where the asylum proceedings were dragging for years or when the persons concerned are given very short notice to find their own housing.

**Access to housing** is also problematic with regards to refugees that have been granted international protection. This category of people is temporarily allowed to stay in one of the integration facilities for the maximum period of 18 months. During this period international protection holder should find a private accommodation. Property owners, however, are often not willing to rent their properties to refugees and there is a huge discrimination on the housing market. This situation was only exacerbated by the Covid pandemic and the current housing situation.

Also, the arbitrary decisions of moving asylum seekers into a different accommodation center often do not reflect the individual situations of each person. As a result of such decisions, asylum seekers are losing access to employment and are losing jobs that were sometimes difficult to find. In addition, asylum seekers, refugees and migrants face numerous obstacles in the enjoyment of their social and economic rights and are often **discriminated** in their access to education, health care, housing, and access to services. The remedies against discrimination are hardly accessible (due to language barrier and costs of litigation) and if pursued, they often prove ineffective (due to length of the proceeding and/or procedural obstacles such as burden of proof, limitation periods, etc.). Public resentment often prevents victims of discrimination to pursue their claims.

## 7. Detention of applicants for international protection (including detention capacity – increase /decrease/stable, practices regarding detention, grounds for detention, alternatives to detention, time limit for detention)

Unfortunately, immigration detention is still a **routine tool of migration control** in the Czech Republic and in most cases, it is not used as a measure of last resort. Immigration authorities detain irregular migrants as well as asylum-seekers, including vulnerable groups such as families with children and unaccompanied children, as well as potential victims of ill-treatment such as victims of trafficking. There are currently **three immigration detention centres** (Bělá-Jezová, Bálková, Vyšní Lhoty) and in the facility in the **transit zone** of the Prague international airport. All facilities are located in **remote areas**, and have **prison-like** security regime (fences, uniform police controls, CCTV monitoring, personal searches, visiting hours, specific daily regime, withdrawal of personal items, limited communication). Detained migrants are still obliged to pay for their detention equivalent of ca. 10 EUR per day per person.[3]

The problematic detention practices persist, regarding **asylum-seekers awaiting transfers under the Dublin regulation**. If a person is found irregularly on the Czech territory and the police found that she/he has claimed asylum in another EU MS, the person is **automatically** detained for the purposes of the Dublin transfer. The assessment of the serious risk of ill-treatment as per Article 28 of the Dublin Regulation is superficial and there are no available alternatives to detention for this group of asylum-seekers. In fact, these asylum-seekers are **not considered as asylum-seekers** under the Czech legislation and are precluded from claiming asylum while in detention.[4] In practice, they are detained for months awaiting their Dublin transfer. The Czech authorities refuse to house this group of asylum-seekers in the reception and accommodation centres for asylum-seekers. Since they are not considered asylum-seekers, detention affects also **vulnerable groups**, including families with children, unaccompanied minors, pregnant women (some of them gave birth while in detention in the past), victims of torture, human trafficking, persons with disabilities or suffering from serious psychological problems. Prolonged detention is particularly problematic for vulnerable persons.

**Alternatives to detention** for asylum-seekers envisage in the legislation **are not used in practice**. If a person requests asylum in the detention centre (if the person is not a Dublin case who cannot claim asylum) and is not found vulnerable, then the person is automatically detained for 120 days. We have not encountered a case where an alternative to detention would be effectively ordered in these cases.

In all categories of detained persons, **identification of vulnerable persons** is extremely problematic (see point 11).

[3] Section 146, Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals; Ordinance No. 447/2005 Coll., which determines the amount of costs for accommodation, meals and transport within the territory of the Czech Republic of a foreigner detained for the purpose of administrative deportation.
[4] Section 129 Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals; Section 3a (1)(a)(4) Act No. 325/1999 Coll., on Asylum.

Throughout 2021 we noted several cases of Covid 19 outbreaks in the Bálková and Vyšní Lhoty detention centres. We also noted several cases where a person's detention has been prolonged beyond the legally permissible limits of detention when this person had to be quarantined due to having a risk contact in the detention centre.

To our knowledge detainees are at present offered the opportunity to get vaccinated with single dose vaccines. However, we also noted cases where people could not be vaccinated despite being clearly interested in doing so. It was argued that due to the overall low amount of interest in the vaccination among the detainees, an important amount of the vaccines from the whole package would go to waste.

## 8. Procedures at first instance (including relevant changes in: the authority in charge, organisation of the process, interviews, evidence assessment, determination of international protection status, decision-making, timeframes, case management - including backlog management)

In 2021, the Czech Ministry of Interior – Department of Asylum and Migration Policy continued to abuse the fact that it had failed to implement Art.46/3 of the EU Procedural Directive in spite of the deadline having expired already in 2015. (**Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection).** Its 46/3 bounds the state to have an asylum appeal mechanism in place in which the appealing authority has the power to grant international procedure directly. Failing to implement the provision, the Czech asylum system continues to solely allow for asylum judicial appeals to courts that are able to cancel the ministerial decision and return the case back to the ministry. This leads to a procedural „ping-pong“, in which the ministry can issue a repeated rejective negative decision in spite of having lost at court previously, leaving the asylum seekers for years in legal uncertainty.

The quality of the asylum proceedings remained to be low and the delays in the procedure continued to be unbearable for many.

## 9. Procedures at second instance (including organisation of the process, hearings, written procedures, timeframes, case management - including backlog management)

The second instance – the judicial review procedure – was of variable quality. Some regional courts and judges dedicated enough attention to the asylum cases and clearly developed expertise in the field, some courts and some judges were unprepared at the hearings and did not familiarize themselves with the basic principles of asylum law.

However, considering the significant qualitative gaps in gathering up-to-date and complete information in asylum cases by the Ministry of Interior, the appeal courts often had to do the ministerial work themselves, including gathering proofs and reading through testimonies the ministry failed to collect. In spite of this need to compensate the ministerial lack of good work, the courts

continued to suffer from a completely inadequate time- and staff- allocation for asylum cases, even though the asylum cases often impact the lives of persons at risk of persecution: at the expert seminar in asylum law organized by the Czech Ombudsman's office in the Fall of 2021, one of the judges compared the time allocation for asylum cases to cases on traffic misdemeanors. Furthermore, there continued to be no tribunals specializing in asylum cases only, leading to at-times poor quality of judicial decisions too, when judged by judges not sufficiently familiar with the asylum law.

## 10. Availability and use of country of origin information (including organisation, methodology, products, databases, fact-finding missions, cooperation between stakeholders)

The country of origin information (COI) that was used continued to be poor in 2021 as well. While the Ministry sometimes enlists numerous resources, in reality only one or two resources are mentioned in the actual reasoning of the decision. Often, the COI relied upon is generic and does not relate to the specificities of the case (i.e., in the case of a victim of serious domestic abuse, only general information about the security situation in the country is considered). When presented with the COI at the first stage of the asylum proceedings before a decision is issued, the asylum seekers are poorly informed about the importance of this step and their right to suggest further documents in their support. The Ministry also provides enormously short deadlines for providing a reply on the COI collected (regularly 10 days) which makes it in practice impossible to provide quality information.

The Ministry of Interior is not using precise and up-to-date COI. For instance, in the case of asylum seekers from Ukraine, the COI used in their cases did not reflect a worsening safety situation. Such applications for international protection are rejected with the reasoning that the person is from a safe country of origin. It is problematic with regard to the 2021 Amendment[5] as there is no suspensive effect for appeals in such cases. Asylum seekers are put in an uncertain position and their right for full and *ex nunc* examination of their cases under Art. 46/3 of the EU Procedural Directive is breached.

## 11. Vulnerable applicants (including definitions, special reception facilities, identification mechanisms/referrals, procedural standards, provision of information, age assessment, legal guardianship and foster care for unaccompanied and separated children)

As to our knowledge, there is **no vulnerability screening tool** or methodological guidance of identification of vulnerable asylum-seekers and migrants arriving to the Czech territory. As a consequence, vulnerable asylum-seekers and migrants are routinely detained in the closed immigration centres or in the transit zone of the Prague international airport, sometimes for prolonged periods. Often, the **authorities fail to identify or recognize the vulnerability** of a particular person, often despite the calls of representatives or NGOs. In some cases, even the medical personnel alerted

[5] Act No. 274/2021 Coll.

the detention centre to the vulnerability of a particular person and had called for release or transfer to another facility, but the detention authority refused to do so.

Whereas the Asylum Act recognizes certain categories of vulnerable persons (children, pregnant women, persons with disabilities, victims of torture, human trafficking etc.) and limits the possibility of their detention,[6] the Act on the Residence of Foreign Nationals does not contain the term "vulnerable person". This is very problematic because the authorities have then no legal obligation to consider vulnerability as one of the factors when deciding upon detention. Moreover, even in the cases under the Asylum Act, the vulnerability is rarely identified according to the law, and the detention of vulnerable persons is applied automatically. The Supreme Administrative Court and the Prague Municipal Court have repeatedly pointed out the **lack of adequate vulnerability identification** of asylum-seekers detained in the airport reception centre,[7] but the Ministry of Interior has never changed its practice and has not developed a mechanism to screen vulnerability.

Detention may be particularly harmful to vulnerable persons, be it due to material conditions, increased stress, insufficient health care, or any other factors connected with deprivation of liberty. Furthermore, detention often leads to deterioration of a pre-existing vulnerability, including psychological condition. Moreover, there is no effective mechanism to examine detention grounds periodically. Even the Supreme Administrative Court pointed out recently that the Czech legal provisions governing judicial review of immigration detention are not in line with Article 5 para. 4 of the European Convention on Human Rights.[8]

***Case study: Detained trans woman with limited access to HIV-treatment and no access to trans-inclusive healthcare***

In 2021, a trans woman from Cuban who happened to be also HIV-positive was detained in Bělá-Jezová detention centre for six months. During this time, she had only limited access to HIV-treatment. In a communication between the Medical Facility of the Ministry of Interior and a specialized doctor in Prague, the specialist was instructed to duly consider whether to provide her with antiviral medication as it was argued she would be deported soon. Additionally, as the medical personnel in Bělá-Jezová lacked experience with similar cases, she also did not have access to any trans-inclusive healthcare, i. e. hormonal treatment. When one of her breast-implants broke and inflated, she refused to go to a specialized clinic as she was afraid of appearing there in the company of the police.

The Czech Republic continues to **detain migrant children** in the closed immigration detention centres. The legislation allows to detain a minor older than 15 years for immigration purposes, both

[6] Section 2(i), 46a(3), Act No. 325/1999 Coll., Asylum Act.
[7] See, for example, Supreme Administrative Court, file no. 5 Azs 312/2016 – 34, decision of 9 March 2017, file no. 9 Azs 19/2016, decision of 2 June 2019 and file no. 9 Azs 193/2019, decision of 4 September 2019.
[8] Supreme Administrative Court, file no. 9 Azs 193/2019-48, judgment of 4 September 2019.

accompanied and unaccompanied children may be detained.[9] Their detention may last up to 90 days.[10] Often unaccompanied minors are placed in the detention centre until their age is determined.[11] Children accompanied by their family members, who are under 15 years old, are formally not detained but they are "accommodated" in the detention centre together with their parents.[12] In practice, however, all the restrictions connected with the detention apply to these children. There are still **no official statistics** about the number of detained children that would be publicly available.

The detention usually takes place in the **closed immigration detention centre in Bělá-Jezová** which has been recently designated to accommodate single women and families with children. However, in our opinion, the detention centre is not appropriate to detain children and other vulnerable groups. The centre located in a woodland remote area around 5 km from the nearest village. The centre is surrounded by a high wire fence with razor fence on the top. The centre is **guarded 24/7 by the immigration police** wearing uniforms. The inner security is outsourced to the private security guards who also wear uniforms. The centre has **prison-like regime**. Upon the admission to the centre, the detained undergo security check.[13] Common rooms in the residential areas are CCTV monitored.[14] Children have no practical possibility to leave the centre, as no trips or education are organized outside of the centre. The international experts emphasize that the immigration detention inherently **harm the children** and it has the negative impact on their physical and mental health and on their development, even when they are detained for a short period of time or with their families.[15]

Moreover, while the authorities do claim that access to education is provided in the Bělá-Jezová detention centre, we are not aware of any school education actually taking place even in situations where children of compulsory school age have been detained.

The alternatives of detention exist only on paper and are rarely implemented.[16] Most of the time, these **alternatives are inaccessible** for migrant families with children since they just arrived and usually have no ties to Czechia, they do not have a residence in Czechia nor have they money to cover the financial guarantee. There are no services available to families with children that would enable them to access the alternatives to detention (in particular the non-custodial accommodation, legal, social and psychological services).

We still register a numerous case of unaccompanied undocumented minors whose age was contested, were **detained in detention facilities for adults**, often for prolonged periods. The practice of immigration authorities is to estimate the age of these children by contested X-ray bone tests, which

[9] Section 124(1)(6),124b(1), 129(1)(5), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.
[10] Section 125(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.
[11] Section 124(6), 129(5), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.
[12] Section 140(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.
[13] Section 137(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.
[14] Section 132a, Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic
[15] CPRMW and CRC Joint General Comment, op. cit. 4, § 9.
[16] Section 123b of the Act on Foreign National: i) residents on an address in the Czech republic, ii) financial guarantee, iii) reporting obligation.

are highly inaccurate.[17] The Constitutional Court have criticized the process of determining the age of detainees in case there is a reasonable doubt. Based on this decision the authorities changed the process and added a psychological assessment made by the social workers in the detention centers whenever the results of the roentgen test of bone structure is borderline. This could be seen as a positive development; however, the authorities are not taking the psychological assessment into consideration while deciding the vulnerability of the detained person. If the psychological assessment is in favor of the detainee being more then 18years old, the detainee is sent to the standard detention center immediately. However, if the psychological assessment is in favor of the detainee being under-aged, the detainee is sent to another medical assessment and the final decision is made based on the latest medical assessment. As a result, this procedure continues the practice that has been criticized by the Constitutional Court –determining the age of the detainees solely based on medical assessments.

***Case study: Detained unaccompanied minor showing signs of serious distress***

In summer 2020, OPU assisted an unaccompanied minor from Iraq who was detained in the Bělá-Jezová detention centre for the purpose of his Dublin transfer to Romania. In the detention decision, the police disputed his age, however, no further steps toward his age assessment were taken for almost 3 months of his detention. Despite the fact that the boy was provided with psychological counselling on a weekly basis, he kept demonstrating signs of serious distress throughout his detention and spoke about suicidal thoughts. At one occasion, he ate a bathroom soap and had to be hospitalized. At other occasions he would break furniture or display anger for which he later apologized. A trained psychologist, who was requested by OPU to conduct age assessment, established his age at 17 years. She also identified various traumatic experiences the boy has been a victim of in the past.

In July 2021, in a decision noted above, the Constitutional Court decided in favour of the minor.[18] However, this changes little to the fact that the child spent several months in the detention centre and faced the threat of deportation. Because he was treated as an adult for over a year, he had no access to education and lost an important year in his life. The minor applied for financial compensation of the harm suffered and is at present waiting for the response of the authorities. To our experience, no wrongfully detained minor received any financial compensation from the authorities for the harm suffered to this date.

[17] See, among many authorities, CRC Committee, Communication no. 11/2017, 18. 2. 2019, § 12.4: "*States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes.*"

[18] Judgment of the Constitutional Court of the Czech Republic, No. II. ÚS 482/21. 30 July 2021, available at: https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2021/II._US_482_21_an.pdf.

## 12. Content of protection (including access to social security, social assistance, healthcare, housing and other basic services; integration into the labour market; measures to enhance language skills; measures to improve attainment in schooling and/or the education system and/or vocational training)

The access of asylum seekers to housing in the third stage of their procedures remained limited. Considering the poor quality of the first instance proceedings, access to both appeal proceedings is vital for many.

As of early 2021, with another state of emergency in place, these persons are once again exceptionally allowed to stay in the centers with exceptions being extended for 2 weeks at the maximum. Asylum seekers continued to have limited access to the labor market only after 6 months of their application pending.

While the access to basic health care was provided, asylum seekers continued reporting difficulties in finding a general practitioner willing to admit them. There was no special psychologic care provided in the accommodation centers.

## 13. Return of former applicants for international protection

The 2019 and 2020 proposal of an amendment to the Asylum Act and Foreigners Act suggests to cancel the until now successful scheme of exceptional regularization of certain unsuccessful asylum seekers, specifically families with small children whose asylum procedure lasted over 4 years and who under certain strict circumstances were able to regularize their stay. Considering how poor the quality of asylum procedures is, and how long the delays are especially in the most vulnerable and well-founded cases, this mechanism provided and important tool to protect children from being returned to their country after experiencing significant delays in the asylum procedure and a years lasting legal uncertainty.

## 14. Resettlement and humanitarian admission programmes (including EU Joint Resettlement Programme, national resettlement programme (UNHCR), National Humanitarian Admission Programme, private sponsorship programmes/schemes and ad hoc special programmes)

No such programs active as per our information.

## 15. Relocation (ad hoc, emergency relocation; developments in activities organised under national schemes or on a bilateral basis)

In August 2021, the Czech authorities realized three evacuation flights for interpreters who worked with Czech military service in Afghanistan and their families. About 180 people were evacuated in total. Upon arrival, they applied for international protection in the Czech Republic, whereas their asylum procedures were finished quickly with granting asylum. In comparison, the asylum procedures of other

Afghan citizens suffer from delays as the deadline for issuing the decision is repeatedly extended. Therefore, many people, even regarding the safety situation in Afghanistan, are left in an uncertain position. Unlike the evacuated interpreters and their family members, in every other case, the Ministry of Interior is using misleading COI to prove that the situation in Afghanistan is getting better and that Afghanistan is a safe country to return to.

***Case study: Afghan refugee in a procedure of withdrawing a supplementary protection***

A man from Afghanistan was granted supplementary protection in August 2015. However, later in February 2017, the Ministry of Interior initiated the procedure of withdrawing the supplementary protection, as the Ministry did not consider the situation in Afghanistan as the widespread internal armed conflict affecting the whole territory of Afghanistan. The court of the first instance annulled the decision of the Ministry of Interior with the reasoning that the decision was based on biased assessment. Later in October 2018, the Ministry issued the decision by which the supplementary protection was withdrawn again. This decision was annulled again by the court's decision in August 2019 – according to the court, the Ministry did not gather COI supporting the conclusion of the improving situation in Afghanistan. Again, in October 2020, the Ministry issued another decision of withdrawing the supplementary protection.

The safety situation in Afghanistan during 2021 changed, nevertheless the position of the Ministry of Interior remained the same. The Ministry persisted with the opinion that supplementary protection is not needed, and Afghanistan is a safe country to return to. The Ministry at the court's hearing in December 2021 claimed that the safety situation got better, even with regard to recent development, and to support this statement the Ministry highlighted that the Taliban is allowing children to attend school and that the Taliban is drafting officers to ensure the country's administration. The Ministry stated that this development is supporting the assumption of improving the situation. However, the court annulled the Ministry's decision for the third time.

## 16. National jurisprudence on international protection in 2021 (please include a link to the relevant case law and/or submit cases to the EUAA Case Law Database)

## 17. Other important developments in 2021

**Stateless persons**

The situation of stateless persons in the Czech Republic is very problematic. Up until recently, there was no procedure to determine their stateless status and stateless persons were left in legal limbo for many years. In the past five years, a quasi-procedure began to be used, allowing stateless persons to apply for determination of their statelessness status under the Asylum Act, but it was fundamentally flawed (explained below), and did not assist stateless persons in accessing basic social and economic rights. Ultimately in 2021, the situation of stateless persons further worsened, with their agenda being shifted to the Aliens Act from the previous systemization in the Asylum Act, still without any procedure

in place and with even a less scope of procedural rights than before. Stateless persons cannot leave the country, but they cannot fully live in it either. They became inhabitants of a second category.

There are no reliable official statistics as to the number of stateless persons residing in the Czech Republic. Some data are gathered by the Foreign Police, some by the Ministry of Interior and some by the Czech Statistical Office but there is no unified methodology of how these data are gathered and therefore it is not known how many stateless persons live in the Czech Republic. The absence of reliable and uniform official statistics of stateless persons are very problematic. The statistics provided in the State report are the statistics of stateless persons registered by the Ministry of Interior which do not reflect the real number of stateless persons in the Czech Republic.

Until 2021, the Asylum Act contained a competence of the Ministry of Interior to consider applications for statelessness status. However, the Asylum Act contained no further rules governing this procedure. In 2021, the new Aliens Act amendment shifted the agenda to the Aliens Act, however still without any procedural rules. There is a great uncertainty about what kind of documents stateless persons should submit to prove their statelessness, what rights and obligations they have during the procedure, what (if any) are the time-limits for the authorities to decide on their applications, what is the result of this procedure. None of these or other issues is governed by the law which results in a total arbitrariness of this procedure and stateless persons are left at mercy of the authorities. Therefore, we hold that the current statelessness determination procedure is fundamentally flawed, and we call upon the Committee to address this issue in its questions to the State party.

Applicants for statelessness status have no access to temporary identity documents that could be used in real life, This deprives them of the possibility to access any kind of social and economic rights, including housing, employment, health care, etc. They often live in irregularity, with no means or hope to improve their situation. Often, the lack of access to proper identity documents also complicates their access to the status determination procedure as the post may refuse to hand them over their correspondence. Accordingly, they risk to miss important deadlines, invitations for interviews with the authorities etc.

***Case study: Temporary identity documents for applicant for statelessness status***

In 2019, the Supreme Administrative Court ruled that the authorities are obliged to provide the applicants for statelessness status an identity document proving their status of applicants for statelessness status. The Ministry of Interior responded with giving the applicants a low-quality A4 paper confirmation of lodging the statelessness application, showing their photo, name and other initials which was valid for 3-6 months. However, it is not clear what rights and obligations are connected with this “document”. Moreover, neither the accommodation centres nor the hospitals or health insurance companies acknowledge this “document” as a valid ID. In fact, this “document” is not even accepted by the police. There were at least two cases where the police questioned the legality of applicants’ stay and attempted to detain them even after they had presented the A4 paper confirmation issued by the Ministry of Interior. There were also several cases where stateless people reported the post refused to hand them over their correspondence.

Due to the minimalistic legal regulation of statelessness determination procedure, it is not clear what rights and obligations the applicants for statelessness status have. In the judgment mentioned in the previous case study, the Supreme Administrative Court stated that in the absence of legal regulation, the applicants for statelessness status should enjoy equivalent rights as asylum-seekers. However, the authorities ignore this judgment and do not provide the applicants for statelessness status with equivalent rights as to the asylum-seekers, more notably with the most recent legal change via which the statelessness agenda was shifted to the Aliens Act, ignoring the analogies that the courts drew between the situation of asylum seekers and stateless persons. Notably, the applicants for statelessness status cannot access health care and housing.

***Case study: Stateless couple not able to access housing***

In 2019, an elderly couple originally from Russia has been detained in the immigration detention centre for purposes of their expulsion due to the lack of appropriate identity or travel documents and visa. During their detention, the police contacted Russian authorities in order to verify their citizenship status, yet with no results and the couple was released after six months. Shortly before their release, the couple applied for stateless status and requested to be housed in one of the open accommodation centres for asylum-seekers. Instead, they were released in the middle of woods where the detention centre is located and left on their own. They were travelling with all their luggage multiple times between the Zastávka Reception Centre (where they were refused entry), different emergency hostels (where they were also at times refused entry due to lacking identity documents), volunteers and NGO offices since. This was particularly challenging for the couple due to their age and also due to serious health condition of the woman who is unable to fully operate one of her arms after a stroke. The couple was living from donations collected by OPU in a temporary shelter. This situation could have been avoided if they were granted housing rights equivalent to those belonging to the asylum-seekers. In such case they would be transferred to one of the open camps, in particular as one such accommodation camp is located right next to the detention centre where they were detained.

Upon OPU´s legal action, the courts decided that not allowing the couple to the refugee accommodation center is an unlawful action and so they were allowed to be housed there. As a result, several other stateless persons were allowed to be housed there, yet only after long discussions between OPU and the Refugee Facilities Administration on whether the judgement applies only to the two litigants concerned or to all stateless persons in general. Moreover,, instead of complying with this jurisprudence, in 2021 the Ministry removed the statelessness agenda from the Asylum Act and now argues the right to housing no longer exists.

Moreover, even the few persons who managed to get their statelessness status recognized, are left in great uncertainty about their future. The Ministry of Interior gave them no identity document. They were left with decision on their statelessness status and sent to the Foreign Police to regularize their

stay. It is very problematic for these persons to access any kind of social rights, including health care and employment.

***Case study: Stateless person not able to access health insurance***

Having spent more than two years in a quasi-procedure, a stateless person was issued a decision confirming his statelessness status. He was then obliged to go to the Foreign Police to regularize his stay. The police have initiated expulsion proceedings which were stayed due to his impossibility to leave the country, and he was issued a temporary tolerated stay visa. With this type of visa he approached the Public health insurance company which however refused to register him as an insured person.

Upon OPU´s legal action,in 2021 the court decided that not allowing the man to enter the public health care system is an unlawful action, and obliged the Public health care company to regard him as insured. The Public health care company appealed and the appeal case is pending.

According to the Committee's statement, all people under the jurisdiction of the State concerned should enjoy Covenant rights. That includes asylum seekers and refugees, as well as other migrants, even when their situation in the country concerned is irregular. In the same statement, the Committee has emphasised that State duties to secure freedom from hunger, to guarantee access to water to satisfy basic needs, access to essential drugs and access to education, complying with "minimum educational standards", are core obligations of the State and should therefore not be restricted on the basis of nationality or legal status. Unfortunately, the stateless persons in the Czech Republic do not often enjoy these basic social and economic rights and we therefore ask the Committee to consider including this very vulnerable groups of persons on the list of issues.

**Civil society**

In the end of 2021, the Czech Ministry of Interior as the sole distributor of the EU grants covering free legal and social aid for refugees and migrants decided to exclude non-governmental organizations as well as the free legal aid topic from the EU grants scheme. This puts the most vulnerable refugees who have no finances at risk to remain without legal aid after the current grants expire in April 2022. This will significantly deteriorate their chances to succeed in the asylum procedure including appeal procedures, in the already restrictive asylum system. This also means the oldest and largest refugee assisting organization OPU (Organization for Aid to Refugees) which was previously funded from these grants will have to downsize significantly, and likely have to close some of its branches after three decades of successfully helping refugees.

## References and sources

**18. Please provide links to references and sources and/or upload the related material in PDF format**

**19. Feedback or suggestions about the process or format for submissions to the Asylum Report**

## Contact details


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