



Input by civil society organisations to the Asylum Report 2024

Dear Colleagues,

The production of the *Asylum Report 2024* is currently underway. The annual [Asylum Report series](#) presents 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, researchers and UNHCR. 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, policies or practices in 2023 by topic as presented in the online survey (**'Part A' of the form**).

We also invite you to share with us any publications your organisation has produced throughout 2023 on issues related to asylum in EU+ countries. These may be reports, articles, recommendations to national authorities or EU institutions, open letters and analytical outputs (**'Part B' of the form**).

Your input can cover information for a specific EU+ country or the EU as a whole. You can complete all or only some of the sections.

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.

All submissions are publicly accessible. For transparency, contributions will be published on the EUAA webpage. For reference, contributions to the 2023 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 Asylum Report 2024 by **Thursday, 30 November 2023**.*





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:

Part A:

- ✓ New developments and improvements in 2023 and new or remaining challenges;
- ✓ Changes in policies or practices, transposition of legislation or institutional changes during 2023;
- ✓ Across the different thematic sections feel free to make reference to issues related to the implementation of the Temporary Protection Directive at national level.

Part B:

- ✓ New publications your organisation produced in 2023

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.

PART A: Contributions by topic

1. Access to territory and access to the asylum procedure (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)

Also in 2023, 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. It takes place before the person arriving is able to apply for international protection or consult a lawyer. Oftentimes, this person is unable to contact the outside world and inform anyone about their situation, let alone to approach lawyers. In the middle of 2023, UNHCR re-gained access to the transit zone via one of their implementing partner organizations SIMI (Association for Integration and Migration), however problematic practices, including the practice of automatically issuing detention decisions continued.

Between January and September 2023, 36 people applied for international protection at the airport, including 2 minors. **Between January and September 2023, the foreign police issued denial of access decisions to 322 individuals, including 10 minors.** These included, among others, nationals of Algeria, Egypt, Ethiopia, Iran, China, Sri Lanka, Russia, Ukraine or





Uzbekistan. Additionally, the police issued **18 deportation decisions** upon arrival at the airport. These involved, among others, nationals of Iran, Iraq, Palestine, Yemen, Pakistan and Ukraine.

Moreover, the problematic **policy of imposing an administrative expulsion to prospective asylum seekers** continued to be applied in 2023. Under this policy, the foreign police would routinely start a procedure for administrative expulsion with individuals without a residence permit or visa when these arrive in Zastávka Reception centre in order to apply for asylum. We believe that this practice is in violation of Art. 31 of the 1951 Refugee Convention. Also, the administrative expulsion is issued based on the Foreigners' Act. However, its provisions should by law not be applicable to asylum seekers.¹ Therefore, we are convinced that administrative expulsion procedures should not be initiated in such proceedings at all. In November 2023, CJEU issued a decision stating this practice is unlawful in the case of *CD v. Czech Ministry of the Interior, C-257/22*.

Case study: CJEU judgement in *CD v. Czech Ministry of the Interior, C-257/22*²

The applicant, an Algerian national, applied for international protection in the Czech Republic, following which, the police initiated removal proceedings against him, due to not possessing a valid right of residence or travel document. He described having been subject to death threats at the hands of the family of a victim of a murder that he witnessed. In addition, he stated that Algeria was not a safe country, and that the government was not able to protect the rights of its own citizens. A subsequent police enquiry found that there was no well-founded fear of real danger upon return to Algeria, and a listing from four years prior enumerated Algeria as a safe country for returns. In essence, the referring court asked whether the Return Directive and Charter entail that the principle of *non-refoulement* precludes the adoption of a return decision against an applicant, where s/he has submitted that s/he will be exposed to threats to their life in their country of origin, and whether it is permissible to have recourse to the “safe country” concept in assessing the risk of a breach to the principle of *non-refoulement* in those circumstances.

The Court noted that international protection applicants have the right to stay until their application has been rejected at first instance. Therefore, they cannot be regarded as “staying illegally” within the meaning of the Return Directive, and no return decision may be adopted before any rejection of international protection takes place. The Court found that Article 2(1) and Article 3(2) of the Return Directive, read in the light of Recital 9 of that Directive and in conjunction with Article 9(1) of the Procedures Directive, must be interpreted as meaning that they preclude the adoption of a return decision, under Article 6(1) of the Return Directive, in respect of a third-country national after the submission by that person of an application for international protection, but before the adoption of a first-instance decision on that application, irrespective of the period of residence to which that return decision refers.

¹ Section 2 Act No. 326/1999 Coll., Act on the Residence of Foreigners in the Czech Republic.

² Cited after ECRE Elena Weekly Legal Update of 24th November 2023, available at: <https://ecre.org/our-work/elena/weekly-legal-updates/>.





Additionally, **Czechia reinstated ad-hoc border controls on its border with Slovakia twice in 2023**. The government cited the “significant increase in illegal secondary migration; increase in activity of organised groups of smugglers; deterioration of the migration and security situation at the EU’s external borders” as the reason for introducing these measures.³

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

Challenges in access to information and legal assistance for refugees, asylum seekers and detainees continued.

As reported previously, by the end of 2021, the **Mol decided to change the funding structure for free legal aid to asylum seekers and detainees**. In the past, this counseling was provided by NGOs and was covered through funding from the EU AMIF fund which the Mol was redistributing. This funding scheme was set to expire by 2022, with the grant covering legal aid to asylum seekers expiring by the end of April and another grant covering legal aid to detainees coming to a close by October 2022. Hereafter, the Mol decided to fund these activities from the national budget, citing the delayed AMIF Regulation for the 2021-2027 programming period as the key reason. That despite the fact that a call for requests for additional funding has been launched by the EU in March 2022.⁴ And despite the fact that there were funds left over from the programming period of the fund, which ended in 2020. Both of these could have been used to cover this gap.

Consequently, the **Mol published a call for proposals for service providers in March 2022, with NGOs excluded from responding to the call and only attorney offices allowed to apply**.⁵ Following the call, the Mol selected the Volopich, Tomšíček a spol. attorney office as the service provider for the period following April 2022, respectively October 2022.⁶ That despite the fact that this attorney office did not have any experience in foreigners’ and asylum law so far⁷ and had a somewhat dubious reputation from the past.⁸ Several newspapers reported about the

³ European Commission, Migration and Home Affairs, Notifications of the Temporary Reintroduction of Border Control, available at: https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area/temporary-reintroduction-border-control_en.

⁴ https://home-affairs.ec.europa.eu/system/files/2022-03/Call%20document%20E2%80%93%20corrigendum_en.pdf

⁵ The call for tenders for the legal assistance to asylum seekers as of May 2022 including the relevant documentation: <https://nen.nipez.cz/en/verejne-zakazky/detail-zakazky/N006-22-V00004433>.

⁶ Contracts the Mol concluded with the attorney office: <https://smlouvy.gov.cz/smlouva/20602391>, <https://smlouvy.gov.cz/smlouva/20603011>.

⁷ S. i. e. official registry of this attorney office in the registry of the Czech Bar Association: <https://vyhledavac.cak.cz/Company/Details/69b7a5f7-5223-e711-80d5-00155d040b0c> and the website of this attorney office: <https://www.akvt.cz/cz/sekce/pro-obcany-2/>.

⁸ S. i. e. Czech TV, Nejvíce dětí v exekuci je v Plzni. Dopravní podnik dluhy přeprodoval do daňového ráje [Most children in foreclosure are in Pilsen. The transport company was selling debts to tax havens], 8. 4. 2019, available at: <https://ct24.ceskatelevize.cz/regiony/2781638-nejvice-deti-v-exekuci-je-v-plzni-dopravni-podnik-dluhy-preprodaval-do-danoveho-raje>.





change, pointing out that the new system will be more expensive and is likely to be of lesser quality.⁹

In the few cases that OPU could follow after this change had been implemented, it observed that the lawsuits prepared by the attorney were typically enormously short (1-2 pages). Typically, the attorney would repeat the personal history of the client, state they do not agree with the decision and request the court to assign the client a legal representative paid by the court. This newly assigned attorney would then have to supplement the lawsuit with additional argumentation, typically within deadlines amounting up to several days.

Notwithstanding the fact that such a system is even more costly for the national budget, it can also endanger the chances of asylum seekers and detainees in succeeding in the relevant proceedings. Per the Czech Administrative Procedure Code, *all* the relevant points of appeal have to be included in the original submission.¹⁰ After the time-limit for bringing the matter to court expires, it is only possible to provide additional argumentation on the points of appeal already included in the original submission but not to add new ones. Accordingly, it is crucial that the original submission includes, at least in short form, all of the relevant points of appeal.

Moreover, following the end of provision of legal aid in detention facilities by OPU by the end of 2022, several clients kept turning to OPU by post and phone, citing lack of trust towards the new legal aid providers.

In 2023, the Ombudsperson initiated an inquiry into the quality of the newly established system of legal aid. According to the preliminary results presented at the Ombudsperson annual conference on recent development in asylum and migration law in November 2023, the Ombudsperson noted an important reduction in complaints against immigration detention decisions submitted to the Supreme Administrative Court. **Whereas in 2018, the detainees supported by NGOs submitted 170 cassation complaints, in 2023 only 17 such complaints were submitted with the help of the attorney.**

⁹ Marek Pokorný, Místo osvědčených expertů dražší advokáti. Vnitro mění způsob pomoci uprchlíkům, [Instead of proven experts, more expensive attorney. The Interior Ministry is changing legal support to asylum seekers], in *Hospodářské noviny*, 25. 3. 2022, available at https://archiv.hn.cz/c1-67049000-misto-osvedceny-ch-expertu-drazsi-advokati-vnitro-meni-zpusob-pomoci-uprchlikum-kteri-zadaji-azyl?fbclid=IwAR1612PJ9FRH7CQgc1Bg_SAQQKUj_fkQNdePTdB2tJodTyRGito0IM5c1U. František Trojan, Už to asi nevyhrajeme. Na ministerstvu vnitra končí Organizace pro pomoc uprchlíkům [I don't think we're gonna win this anymore. The Organisation for Aid to Refugees is closing down at the Ministry of Interior], 30. 3. 2022, available at: <https://www.respekt.cz/agenda/uz-to-asi-nevyhrajeme-na-ministerstvu-vnitra-skonci-organizace-pro-pomoc-uprchlikum>. Česká justice, Vnitro končí s Organizací pro pomoc uprchlíkům, místo ní najme advokáty [The Ministry of Interior is ending its relationship with the Organisation for Aid to Refugee; it will hire attorneys instead], 10. 4. 2022, available at: <https://www.ceska-justice.cz/2022/04/vnitro-konci-s-organizaci-pro-pomoc-uprchlikum-misto-ni-najme-advokaty/>.

¹⁰ Section 71 (1) lit. a) and 71 (2) Law no. 150/2002 Coll., Administrative Procedure Code.





Moreover, in 2023 **also judges and their assistants publicly complained about receiving fewer lawsuits in asylum and detention proceedings and the lawsuits being of overall lower quality.**¹¹

Accordingly, **we believe that under the new system, the right to good quality legal representation and the right to have one's case duly reviewed by a court are not guaranteed.**

At present, the Mol has reopened the calls for the provision of legal assistance to NGOs for 2023. OPU and other migrant assisting organizations in Czechia have applied for funding under this call and are at present awaiting the result. As of 2024, the counseling is supposed to be provided by both, the attorney at law and NGOs.

However, the present gap has already had severe damage on NGOs providing such assistance and in particular OPU, since some of the most experienced employees have left the organization by the beginning of 2022 due to the ongoing financial insecurities. Paradoxically, this change happened just before the outbreak of the war against Ukraine, at a time when experienced employees would have been needed, thus putting the organization's stability at risk.

Moreover, even in cases where OPU has been successful in ensuring additional funding, in particular from private donors, **the authorities created additional bureaucratic obstacles for OPU employees to access the relevant facilities.** This is in particular the case for detention facilities. Whereas in the past OPU could come regularly to these facilities on specific counseling days and was provided a long-term entry permit and access to a safe space office equipped with computers and printers for that purpose, at present, it can only come visit persons who expressly requests a visit by OPU or who OPU already represents on the basis of a power of representation. On some occasions, these visits would take place only in the visitors' room where no computer, printers or other equipment are available, and while such room did not provide for a safe private space suitable for counseling vulnerable and traumatized persons.

In 2023, the Government Council on Human Rights and its Committee on the Rights of Foreigners adopted a motion requesting the authorities to grant NGOs access to the detention facilities on the basis of a long-term permit and independently from whether or not they receive funding for its activities from the Mol.¹²

¹¹ Martin Kopa, judge at Brno Regional Court, "Zrcadlové bludiště azylového práva", in Czech Constitutional Court: Víceúrovňová spravedlnost: Soudní ochrana v kontextu interakce národního, nadnárodního a mezinárodního systému, Odborné sympozium pořádané Ústavním soudem u příležitosti předsednictví České Republiky v Radě Evropské unie, page 33, available at: https://www.usoud.cz/fileadmin/user_upload/Vedouci_OVVP/Sbornik_Viceurovnova_spravedlnost.pdf. S. also Stanislava Sládeková, assistant at the Brno Regional Court, Jak je na tom Česko s právní pomocí uprchlíkům?, Právo21, 19. 6. 2023, available at: <https://pravo21.cz/pravo/jak-je-na-tom-cesko-s-pravni-pomoci-uprchlikum>.

¹² Vláda ČR, Rady vlády pro lidská práva, Usnesení k poskytování právního poradenství v zařízení pro zajištění cizinců nevládními organizacemi, 25. 10. 2023, available at: <https://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/jednani-rady-dne-25-rijna-2023-209448/>. Vláda ČR, Rada vlády pro lidská práva, Výbor pro práva cizinců, Podnět k umožnění poskytování





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 services **remained questionable**.

Interpreters translating asylum interviews or foreign police interviews continued to have no obligation to undergo special training to work with asylum seekers and vulnerable persons. Moreover, with the Czech migrant population being comparatively small, there continues to be only a very small pool of qualified interpreters which the authorities can rely on. It has been an ongoing challenge for the authorities to find suitable interpreters especially for some of the rare languages. It has been an ever bigger challenge to find interpreters who would have sufficient sensitivity towards specific issues (gender-based violence claims, LGBTI claims) or can be reasonably expected to be impartial (i. e. by not being members of a specific ethnic group in case of inter-ethnic violence).

In terms of asylum interviews, we noted that in some cases, the interpreters tended to summarize the testimonies instead of providing actual word by word interpretation. In other cases, the asylum seekers and our own employees have experienced the interpreters as adversary. Some asylum seekers have also expressed concerns the interpreters might be in touch with or cooperating with embassies with their countries of origin. In 2023, this was especially the case for asylum seekers from Azerbaijan, who oftentimes preferred interpretation to other languages, such as Turkish. Unfortunately, this has negatively affected the quality and level of detail of their testimonies.

These challenges were further exacerbated in proceedings with short deadlines, such as, for example, in detention proceedings, where the foreign police has to issue a detention warrant within 48 hours. In our experience, interpretation during initial police interviews before a detention or deportation order is issued, is often of poor quality and lacks substantive guarantees. This is in particular the case in situations where the police is faced with a larger group of foreigners in respect of whom they have to issue a decision quickly. Typically and contrary to the asylum procedure, in these procedures, the foreigners are not familiarised with a transcript of their testimony and hence cannot correct any potential mistakes resulting from misinterpretation. Nonetheless, the protocols of these testimonies have been repeatedly requested and used by the Mol in the asylum interviews as proof against the asylum seekers's credibility.

Case study: Fraudulent interpreter

In September 2023, OPU received an alert that a fraudulent interpreter from Arabic language, against whom a police complaint was made in 2016, continues to be hired by the Refugee

právního poradenství v zařízení pro zajištění cizinců ze strany nevládních organizací, 20. 2. 2023, available at: <https://www.vlada.cz/assets/ppov/rlp/vybory/pro-prava-cizincu/ze-zasedani-vyboru/Podnet-Vyboru-pro-prava-cizincu-k-pravnimu-poradenstvi-v-detencnich-zarizenich-200223.pdf>.





administrative facilities in detention centers, and continues to provide fraudulent information and charge money to the detainees who speak Arabic. This is happening while all NGOs lost access to detention centers as described above, and the detainees have almost no chances to access a good quality free legal aid. Already in 2016, OPU received complaints about this particular fraudulent interpreter in the detention centers interpreting to all detainees who speak Arabic language, charging refugees high amounts money, linking them to untrustworthy private lawyers, and promising them to be released speedily if they pay high amounts of money. OPU as well as some detainees reported the fraudulent interpreter to Czech police,¹³ Ministry of interior and to Refugee administration facilities as well to the Czech Bar of Attorneys to point out the linkage to the private lawyers. At the time of writing this report, no changes were made.

Case study: Asylum decision annulled due to improper interpretation

In 2023, OPU supported a family from Azerbaijan. Due to concerns that Azerbaijani interpreters may be in contact with the domestic authorities, the family requested interpretation in Turkish. During the interview, OPU lawyer pointed out the interpretation was incorrect, the interpreter needed to explain the questions asked multiple times. Also the interpreter himself admitted the interpretation may not have been always precise. This was a second reassessment of the applicant's asylum claim. The first asylum decision claiming the applicants were unreliable had been canceled by the domestic courts. The accuracy of the testimony was thus a crucial element of the case. Nonetheless, despite the concerns raised, the Mol proceeded with processing the case and issued a second negative asylum decision. With the help of OPU, the applicants challenged this decision successfully for the second time in the Hradec Králové Regional Court. In its judgment, the court pointed out the interpretation deficiencies during the interview and remitted the case back to the Mol for a new assessment. It stated that the Mol should have discontinued the interview the minute the issues with interpretation became evident. In the current situation, the actual state of affairs could not have been sufficiently established.¹⁴

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

We have seen new practice in the case of reunification of unaccompanied minors through the Dublin Regulation. Specifically, it concerns the proof of filiation. In our case, it was a minor boy from Turkey and his uncle (the mother's brother), who is a permanent resident in Germany. The kinship between the nephew and the uncle was proved by an extract from the family books - this is the standard way of proving kinship from Turkey and other countries. German authorities

¹³ Martin Biben, Tlumočník uprchlíkům sliboval, že je za 70 tisíc dostane z detence. Policie v tom problém nevidí, Aktuálně.cz, 24. 8. 2016, available at: <https://zpravy.aktualne.cz/domaci/policejni-tlumocnik-sliboval-uprchlikum-propusteni-za-2550-e/r~544e3394693511e6851c002590604f2e/>.

¹⁴ Regional Court in Hradec Králové, branch in Pardubice, judgement 61 Az 2/2023-58 from 13. 9. 2023.





had previously accepted this method of proving kinship without any problems. In this case, however, the German authorities assessed the evidence as insufficient, stating that kinship could only be proven by DNA tests. This makes the reunification processes more lengthy and uncertain.

Moreover, in one case the Regional Court in Brno annulled a Dublin transfer to Hungary.¹⁵ The court looked extensively in the current CJEU and ECtHR jurisprudence relating to the situation of asylum seekers in Hungary. It concluded that in view of this jurisprudence, the MoI was obliged to particularly carefully consider whether the Hungarian asylum system faces severe deficiencies. In view of the court, the Hungarian asylum system does suffer from such deficiencies. The applicant would be at risk of being returned to his country of origin without his application duly considered. The court looked in particular at the question whether a person who was sent to Hungary under the Dublin regulation would be able to continue their asylum procedure there. It concluded that such an option was solely to the discretion of the Hungarian authorities. The current legislation, requesting prospective asylum seekers to first register with the Hungarian authorities at the embassy in Belgrade or Kyiv, did not provide any guarantee that the asylum procedure would continue or that the asylum seeker would have the possibility to lodge a new application in Hungary.

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

For border procedures s. point 1. 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)

Also in 2023, regular asylum seekers continued to receive insufficient support and often ended up living in poverty. The situation continued to be worsened by the fact that the asylum proceedings lasted unreasonably long - often years. With all of the reception facilities located in remote areas, asylum seekers often could not access most of the services facilitating their integration. This often resulted in the loss of hope, inability to integrate in the host society and a loss of ties with the home country (which made it impossible to return in case of a negative decision in the asylum procedure).

¹⁵ Regional Court in Brno, judgment no. 41 Az 20/2023-48 of 30. 7. 2023.





Moreover, in 2023, the **challenges in access to housing of asylum seekers in the final stage of their asylum process continued**. 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 (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 reception centre. 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, since 2020 the situation has changed and almost no asylum seeker is provided accommodation during the final instance of the proceedings since. While in the most vulnerable cases the Ministry granted the exception, the problematic law is still at force. This means that typically, the asylum seeker has to leave the 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.

The Mol did not provide any additional protection to those asylum seekers who claimed they did not feel safe in the asylum accommodation centers, such as **victims of domestic violence**. In 2023, OPU was informed about a female asylum seeker, victim of domestic violence in her country of origin, whose abusive husband found her in the Czech Republic and threatened her violently. All the addresses of asylum housing are easily trackable online and there are no additional safety measures for those who don't feel safe in the centers. This is especially problematic, considering the asylum seekers are not allowed to work for the first 6 months of the asylum procedure, hence they cannot afford private housing.

Last but not least, the **situation of temporary protection permit holders was particularly challenging, as the government continued to decrease its support** for this group of refugees throughout the year. Specifically, the Mol started distinguishing between “vulnerable” and “not vulnerable” refugees in this group, with the later group receiving even fewer support. However, in cases where the beneficiaries of temporary protection were not entitled to accommodation paid for by the state, it was very difficult for them to obtain and maintain any accommodation. The amounts provided to cover housing costs were very low. In some cases, in fact, it was more beneficial for these refugees not to work. As their social support was being cut in respect of their salaries, this left them with altogether lower income than when they were fully reliant on benefits.

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)

While NGOs were barred from accessing immigration detention, we believe immigration detention continued to be used as a routine tool of migration control in the Czech Republic throughout 2023 with the previously reported problems still persisting.





Moreover, the Committee on the Rights of Foreigners and later the Government Council on Human Rights both adopted a motion requesting the MoI to end immigration detention of children by the 1st of January 2026.¹⁶ In 2024, a working group on alternatives to detention should be established under the auspices of the Government Representative for Human Rights.

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)

Also in 2023, first instance procedures remained of low quality and have not improved despite numerous recommendations by various institutions. Determination of vulnerability was not adequately assessed. The asylum seekers were under the impression interviews were led with the intention to find irregularities in their statements. In the case of some asylum seekers, more interviews were conducted with a significant interval between them. These interviews were compared in detail with the purpose to find differences (e.g., exact dates, building numbers, etc.). In such a case the asylum seekers were considered untrustworthy. There was no consideration of potential effects of PTSD on memory.

The Ministry also continued its problematic practice of using parts of COI supporting the conclusion not to grant international protection, while disregarding information supporting asylum seekers' claims.

In 2023, OPU lawyers experienced additional **challenges relating to the applicants' right to see the content of their file**. While in theory this right should be guaranteed under the Administrative Procedure Code, asylum seekers and OPU lawyers faced in some cases notable obstacles to access the files. For example, in some cases the MoI would not react to written requests for file inspection for several weeks, in some cases even months. In other cases, it offered little to no flexibility to enable come see the files in the refugee facilities during times when OPU lawyers were actually present.

At the annual Ombudsperson seminar on recent developments in asylum and migration law in November 2023, the MoI announced they have developed together with the Ombudsperson a **new template for asylum decisions** which will be tested for use in the coming months. This template was developed relying on standards for easy to understand language and should increase the clarity of the decisions issued. We welcome this development as a step in the right direction.

That being said, we also remark that asylum seekers from some countries obtained their first-instance asylum decision relatively quickly. This was especially the case for asylum seekers from Afghanistan, Syria, Ukraine and Yemen. The procedures were especially fast-tracked in

¹⁶ Vláda ČR, Rady Vlády pro lidská práva, Usnesení k zajišťování nezletilých dětí-cizinců, 25. 10. 2023, available at: <https://www.vlada.cz/cz/ppov/rlp/cinnost-rady/zasedani-rady/jednani-rady-dne-25--rijna-2023-209448/>.





cases of prolongation of subsidiary protection, where typically lasted only two or three months. On the other hand, in a number of other cases, the Mol surpassed the statutory deadlines for issuing decisions by several months. Even in cases where people brought a motion for protection against the inaction to the Minister himself, nothing changed in practice.

Illustratory in this respect is also the situation concerning asylum applicants from China applying for international protection on the basis of their Christian faith. The Ombudsperson already previously investigated severe shortcomings of the Mol in particular in terms of the length of the procedure. However, even after the investigation was communicated to the authorities, no steps were taken to remedy the situation. The Ombudsperson thus decided to report the situation to the Government. With that, the Ombudsperson exhausted all of the available means of its intervention. For the applicants, the situation remained unchanged.

Lastly, a most recent amendment of the Asylum Law of 2023 deleted the right of hospitalized persons to lodge asylum applications in hospitals. According to the Mol, this right was in practice supposedly misused by individuals in order to gain access to health insurance. However the Mol did not back up this postulation with any statistical data.

Case study: Woman hospitalized on her way to the reception centre and hence unable to apply for asylum

Following the legislative change above, OPU assisted a vulnerable woman who urgently needed to apply for asylum, among others due to her precarious mental health condition involving long-term memory loss. She could not remember her name, who she was and where she used to live in Czechia. That being said, she was from a country with a highly problematic human rights reputation.

The woman was brought to OPU's offices upon the request of other organizations. She was provided with an emergency shelter and was supposed to travel together with a volunteer to the reception facility to apply for asylum in the following days. She was previously repeatedly hospitalized in different hospitals in Czechia.

However, while in the emergency shelter, her mental health situation deteriorated and she had to be again hospitalized. Under the new rules, the hospitalization now posed an obstacle to access the asylum procedure. Her asylum application sent in writing via OPU to the Mol from the hospital was not registered by the authorities. She was later released from the hospital and went to register her asylum application in the reception facility.

OPU helped her to petition a court as well as the Ombudsman's office to clarify the status of asylum applications filed from hospitals. According to the Ombudsman's statement issued promptly, no legislative change can go against Art.6 (1) of the Procedures Directive. No legislative change can impose excessive formal requirements to lodge an asylum application. The Ombudsperson concluded that the Mol was still obliged to accept asylum applications lodged in hospitals.





The Ombudsperson's opinion, however, is solely a recommendation, and OPU was already informed about another case of an elderly woman from Ukraine whose application for asylum lodged in a hospital was not registered by the Mol.

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

Also in 2023, the second instance (judicial review) procedure continued to be of **variable quality**. Some regional courts and judges dedicated sufficient attention to the asylum cases, others went into great levels of detail on each case and clearly developed expertise in the field. Some courts and some judges appeared unprepared at the hearings and did not familiarize themselves with the basic principles of asylum law. Moreover, a lack of sufficient English knowledge may continue to be an obstacle for some of these judges to familiarize themselves with the European and international human rights law, the relevant jurisprudence or study COI. Furthermore, there continued to be no tribunals specializing in asylum cases, resulting in a lack of specialization in the field.

Case study: court referencing international law, working in detail with COI in a case concerning a young trafficked woman from Nigeria

Despite the challenges outlined above, we want to highlight a positive example of a court going into great levels of detail in working with both, international law and COI in a case concerning a young trafficked woman from Nigeria.

Since January 2019, OPU has been supporting a young woman from Nigeria who was identified as staying irregularly in the territory of the Czech Republic and was consequently detained for the purpose of her deportation. In the course of the counseling, it has been established that the woman has been a victim of serious human rights violations and trafficking before and during her journey to Europe. She comes from a poor family based in the Edo state, due to poverty she had to grow up with a family acquaintance who offered to pay for her education. The acquaintance repeatedly sexually abused her, forced her into sexual intercourse in order to exchange for food and physically assaulted her when she refused to do so. She was about 17 years old at that time. She became pregnant as a result and was subsequently forced to abort. She therefore decided to run away from her uncle. While living on the street, she ran into a woman who provided her with shelter and promised to help her. She offered to help her organize her journey to Europe.

Our beneficiary then traveled with the help of smugglers to Libya. She was twice sold into sexual slavery in Libya. She was sold for the first time because the smuggler who organized their trip owed money to another organized group. She was then forced into prostitution. Later she was sold to another group and again forced into prostitution. Eventually she managed to escape the people who enslaved her and got to Italy by boat.

The Mol issued the applicant a first a negative decision on her asylum application, stating her testimony was not credible. This decision was canceled by the domestic courts. In 2023, the





Mol issued a new decision. Here, it claimed the applicant's testimony was credible. However, in view of the Mol, she became a victim of trafficking only in Libya and not in Nigeria. Accordingly, she would face no risk in case of return. Our beneficiary challenged also the second asylum decision in court.

In its judgment, delivered within two months, the Regional Court in Ostrava went into great levels of details in assessing the case. Looking into COI and citing how smugglers networks typically operate, the court concluded the applicant may have been a victim of trafficking already in Nigeria. The woman offering her support may have misused her vulnerability. The Mol argument that this woman could not in any way be connected to the smugglers, was not convincing. Moreover, in view of the court, the applicant's profile in terms of her socio-economic status was typical for a victim of trafficking from that region of Nigeria. As such, she could even fall under the category of a particular social group. The court also looked into detail in the workings of the Nigerian anti-trafficking agency, NAPTIP, and concluded that the agency was not successful in combating trafficking. It noted in particular, that according to the COI, 8 out of 10 victims of trafficking returned to Nigeria were later re-trafficked. It further looked into options for affording the applicant subsidiary protection or even humanitarian asylum.¹⁷

However, considering the significant qualitative gaps in the asylum procedure, it cannot be overlooked that the appellate courts often had to do the work which ought to be done by the Mol. This includes gathering proofs, looking carefully into COI or hearing witness testimonies the Mol refused to collect.

Moreover, the courts continued to suffer from a completely inadequate time- and staff-allocation for asylum cases, even though these cases often impact the lives of persons at risk of persecution.¹⁸ The above-noted change in the financial scheme for legal aid to asylum seekers impacted the courts too. As in practice, the attorney hired by the Mol would write only very short lawsuits and request to courts to assign a new attorney free of charge to complement the lawsuit, the administrative burden placed on the courts only grew as several steps had to be taken before the court could look into the merits of a case. We also noted that the courts became stricter and more tedious in reviewing the actual financial means of individuals who requested free of charge attorneys. In proceedings where an individual has to be by law represented by an attorney, this has sometimes had negative consequences for their case.

The precarious financial situation of the courts is only expected to worsen with the austerity measures announced by the current government.

¹⁷ Regional Court in Ostrava, judgment no. 18 Az 31/2023-38 if 23. 11. 2023.

¹⁸ For example, at the expert seminar on asylum law organized by the Czech Ombudsperson's office in the fall of 2021, one of the judges noted the time they are allocated to asylum cases should as a matter of the court schedule compared to cases on traffic misdemeanors.





Case study: stateless person unable to prove lack of financial means and access legal aid due to her status

In 2023, OPU supported a woman who launched an application to be recognized as stateless. Her application has been rejected by the Mol and she brought her case to the courts. She was not successful in the Regional Court and brought her case to the Supreme Administrative Court. Here, she was obliged to be by law represented by an attorney at-law. She requested to be afforded an attorney at law free of charge, due to her precarious status resulting in lack of financial means. However, due to her precarious residence status, she was unable to find official employment and was hence unable to provide the court with sufficient evidence about her incomes. As a result the court did not afford her an attorney free of charge.

Nonetheless, despite these challenges, the average length of proceedings at the second instance continued to be approximately one year at the level of the regional courts and one year at the level of the Supreme Administrative Court.

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 2023 as well. In many cases, the Mol was using imprecise and outdated COI which was also often the reason why its decision were being annulled by courts, thus further prolonging the asylum procedure.

While the Mol typically enlists numerous resources, often only one or two resources are used in the actual reasoning of the decision. Typically, one of the key sources on which the Mol would base its decisions is information procured from the Ministry of Foreign Affairs (MFA) about the situation of unsuccessful asylum seekers returning to their country of origin. However, these information briefs do not meet the required standards for COI. They are not produced by an impartial and independent research entity. Most of the times, these documents do not cite any source for their claims and appear to be based solely on the perception of the embassy workers. In some cases, they even use biased language (such as, saying that in the case of Nigeria, applicants would be typically returning after engaging in “more or less legal activities” in Europe).

Moreover, the COI relied upon is often 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 of origin is considered, or in the case of a member of a specific minority, only general information about the country of origin is used). Even where good quality COI is produced, in some cases, the Mol would rely only on some parts of the COI in the decision-making, typically the ones going to the detriment of the asylum seeker, yet would ignore the parts going to their favor.





Moreover, 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.

Moreover in **2023, the Mol introduced a new problematic practice in respect of the right to view the COI before a decision is issued.** Typically, during the first interview, the asylum seeker is familiarized with their right to see the file before a final decision is issued. They are also on the spot offered the option to waive this right. If no lawyer is present during the interview, the asylum seekers will typically have only a limited understanding of the importance of this right for the outcome of their application and may decide to waive it. Later, the courts assessed this practice as unlawful.¹⁹

Lastly, the Mol also provides enormously short deadlines for providing a reply on the COI collected (regularly 10 days). This makes it in practice impossible to read through the documentation and provide a good quality assessment.

All in all, the practice above often results in important evidence or information being submitted only during court review, thus further prolonging and complicating the procedure.

11. Issues of statelessness in the context of asylum (including identification and registration)

The Czech legislation outlines rights and criteria for asylum seekers, including stateless individuals, who are seeking refuge in the country. In the case of stateless people, the Asylum Act assesses the risk of persecution and serious harm in relation to the state in which the stateless individual has his or her last place of residence, i.e., the state in which the stateless individual resided prior to his or her arrival in Czechia and the state to which he or she could establish ties. The Asylum Act does not define a stateless person, so the definition of the 1954 Convention applies. As statelessness may be relevant as an indication of a well-founded fear of persecution or human rights violations in the asylum seeker's country of origin, the Mol often does not thoroughly assess the cause of statelessness in its international protection decisions.

If the stateless person applies for both international protection and statelessness determination, the international protection procedure will take precedence and the asylum grounds will be considered first. The Mol will suspend the statelessness determination procedure and resume it once the international protection procedure is completed. This is because if the applicant for statelessness status is granted another type of residence permit, including international protection, the Mol will only issue a certificate of statelessness, which does not confer the rights associated with statelessness under Section 49a of the Immigration Act. In practice, this means that a stateless person will enjoy the rights associated with the specific residence permit issued to them, and will be able to prove their statelessness if necessary (e.g. to claim citizenship rights for their future children).²⁰

¹⁹ Regional Court in Brno, judgement no. 41 Az 4/2023 - 58 from 17. 5. 2023.

²⁰ Section 170d para. 4 of the Immigration Act





However, if the person only applies for international protection and is unaware of the statelessness determination procedure, the Mol will not make a referral. If the person's application for international protection is rejected, the person may not necessarily be informed of the statelessness determination procedure as there is no obligation for the authorities to do so. There may be a gap in ensuring that a person identified as (potentially) stateless is properly recognized as stateless in order to prevent detention and/or attempts at forcible removal. It is essential to take appropriate measures to provide individuals with the necessary information about the statelessness determination procedure in order to ensure access to the procedure and to prevent cases of detention and/or forcible removal.

12. 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, also in 2023 there continued to be **no vulnerability screening tool or methodological guidance** for identification of vulnerable asylum seekers. Often, the authorities failed to identify or recognize the vulnerability of a particular person despite the calls of representatives or NGOs. There also appeared to be a lack of understanding of more holistic approaches to vulnerability which would not look at vulnerability characteristic individually but in their interplay and would recognize patterns of multiple or intersecting discrimination. Moreover, even where vulnerability was recognized or obvious, **it remained unclear what adjustments were taken in practice**, especially in respect of ensuring the individual can access their rights in the procedure.

Case study: Mol refusing to refer for psychological examination a client with previous mental health conditions, asks her to travel across the country to view her file

OPU observed a further lack of sensitivity and absence of reasonably to be expected adjustments in a case described above, concerning an asylum seeker with previous mental health challenges.

The available medical reports of this client stated clearly that additional, more long-term examination was needed in order to establish a concrete diagnosis. OPU requested the Mol repeatedly to have such an assessment conducted by an external expert. However, no such examination had been carried out before a decision was issued. Additionally, despite OPU's requests to add to the file COI relating to the availability of specialized health care in the client's country of origin, no such information was researched and added by the Mol.

Moreover, the Mol, while well aware of the client's challenges with memory and her fear of further memory loss, asked the client to travel to a completely different facility to come inspect the file before issuing a decision. As a result, the client would have to travel for several hours and change the train at least three times to reach the facility. She was fearing she would be unable to make the journey and would get lost on the way. OPU requested the Mol to conduct the file inspection in the facility where the client was accommodated. Nonetheless, the Mol refused to do so.





Case study: Lack of sensitivity towards LGBTQI+ asylum seeker

In 2023, OPU assisted an LGBTQI+ asylum seeker from a country where same-sex sexual intercourse can be penalized by death penalty. The Mol showed lack of sensitivity during the procedure. The applicant was asked questions about his sex life during the interview. I.e. when was the last time he and his partner had sex, when was the first time, how often they have sex and so on. The applicant did in the end receive a positive response. However, the Mol decided to grant him only subsidiary protection. In OPU's views, however, the client's claim qualifies for asylum. Moreover, the decision included several harmful and derogatory comments showing a lack of sensitivity by the Mol. For example, the Mol claimed that "the life of the applicant shows that it is possible to live as a gay man in his country of origin". It also referred to LGBTQIA+ people with the derogatory term of "4 % minority".

Moreover, in 2022, the Ministry of Interior (Mol) initiated a change of the Asylum Law which may have a negative impact on vulnerable groups. Previously, the Mol would provide subsidiary protection in cases where the return of a person would be contrary to Czechia's international obligations (§ 14a (1) lit. d Asylum Law). However, this provision was deleted with the most recent amendment (Law 173/2023 Coll.), in force since the 1st of July 2023. While in theory the prohibition of non-refoulement, interpreted broadly, should prevent the authorities from deporting an individual in such situations, it no longer automatically qualifies them for international protection. We believe that this change may impact especially particularly vulnerable groups who may fall outside of the traditional protection categories, such as victims of domestic trafficking in human beings.

- 13.** Content of protection (including access to social security, social assistance, health care, 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)

In 2023, the State Integration Programme continued to be relatively well organized. However, in practice it continued to come as too little too late. Due to the length of the asylum procedure, most refugees managed to integrate on their own and by the time they finally received international protection, there was little added value for them in entering the programme.

Moreover, some issues remained a challenge even for those refugees whose claims got recognized quickly and who could hence benefit from the program the most. In particular, access to housing remains problematic. Recognized refugees continued to be temporarily allowed to stay in one of the integration facilities for the maximum period of 18 months. **The state-funded integration apartments, however, continued to be located in a segregated locality in Ústí nad Labem.** This made it very challenging for these refugees to find jobs, doctors or kindergartens for their children. Moreover, during this period, the refugees were asked to find private accommodation. Yet property owners continued to be unwilling to rent their properties to refugees. This situation was only exacerbated by the ongoing housing crisis and by the Russian invasion of Ukraine.





14. Return of former applicants for international protection

With the amendments in force in 2023, the MoI finally managed to cancel the successful scheme of exceptional regularization of certain unsuccessful asylum seekers. Under this scheme families with small children or elderly individuals whose asylum procedure lasted over 4 years were under certain circumstances able to regularize their stay and obtain permanent residence. Considering how poor the quality of asylum procedures is, and how long the delays are especially in vulnerable cases, this mechanism provided an important tool to protect people from being returned to their country after experiencing significant delays in the asylum procedure and a years lasting legal uncertainty. In 2023, this scheme was canceled with no replacement.

15. 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)

In May 2022, the Civil Society Programme²¹ was introduced. The programme is focused on Russian and Belorussian citizens – mainly on political activists, human rights defenders, journalists, and those, who are subjected to persecution by authorities based on their exercising their freedom of speech and other special cases of people whose fundamental rights are restricted and limited.

Application to this Programme can be submitted through a guarantor, who forwards it to the MFA. Successful candidates are guaranteed that they will be issued long-term visa or residence permit at Embassies or the Consular Offices of the Czech Republic. Also, close family members can be included in the Programme. The number of applicants was limited to 500. According to our knowledge, in 2022 this quota was filled by summer. However, we lack the statistics for 2023.

The Programme is welcomed; however, it appears that each individual's application is assessed on a strict basis. The Programme is profiled on high-level political activists, journalists, and their families. In practice, it appears that these already have to have pre-existing ties with some Czech NGOs and ideally, the guarantor. It is thus not intended for a wider public, only average opposition members and so on.

Nonetheless, **the MoI is at present aiming to channel this ad hoc programme into a regular humanitarian visa under the currently prepared new Foreigners' Law.** This is a welcomed development.

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

²¹ The Civil Society Programme. Ministry of the Foreign Affairs. Available at https://www.mzv.cz/jnp/cz/informace_pro_cizince/aktuality/program_obcanska_spolecnost.html.





17. National jurisprudence on international protection in 2023 (please include a link to the relevant case law and/or submit cases to the EUAA Case Law Database)

In addition to the jurisprudence outlines above, we want to mention the following cases:

The Prague City Court looked into a case involving a young woman from Russia who was a doctor and was fearing she would be subjected to mobilization upon return. In its judgment, the court confirmed previous jurisprudence stating that persons who refuse military service in an army who commits war crimes, may be generally eligible for international protection. In respect of the applicant's specific education degree, the Mol should have researched more detailed information on whether or not she may be subjected to mobilization upon return.²²

In a case challenging the expulsion order issued to an Ethiopian national, the Prague City Court granted the motion suspensive effect. It cited among others, the UNHCR recommendations on returns to Ethiopia.²³

In a recent judgment, the Supreme Administrative Court went into great levels of details in how to assess credibility of asylum applicants, citing among others the EASO Guidebook on Evidence Assessment from 2015.²⁴

Moreover, in a recent judgment, the Supreme Administrative Court stated it would be obliged to afford international protection to the applicant should the Mol repeatedly refuse to do so.²⁵ In view of the court, unless there was a dramatic change in the factual circumstances of the case, application, the Mol was obliged to grant the applicant subsidiary protection pursuant to Art. 14a Asylum Law. Should it fail to do so, the court would be obliged, in any subsequent annulment judgment, to grant the applicant subsidiary protection directly, on the basis of the *Torubarov*. That even though national law does not otherwise confer such power on the administrative court.

18. Other important developments in 2023

We want to highlight the remaining challenges relating to **temporary protection** for persons fleeing Russia's war of aggression against Ukraine.

The granting of temporary protection to persons fleeing Ukraine is accompanied by many problems which are mainly due to the adopted domestic legislation regulating the conditions

²² City Court in Prague, judgement no. 20 Az 32/2022-41 of 13. 9. 2023.

²³ City Court in Prague, decision no. 4 A 21/2023-22 of 16. 8. 2023.

²⁴ Supreme Administrative Court, ref. no. 5 Azs 208/2022 - 52 of 10. 2. 2023.

²⁵ Supreme Administrative Court, judgement no. 5 Azs 192/2023 - 28 of 1. 11. 2023.





for granting and withdrawing temporary protection in the Czech Republic (Law No. 65/2022 Coll, so-called Lex Ukraine, now in its fifth version).²⁶

In the Czech Republic, **a large number of applications for temporary protection are still declared inadmissible without a decision being issued.** Moreover, Czech legislation implementing temporary protection states that **judicial review is precluded in the case of inadmissibility of temporary protection.**

Generally, there types of situations where an application is declared inadmissible may arise.

The first and most typical one is **a situation where a citizen of Ukraine has already applied for or obtained temporary protection in another EU country.** In this case the application is assessed as inadmissible. No formal procedure is initiated. Instead, the Mol employees simply return the application form to this person on the spot. Moreover, even if the Ukrainian national cancels his/her temporary protection in another country, the Mol will not grant this person temporary protection if it can still see the application submitted in the Temporary Protection Platform (TPP) database. The Mol continued applying this practice even though the use of Article 11 of the Temporary Protection Directive has been excluded by the Member States in the accompanying Council implementing decision. Moreover, we believe the Mol cannot be creating new grounds of inadmissibility, as the minimum standards set by the Directive. Moreover, the Commission has stated that any citizen of Ukraine who meets the conditions for temporary protection has the right to choose the country in which to reside.

Further problematic are situations where a Ukrainian national obtained **a visa to another country.** If a citizen of Ukraine fulfills the basic conditions for temporary protection, but as of 24 February 2022 had been granted a visa to another country, temporary protection is not granted, as according to the administrative authorities, a citizen of Ukraine can find assistance in the country where he or she was granted a visa. Even if the citizen of Ukraine did not use this visa and was not personally on the territory of the state that issued the visa, but was only on the territory of Ukraine all the time, his application is again assessed as inadmissible. Indeed, the administrative authorities interpret the concept of “residing in Ukraine” in Article 2(1)(a) of the Council Implementing Decision not in terms of where the citizen of Ukraine was actually present on 24 February 2022, but where he was allowed to reside. Thus, if, for example, a citizen of Ukraine was in possession of a Polish visa on 24 February 2022, but never traveled to Poland on the basis of that visa, and his first journey was from Ukraine to the Czech Republic, they will not be granted temporary protection.

A further challenge is the **automatic termination of temporary protection if the temporary protection holder obtains a visa or residence permit for another country.** In practice, an important number of Ukrainian citizens applied in the past or are applying now for visas to other countries but are not aware of the consequences of being granted a visa. Once they are granted a visa for another country, their temporary protection is revoked by law. This means they do not receive any decision and do not find out about this fact until several months later. This implies

²⁶ Law No. 65/2022 Coll., Law on certain measures in connection with the armed conflict on the territory of Ukraine caused by the invasion of the Russian Federation troops.





they might be in practice without a valid residence permit, a valid work permit or health insurance without knowing it and might be even liable to repay any social security support which they obtained during the time they were no longer temporary protection holders. They can regain the temporary protection if they manage to cancel the visa, however, this proves in practice often challenging as some embassies do not have formal procedures for canceling visas which have not been made use of in practice.

In a number of cases, and considering that formal judicial review was excluded by law, OPU lawyers have thus filed so-called intervention actions.²⁷ These have been found admissible and often justified by the courts.²⁸ The exclusion from judicial review is in fact, also in contradiction with European legislation. Article 29 of Council Directive 2001/55/EC provides that persons excluded by a Member State from temporary protection or family reunification are entitled to lodge an appeal in that Member State. Moreover, the Ombudsperson initiated an inquiry into the matter and came to the same conclusions.²⁹

The MoI remitted the majority of the cases won at the regional court level to the Supreme Administrative Court. Moreover, **on November 30, 2023, the Supreme Administrative Court submitted a request for a preliminary ruling relating to the interpretation of the TPD to the CJEU.**³⁰ As for now, the legislation remains the same. It continues to exclude judicial review and still contains grounds of inadmissibility going beyond the scope of the TPD.

Part B: Publications

1. If available online, please provide links to relevant publications produced by your organisation in 2023

2. If not available online, please share your publications with us at:
Asylum.Report@euaa.europa.eu

²⁷ Action for protection against unlawful interference under § 82 Law no. 150/2002, Administrative Procedure Code.

²⁸ S. i. e. City Court in Prague, judgement no. 11 A 80/2022-79 of 27. 4. 2023, Regional Court in Pilsen, judgement no. 55 A 6/2023 of 17. 5. 2023, Regional Court in Pilsen, judgement no. 55 A 12/2023 of 12. 6. 2023, Regional Court in Pilsen, judgement no. 57 A 20/2023 of 27. 6. 2023, Regional Court in Ústí nad Labem - branch in Liberec, judgement no. 59 A 45/2022-30 of 25. července 2022, City Court in Prague, judgement no. 11 A 111/2023-62 of 2. 11. 2023.

²⁹ Report on the Ombudsperson's investigation of 22 February 2023, Case No. 14372/2022/VOP/VVO, available at: <https://eso.ochrance.cz/Nalezene/Edit/11420>.

³⁰ Supreme Administrative Court, resolution no. 8 Azs 93/2023-37 of 30. 11. 2023.





3. For publications that due to copyright issues cannot be easily shared, please provide references using the table below.

	Title of publication	Name of author	Publisher	Date
1				
2				
3				
4				
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Contact details

Name of organisation: Organizace pro pomoc uprchlíkům - Organization for Aid to Refugees (OPU)

Name and title of contact person: Zuzana Pavelková, lawyer

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