



## **Czech Republic**

### **Joint Global Detention Project, Organization for Aid to Refugees and Forum for Human Rights Submission to the Universal Periodic Review 28<sup>th</sup> session of the UPR Working Group, October-November 2017**

#### **Submitting organisations**

The Global Detention Project (GDP) is an independent research centre based in Geneva, which investigates the use of immigration-related detention as a response to global migration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices and to promote scholarship and comparative analysis of immigration control regimes.

The Organization for Aid to Refugees (OPU) is a nongovernmental organization with a 25-year-long experience in providing free assistance to refugees and migrants in the Czech Republic. OPU lawyers provide free on-site legal counseling for refugees and migrants in all detention, reception and accommodation centers in the Czech Republic and ensure that policies do not violate human rights. OPU lawyers litigate at domestic courts, ECHR and UN-bodies. OPU is a member of ECRE, of Consortium of NGOs working with migrants, and is a UNHCR implementing partner OPU is active in cross-Europe dialogue and aims to support democratization and to strengthen civic society. OPU is an expert source for media and has carried out campaigns to encourage discussion on human rights, racism and tolerance.

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

#### **Issues concerning immigration detention**

During the 2<sup>nd</sup> cycle of Universal Periodic Review of the Czech Republic (14th session, 22 October 2012) the following recommendation was supported by the country:

*Consider the recommendation of UNHCR to review legal provisions of the proposed amendments on detention to ensure that asylum seekers, including adolescents and children, and families with children are not detained (Uzbekistan) (para. 94.120)*

In 2015, the number of migrants and asylum seekers crossing Czech territory en route to West European countries increased significantly. The Czech Republic responded by boosting detention efforts. The number of detainees increased from around 350 in 2013,<sup>1</sup> to 4,822 in 2014; and 8,563 in 2015.<sup>2</sup> In 2015, most detainees came from crisis situations in Syria (2,013), Ukraine (1,099), and Afghanistan (576).

These sharp increases together with reports of inadequate detention conditions prompted the UN High Commissioner for Human Rights to target the country for particular criticism. He said, "According to credible reports from various sources, the violations of the human rights of migrants are neither isolated nor coincidental, but systematic: they appear to be an integral part of a policy by the Czech Government designed to deter migrants and refugees from entering the country or staying there."<sup>3</sup>

While the numbers of detainees have decreased in 2016 and 2017 as a consequence of changing migration routes, detention is still used as a primary measure of deterrence. In addition, there is a rising concern about detention of migrants arriving at the Prague airport transit zone. Persons arriving at the Prague airport transit zone who are admitted to the asylum procedure are being detained at the airport reception centre without assessing their vulnerability, while some are not admitted to the asylum procedure and detained in regular prisons upon initiating criminal proceedings against them.<sup>4</sup>

## LAWS, POLICIES, PRACTICES

**Legal framework governing immigration detention.** Immigration detention is provided for in the 1999 [Act No. 326/1999 Coll. on the Residence of Foreign Nationals](#) (Foreign Nationals Act, FNA) and the 1999 [Act No. 325/1999 Coll. on Asylum](#) (Asylum Act, AA). When compared to other countries in the region, the Czech legal framework stands out because of the extensive number of grounds that can lead to detention. In 2013, the UN Human Rights Committee expressed concern that foreign nationals may be detained on grounds that are not narrowly defined, such as failure to observe their duties during their stay and urged the country to ensure that immigration detention is always reasonable, necessary, and proportionate with respect to a person's individual circumstances.<sup>5</sup>

The Czech immigration detention practices were also condemned by the European Court of Human Rights<sup>6</sup> and recently by the Court of Justice of the European Union.<sup>7</sup>

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<sup>1</sup> European Migration Network (EMN) Czech National Contact Point (NCP) (the Department for Asylum and Migration Policies of the Ministry of the Interior), *The use of detention and alternatives to detention in the context of immigration policies*, 2014, [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/studies/results/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/studies/results/index_en.htm) (EMN, 2014).

<sup>2</sup> Ceske Noviny, "Czech police detain 8175 illegal foreigners this year," *Ceske Noviny*, 18 December 2015, <http://www.ceskenoviny.cz/zpravy/czech-police-detain-8175-illegal-foreigners-this-year/1294611>.

<sup>3</sup> Office of the High Commissioner for Human Rights, "Zeid urges Czech Republic to stop detention of migrants and refugees," *News and Events*, 22 October 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16632&LangID=E> (OHCHR, 2015).

<sup>4</sup> Hungarian Helsinki Committee (HHC), *Pushed Back at the Door: Denial of Access to Asylum in Eastern EU Member States*, 2017, <http://www.ecre.org/poland-bulgaria-czech-republic-hungary-and-slovenia-pushed-back-at-the-door/> (HHC, 2017).

<sup>5</sup> Human Rights Committee, *Concluding observations on the third periodic report of the Czech Republic*, CCPR/C/CZE/CO/3, 22 August 2013, <http://ohchr.org/EN/Countries/ENACARegion/Pages/CZIndex.aspx> (HRC, 2013).

<sup>6</sup> European Court of Human Rights, *Buishvili v. the Czech Republic*, 25 October 2012, 30241/11, <http://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22buishvili%22%5D,%22documentcollectionid%22:%5B%22GRANDC>

**Length of detention.** The FNA (Section 125) allows detention for up to six months, which can be extended up to 18 months if the detainee obstructs expulsion or provides false information. Applicants for international protection can be detained for up to 4 months (AA, Section 46(a)(5)).

Both the FNA (Section 125(5)) and AA (Section 46(a)(4)) clarify that if a person has already been detained under the either act, the time already spent in detention does not count toward the maximum permissible length of the fresh detention. There is thus a possibility for the periods of detention under both acts to be applied cumulatively for up to 10 months.

The average length of detention has sharply increased in recent years, from 51 days in 2013<sup>8</sup> to 80 days in 2014.<sup>9</sup>

In March 2017, a member of the Czech parliament proposed an amendment to the FNA<sup>10</sup> to extend the length of detention by additional 185 days if the destination country does not collaborate efficiently. The presenting member of parliament admitted that the proposal was written by the Ministry of Interior.<sup>11</sup> The Ministry thus bypassed the regular legislative process and avoided the debate about this amendment between other state bodies and civil society. The parliament is scheduled to vote on this amendment early April 2017.

**Judicial review of detention.** Judicial organs review decisions on detention made by administrative authorities only in response to an appeal submitted by the detainee under Section 129(a)(2) of the FNA.<sup>12</sup> The fraction of successful appeals was small in 2012 and 2013: 2 out of 12 appeals were successful in 2013 and 6 out of 27 in 2012.<sup>13</sup>

Judicial review of immigration detention is very slow. FNA sets the time limit only for the courts of first instance and even then the proceedings may last 2 to 3 weeks. If the first instance decision is negative, the court has 30 days to deliver written reasons and the appellate court has no prescribed time limit to render its judgment.

There is no automatic regular judicial review of immigration detention. This was problematic especially in the time of the larger influx of migrants in 2015 and 2016 when access to legal aid in the detention centres was severely limited and many

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HAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-114051%22]]; European Database of Asylum Law (EDAL), *Czech Republic: ECtHR grants interim measure to prevent Article 3 violation regarding detention of family with minors*, 22 October 2015, <http://www.asylumlawdatabase.eu/en/content/czech-republic-ecthr-grants-interim-measure-prevent-article-3-violation-regarding-detention>.

<sup>7</sup> Court of Justice of the European Union, *Al Chodor and Others*, C-528/15, 15 March 2017, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-528/15>.

<sup>8</sup> EMN, 2014, *op. cit.*

<sup>9</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the Czech Government on the visit to the Czech Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 1 to 10 April 2014*, CPT/Inf (2015) 18, 31 March 2015, <http://www.cpt.coe.int/documents/cze/2015-18-inf-eng.pdf> (CPT, 2015).

<sup>10</sup> Consortium of Organizations Working with Migrants, *TISKOVÁ ZPRÁVA: Poslanecký přilepek protiústavně omezuje práva cizinců*, Press Release, 28 February 2017, <http://www.konsorcium-nno.cz/cz/clanek/167/tiskova-zprava-poslanecky-prilepek-protiustavne-omezuje-prava-cizincu>.

<sup>11</sup> Blahoslav Hruška, "Vnitro přitvrzuje vůči cizincům. Chovancův úřad obešel legislativní kolečko," *Lidovský*, 5 March 2017, [http://www.lidovsky.cz/vnitro-pritvrzuje-vuci-cizincum-chovancuv-urad-obesel-legislativni-kolecko-1wq/zpravy-domov.aspx?c=A170301\\_141500\\_In\\_domov\\_ELE](http://www.lidovsky.cz/vnitro-pritvrzuje-vuci-cizincum-chovancuv-urad-obesel-legislativni-kolecko-1wq/zpravy-domov.aspx?c=A170301_141500_In_domov_ELE).

<sup>12</sup> EMN, 2014, *op. cit.*; Kosar and Kühn, 2014, *op. cit.*

<sup>13</sup> Kosar and Kühn, 2014, *op. cit.*

detainees were unable to submit legal remedies. Without legal representation an appeal against detention is illusory, as it must be submitted in Czech language in accordance with formal requirements set under the Czech law.

**Children.** Asylum applicants who are unaccompanied children or families with children may not be detained (AA, Section 2(i) and 46(a)(3)). However, unaccompanied children older than 15 years who are not asylum applicants can be detained. They can be detained on specific grounds, notably if there is a reasonable risk that they might threaten state security or seriously disrupt public order (FNA, Sections 124(6) and 129(5)) and if it is deemed to be in their best interests (FNA, Section 124(5)-(6)). FNA also sanctions detention of unaccompanied children until their age is determined, if the authorities have doubts about the child's real age. In practice, the age assessment can take months.

Reportedly, unaccompanied children in the 15-18 age group are rarely detained but when they are they are held in the same premises as adults.

In 2014, the European Committee for the Prevention of Torture (CPT) urged the country to ensure that unaccompanied children are provided with special care and accommodated in an open or semi-open establishment dedicated for juveniles, such as social welfare or educational institutions.<sup>14</sup>

Children between 15-18 can be detained for up to three months (FNA, Section 125(1)-(3)).<sup>15</sup> In 2013, the Human Rights Committee expressed concern about the 90-day detention limit for minors. The committee urged the Czech Republic to reduce this period and to ensure that the detention of children be permitted only as a measure of last resort and for the shortest appropriate period.<sup>16</sup>

Families with small children were routinely detained in 2015 and 2016. In 2015 the authorities detained 375 children, 80 percent of whom were younger than 15 years and 40 percent of whom were below the age of 6. Most of these families came from Syria, Afghanistan and Iraq.<sup>17</sup>

Widespread detention of families with children in the Czech Republic was condemned at the international level by the UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein,<sup>18</sup> the Council of Europe Commissioner for Human Rights Nils Muižnieks,<sup>19</sup> the CRC,<sup>20</sup> and the UN Committee on the Elimination of Discrimination against Women (CEDAW),<sup>21</sup> and at the domestic level by the Czech Ombudsman,<sup>22</sup> and

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<sup>14</sup> CPT, 2015, *op. cit.*

<sup>15</sup> CPT, 2015, *op. cit.*; EMN, 2014, *op. cit.*

<sup>16</sup> HRC, 2013, *op. cit.*

<sup>17</sup> The data based on the monitoring of detention provided by the Office of the Public Defender of Rights under the Act No. 106/1999 Coll., on free access to information.

<sup>18</sup> OHCHR, 2015, *op. cit.*

<sup>19</sup> CTL, "Komisař Rady Evropy: Jsem zklamán zprávami o situaci uprchlíků v Bělé," *Aktuálně.cz*, 16 October 2015, <http://zpravy.aktualne.cz/domaci/komisar-rady-evropy-jsem-zklamany-zpravami-o-situaci-uprchli/r~4b69dc7c740011e5974b0025900fea04/>.

<sup>20</sup> Committee on the Rights of the Child, *Concluding observations: Czech Republic*, CRC/C/CZE/CO/3-4, 4 August 2011, <http://ohchr.org/EN/Countries/ENACARegion/Pages/CZIndex.aspx> (CRC, 2011).

<sup>21</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the sixth periodic report of the Czech Republic*, CEDAW/C/CZE/CO/6, 14 March 2016, <http://ohchr.org/EN/Countries/ENACARegion/Pages/CZIndex.aspx>.

<sup>22</sup> Public Defender of Rights (Ombudsman), Zpráva z návštěvy zařízení pro zajištění cizinců Bělá-Jezová, 18 February 2015, [http://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/ZZ-Zarizeni\\_Bela-Jezova\\_2014.pdf](http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/ZZ-Zarizeni_Bela-Jezova_2014.pdf); Public Defender of Rights (Ombudsman), Zpráva z návštěvy zařízení pro zajištění cizinců Bělá-Jezová, 31 August 2015,

the Czech Governmental Committee on Human Rights (Rada vlády pro lidská práva).<sup>23</sup>

**Criminalization.** Between 2015 - 2017, the OPU observed that asylum seekers tended to be imprisoned in regular prisons after arriving at the Prague international airport. The imprisonment was a criminal sanction for presenting themselves with forged documents. This procedure was contrary to the non-penalization clause in Article 31 of the Convention Relating to the Status of Refugees. According to the statements of imprisoned asylum seekers, their requests to submit an asylum application at the airport transit zone were ignored or directly rejected.<sup>24</sup> The testimonies of imprisoned asylum seekers collected by OPU included a victim of torture and sexual violence from Sri Lanka who was imprisoned for 8 months. The total number of imprisoned asylum seekers is unknown because their access to legal aid is severely limited and there is no organization providing regular legal aid to asylum seekers in prisons.

**Alternatives to detention.** The police may detain a foreign national if the imposition of alternative measures (called “special measures”) is not sufficient (AA, Section 46(a)(1); FNA, Sections 124(1), 124(a) and 124(b)(1)). There are three alternatives to detention: the obligation 1) to provide the address of one’s place of residence to the police, to reside at that address, and to report any change of the address to the police on the following working day; 2) to report in person at a police station at a time limit stipulated by the police on a regular basis; or 3) to deposit a financial security (FNA, Section 123). According to official sources, only residence restrictions and reporting obligations are used in practice.<sup>25</sup>

Although the FNA (Section 124(1)) provides that the police should always consider possibility of application of alternatives to detention before issuing any decision on detention, it also links alternatives to detention to the proceedings on administrative expulsion (Section 123b). Thus, the application of alternatives to detention is problematic in the cases of Dublin transfer or return under a readmission agreement. There are no feasible alternatives to detention for families with children who are mostly detained for the purpose of their transfer under the Dublin Regulation or readmission agreement and have no place of residence to stay in. There are no community-based centres where they could be accommodated.

In 2011, the UN Committee on the Rights of the Child urged the Czech authorities to consider all possible alternatives to detention of all children.<sup>26</sup> In 2012, the UN Committee against Torture urged the Czech Republic to implement alternatives to

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[http://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/2015-srpen-Bela-Jezova-ZZ.pdf](http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/2015-srpen-Bela-Jezova-ZZ.pdf); Public Defender of Rights (Ombudsman), Zpráva z návštěvy zařízení pro zajištění cizinců Bělá-Jezová, 9 September 2015,

[http://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/2015-srpen-Bela-Jezova-ZZ.pdf](http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/2015-srpen-Bela-Jezova-ZZ.pdf); Public Defender of Rights (Ombudsman), Zpráva z návštěvy zařízení pro zajištění cizinců Bělá-Jezová, 3 October 2015,

[http://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/2015-rijen-Bela-Jezova-ZZ\\_vyhodnoceni.pdf](http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/2015-rijen-Bela-Jezova-ZZ_vyhodnoceni.pdf).

<sup>23</sup> Vlada Ceske Republiky, “Výbory Rady vlády se zabývaly problematikou cizinců,” *Vlada Ceske Republiky*, 16 September 2015, <https://www.vlada.cz/cz/ppov/rlp/aktuality/vybory-rady-vlady-se-zabyvaly-problematikou-cizincu-134730/>.

<sup>24</sup> HHC, 2017, *op. cit.*

<sup>25</sup> EMN, 2014, *op. cit.*

<sup>26</sup> CRC, 2011, *op. cit.*

detention of asylum seekers, in particular for families with children and asylum seeking adults who are responsible for children.<sup>27</sup>

**Cost of detention.** Detainees have to pay for their detention. Every detainee (including minors) is to pay a daily fee of 130 CZK for accommodation and 112 CZK for meals, or roughly 10 Euros per day.<sup>28</sup> Detainees have to hand over all their money, with which their confinement is paid. Many of them cannot pay this amount of money and are issued with a debt note upon release.<sup>29</sup> The UN High Commissioner for Human Rights has argued that “the fact that people are being forced to pay for their own detention is particularly reprehensible.”<sup>30</sup> This issue had been flagged out also by the CPT.<sup>31</sup>

**Privatisation.** While the police are charged with securing the perimeter of the Bělá-Jezová detention centre, a private security company is in charge of maintaining internal order and is present in the facility around the clock.<sup>32</sup> In 2014 the CPT noted many staff members at the facility—in particular the private security company employees—had received no specific training for working in a multi-ethnic environment. The CPT expressed concern that some private security staff carried pepper spray inside the detention areas.<sup>33</sup>

## DETENTION INFRASTRUCTURE

**Detention centres.** For nearly a decade, the Czech Republic operated one immigration detention facility, located in Bělá-Jezová. In 2015, the country opened two additional dedicated detention centres, in Vyšní Lhoty and Drahonice. As of August 2016, Bělá-Jezová had a capacity of 246, Vyšní Lhoty 544, and Drahonice 240.<sup>34</sup> By March 2017, the Drahonice facility had been replaced by another facility, Balková, with the capacity of 200; the capacity of the remaining two facilities was sharply reduced. Bělá-Jezová centre had a capacity of 90 and Vyšní Lhoty of 198.<sup>35</sup>

The Bělá-Jezová detention centre was criticized by the Czech Ombudsperson especially regarding the placement of families with children. The Ombudsperson found that conditions in the centre were unacceptable for accommodation of families with children and recommended to immediately cease the practice of placing families with children in this centre. She found the conditions for families with children in this centre to be in violation of Article 3 of the European Convention of Human Rights.<sup>36</sup>

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<sup>27</sup> Committee against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention: Concluding observations of the Committee against Torture: Czech Republic*, CAT/C/CZE/CO/4-5, 13 July 2012, <http://ohchr.org/EN/Countries/ENACARRegion/Pages/CZIndex.aspx> (CAT, 2012).

<sup>28</sup> Regulation 447/2005 Coll, <https://www.psp.cz/sqw/sbirka.sqw?cz=447&r=2005>.

<sup>29</sup> Rozumek, 2015, *op. cit.*

<sup>30</sup> OHCHR, 2015, *op. cit.*

<sup>31</sup> CPT, 2015, *op. cit.*

<sup>32</sup> CPT, 2015, *op. cit.*; EMN, 2014, *op. cit.*; Ministry of the Interior of the Czech Republic, Website, "Procedure for Granting International Protection in the Czech Republic," last updated 2017, <http://www.mvcr.cz/docDetail.aspx?docid=126021&docType=ART&chnum=3> (Ministry of the Interior, "Procedure for Granting," 2017).

<sup>33</sup> CPT, 2015, *op. cit.*

<sup>34</sup> Ministry of the Interior of the Czech Republic, Website, "Aktuální statistiky," last updated 2016, web archive on file with the GDP.

<sup>35</sup> Ministry of the Interior of the Czech Republic, Website, "Aktuální statistiky," last updated 2017, <http://www.mvcr.cz/migrace/clanek/aktualni-statistiky.aspx>.

<sup>36</sup> Public Defender of Rights (Ombudsman), *Zpráva z návštěvy zařízení pro zajištění cizinců Bělá-Jezová*, 18 February 2015,

The conditions in the Bělá-Jezová detention centre have considerably deteriorated in summer 2015 after its capacity was enhanced from 270 to 700 during the peak of the migration crisis. To accommodate more persons, the authorities built containers and tents and used other “spare areas”, such as gym, for accommodation. Following her visit in August 2015, the Ombudsperson found the conditions in the containers degrading and inhuman and noted with concern that even children were detained in such conditions. The area of children playground was transformed into a walking area for men who were accommodated in tents and activities for children were organised by one employee.<sup>37</sup> In her follow-up report of October 2015, the Ombudsperson concluded that even though the situation slightly improved, it was still completely unsatisfactory. Children were placed in a facility with prison regime with all of its components (counting inmates, presence of uniformed guards) and some children had no other shoes than flip-flops. The Ombudsperson concluded that conditions for children in Bělá-Jezová constituted ill-treatment in the meaning of Article 3 of the European Convention on Human Rights and called on Czech authorities to immediately cease detaining children and families in this facility.<sup>38</sup> The authorities refused to comply and by today detain families with children in the Bělá-Jezová detention centre.

Earlier, both the Human Right Committee in 2013 and the Committee against Torture in 2012 urged the Czech Republic to ensure that the material conditions and regime are reviewed and conform to international standards.<sup>39</sup>

**Reception centres.** The Czech Republic operates two reception centres, located in Zastávka and at the Prague Ruzyně Airport. Asylum seekers are obligated to stay at a reception centre for the purposes of performing identification processes and a medical examination. A breach of the obligation to remain at a reception centre is considered to be an offence.<sup>40</sup> If the Ministry does not decide on an asylum request within four weeks, the person is released. The maximum length of stay at the airport reception centre is 120 days. Both reception centres are secure, guarded facilities. The rooms in the airport facility are behind bars and have no access to outdoors, while in Zastavka asylum seekers can walk freely between the buildings and only the external exit is guarded. The Global Detention Project classifies both reception centres as “secure” reception centres that amount to detention because asylum seekers are physically prevented from leaving the premises.

Between 2015-2017, OPU observed that in practice asylum seekers who arrived at the Prague airport transit zone with valid documents had difficulties to submit their asylum claim. The authorities frequently cancelled their valid visas and ignored or rejected asylum application request, preventing the asylum seekers from leaving the airport transit zone and attempting their deportations without assessing possible obstacles to return, contrary to the *non-refoulement* principle. Testimonies collected by OPU included a female asylum seeker from Azerbaijan with valid visa, travelling

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[http://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/ZZ-Zarizeni\\_Bela-Jezova\\_2014.pdf](http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/ZZ-Zarizeni_Bela-Jezova_2014.pdf).

<sup>37</sup> Public Defender of Rights (Ombudsman), Zpráva z návštěvy zařízení pro zajištění cizinců Bělá-Jezová, 9 September 2015,

[http://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/2015-srpen-Bela-Jezova-ZZ.pdf](http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/2015-srpen-Bela-Jezova-ZZ.pdf).

<sup>38</sup> Public Defender of Rights (Ombudsman), Zpráva z návštěvy zařízení pro zajištění cizinců Bělá-Jezová, 3 October 2015, [http://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/2015-rijen-Bela-Jezova-ZZ\\_vyhodnoceni.pdf](http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/2015-rijen-Bela-Jezova-ZZ_vyhodnoceni.pdf).

<sup>39</sup> HRC, 2013, *op. cit.*; CAT, 2012, *op. cit.*

<sup>40</sup> Ministry of the Interior, “Procedure for Granting,” 2017, *op. cit.*

with her two small children in 2015,<sup>41</sup> and a family of Iraqi Yezidi asylum seekers with valid visa, travelling with four young children in 2016.<sup>42</sup>

However, asylum seekers who succeeded in having their asylum applications registered at the Prague airport transit zone were also routinely detained there. The detention was based on alleged threat to public order due to presumed risk of absconding. The detention decisions were issued without assessing vulnerability of the detainees, contrary to the Asylum Act (Section 74(1)), which prohibits the Ministry from detaining vulnerable persons at the airport reception centre. Upon appeals, the courts tended to overturn detention decisions, confirming that the Ministry failed to recognize vulnerability of the detainees or did not have sufficient reasons to assume threat to public order.<sup>43</sup> In spite of this jurisprudence, the Ministry did not change this practice.

Moreover, the Section 74(1) of the Asylum Act was recently amended<sup>44</sup> to allow detention of certain vulnerable groups at the airport reception centre, namely persons with “physical disability, which does not prevent stay in reception centre or in a detention facility.” This amendment is problematic, considering that the Ministry does not conduct any individual assessment of vulnerability of detainees at the Airport centre, nor does it conduct assessment of whether a particular disability precludes detention.

### **Key priorities for the Czech Republic with regards to immigration detention:**

#### **General recommendations:**

- **To ensure that grounds justifying detention under the Foreign Nationals Act and Asylum Act are clear and foreseeable in their application, in line with the requirement of lawfulness;**
- **To ensure that detention is imposed only where it is necessary and proportionate in the person’s individual circumstances;**
- **To ensure that detention is maintained for the shortest time possible;**
- **To apply alternatives to detention where the objective of detention can be achieved by non-custodial measures;**
- **To ensure that detention is reviewed by judicial organ automatically and in regular periods;**
- **To ensure adequate legal and linguistic assistance during all detention and appeal proceedings;**
- **To provide regular psychological counseling to foreign nationals in detention;**
- **To abandon the practice of requiring foreign nationals to pay for their detention;**
- **To ensure appropriate training to the personnel of the detention facilities, including private security guards;**
- **To ensure adequate material conditions and regime of detention in the country’s all detention facilities;**

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<sup>41</sup> HHC, 2017, *op. cit.*

<sup>42</sup> Markéta Žižková, “Tahle země není pro vás, zpátky do letadla! Česká policie vyhání uprchlíky v ohrožení života, tvrdí právníci,” *Info.Cz*, 9 February 2017, <http://www.info.cz/cesko/tahle-zeme-neni-pro-vas-zpatky-do-letadla-ceska-policie-vyhani-uprchliky-v-ohrozeni-zivota-tvrdi-pravnici-4368.html>.

<sup>43</sup> Municipal Court Prague Nr. 1 A 93/2016, 1 A 94/2016, 1 A 82/2016, 2 A 90/2015, <http://nssoud.cz>.

<sup>44</sup> Act Nr. 314/2015 Coll. amending the Asylum Act Nr.325/1999 Coll.



- **To ensure that the conditions of stay in “reception centres” conform to international and European detention standards.**
- **To set up an effective mechanism to identify asylum seekers at the Prague airport transit zone reception center**
- **To adhere to the non-penalization clause in Article 31 of the Convention Relating to the Status of Refugees and avoid prosecuting asylum seekers arriving at the Prague airport transit zone with forged documents.**

**Recommendations regarding vulnerable groups:**

- **To emphasize non-custodial, effective and accessible alternatives to detention and not detain families with children;**
- **To ensure equal protection from detention for children irrespective of whether they are in asylum procedure;**
- **To ensure early detection of vulnerable groups by the authorities, in particular to employ multi-discipline professionals and regularly train them in the topic;**
- **To avoid detention of vulnerable groups and if detained, ensure their early release once their vulnerability is detected and ensure provision of necessary services to protect vulnerable persons from further harm;**
- **To avoid secondary victimization of vulnerable persons;**
- **To set up an effective mechanisms to identify vulnerable refugees at the Prague reception center, including provision of psychological counseling;**
- **To avoid detaining vulnerable refugees at the Prague airport reception center.**