

**NGOs information to the United Nations Committee against Torture**

**The Sixth Periodic Report of Czechia  
under the United Nations Convention Against Torture**

**IMMIGRATION DETENTION OF FAMILIES WITH CHILDREN**

Submitted by:

Forum for Human Rights (FORUM)

Organization for Aid to Refugees (OPU)

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## Introduction

1. The objective of this written submission, prepared by the Forum for Human Rights (FORUM)<sup>1</sup> and joined by the Organization for Aid to Refugees (OPU)<sup>2</sup>, is to provide the UN Committee against Torture (hereinafter “the Committee”) with alternative information regarding the immigration detention of families with children in Czechia. We believe that this practice is in violation of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (hereinafter “the CAT”) and should be abolished immediately.
2. The Czechia continues to **detain families with children** in the closed immigration detention centre, despite the 2012 recommendation of the Committee<sup>3</sup> and despite the international human rights standards that **absolutely prohibit immigration detention of families with children**.<sup>4</sup> The possibility of detaining children as a measure of last resort, which may apply in other contexts such as juvenile criminal justice, *is not applicable* in immigration proceedings as it would conflict with the principle of the best interests of the child and the right to development.<sup>5</sup> Children should never be detained for reasons related to their or their parents’ migration status.<sup>6</sup> The child and family **immigration detention should be prohibited by law** and its abolishment ensured in policy and practice.<sup>7</sup>
3. Immigration detention of families with children has been long criticised by many international human rights bodies, including the UN CRC Committee<sup>8</sup>, the UNHCR<sup>9</sup>, the UN Special Rapporteur on the human rights of migrants<sup>10</sup> and UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.<sup>11</sup> The last mention authority, Mr Juan Mendez, has stated that “*within the context of administrative immigration enforcement ... the deprivation of liberty of children based on their or their parents’ migration status is **never in the best interests of the child**, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children*”.<sup>12</sup> All the above mentioned UN bodies call for expeditious and complete abolishment of the detention of children on the basis of their immigration status.

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<sup>1</sup> FORUM is a Central European non-governmental organisation working work to ensure that human rights are respected, protected and fulfilled in accordance with relevant international human rights standards, using litigation and advocacy to promote human rights before national and international human rights bodies. FORUM provides support to domestic NGOs and leads domestic and international litigation and advocacy activities in Czechia and Slovakia.

<sup>2</sup> OPU is a nongovernmental organization with a 25-year-long experience in providing free assistance to refugees and migrants in Czechia. OPU lawyers provide free on-site legal counseling for refugees and migrants in all refugee accommodation facilities in the Czech Republic and ensure that policies do not violate human rights. OPU lawyers litigate at domestic courts, ECHR and UN-bodies.

<sup>3</sup> CAT, Concluding Observations - Czech Republic, 13 July 2012, CAT/C/CZE/CO/4-5, § 17.

<sup>4</sup> CPRMW and CRC, Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, § 10.

<sup>5</sup> Ibid, § 10.

<sup>6</sup> Ibid, §§ 5-13.

<sup>7</sup> Ibid., §§ 5 and 12.

<sup>8</sup> UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion, The Rights of All Children in Context of International Migration, § 78.

<sup>9</sup> UNHCR, Detention Guidelines, 2012, § 52.

<sup>10</sup> High-level Dialogue on international migration and development “Migrant Children should not be Detained”, Statement by the UN Special Rapporteur on the human rights of migrants, François Crépeau, 2 October 2013.

<sup>11</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Ernesto Mendez, 5 March 2015, A/HRC/28/68, § 80.

<sup>12</sup> Ibid.

4. The Czech authorities are well aware of their international obligations and keep ignoring them. Already in 2011 the UN CRC Committee urged Czechia “to avoid any form of detention of asylum-seekers under 18 years of age”<sup>13</sup>, same as the UN CERD Committee<sup>14</sup> and the UN CEDAW Committee that urged the Czech authorities to “immediately cease the detention of asylum-seeking, refugee or irregular migrant women and their children and to implement less coercive alternative measures.”<sup>15</sup>

## Description of the immigration detention practices

### *Prolonged detention, no official statistics*

5. Migrant families with children are detained in the closed immigration detention centre in Bělá-Jezová. Their detention may last up to 90 days.<sup>16</sup> In the period 2015-2016 the **average duration** of detention of these families was **55 days**.<sup>17</sup> In this period, **153 children** were detained in the immigration detention centre (from 2 up to 86 days).<sup>18</sup> In 2017 the number of detained children dropped substantially. Currently, however, the authorities detained at least nine families with children from Iraq and another family with children from Armenia in the Bělá-Jezová detention centre.<sup>19</sup> The authorities also detained two women from Nigeria in high degree of pregnancy that subsequently gave birth while in detention.<sup>20</sup> The exact numbers of detained families with children are not available.
6. There are **no official statistics** about the number of detained families with children that would be publically available and the authorities responsible for detention of foreign nationals do not even collect separate data on the number of families with children detained the immigration detention facilities.

### *Asylum-seeking families subject to detention measures*

7. Most of the families affected by detention are in fact **asylum-seeking families**. Although the families with children that filed an asylum claim in Czechia are considered vulnerable and therefore cannot be detained under the current legislation,<sup>21</sup> the Czech authorities do not consider persons that sought asylum in another EU Member State (whose asylum application was not yet resolved and are to be transferred to another EU Member State under the criteria of the Dublin Regulation), to be asylum seekers on the Czech territory.<sup>22</sup> These persons are deprived of the reception conditions to which they are entitled under the EU law and are

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<sup>13</sup> CRC, Concluding observations: Czech Republic, 4 August 2011, CRC/C/CZE/CO/3-4, § 64.

<sup>14</sup> CERD, Concluding observations on the combined tenth and eleventh periodic reports of the Czech Republic, 25 September 2015, CERD/C/CZE/CO/10-11, §§ 25-26.

<sup>15</sup> CEDAW, Concluding observations on the sixth periodic report of the Czech Republic, 14 March 2016, CEDAW/C/CZE/CO/6, §§ 38-39.

<sup>16</sup> Section 125(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

<sup>17</sup> Public Defender of Rights, Evaluation of the visit of the Facility for Detention of Foreigners Bělá-Jezová (December 2016), 8 June 2017, p.3, available in English at:

[https://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/Evaluation\\_of\\_the\\_visit\\_of\\_the\\_Facility\\_for\\_Detention\\_of\\_Foreigners\\_Bela-Jezova\\_December\\_2016\\_.pdf](https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/Evaluation_of_the_visit_of_the_Facility_for_Detention_of_Foreigners_Bela-Jezova_December_2016_.pdf).

<sup>18</sup> Ibid.

<sup>19</sup> Information provided by the OPU that visit the detention centre on regular basis.

<sup>20</sup> Ibid.

<sup>21</sup> CAT, State Party report, 29 November 2016, CAT/C/CZE/6, § 47.

<sup>22</sup> Ibid, § 50.

excluded from the ban on the immigration detention.<sup>23</sup> This practice creates **two categories of asylum seekers**: i) those who filed their asylum claim in Czechia, and ii) those whose asylum claim is to be considered in another EU Member State. Albeit from the international refugee law perspective and the vulnerability considerations both groups are identical, the second group of persons is routinely detained for prolonged periods (counting in months) in the closed immigration detention centre awaiting their return to another EU Member State. This distinction is illogical (since on the one hand the Czech authorities recognise vulnerability of the asylum seeking families with children and forbid their detention, but on the other hand deny this protection to the same category of vulnerable persons just on the basis of their different immigration status). Thus, the currently legislative setting together with the practice described above makes the asylum seeking families **subject to the detention measures**. In any event, the children should never be detained for reasons related to their or their parents' migration status.<sup>24</sup>

### *Inaccessible alternatives to detention*

8. The alternatives of detention exist only on paper and are rarely implemented.<sup>25</sup> There are three alternatives to detention: i) residence on an address in Czechia, ii) financial guarantee in the amount of return costs, iii) reporting obligation.<sup>26</sup> Most of the time, these **alternatives are inaccessible** for migrant families with children that happened to be on the Czech territory. Since they just arrived and usually have no ties to Czechia, they do not have a residence in Czechia. Nor have they money to cover the financial guarantee. The third alternative would in theory be accessible to these families but has never been used in practice. There are no services available to these families that would enable them to access the alternatives to detention (in particular the non-custodial accommodation, legal, social and psychological services). The alternative of unconditional release does not exist in the Czech legislation, nor is it considered in practice.
9. The children under 15 years old are formally not detained (since the legislation forbids detaining a child younger than 15 years old) but they are "accommodated" in the detention centre together with their parents. In practice, however, all the restrictions connected with the detention apply to these children. The Czech authorities claim that it is in the best interest of these children to be placed in the detention centre in order not to be separated from their parents.<sup>27</sup> This approach is wrong and misconceived. The **need to keep the family together is not a valid reason** to justify the deprivation of liberty of a child.<sup>28</sup> When the child's best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child's parents and requires the authorities to choose non-custodial solutions for the entire family.<sup>29</sup> The immigration detention of children is **never in their best interest**.<sup>30</sup>

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<sup>23</sup> These persons are detained under Section 129 of the Act on the Residence of Foreign Nationals. The purpose of the detention is their transfer under the Dublin Regulation or a readmission agreement.

<sup>24</sup> CPRMW and CRC Joint General Comment, op. cit. 4, § 5. "Reasons related to migration status" is understood by the Committees to be a person's migratory or residence status, or the lack thereof, whether relating to irregular entry or stay or not, consistent with the Committees' previous guidance.

<sup>25</sup> Section 123b of the Act on Foreign National: i) residents on an address in the Czech republic, ii) financial guarantee, iii) reporting obligation.

<sup>26</sup> Section 123b of the Act on the Residence of Foreign Nationals.

<sup>27</sup> CAT, State Party report, 29 November 2016, CAT/C/CZE/6, § 50.

<sup>28</sup> CPRMW and CRC Joint General Comment, op. cit. 4, § 11.

<sup>29</sup> Ibid.

<sup>30</sup> CPRMW and CRC Joint General Comment, op. cit. 4, § 10.

10. Since the alternatives to detention are inaccessible as explained above and since the Czech authorities consider placement of children in the detention centres “in their best interest”, the detention of families with children is a **routine practice** and is under no circumstances a measure of last resort.

#### *Conditions of detention*

11. The families with children are placed in the Bělá-Jezová detention centre, located in a woodland remote area around 5 km from the nearest village. The centre is surrounded by a high wire fence with razor fence on the top. The centre is **guarded 24/7 by the immigration police** wearing uniforms. The inner security is outsourced to the private security guards who, however, also wear uniforms. The centre is composed of different buildings (some of them divided by a wire fence) and the detainees can move between them only when escorted by the security guards. The centre has strict **prison-like regime**. For example the detainees are being escorted at minimum three times a day for the meal to the main building, the children are being escorted to access the education room, playground etc. Upon the admission to the centre, the adult members of the family undergo security check performed by the police while the children wait in another room. Common rooms in the residential areas are CCTV monitored.<sup>31</sup> The family life in these conditions is not possible and as the Public Defender of Rights repeatedly found, the detention of children **constitutes inhuman and degrading treatment**.<sup>32</sup>
12. Although in the last year, the authorities put some effort in humanising the detention centre, it still remains a closed detention centre, with strong police presence and prison-like regime. Children placed in this centre on account of the immigration status of their parents have rarely a possibility to leave the centre and are thus exposed to the same detention measures as their parents. The international experts emphasize that the immigration detention inherently **harm the children** and it has the **negative impact on their physical and mental health and on their development**, even when they are detained for a short period of time or with their families.<sup>33</sup>

#### *2015 overcrowding*

13. In 2015, during the so called “refugee crisis” in Europe, the Bělá-Jezová detention centre was severely overcrowded. Again, official statistics are not available, but the centre was visited twice by the monitoring group of the Public Defender of Rights – during their first visit in August 2015 there were 659 persons placed in the centre, during their second visit in October 2015, there were 397 persons, out of which 100 children (!). The capacity of the centre was 270 persons at that time. The **heavy overcrowding** and **very poor material conditions** in the detention centre were fiercely criticised by the Public Defender of Rights who found severe cases of inhuman and degrading treatment.<sup>34</sup> The persons, including families with children,

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<sup>31</sup> The material conditions in the centre are described in the 2016 Report of the Public Defender of Rights published after the monitoring visit to the centre. The report is available online in English: [https://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/Visits\\_of\\_the\\_Facility\\_for\\_Detention\\_of\\_Foreigners\\_Bela-Jezova\\_December\\_2016\\_.pdf](https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/Visits_of_the_Facility_for_Detention_of_Foreigners_Bela-Jezova_December_2016_.pdf).

Evaluation report of the visit is available here: <https://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/detention-of-foreigners/>.

<sup>32</sup> This finding corresponds to the jurisprudence of the European Court of Human Rights, in particular *Popov v. France* (no. 39472/07 of 19 January 2012), *A. B. and Others v. France* (11593/12 of 12 July 2016) and *S.F. and Others v. Bulgaria* (no. 8138/16 of 7 December 2017).

<sup>33</sup> CPRMW and CRC Joint General Comment, op. cit. 4, § 9.

<sup>34</sup> The reports from August and October 2015 are available online in English together with picture documentation showing heavy overcrowding and poor material conditions:  
August 2015 report:

were accommodated in the gym and temporary containers premises, lacking privacy, adequate clothing, sharing sanitary facilities, with almost no leisure activities and education. The ombudsperson also pointed out that they had very limited information about the reasons of their detention and further destiny. The access to legal aid was severely restricted. Most of these persons spent months in these terrible conditions that undoubtedly constituted inhuman and degrading treatment. As to our knowledge, the authorities offered **no redress to the victims of 2015 overcrowding**, not even in the form of official apology, financial compensation or criminal (or at least disciplinary) prosecution of those responsible for the management decisions causing such a severe overcrowding.

#### *No compensation for victims of ill-treatment*

14. According to Article 14 of the CAT the State Party should ensure that the victims of ill-treatment<sup>35</sup> obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. It is a matter of great concern that families and their children detained in the immigration detention in Czechia have very limited access to compensation. This is so even in the situation, when their detention had been found unlawful by the domestic courts.
15. The State Liability Act (no. 82/1998) provides for a possibility to seek redress for ill-treatment, including claiming compensation of non-pecuniary damage. There is, however, very strict statute of limitation period to file such claim - the right to seek compensation for non-pecuniary damage expires after **six months** which sharply contrasts with 3 years limitation period for similar civil law claims.<sup>36</sup> The Committee already in 2012 recommended Czechia to extend the time limit for filing these claims<sup>37</sup> but there was no change in this respect. Moreover the calculation of this limitation period is being interpreted restrictively (e.g. the statute of limitation starts to run from when the victim learns about the ill-treatment and not from when the investigation authorities or courts confirm that there was ill-treatment which may take years and the victims loses the possibility to lodge the compensation claim).
16. Even if the victims manage to file such a claim, the responsible Ministry usually denies providing compensation and the victim has to file a court action. Whereas such actions used to be free from court fees, as of 2017 it is no longer so and victims claiming compensation of damage caused by the State are subject to the court fee of equivalent to ca. 80 euros.<sup>38</sup> In addition, in case of loss they are to bear the legal costs incurred by the authorities. The court proceedings are very **lengthy** and usually take years. Further delays are caused by the relatively recent practice of the Czech courts to open separate proceedings to establish whether the court action is “in the interest of the children”. All these barriers deter victims of ill-treatment from seeking redress.

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[https://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/Report\\_Bela-Jezova-august-2015.pdf](https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/Report_Bela-Jezova-august-2015.pdf)

October 2015 follow-up report:

[https://www.ochrance.cz/fileadmin/user\\_upload/ochrana\\_osob/ZARIZENI/Zarizeni\\_pro\\_cizince/Report\\_Bela-Jezova.pdf](https://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/Report_Bela-Jezova.pdf).

<sup>35</sup> CAT, General Comment no. 3 (2012), 13 December 2012, CAT/C/GC/3, § 1.

<sup>36</sup> Compare Section 32(3) of the State Liability Act (no. 82/1998) and Section 629 of the Civil Code (no. 89/2012).

<sup>37</sup> CAT, Concluding Observations - Czech Republic, 13 July 2012, CAT/C/CZE/CO/4-5, § 13.

<sup>38</sup> Act no. 549/1991 Coll. on court fees, Item 8a.

## RECOMMENDATIONS:

- **Immediately stop detaining families with children in the closed immigration detention centre.**
- **Adopt legislation banning the immigration detention of families with children.**
- **Introduce feasible and accessible alternatives to detention, including non-custodial accommodation for migrant families with children and ensure legal, social and psychological services for these families.**
- **Divert resources currently dedicated to detention to non-custodial solutions** carried out by competent child protection actors and ensure that these solutions do not imply any kind of child or family deprivation of liberty and are based on an ethic of care and protection, not enforcement.<sup>39</sup>
- **Collect separate statistics, desegregated by age, gender, nationality and vulnerability, on the number of children accompanied by their family members or other guardians apprehended on the Czech territory.**
- **Make the compensation procedure accessible for victims of ill-treatment**, in particular (i) waive the court fee for victims claiming compensation of damage caused by the State actors, (ii) extend the statutory limitation period to claim compensation of non-pecuniary damage from six months to 3 years and ensure that the calculation of the limitation period is interpreted in fair and pro-victim manner, and (iii) speed-up the proceedings concerning the compensation claims.
- **Provide redress for the victims of 2015 overcrowding in the Bělá-Jezová detention centre**, at least in the form of official apology published on the website of the Ministry of Interior and national media, or by adopting a compensation scheme for the victims of overcrowding and holding responsible those in charge of the decisions causing overcrowding. Adopt feasible emergency plans to avoid such overcrowding in the future.

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<sup>39</sup> CPRMW and CRC Joint General Comment, op. cit. 4, § 12.