

**NGOs information to the United Nations Committee against Torture  
for consideration when compiling the List of Issues (LOI) on the 70<sup>th</sup> session  
in respect of**

**CZECHIA**

**for the Seventh Periodic Report  
under the United Nations Convention Against Torture**

**MIGRANTS AND ASYLUM-SEEKERS**

Submitted by:

Forum for Human Rights (FORUM)  
Organization for Aid to Refugees (OPU)

25 January 2021

## OVERVIEW

The objective of this written submission, prepared jointly by the Forum for Human Rights (FORUM)<sup>1</sup> and 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 treatment of migrants and asylum-seekers in Czechia in respect of rights provided by the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (hereinafter “the CAT”). We believe that the issues raised in this submission will assist the Committee in their adoption of the list of issues (LOI) on its upcoming 70<sup>th</sup> session.

In the last concluding observations adopted in 2018 in respect of the Czechia, the Committee expressed a number of concerns regarding the policies towards migrants and asylum-seekers, notably detention of asylum-seekers and the lack of alternatives accommodation for families with children, shortcomings in the material conditions in the reception and detention facilities for migrants, insufficient legal assistance, the absence of standard operative procedures for identification and protection of vulnerable persons, and the obligation of detained migrants to pay for their detention, the situation of stateless persons and hate crime towards Muslim community.<sup>3</sup> We have to state with regret, that none of these issues have improved in the past two years. Rather some of the problems have worsened due to measures adopted in response to the Covid situation.

We would like to draw the Committee’s attention to following topics and systemic deficiencies which we find pressing and important:

1. The lack of protection against ill-treatment in the immigration detention centres, detention of vulnerable individuals, in particular families with children, unaccompanied minors, and potential victims of ill-treatment;
2. Situation of stateless persons, notably their lack of effective access to basic rights;
3. Material conditions in reception and accommodation centres for asylum-seekers;
4. Redress for victims of ill-treatment, access to justice;
5. Problematic environment of operation for migrants assisting organisations, hate speech and hate crimes against migrants;
6. Upcoming legislative changes.

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<sup>1</sup> FORUM is an international human rights organisation active in the Central European region. It provides support to domestic and international human rights organisations in advocacy and litigation and also leads domestic and international litigation activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and international bodies. FORUM authored and co-authored a number of reports and information for the UN and Council of Europe on the situation in the Central European region, particularly in Slovakia and Czechia. For more information, please visit [www.forumhr.eu](http://www.forumhr.eu).

<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 counselling for refugees and migrants in all refugee accommodation facilities as well as immigration detention centres in the Czechia and ensure that policies do not violate human rights. OPU lawyers litigate at domestic courts, ECHR and UN-bodies. For more information, please visit [www.opu.cz](http://www.opu.cz).

<sup>3</sup> CAT, Concluding Observations on the sixth periodic report of Czechia, 6 June 2018, CAT/C/CZE/CO/6, §§ 20-23, 26-27.

## 1. IMMIGRATION DETENTION CENTRES

Unfortunately, immigration detention is still a **routine tool of migration control** in Czechia and in most cases, it is not used as a measure of last resort. Immigration authorities detain irregular migrants as well as asylum-seekers, including vulnerable groups such as families with children and unaccompanied children, as well as potential victims of ill-treatment such as victims of trafficking. There are currently **three immigration detention centres** in Czechia (Bělá-Jezová, Bálková, Vyšní Lhoty) and in the facility in the transit zone of the Prague international airport. All facilities are located in remote areas, and have prison-like security regime (fences, uniform police controls, CCTV monitoring, personal searches, visiting hours, specific daily regime, withdrawal of personal items, limited communication). Detained migrants are still obliged to pay for their detention equivalent of ca. 9.5 EUR per day per person.<sup>4</sup>

During the Covid pandemics, some of detention centres became **prone to infection** due to limited private space, shared rooms and sanitary facilities. Bálková and Vyšní Lhoty witnessed repeated Covid spreads among the detainees which in several cases resulted in the prolongation of their detention beyond the permissible limits set by law. Besides, the migration authorities were slow in considering border closes as a reason for release and many foreign nationals, including asylum-seekers, spent prolonged time in detention facilities despite no prospect of their transfer. There are many problems in immigration detention centre, and we would like to point Committee's attention to three particularly worrying and persistent issues:

- 1.1 Lack of effective safeguards against ill-treatment in quarantine,
- 1.2 Absence of identification of vulnerable persons,
- 1.2 Detention of children.

### 1.1 Lack of effective safeguards against ill-treatment in quarantine

During 2020, the detention centre in Bělá-Jezová was transformed in a facility with two purposes. Besides continuing to be a detention centre for women, families and vulnerable groups, it also became the official **quarantine facility** (including isolation for proven Covid cases) for foreigners. The quarantine was applicable to both, asylum-seekers as well as foreigners who were identified as staying in the country irregularly by the foreign police. Asylum seekers had to file their asylum applicant in the Bělá-Jezová and following the quarantine, which took between one to two weeks, they were transferred to the Zastávka reception centre. Foreigners staying irregularly in the country were transferred to one of the three detention centres following the quarantine.

The quarantine part of the detention was facing a number of **security risks**, some of which resulted in actual security incidents during summer 2020. Most of the risks emanated, to our understanding, from the lack of opportunities to leave the quarantine, lack of possibilities to communicate with the outside world and lack of information. The quarantine facility is closed, with no possibility to leave the facility, or even one's own floor, during the quarantine. There

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<sup>4</sup> Section 146, Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals; Ordinance No. 447/2005 Coll., which determines the amount of costs for accommodation, meals and transport within the territory of the Czech Republic of a foreigner detained for the purpose of administrative deportation.

is a phone booth at every floor and the newly incoming person obtains a phone card in the amount of 180 CZK (ca. 7 EUR) which they can use to make calls either within the detention facility or the outside world. However, it appears that the phone booths were not always working properly. Meanwhile, individuals who are in the quarantine under the detention regime did not have access to their cell-phones. While asylum seekers were allowed to keep their cell phones, the internet connection inside of the facility is very weak to allow them to communicate with the outside world. The social workers would go in the quarantine three times per day to distribute meals. This would be often the only moment when a person in quarantine would have contact with the outside world and could voice any problems in the facility. In the detention part of the quarantine, the social workers are additionally accompanied by police personnel which may create further barrier for the foreigners to ask questions. According to the detention management, there is one emergency button at every floor, however, most individuals were not aware of its existence. Furthermore, during most part of the quarantine, the bathrooms and toilets were lacking the possibility to lock oneself up, creating further security risks. Additionally, in some cases it appeared that the facility was lacking capacities to separate people according to their gender in addition to separating them according to the time or arrival and the regime of quarantine (asylum seekers/detainees). We received at least one phone call of a woman asylum seeker with children who claimed to be accommodated next to a group of men and expressed concerns of safety. Following the security incident in summer 2020 and the **visit of the Ombudsperson** office, the management promised to address some of the issues. The emergency button should now be more visibly marked with a poster. Locks have been added to bathroom and toilet doors. The facility also promised to provide more phones on each floor which would allow the persons under quarantine to contact the social workers directly whenever they need it.

Access to **legal counselling was likewise limited**. In the beginning of the pandemic between March to April 2020, OPU lawyers were not allowed to visit neither the quarantine nor the detention centre. The consultations took place over phone and OPU workers were in touch with the social workers in the detention centre on a 2 to 3-day basis in order to discuss the detainees' legal needs. However, they did not have access to the quarantine during this time. During summer 2020, OPU lawyers had the possibility to visit the quarantine about once every two weeks. At present, the frequency of visits has been increased to once per week as means of further addressing the security risks. However, the quarantine visit has to take place during the same time as the distribution of meals, it does not take place in private, OPU lawyers are not allowed to bring in any items or take any of them out. Essentially, the counselling consists of briefly informing people where they are, what the next steps in their proceedings (asylum or detention) will be and providing them with OPU's contact details. The lawyers are not allowed to bring in any phone and during the short timespan during which the counselling has to take place in between the handing-out of meals, it is not possible to organize interpretation in various languages. In case a person does not speak Czech, Russian or English, they are merely shown the phone number of OPU which they can note down. OPU lawyers do not visit individuals in the isolation part of the quarantine which is reserved only persons who have tested positive on Covid, these individuals are primarily visited by health care workers. However, in case someone expresses wish to speak to a lawyer, OPU lawyers can arrange a call to the respective floor and provide consultation over phone also to persons in isolation.

When the quarantine was being established, OPU was promised by the authorities that no deadlines would be applicable in the respective asylum or detention proceedings during the quarantine (i.e. the 7 days deadline to apply for asylum after being detained) precisely due to the lack of access to legal counselling. However, we noted at least one case where a belated asylum application was dismissed by the Ministry of Interior and one case where a belated appeal against deportation has been dismissed by the police, despite the fact that the delays were due to the quarantine.

### ***Sexual abuse in quarantine***

In June 2020, OPU represented two foreigners from Vietnam who were brutally sexually abused by other person in the quarantine part of the Bělá-Jezová reception/detention centre. The ill-treatment took place in the evening and was about to continue in the morning and included, besides sexual assault, also various forms of degrading treatment, essentially trying to enslave the two foreigners to fulfil meaningless tasks for the perpetrator. Besides abusing the persons themselves, the perpetrator “offered” the two foreigners also to the other detainees. In order to escape the violence, the two foreigners could not find any other solution but to jump out of the window, which resulted in serious injuries including a spine injury. The criminal prosecution was subsequently initiated against the perpetrator. To our knowledge, no responsibility was inferred by the management of the Bělá-Jezová facility. Moreover, following hospitalization, the victims of ill-treatment were brought back to the Bělá-Jezová detention centre, and later to the Bálková detention centre. They were only released following an intervention of OPU and the Ombudsperson.

The incident is illustrative of the dangerous institutional environment of the quarantine facilities, which **do not offer sufficient safeguards against ill-treatment**. Following the sexual abuse incident, the Ombudsperson organized an unannounced visit to the quarantine facility. To our knowledge, a report has been produced with concrete proposals for improvement and accompanied by a request to make them effective as of immediately. While we do recognize that some further steps have been taken in order to improve the situation, we are unable to tell to what extent the present situation offers effective safe-guards against ill-treatment. It appears that there are no effective reporting procedures for victims of ill-treatment, the management and staff of the facilities appear to have been provided with no training or guidelines on protection against ill-treatment.

## **1.2 Failure to identify vulnerable persons in detention**

Despite challenges which newly arise or become amplified as a result of the Covid-19 pandemic, old challenges remain. There is still **no vulnerability screening tool** or methodological guidance for the identification of vulnerable asylum-seekers and migrants arriving to Czechia. As a consequence, vulnerable asylum-seekers and migrants are routinely detained in the closed immigration centres or in the transit zone of the Prague international airport, sometimes for prolonged periods. Often, the **authorities fail to identify or recognize the vulnerability** of a particular person, despite the calls of representatives or NGOs. In some cases, even the medical personnel alerted the detention centre to the vulnerability of a

particular person and had called for release or transfer to another facility, but the immigration authorities refused to do so.

Whereas the Asylum Act recognizes certain categories of vulnerable persons (children, pregnant women, persons with disabilities, victims of torture, human trafficking etc.) and limits the possibility of their detention,<sup>5</sup> the Act on the Residence of Foreign Nationals does not contain the term “vulnerable person”. This is very problematic because the authorities have then no legal obligation to consider vulnerability as one of the factors when deciding upon detention. Moreover, even in the cases under the Asylum Act, the vulnerability is rarely identified according to the law, and the detention of vulnerable persons is applied automatically, families with children being a notable exception. The Supreme Administrative Court and the Prague Municipal Court have repeatedly pointed out the **lack of adequate vulnerability identification** of asylum-seekers detained in the airport reception centre,<sup>6</sup> but the Ministry of Interior has never changed its practice and has not developed a mechanism to screen vulnerability.

Detention may be particularly harmful to vulnerable persons, be it due to material conditions, increased stress, insufficient health care, or any other factors connected with deprivation of liberty. Furthermore, detention often leads to deterioration of their psychological and physical state.

***No examination of detention grounds in case of a suicidal woman from Belarus***

In 2019, an asylum-seeker from Belarus was detained in the Prague airport transit zone. In her country of origin, she had been beaten up, had a serious injury and suffered from depression. During the detention, her psychological condition had deteriorated to the extent she started being suicidal. A psychologist working in the centre confirmed she was in a serious condition and that she needed psychiatric care. Despite this she was not released and had to appeal to the courts at two instances, where she eventually won.<sup>7</sup>

***Victim of human trafficking with serious eating disorder detained for prolonged period***

In 2019, a woman from Japan was detained in the Bělá-Jezová detention centre for more than 150 days for the purposes of expulsion. During her detention, new information emerged suggesting she may be a victim of trafficking, but the authorities never took any steps to establish her status by trained experts despite numerous requests. She suffered from a number of physical and mental health issues, including a serious eating disorder, which was rapidly deteriorating during her detention. She began to lose weight rapidly to the point of severe malnutrition potentially endangering her life. The connection between her health status and her detention has been clearly pointed out by several medical reports. This information has not been taken into consideration by the police when deciding on whether or not to prolong her detention. Instead, the visits to the doctors were viewed as

<sup>5</sup> Section 2(i), 46a(3), Act No. 325/1999 Coll., Asylum Act.

<sup>6</sup> See, for example, Supreme Administrative Court, file no. [5 Azs 312/2016 – 34](#), decision of 9 March 2017, file no. [9 Azs 19/2016](#), decision of 2 June 2019 and file no. [9 Azs 193/2019](#), decision of 4 September 2019.

<sup>7</sup> Supreme Administrative Court, file no. [9 Azs 193/2019](#), decision of 4 September 2019.

purpose-built with the aim of achieving release. The woman was ultimately deported to her country of origin.

### 1.3 Immigration detention of children

Czechia continues to detain migrant children in closed immigration detention centres. The legislation allows to detain a minor older than 15 years for immigration purposes, **both accompanied and unaccompanied children** may be detained.<sup>8</sup> Their detention may last up to 90 days.<sup>9</sup> Often unaccompanied minors' claims about their age are being disputed by the police and they are placed in the detention centre until their age is determined.<sup>10</sup> Children accompanied by their family members, who are under 15 years old, are formally not detained but they are "accommodated" in the detention centre together with their parents.<sup>11</sup> In practice, however, all the restrictions connected with the detention apply to these children. There are still no official statistics about the number of detained children that would be publicly available.

The detention usually takes place in the closed immigration detention centre in Bělá-Jezová which has been recently designated to accommodate single women and families with children. However, in our opinion, the detention centre is not appropriate to detain children and other vulnerable groups. The centre located in a woodland remote area around 5 km from the nearest village. The centre is surrounded by a high wire fence with razor fence on the top. The centre is **guarded 24/7 by the immigration police** wearing uniforms. The inner security is outsourced to the private security guards who also wear uniforms. The centre has **prison-like regime**. Upon the admission to the centre, the detainees undergo security check.<sup>12</sup> Common rooms in the residential areas are CCTV monitored.<sup>13</sup> Pre-Covid, children were supposed to be schooled within the centre and had therefore no practical possibility to leave the centre.<sup>14</sup> The international experts emphasize that the immigration detention inherently **harms 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>15</sup> The alternatives to detention exist only on paper and are rarely implemented.<sup>16</sup> Most of the time, these **alternatives are inaccessible** for migrant families with children since

<sup>8</sup> Section 124(1)(6), 124b(1), 129(1)(5), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

<sup>9</sup> Section 125(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

<sup>10</sup> Section 124(6), 129(5), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

<sup>11</sup> Section 140(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

<sup>12</sup> Section 1371(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

<sup>13</sup> Section 132a, Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

<sup>14</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. However, the authorities put some effort in humanizing the detention centre since this report. 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>15</sup> CPRMW and CRC Joint General Comment, op. cit. 4, § 9.

<sup>16</sup> Section 123b of the Act on Foreign National: i) residents on an address in the Czech republic, ii) financial guarantee, iii) reporting obligation.

they just arrived and usually have no ties to Czechia, they do not have a place to stay in Czechia nor have they money to cover the financial guarantee. There are no services available to families with children that would enable them to access the alternatives to detention, in particular the non-custodial accommodation.

In the last two years, we registered at least a dozen of cases when **unaccompanied undocumented minors** whose age was contested, were **detained in detention facilities for adults**, often for prolonged periods. The practice of immigration authorities is to estimate the age of these children by contested X-ray bone tests, which are highly inaccurate.<sup>17</sup> Based on the result of these tests, during which these children are not represented and are not appointed a guardian, they are either housed in a specialized care home for unaccompanied migrant children or put in a detention centre, including sometimes a detention centre for adults. This practice is harmful, and it often takes months of litigation until these children are released. In detention centres for adults they are often traumatized and prone to abuse and ill-treatment. In this context, it is worrying that the Ministry of Interior **refrained from the pilot project** of estimating age through psychological assessment and returned to using bone test method. We have also noted a problematic practice on the part of child protection authorities (OSPOD) refused to initiate guardianship proceedings even when requested to do so by the police on the basis of inconclusive bone scans.

Numerous international human rights documents prohibit absolutely immigration detention of families with children.<sup>18</sup> The Czech authorities are well aware of their international obligation to stop detaining migrant children. Already in 2011 the UN CRC Committee urged Czechia *“to avoid any form of detention of asylum-seekers under 18 years of age”*<sup>19</sup>, same as the UN CERD Committee<sup>20</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>21</sup> the UN CAT called upon Czech authorities to *“end the practice of detaining persons in need of international protection, particularly children, and ensure the provision of alternative accommodation for families with children”*<sup>22</sup> and most recently the Human Rights Committee suggested the Czech Republic to *„move to end the detention of all children, including detention of children with their families“*.<sup>23</sup>

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

<sup>18</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>19</sup> CRC, Concluding observations: Czech Republic, 4 August 2011, CRC/C/CZE/CO/3-4, § 64.

<sup>20</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>21</sup> CEDAW, Concluding observations on the sixth periodic report of the Czech Republic, 14 March 2016, CEDAW/C/CZE/CO/6, §§ 38-39.

<sup>22</sup> CAT, Concluding observations on the sixth periodic report of Czechia, 6 June 2018, CAT/C/CZE/CO/6, § 21.

<sup>23</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Czechia, CCPR/C/CZE/CO/4, 7 November 2019, § 29.

### ***Detained unaccompanied minor showing signs of serious distress***

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

### ***Family from Iraq not aware of their child's whereabouts while detained***

In summer 2020, OPU represented a family from Iraq with six children aged 2 to 17, including one severely sick child with a pre-existing heart condition. The health status of the child has worsened during the detention to the point the child had to be hospitalized. The parents were not allowed to accompany the child to the hospital. While they did sign an agreement with the child's hospitalization, due to problems with interpretation, they did not understand where their child has been brought. They could only restore contact with the child via phone with the help of OPU who called in nearby hospitals. The fact of being detained, the lack of knowledge about the child's whereabouts including the inability to accompany the child to the hospital, has caused the family great mental suffering. The family was later released by the police on the basis of OPU's request for release stressing the worsening health condition. The unlawfulness of their detention has been later confirmed by domestic court.<sup>24</sup>

### ***Four unaccompanied minors detained in detention centre for adults***

In summer 2019, four unaccompanied Afghan boys, who claimed to be aged between 15 and 17 years, were detained in the Bálková detention centre designated for adult men where they spent almost three months. The police determined their age by the contested bone tests. All their detention cases were eventually overturned by the Plzeň Regional Court. The court stated that the authorities considered them as adults based on incomplete facts and emphasized the obligation of the authorities to be aware of the limitations of an age determination procedure based solely on bone tests.<sup>25</sup> We registered a dozen of similar cases throughout 2019 and 2020.

<sup>24</sup> Brno Regional Court, file no. 32 A 51/2020 - 15, judgment of 19 August 2020.

<sup>25</sup> Plzeň Regional Court Plzeň, file no. 17 A 121/2019-74, judgment of 24 July 2019, and file no. 60 Az 44/2019-10, judgment of 30 August 2019.

### Recommended questions:

- Please provide information about existing reporting procedures for victims of ill-treatment in the reception and detention centres for foreign nationals, including in the quarantine facilities, the number of complaints for the last two years, and their resolution. Please provide information about the control and monitoring mechanism in these centres with the view to prevent ill-treatment, the number of visits in the last two years and the outcomes of these visits. Please provide information whether the management and staff working in the detention centres, including medical personnel, have undergone training in ill-treatment prevention and reporting obligations.
- Please inform the Committee about vulnerability screening tools that are in place to identify vulnerable asylum-seekers and migrants arriving to the Czech territory, notably at the Prague airport transit zone. Please inform the Committee about particular measures that are taken to avoid immigration detention of vulnerable persons. Please provide information whether the immigration officers deciding on detention and its prolongation have undergone training to recognize vulnerable persons.
- Please inform the Committee about the number of accompanied and unaccompanied children detained or accommodated in the immigration detention centres during the reporting period. Please provide these data desegregated as to the age, gender, nationality and legal status of these children. Please provide information on the accessible and available alternative accommodation for migrant and asylum-seeking families with children, and how often they have been used in the last two years.
- Please provide information about the methods used to estimate age of unaccompanied migrant children and what safeguards are in place to protect the children's interest and the results can be contested. Explain why the authorities do not use available psychological assessment.

## 2. SITUATION OF STATELESS PERSONS

The situation of stateless persons in the Czechia continues to be very **problematic**. Up until 2018, there was no procedure to determine their stateless status and stateless persons were left in legal limbo for many years. As of 2018, there is a procedure allowing stateless persons to apply for determination of their statelessness status, but this procedure is fundamentally flawed, and in the end does not assist stateless persons in accessing basic rights. Stateless persons are often required to show identity or travel documents to access any kind of service or right (housing, health care, post office), but they often **lack documentation** due to their statelessness. Czech authorities do not help them to obtain identity documents and stateless persons are therefore left in legal limbo for most of their lives.<sup>26</sup>

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<sup>26</sup> For more detailed information see UNHCR, Faces of Statelessness in the Czech Republic, December 2020.

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

As of 2018, the Asylum Act contains a competence of the Ministry of Interior to consider applications for statelessness status.<sup>27</sup> However, the Asylum Act contains no further rules governing this procedure. There is a great uncertainty about what kind of documents stateless persons should submit to prove their statelessness, what rights and obligations they have during the procedure, what (if any) are the time-limits for the authorities to decide on their applications, what is the result of this procedure. None of these or other issues is governed by the law which results on a total arbitrariness of this procedure and stateless persons are left at mercy of the authorities. Therefore, we hold that the **current statelessness determination procedure is fundamentally flawed**, and we call upon the Committee to address this issue in its questions to the State party.

Applicants for statelessness status have **no access to temporary identity documents** that could be used in real life. This deprives them of the possibility to access any kind of social and economic rights, including housing, employment, health care, etc. They often live in irregularity, with no means or hope to improve their situation.

#### ***Temporary identity documents for applicant for statelessness status***

In 2019, the Supreme Administrative Court ruled that the authorities are obliged to provide the applicants for statelessness status an identity document proving their status of applicants for statelessness status.<sup>28</sup> The Ministry of Interior responded with giving the applicants an A4 paper confirmation of lodging the statelessness application, showing their photo, name and other initials. However, it is not clear what rights and obligations are connected with this “document”. Moreover, neither the accommodation centres nor the hospitals or health insurance companies acknowledge this “document” as a valid ID. In fact, this “document” is not even accepted by the police. There were at least two cases where the police questioned the legality of applicants’ stay and attempted to detain them even after they had presented the A4 paper confirmation issued by the Ministry of Interior.

Due to the minimalistic legal regulation of statelessness determination procedure, it is not clear what rights and obligations the applicants for statelessness status have. In the judgment mentioned in the previous case study, the Supreme Administrative Court stated that in the absence of legal regulation, the applicants for statelessness status should enjoy **equivalent rights as asylum-seekers**.<sup>29</sup> However, the authorities ignore this judgment and do not provide

<sup>27</sup> Section 8d, Act No. 325/1999 Coll., Asylum Act.

<sup>28</sup> Supreme Administrative Court, file no. 7 Azs 488/2018 – 53, judgment of 9 April 2019.

<sup>29</sup> Ibid.

the applicants for statelessness status with equivalent rights as to the asylum-seekers. Notably, the applicants for statelessness status cannot access health care and housing.

In 2020, the Ministry of Interior drafted a legislative amendment introducing a new statelessness determination status procedure to the Foreigners Act.<sup>30</sup> While it is undoubtedly a positive step that a procedure will be introduced into the Czech legal system, it unfortunately leaves stateless persons without certain basic rights. First, it moves the procedure from the Asylum Act to the Foreigners Act which is conceptually wrong and does not follow the practice established so far. It means that the applicants for statelessness status will lose basic rights that they currently should have (at least in theory), such as access to housing in the accommodation centres for asylum seekers,<sup>31</sup> public health insurance, free interpreting during statelessness determination procedure, etc., as there are based on the Asylum Act rather than the Foreigners Act. Judicial appeal will have no suspensive effect. Last but not least, when obtaining a decision determining the statelessness status, a person is to be granted only a **tolerated stay visa**, the least stable status in the Czech legal order. The proposed procedure is in many ways incompatible with the standards and recommendations established by UNHCR in these types of procedures.<sup>32</sup>

Recommended questions:

- **Please provide the Committee with up-to-date statistic of stateless persons residing in the Czechia, including the methodology of data gathering.**
- **Please explain the functioning of the existing statelessness status determination procedure and the initiatives to raise awareness among the target group about this procedure. Provide information on the number of stateless persons that underwent the procedure and the number of persons currently in the procedure.**
- **Please provide information about the access of stateless persons, including applicants for statelessness status, to basic rights, including adequate standard of living, housing, health care, employment and education. Please provide information whether they enjoy rights equivalent to those of asylum-seekers and refugees, and if not, why. Please specify how these rights would be secured under the proposed legislative amendment.**

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<sup>30</sup> Governmental draft amendment no. 1091/0 of the Foreigners Act, 19 November 2020.

<sup>31</sup> Prague Municipal Court, file no. 5 A 168/2019: “Not admitting applicants for status of a stateless person to an asylum seeker’ accommodation center is an unlawful action.”

<sup>32</sup> See, in particular, UNHCR Handbook on Protection of Stateless Persons, Geneva 2014.

### 3. MATERIAL CONDITIONS IN RECEPTION AND ACCOMMODATION CENTRES FOR ASYLUM-SEEKERS

Asylum-seekers receive insufficient support and often end up living in poverty. The situation is exacerbated by the fact that the **asylum proceedings last unreasonably long** - often months or even years.<sup>33</sup> During the asylum proceedings, asylum-seekers live in uncertainty about their future and cannot assess most of the services facilitating their integration. This often results in the loss of hope, inability to integrate in the host society and the loss of ties with the home country (which makes it impossible to return in case of negative decision in the asylum proceedings).

Asylum-seekers who cannot afford their own accommodation have a right to live in one of the state-funded accommodation centres. All of these centres **are residential institutions with collective housing** where it is extremely hard to lead a normal family life, in particular on a long-term basis. Families are accommodated in rooms, sometimes with their own sanitary facilities but many times with sanitary facilities common for the entire corridor. Not all the centres offer possibilities for cooking and in some centres, meals are provided centrally which strengthens the institutional character of these centres. The centres are guarded by a private security company and have special rules (e.g. for washing clothes, language classes, legal aid) that secure co-habitation of asylum-seekers from different cultures. The centres are not designated for the families with children only, which results in children being witnesses of undesirable behaviour such as fights, alcohol and drug abuse, police controls. Such environment makes them prone to ill-treatment. There are no preventive or control mechanisms against ill-treatment.

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

**Asylum-seekers with disabilities** are in an extremely challenging situation. The accommodation centres, with the exception of the one in Zastávka, are not designed to accommodate persons with disabilities. Even the centre in Zastávka where most persons with disabilities are accommodated, faces serious challenges to provide medical and other care for this target group. They face unwillingness of doctors to find medical professionals to accept asylum-seekers with disabilities as patients. They also struggle to find professional nurses who would be willing to provide even basic care services within the centre.

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<sup>33</sup> Section 27(1-3), Act No. 325/1999 Coll., on Asylum provides for 6 months' time limit to issue a decision in asylum proceedings. This time-limit may be prolonged by additional 9 months in complicated cases. There are no official statistics on delays in asylum proceedings, which are, however, notoriously known.

During our activities we also observed a **lack of targeted support for victims of torture** or ill-treatment seeking asylum in the Czech Republic. These asylum seekers are extremely vulnerable, often suffered extreme ill-treatment in their country of origin, or during their migration route (in particular in Libya). They need immediate medical, psychological and rehabilitation attention. Yet, there is a shortage of such facilities in the Czech Republic, in particular medical practitioners and therapists who would have experience working with victims of torture and victims from different cultural background. The therapeutic and rehabilitation needs of victims of torture are often left unattended and coupled with uncertainty over their asylum status, it tends to worsen their condition.

#### **Recommended questions:**

- **Please provide information about the material conditions in the reception and accommodation centres for asylum seekers. Are there any plans to restructure these facilities to provide more communal housing and ensure privacy?**
- **Please provide information on access to healthcare for asylum seekers, including its affordability. Please inform the Committee about measures accommodating special needs for persons with disabilities seeking asylum.**
- **Please provide the Committee with information about the scope and accessibility of medical, psychological and rehabilitation services for victims of torture and ill-treatment seeking asylum in Czechia. How many asylum seekers have profited from these services in the last two years?**

#### **4. REDRESS FOR VICTIMS OF ILL-TREATMENT AND ACCESS TO JUSTICE**

According to Article 14 of the CAT the State Party should ensure that the victims of ill-treatment<sup>34</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 victims of ill-treatment in Czechia have very limited access to justice.

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>35</sup> The Committee already in 2012 recommended Czechia to extend the time limit for filing these claims<sup>36</sup>, same as in the 2018 concluding observations,<sup>37</sup> but there was no change in this respect. The State effectively protects itself from having to pay liabilities for the actions of its agents.

Moreover the calculation of this limitation period is being interpreted very restrictively (e.g. the statute of limitation starts to run from when the victim learns about the ill-treatment and

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<sup>34</sup> CAT, General Comment no. 3 (2012), 13 December 2012, CAT/C/GC/3, § 1.

<sup>35</sup> Compare Section 32(3) of the State Liability Act (no. 82/1998) and Section 629 of the Civil Code (no. 89/2012).

<sup>36</sup> CAT, Concluding Observations - Czech Republic, 13 July 2012, CAT/C/CZE/CO/4-5, § 13.

<sup>37</sup> Concluding Observations on the sixth periodic report of Czechia, 6 June 2018, CAT/C/CZE/CO/6, § 30.

not from when the investigation authorities or courts confirm that there was ill-treatment which may take years and meanwhile, the victims lose the possibility to lodge a compensation claim).

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. Victims claiming compensation of damage caused by the State are subject to a **court fee** equivalent to ca. 80 euros and, when claiming compensation of non-pecuniary damage, they have to pay additional court fee depending on the amount claimed.<sup>38</sup> In our experience, the introduction of the court fee is a substantial barrier for victims of ill-treatment to claim redress. In addition, the court proceedings are very **lengthy** and unpredictable. In effect, victims of ill-treatment rarely achieve redress and the actions of state agents amounting to ill-treatment often remain unpunished. This is perhaps the reason why the State failed to provide the Committee with the data on compensation claims, as requested in the 2018 concluding observations.<sup>39</sup>

Migrants and asylum-seekers further face additional language and cultural barriers when accessing justice, as well as general hate environment in the society. In 2020, OPU represented unaccompanied minor asylum-seekers in their claims for compensation against the Ministry for unlawful detention. Despite being strictly confidential, information about their claims leaked to the media,<sup>40</sup> spurring an enormous wave of hate reactions towards them and their representatives, including from the far- right MP.<sup>41</sup> It was not the first time, sensitive information about asylum-seekers and migrants leaked to media, presumably from the state authorities.<sup>42</sup> In such situation, its often even dangerous to seek redress for ill-treatment and the State is doing nothing to improve this situation.

#### **Recommended questions:**

- **Please provide information on the number of claims for compensation under the State Liability Act from foreign nationals, and how were these resolved.**
- **Please explain the reason why the limitation period under the State Liability Act is shorter than in civil claims. Please explain why the court fees were introduced for claims under the State Liability Act.**
- **Please explain the guarantees for maintaining confidentiality of minors in judicial proceedings. Please explain the repercussions that authorities, including judges, face if breaching minor's confidentiality.**

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<sup>38</sup> Act no. 549/1991 Coll. on court fees, Items 3 and 8a.

<sup>39</sup> Concluding Observations on the sixth periodic report of Czechia, 6 June 2018, CAT/C/CZE/CO/6, § 31.

<sup>40</sup> idnes.cz, [Uprchlíci z vlaku chtějí odškodnění 180 tisíc, policie podle soudu chybovala](#), 6. 11. 2020.

<sup>41</sup> parlamentnilisty.cz, [Okamura \(SPD\): Proboha za co a proč Babišova vláda a české soudy podporují uprchlíky?](#), 7. 11. 2020.

<sup>42</sup> See, e.g. unusual media attention of the court proceedings with the same unaccompanied minors including videos showing their faces: idnes.cz, [Českým soudem zněly dárí a pašunština, uprchlíci žalují určování věku](#), 24. 2. 2020.

## 5. HATE SPEECH AND HATE CRIMES AGAINST MIGRANTS AND ASYLUM-SEEKERS

The situation has worsened notably with regard to hate speech and hate crime towards migrants. Migration was often used by politicians as their campaign tool, focusing on its negative aspects. NGOs assisting migrants as well as journalists covering the topic of migration reported facing verbal threats. The environment of operation for migrants assisting organisations is very problematic.

A recent analysis of media covering the issue of migration points out that migration is often used as a negative political campaign tool: during elections, the number of media coverage of migration increases, while after the election the number lowers again. The study also indicates that the news almost always covers stories of migrants living abroad, and ignore migrants living in the Czech Republic. The main topics of migration news is immigration politics and problems and unrests connected to immigration. For example, in the Czech news covering Germany, this is even the prevailing topic. It is the politicians who most often speak about migration in media: voices of experts as well as voices of migrants are significantly weaker.<sup>43</sup> Journalists who try to cover the issue of migration in an unbiased way can face hate crimes. In the recent study, some journalists confirmed facing verbal threats, including comments that "they should hang" or that they "commit treason".<sup>44</sup>

Nongovernmental organizations assisting migrants and its staff routinely face verbal attacks and verbal threats including threats of physical harm. In 2015, the OPU received numerous verbal threats and had to evacuate its headquarters once due to a safety threat in an incident that was announced to police. Eventually, the police discontinued the investigation. In the same time period, the director of OPU initiated a police investigation against an offender threatening him with physical harm including killing, but eventually the police discontinued the inquiry.

Courts dealt with several hate crime cases against refugees. In 2019, the court reopened a hate crime case against a woman who posted on social media that buses with refugees should be burnt; originally, the charges against her were dropped, the case is pending now.<sup>45</sup>

NGOs working with migrants not only face threats from individuals, or on social media, but they are being targeted by the populists moves from the members of the Parliament. In December 2020, a member of an extreme right-wing parliament party urged the Czech Government to suspend all finances to NGOs "which do not help with Covid", in particularly targeting two organisations working with migrants.<sup>46</sup>

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<sup>43</sup> Pavel Prospěch, Adéla Jurečková, *Migrace bez migrantů? Mediální obraz migrace a jejích aktérů v České republice*, Člověk v tísni, 2019.

<sup>44</sup> Ibid.

<sup>45</sup> Lidovky.cz, [Soud musí znovu otevřít případ ženy, která si přála likvidaci migrantů. Zeman uspěl s dovoláním](#), 22 February 2019.

<sup>46</sup> Deník N, *Sociální demokraté otočili, rozpočet podpoří. Chtějí ale ubrat peníze neziskovkám, které nepomáhají s covidem* – Deník N (denikn.cz), 2 December 2020.

### Recommended questions:

- Please provide information on the number and nature of identified and prosecuted hate crimes against migrants and persons assisting migrants.
- Please provide information on measures to prevent hate crimes against migrants and migrant assisting organisations and measures to increase tolerance in the society, in particular towards Muslim minority.

## 6. UPCOMING LEGISLATIVE CHANGES

The Ministry of Interior has prepared two major legislative amendments in the area of asylum and migration, none of them has yet been adopted.

The first, more substantial, legal amendment concerns the Asylum Act and the Foreigners Act.<sup>47</sup> If adopted, the amendment will significantly worsen the situation of asylum seekers, including victims of torture. The Ministry plans to completely **abolish the subsidiary protection due to a risk of breaching the international obligations** (presently Section 14a § 1d of the Asylum Act). This, if passed, may have implications on victims of torture. While a risk of torture presents a separate subsidiary protection ground (Section 14a § 1b of the Asylum Act), the frequent lack of identification of torture victims, as well as the risks of torture, makes the more generic breach of international obligations a safeguard for those victims who were unidentified.

The Ministry further plans to completely **abolish humanitarian asylum**. This will have a negative impact on the most vulnerable persons, typically individuals in irreversible health conditions that preclude them from traveling to their country of origin, while there will be no other dignified solution to help them stay in the Czech Republic.

Furthermore, the Ministry plans to significantly **cut procedural guarantees for asylum seekers**, including the impossibility to file a cassation appeal with the Supreme Administrative Court in certain situations, including when the asylum claim was filed at the Prague International Airport. This is particularly problematic as the airport is the only external EU border, and the asylum claims filed at the airport are often well-founded, and the quality of the first instance court decisions is very low.

The draft amendment also introduces a **new procedure for “special situations”** which are very vaguely defined as a “larger arrival” of migrants. It presupposes a fast-track procedure of refugee status determination in a vaguely defined terms without adequate procedural guarantees.

The amendment also **abolishes the regularization scheme** for certain groups of unsuccessful asylum seekers, specifically families with small children, whose asylum procedure lasted over 4 years. Considering how poor the quality of asylum procedures is, and how long the delays are especially in the most vulnerable and well-founded cases, this mechanism provided an

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<sup>47</sup> Governmental draft amendment [no. 1033/0](#) to the Asylum Act and Foreigners Act, 1 October 2020.

important tool to protect children from being returned to their country after experiencing significant delays in the asylum procedure and long-lasting uncertainty about their future.

The second amendment will worsen the situation of Czech **unmarried family members** who are foreigners, as it worsens the conditions of applying for temporary residence permits.<sup>48</sup> It will also cancel their right to remain in the Czech Republic during the appeal procedure. This is problematic considering the exceptionally high ratio of mistakes made in the first instance proceedings and in 2019 and 2020. Out of 1048 decisions on appeals in the EU family members temporary residence procedure, 463 decisions were cancelled or modified in the appeal instance.<sup>49</sup> This can have negative impact on all binational unmarried couples and on their children.

The second amendment will also introduce a special procedure to apply for the status of a **stateless persons**. While it is generally speaking a positive step to introduce a procedure that up until now was missing the Czech law, the way the procedure was drafted does not give stateless persons access to adequate basic rights (see above part 2 on stateless persons).

We believe that most of the proposed changes are **retrogressive** and they diminish already very limited rights asylum seekers and foreign nationals enjoy in Czechia. We therefore kindly ask the Committee to consider including the legislative changes described above on the LOI.

Thank you for your attention.

For further information please contact:

**Ms Alexandra Dubová**, Senior Lawyer, Forum for Human Rights

email: [dubova@forumhr.eu](mailto:dubova@forumhr.eu)

**Ms Hana Franková**, Head of the Legal Department, Organization for Aid to Refugees

email: [hana.frankova@opu.cz](mailto:hana.frankova@opu.cz)

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<sup>48</sup> Governmental draft amendment no. 1091/0 of the Foreigners Act, 19 November 2020.

<sup>49</sup> Answer of the Commission for deciding in matters of foreigners provided based on the Act no. 106/1999 Coll., on the free access to information, of 21 January 2021, No. MV-4701-2/SO-2021.