

**NGOs information to the UN Committee on the Rights of the Child
on the situation of asylum-seeking, refugee and migrant children**

for consideration of the fifth and sixth periodic reports of

CZECHIA

Submitted by:

Forum for Human Rights (FORUM)
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Introduction

The objective of this written submission, prepared by the Forum for Human Rights (FORUM)¹ and the Organization for Aid to Refugees (OPU)², is to provide the UN CRC with information about the situation of asylum-seeking, refugee and migrant children in the Czech Republic.

On the list of issues adopted on 24 October 2019, the Committee included the following issues concerning migrant children: their detention and non-custodial solutions, education, health care and insurance, hate speech and negative stereotypes, language programs and school integration and the situation of children facing statelessness. In our submission, we will address most of these topics and provide the Committee with alternative information to that provided by the Government in their report:

1. Immigration detention of families with children
2. Situation of unaccompanied minors
3. Situation of asylum-seeking families
4. Access to social rights of migrant children

1. IMMIGRATION DETENTION OF FAMILIES WITH CHILDREN

Czechia continues to **detain families with minor children** for immigration purposes. The legislation allows to detain a minor older than 15 years for immigration purposes, both accompanied and unaccompanied children may be detained.³ Their detention may last up to 90 days.⁴ 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.⁵ In practice, however, all the restrictions connected with the detention apply to these children. The detention is used routinely in respect of migrant families with children who are transiting through the Czech territory,⁶ often from war torn countries like Syria, Iraq or Afghanistan with valid asylum claims. There are **no official statistics** about the number of detained children that would be publicly available.

According to the Refugee Facilities Administration, which operates the detention centres, there were **6 children** detained or placed in the detention centre together with their family members in 2019.⁷ Their country of origin was Afghanistan, Iraq, Iran and Ukraine. 3 children were aged between 0-6 years, 2 between 7-15 years and 1 between 16-17 years. The average duration of their detention was **35.8 days**.⁸

The numbers were higher in the preceding years. According to the EMN report, the share of children detained for immigration purposes was 4.5 % in 2018 and 5 % in 2017.⁹ According to the 2018 annual report of the Ministry of Interior, 704 persons were detained in 2018 and 648 persons in 2017.¹⁰ Doing the maths, **31 children** were detained for immigration purposes in 2018 and **32 minors** in 2017. The

¹ 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 before the European Court of Human Rights. FORUM has authored and co-authored a number of reports and has provided information to UN and Council of Europe bodies on the situation in the Central European region, especially in Slovakia and the Czech Republic.

² 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 counselling 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.

³ Section 124(1)(6), 124b(1), 129(1)(5), Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic.

⁴ Section 125(1), Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic.

⁵ Section 140(1), Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic.

⁶ The Czech Government confirmed this information at the HRC session on 18 October 2019: *Migrant families with children who were detained were those who were detained under the Dublin regulations and they were detained for purposes of transfer to the country of entry. This group represented the vast majority of detained families with children. Rarely were they detained for the purpose of return to their countries of origin.* Available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25167&LangID=E>

⁷ Refugee Facilities Administration, Reply to a request for information, 9. 4. 2020, UT-08061/2020.

⁸ Ibid.

⁹ EMN, Annual Report on Asylum and Migration Policy Czech Republic, 2018, p. 120.

¹⁰ Ministry of Interior, Department on Asylum and Migration, Annual Report on Migration and Integration of Foreign Nationals in the Czech Republic, 2018, p. 143.

Government refers to the 2016 Ombudsperson report according to which the average times children spent in detention is **55 days**.¹¹

The detention takes place in the **closed immigration detention centre in Bělá-Jezová** which has been recently refurbished and designated to accommodate single women and families with children.¹² However, despite the efforts made by the authorities as well as individual workers in the facility, in our opinion, the detention centre is not appropriate to detain children and other vulnerable groups. The centre is located in a woodland remote area around 5 km from the nearest village.¹³ 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.¹⁴

The centre has a **prison-like regime**. Upon the admission to the centre, the detained persons undergo security checks performed by police officers.¹⁵ Free movement in the detention centre is possible only in the designated areas and in the specified time regime from 07:00 to 20:00 during the winter time and between 07:00 to 21:00 during the summer time, except for the period from July 1 to August 31 when the walks are allowed from 7:00 to 22:00.¹⁶ Detained foreigners are not allowed to move around the premises themselves, but they are always accompanied by security staff and have to have an identification card produced upon their entry to detention facility always on them. The private security indicates in a transmitter any movement of an individual within the facility from one place to the other. Common rooms in the residential areas are also CCTV monitored.¹⁷ In addition, the opening of the accommodation centre for asylum-seekers in the neighbouring building has led to a certain **increase in security elements**. For example, a new fence has been built facing the accommodation centre and a new police "booth" with uniformed police officer has been placed in an area opposing the only entrance to the detention centre.

Communication with the outside world is restricted in a prison-like approach, as well. When placed in the detention facility, detained foreigners are allowed to copy the numbers from their mobile phone if they have one and are allowed to make one phone call in the duration of 3 minutes maximum.¹⁸ They only receive their phones and other valuables back when being released. The detainees receive a telephone card upon arrival which allows them to contact their families with the help of two telephone booths in the centre.¹⁹ However, one card is charged with 180 CZK (7,3 USD) only and only limited number of phone cards is later distributed by social workers or OPU lawyers. Families and unaccompanied minors from countries such as Afghanistan or Iraq can hence only call their families for very short periods, approx. twice per month. In addition, the access to internet is still considerably restricted. There are only two internet devices, not all websites are permitted, and they can be used only for certain periods of time. The centre often faces technical difficulties in securing stable internet

¹¹ State Report, § 146.

¹² 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 reports 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.

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

After these reports, the authorities put some effort in humanizing the detention centre:

<http://www.suz.cz/co-delame/provoz-zarizeni/zzc-bela-jezova/>

¹³ CRC, General Comment no. 6 (2005) treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, § 63: „Facilities should not be located in isolated areas where culturally appropriate community resources and access to legal aid are unavailable.”

¹⁴ The employees of the private security company are not trained to work with children or vulnerable persons. They may have very little understanding of the fact that the detention is, at least officially, supposed to serve as an administrative measure and not a form of punishment. These are low-paid, low-qualified jobs. We also encountered cases where security guards expressed their negative attitudes or stereotypes towards foreign nationals by swearing at them, including in the presence of other detainees.

¹⁵ Section 1371(1), Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic.

¹⁶ Art. 9 Rules or Order of the Bělá-Jezová detention facility, Ministry of Interior, Refugee Facilities Administration, file no. UT/423/2019, 25 February 2019.

¹⁷ Section 132a, Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic.

¹⁸ Art. 21 Rules or Order of the Bělá-Jezová detention facility, Ministry of Interior, Refugee Facilities Administration, file no. UT/423/2019, 25 February 2019.

¹⁹ Ibid.

connection. Moreover, without having their phone, it is often impossible to access social media, since verification via mobile phone (SMS code) is often requested when a person is trying to log in. Thus, detained persons have only limited opportunities to communicate with the outside world, which may further deepen their feelings of anxiety about detention. It also makes it very difficult if not impossible to gather any evidence to support their case.

Children are schooled in the detention centre and have therefore no practical possibility to leave the centre.²⁰ The international experts emphasize that the immigration detention inherently **harms the children** and it has a 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.²¹ In addition, families with children are **forced to pay** for each detained as well as accommodated family member in the amount of 10.5 USD per day.²² All cash is automatically withheld during the personal check and used to cover the costs of detention. If the family has insufficient finances, they are in debt towards the operator of the detention centre.

The alternatives to detention exist only on paper and are rarely implemented.²³ Most of the time, these **alternatives are inaccessible** for migrant families with children since they just arrived and usually have no ties to Czechia, they do not have a residence in Czechia nor have they money to cover the financial guarantee.²⁴ There are no services available to families with children that would enable them to access the alternatives to detention (in particular the non-custodial accommodation, legal, social and psychological services). The "new alternative" introduced in the law only in August 2019 that would allow families to stay at a place designated by the police, presumably the closed reception centre for asylum-seekers, has **never been applied** in practice.²⁵ In 2019, the police have not used **any alternative to detention** in case of children.²⁶

The CRC has asserted in the past and keeps repeating on every occasion that *„the detention of any child because of their or their parents' migration status constitutes a child rights violation and contravenes the principle of the best interests of the child. In this light, both Committees have repeatedly affirmed that children should never be detained for reasons related to their or their parents' migration status and **States should expeditiously and completely cease or eradicate the immigration detention of children. Any kind of child immigration detention should be forbidden by law and such prohibition should be fully implemented in practice.**”*²⁷

The Czech authorities are well aware of their international obligation to stop detaining migrant children. Already in 2003 and then again in 2011 the UN CRC Committee urged Czechia *“to avoid any form of detention of asylum-seekers under 18 years of age”*²⁸, same as the UN CERD Committee²⁹ 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,”*³⁰ 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*

²⁰ CRC, General Comment no. 6 (2005) treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, § 63: *“During their period in detention, children have the right to education which ought, ideally, to take place outside the detention premises in order to facilitate the continuance of their education upon release.”*

²¹ 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, § 9.

²² Sections 137(4), 146(1), Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic.

²³ Section 123b of the Act on Foreign National: i) obligatory residence on an address in Czechia, ii) financial guarantee, iii) reporting obligation with the police, iv) obligation to stay at the place designated by the police.

²⁴ See EMN, Annual Report on Asylum and Migration Policy Czech Republic, 2018, p. 120.

²⁵ Police Directorate, Answer to the request for information, 30 March 2020, CPR- 13939 -1/ČJ - 2020 – 930103.

²⁶ Ibid.

²⁷ CPRMW and CRC Joint General Comment, op. cit 15, § 5 et seq.

²⁸ CRC, Concluding observations: Czech Republic, 4 August 2011, CRC/C/CZE/CO/3-4, § 64.

²⁹ 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.

³⁰ CEDAW, Concluding observations on the sixth periodic report of the Czech Republic, 14 March 2016, CEDAW/C/CZE/CO/6, §§ 38-39.

*accommodation for families with children"*³¹ 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*".³² The last mentioned Committee was also concerned that "*alternatives to detention ... are hardly ever applied in practice*" and about "*the ongoing practice of "accommodating" children with their family members detained under the Act, which constitutes de facto detention*".³³

Information provided by the Czech Government in the State Report are misleading.³⁴ It is not true that detention is used only as a measure of last resort, because migrant families with children have no effective access to the alternatives to detention. In fact, **detention is used routinely** for migrant families who are transiting the territory of the Czech Republic. It is also misleading to claim that children may leave the detention centre because in majority of cases they have no other caretaker but their detained parents (or other family members). The Government also claims that as soon as the family applies for international protection, detention is not permitted. But the Government omitted to mention that migrant families transiting through the territory are detained for the purpose of their transfer under the Dublin regulation or readmission which means under the Czech law they are **not allowed to ask for international protection** while in detention.³⁵ Besides, we also encountered a case last year where a pregnant woman detained with her 6-years old daughter applied for international protection after she has been detained and the authorities refused to release them.³⁶

As admitted by the Government, families with children are detained for protracted periods (55 days on average in 2016). In our experience, families are often detained for the maximum legal period, i.e. 90 days, and then released because the Czech authorities failed to realize their transfer or return. These families are released often with no money (which are withheld and used to cover the detention costs) and with no further assistance, left on their own in the middle of the woods. Judicial review of detention is protracted and if dismissed at first instance, often takes longer than the maximum legal period of detention. We also encountered cases, when **a family was divided** by a court decision which released some family members and kept detained the others.³⁷

Yezidi siblings split by the Czech court's decision

In October 2018 the Czech authorities apprehended and detained a Yezidi family from Mosul comprised of five siblings in the age of 17 to 24 years and 8-year-old son of one sister. They were travelling without their parents who stayed in an Iraqi refugee camp. Approximately two months later the court released three siblings and the boy and left two sisters in the age of 18 and 19 years detained in the Bělá-Jezová detention centre. The courts claimed that sibling relations cannot be considered as family and therefore the legal protection of families do not apply to their case. Despite further judicial actions, the sisters stayed detained until the mid-February 2019.

When deciding on detention of families with children, the police do not apply the **best interest principle** at all or apply it in a misconceived manner such as arguing with protecting family unity. We encountered cases where police gave the family a choice of being detained together or separated from their children. In another case, the police justified the detention of the child by clear air in the woods surrounding the detention centre. Such arguments illustrate a limited understanding among police personnel of the paramount importance of the best interest of the child as a guiding principle which should be decisive in all decisions relating to children, as well as on the impact of any detention on the development and well-being of children.

³¹ CAT, Concluding observations on the sixth periodic report of Czechia, 6 June 2018, CAT/C/CZE/CO/6, § 21.

³² HRC, Concluding observations on the fourth periodic report of Czechia, CCPR/C/CZE/CO/4, 7 November 2019, § 29.

³³ Ibid, § 28.

³⁴ We refer here to paragraphs 145 of the State Report.

³⁵ See Section 129 (1) Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic, in connection with Section 3a (1)(a)(4) of the Act no. 325/1999 Coll., Asylum Act.

³⁶ Prague Regional Court, file no. 49 A 9/2018- 37, judgement of 30 November 2018.

³⁷ Usti nad Labem Regional Court, file no. 75 A 26/2018-40, judgment of 21 November 2018, Supreme Administrative Court, file no. 7 Azs 505/2018-67, judgment of 18 December 2019.

Recently, the police as well as courts keep putting in question to what extent minors beyond 15 years of age fall under the protection of the international law on the rights of the child. We noted at least one case where a 15-year-old minor has been detained together with his adult family member with no assessment whatsoever being made in the respective detention order of the fact that the detainee is a child and hence, specific protection safeguards should apply. Despite this clear procedural mistake on the side of the police authorities, the Regional Court in Brno dismissed the case.³⁸ Likewise, recent jurisprudence suggests that there is little willingness to afford special protection to children who are nearing the age of adulthood.³⁹

Recommendations:

- **Immediately stop detaining families with children.**
- **Adopt legislation forbidding the immigration detention of families with children**, in particular amend Sections 124, 124b and 129 of the Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic, to forbid detention of persons younger than 18 years old.
- **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.⁴⁰
- **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**. Collect comprehensive statistics on how many of these children were detained and in how many cases alternative to detention was applied.
- **Train law enforcement officials, judges, social workers and any other relevant actors on the paramount significance of the best interest of the child** and how to assess it in a specific situation.

2. SITUATION OF UNACCOMPANIED MIGRANT CHILDREN

The number of unaccompanied migrant children in Czechia is not high,⁴¹ however they face multiple challenges to reach protection they deserve. Especially vulnerable are unaccompanied minors close to the adult age who are undocumented, and their minority cannot be inferred from their appearance and is therefore contested.⁴² Official statistics of this group of minors are missing.⁴³

According to the Refugee Facilities Administration, in 2019 there were **12 unaccompanied minors** detained in the detention centres with the average length of their detention reaching **51.8. days**.⁴⁴ Czech legislation enables **detention of unaccompanied minors** whose age is contested until their age is determined.⁴⁵ This legislation has been repeatedly criticized by the UN bodies. Most recently the Human Rights Committee expressed concern *“that the principle of the benefit of the doubt in age*

³⁸ Brno Regional Court, file no. 41A 30/2019, judgment of 7 May 2019.

³⁹ Supreme Administrative Court, file no. 10 Azs 316/2018, judgment of 21 March 2019, Ústí nad Labem Regional Court, file no. 41 A 16/2018, judgment of 13 November 2018,, file no. 75 A 13/2019, judgment of 15 April 2019.

⁴⁰ CPRMW and CRC Joint General Comment, op. cit. 15, §§ 11-12.

⁴¹ According to the EMN 2018 report (cited above), there were **29 unaccompanied minors** in Czechia in 2018, most of them were males, close to adult age, mostly from Afghanistan and Iraq. These statistics include only those children with confirmed age.

⁴² See also, CPRMW and CRC Joint General Comment, op. cit. 15, § 3, referring to this exact group of minors.

⁴³ The official statistics exclude unaccompanied minors whose age was contested, and the medical examination did not confirm their minority or was inconclusive. We encounter up to 10 such cases yearly, mostly in the detention centres.

⁴⁴ Refugee Facilities Administration, Reply to a request for information, 9. 4. 2020, UT-08061/2020.

⁴⁵ Section 124(6), 129(5), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

assessment cases is not applied and that unaccompanied children may be detained as adults under the Act, pending the outcome of their age assessment."⁴⁶

In practice, unaccompanied minors whose age is contested are usually placed in the Bělá-Jezová detention centre.⁴⁷ The police usually order an **X-ray examination of wrist bones** in order to determine the estimated biological age. This method is highly contested because it is inaccurate and does not reflect differences due to ethnicity and origin. The unaccompanied minors are usually appointed a guardian from among the social workers of the town they were apprehended. The guardian rarely defends their rights or best interests, for example to refuse the above-mentioned medical examination, has little or no knowledge of legal procedures relevant to asylum-seekers or foreign nationals. They rarely have access to the medical reports from the bone tests. Also, the authorities do not assist children in proving their age otherwise (by contacting family members, trying to obtain school documents, etc.) and the medical examination is performed more or less automatically (not as an ultimate measure). We also encountered cases where the child provided documentation proving their age, such as the Afghan *tazkira*, but these were not taken into account by the police.

If the bone test confirms minority, the unaccompanied minor is transferred to the Facility for Children of Foreign Nationals located in Prague.⁴⁸ If the bone test excludes minority or is inconclusive, the minor is transferred to the **detention centre for adults**⁴⁹ where legal regime for adult detainees automatically applies (e.g. maximum detention period for up to six months). There is no procedure to contest the results of the medical examination. We also had cases where the children were transferred to the detention centre for adults without a formal decision and had no possibility to challenge such transfer. We also encountered cases, where the medical examination showed the range of possible biological age between 17 and 19 years and the police presumed the persons to be adults.⁵⁰

It is extremely harmful for minors to be detained among adults. CRC stressed that "*unaccompanied or separated children should not, as a general rule, be detained. In the exceptional case of detention, conditions of detention must be governed by the best interests of the child and pay full respect to article 37 (a) and (c) of the Convention and other international obligations. Special arrangements must be made for living quarters that are suitable for children and that **separate them from adults** (...)*".⁵¹ In combination with extremely weak procedural guarantees (no possibility to challenge the results of age assessment, no possibility to challenge transfer to the adult detention), this practice violates in our opinion Article 37 of the Convention.

As for April 2019, the Ministry of Interior (MoI) initiated a **pilot project** to perform age assessment by psychological interviews. We find these developments very positive. However, in practice the unaccompanied minors whose age is contested face considerable **problems in the access** to this new method of age assessment. We encountered several cases where the police requested the MoI to perform psychological interviews along with the bone tests but the MoI failed to do so. The excuses for this omission differed from the insufficient capacity of psychologists to the argument that psychological interviews will be performed only if the bone tests were inconclusive.

According to the CRC, "*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.*"⁵² To make an informed estimate of age, States should undertake a comprehensive assessment of the child's physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development. Such assessments should be carried out in a prompt, child-friendly, gender-

⁴⁶ HRC, Concluding observations on the fourth periodic report of Czechia, CCPR/C/CZE/CO/4, 7 November 2019, § 29.

⁴⁷ In some cases, however, unaccompanied minors were put directly in the detention centre for adults.

⁴⁸ <https://zdcpraha.cz/en/>

⁴⁹ <http://www.suz.cz/co-delame/provoz-zarizeni/zc-balkova/>

<http://www.suz.cz/co-delame/provoz-zarizeni/zc-vysni-lhoty/>

⁵⁰ Plzeň Regional Court, file no. 17 A 121/2019, judgment of 24 July 2019, and file no. 60 Az 44/2019- 10, judgment of 30 August 2019.

⁵¹ CRC, General Comment no. 6 (2005) treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, § 63.

⁵² CPRMW and CRC Joint General Comment, op. cit. 15, § 4.

sensitive and culturally appropriate manner, including interviews of children and, as appropriate, accompanying adults, in a language the child understands. States should also ensure that their age determinations can be reviewed or appealed to a suitable independent body.⁵³

On the more positive side, the care for unaccompanied minors whose age is not contested, is of a good standard. They are offered a wide range of educational, psychological and social services as described in the State Report. However, from the long-term perspective Czechia fails to develop non-residential family-like setting of care for unaccompanied minors. The Facility for Children of Foreign Nationals is still an institution where minors face measures such as initial isolation for medical reasons, withholding of finances and mobile devices. Also, there is still a high proportion of escape rate from this facility.⁵⁴

Unaccompanied minors detained in the detention centre for adults

In May 2019, four unaccompanied Afghan boys were found in the back of a truck. They had no documents and claimed to be aged 15 and 17 years. The police detained them in the Bělá-Jezová detention centre and ordered the X-ray examination of wrist bones. The medical examination showed the age range between 16 to 19 years old (based on different methods). Subsequent to medical examination, they were considered adults and transferred to the Bálková detention centre designated for adult men where they spent almost three months. No psychological interviews were performed.

Very similar scenario repeated with five boys from Afghanistan apprehended in January 2020, who were detained in the detention centre for adults for three months.

Recommendations:

- **Immediately cease the practice of detaining unaccompanied minors whose age is contested.** Instead, apply the presumption of minority and place these persons in the Facility for Children of Foreign Nationals until their age is clarified.
- **Amend legislation to forbid detention of unaccompanied minors**, in particular Sections 124(6) and 129(5) of the Act No. 326/1999 Coll., on the Residence of Foreign Nationals in the Czech Republic. Meanwhile, amend legislation to enable to challenge the transfer of unaccompanied minors whose age is contested to the detention centre for adults.
- **Strengthen legal protection of unaccompanied minors whose age is contested** by appointing a guardian and a lawyer or counsellor from the moment they are within the power of the authorities. Provide these groups of persons with immediate and active assistance in proving their age (by contacting relatives, submitting supporting documents, school certificates, or otherwise). Train the guardians and social workers to assist unaccompanied minors in defending their best interests, in particular in proving their age by other than medical means.
- **Refrain from using medical methods of age assessment, in particular the bone tests.** Make sure that medical methods (including psychological) of age assessment are used only as a last resort, after it proves impossible to establish the age by the means mentioned above. Make sure that the results of age assessment are always communicated to the persons concerned and that they receive a copy of it. Amend legislation to enable to challenge the results of the age assessment and have it reviewed by an independent body, preferably a court.
- **Ensure development of non-residential care arrangements for unaccompanied minors.**

⁵³ Ibid.

⁵⁴ It had been reported that 106 out of 132 children had escaped in 2015, a very high proportion, especially in light of their vulnerability to human trafficking. See HRC questions of 18 October 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25167&LangID=E>

- **Gather statistics** of the number of unaccompanied minors on the territory of Czechia. Make sure that these statistics involve a group of persons whose age is contested.

3. SITUATION OF ASYLUM-SEEKING FAMILIES

Asylum-seeking families with children 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.⁵⁵ During the asylum proceedings, asylum-seeking families 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-seeking families with children 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.

All of the accommodation centres are located in **remote areas** which complicates integration into the society.⁵⁶ Weak financial situation makes it hard for asylum-seekers to travel to the towns (transport is not paid by the state) in order to look for jobs⁵⁷ and accommodation and as such to decrease their dependence on state support. The remoteness of the residential centres thus creates another barrier in addition to the prevalent discrimination in the access to labour and housing market. The location of the residential centre often influences the "choice" of the school the child attends and can have long-term effects for the child's future (e.g. impossibility to attend a secondary school of their choice due to insufficient funds of the family to move or to support child's travel to the town where the school is located).

The state **financial support is tremendously insufficient**. The asylum-seekers accommodated in the residential centres have right to receive "pocket-money" in the amount of 1.20 USD per person per day.⁵⁸ In those facilities where food is not provided the asylum-seekers do not receive pocket-money but a financial contribution in the amount of minimal living costs (currently 138 USD per person per month). In a situation where asylum seekers have no possibility to work (the first six months) and especially in case of families and single mothers, these social contributions are clearly insufficient to cover all necessary living costs (such as food, medicines, clothes, transport, etc.). Asylum-seeking families are thus dependent on donations and charity. Single mothers with small children find it extremely difficult to find employment given very limited possibility to find pre-school facilities accepting their children. There is a day-care facility in some of the accommodation centres, these, however, require presence of the parents at all times.

⁵⁵ 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.

⁵⁶ There are currently four accommodation centres operated by the Refugee Facilities Administration – in Zastávka u Brna, Kostelec nad Orlicí, Havířov and Bělá-Jezová. More information can be found on www.suz.cz.

⁵⁷ Section 97(e), Act No. 435/2004, on Employment, enables applicants for international protection to apply for work permit 6 months after submission of their asylum claim.

⁵⁸ Section 42a, Act No. 325/1999 Coll., on Asylum, in connection with Order No. 376/2005 Coll., on the amounts paid for accommodation and food in the asylum facilities, amount of pocket-money and the dates of its payment.

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 financial resources on travel expenses to reach medical care for their children.

Families with **children 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.

In 2019 we came across a systemic problem with the **access to housing** of asylum seekers in the final stage of their asylum claim. At this stage, i.e. before the Supreme Administrative Court, asylum seekers have no longer the right to housing in the accommodation centres, regardless of their (in)ability to find their own housing. This is very problematic especially for families with small children and single mothers, who have very limited possibility to earn a living and therefore very limited possibility to find and fund their own housing. There is also considerable discrimination against asylum-seekers on the housing markets, where the flat-owners are extremely hesitant to rent apartment to asylum-seeking families.

The law allows the authorities to allow in exceptional cases to provide housing in the accommodation centres. In the past, this exception was used more or less automatically for all asylum seekers in the final stage of their asylum claims mainly due to free capacities of accommodation camps. However, in 2019 the situation has changed and almost no asylum seeker is provided accommodation during the final instance of the proceedings. Even in the most urgent cases (families or single parents with kids), the housing exception is provided only for a short time after the decision in the second instance and then they have to leave accommodation centres and find a place to live elsewhere. This may be very problematic, especially in cases where the asylum proceedings were dragging for years or when the persons concerned are given very short notice to find their own housing.

Single mother from Ethiopia deprived of accommodation

A single mother from Ethiopia with her three-year-old son was given notice to vacate the accommodation centre for asylum seekers at the end of March 2019. Upon request, she was allowed to stay for a couple of days but without any financial support. As a single mother with a little child with very limited knowledge of Czech language and no financial source and savings she found it impossible to find an ordinary accommodation. In the end she and her son were accommodated in a woman shelter house run by a charity.

Kyrgyz family with three children evicted from accommodation centre

A family from Kyrgyzstan with three children, the youngest with a mental disability, received notice to leave the accommodation centre after their case was dismissed by the Regional Court. They tried to find an alternative accommodation with the help of NGO but with no success. The family managed to obtain a special health and pedagogical treatment for the child with disability and if they will be forced to move to another place, this treatment will have to be interrupted.

Recommendations:

- **Avoid delays in the asylum proceedings**, in particular for families with children.
- **Transform current accommodation centres for asylum seekers** from collective institutions into the community-based residential centres located in towns that would facilitate integration, privacy and family life, in particular for families with children.
- **Increase social contributions for asylum-seeking families** to enable dignified living. **Enhance access to medical care** for asylum-seekers, in particular children and persons with disabilities (including assistance services). Ensure support to asylum-seeking children to enter **education of their choice** and support possibilities of **pre-school education** of asylum-seeking children outside the accommodation centres. Assist asylum-seeking parents to **find employment**.
- Ensure stability of accommodation for **asylum-seekers in the final stage** of the asylum proceedings and **avoid their eviction** from accommodation centres until the decision on their asylum is final. Assist asylum-seeking families with negative asylum decision to find accommodation until their return is organised.

4. ACCESS TO SOCIAL RIGHTS OF MIGRANT CHILDREN

Access to housing is also problematic with regards to refugees that have been granted international protection. This category of people is temporarily allowed to stay in one of the integration facilities for the maximum period of 18 months. During this period international protection holder should find a private accommodation. Property owners, however, are often not willing to rent their properties to refugees.

In addition, asylum seekers, refugees and migrants face numerous obstacles in the enjoyment of their social and economic rights and are often discriminated in their access to education, health care, housing and access to services. The remedies against discrimination are hardly accessible (due to language barrier and costs of litigation) and if pursued, they often prove ineffective (due to length of the proceeding and/or procedural obstacles such as burden of proof, limitation periods, etc.). Public resentment often prevents victims of discrimination to pursue their claims.

A Somali student prohibited from wearing a hijab in a nursing school

In 2019, the Supreme Court spoke up for a Somali student of a nursing school who was expelled from the school due to her wearing a hijab. While the courts of previous instances failed to identify any discrimination, the Supreme Court stated the hijab prohibition in a theoretical education has no legitimate goal. The procedure that has lasted more than 6 years attracted a lot of negative responses, including an immediate response by one of the extremist political parties speaking of an Islamist ideology in this context.⁵⁹

Migrants with temporary residence status are excluded from the public **health insurance** scheme in the Czech Republic, unlike the Czech citizens and foreign nationals with permanent residence status, unless being employed and therefore covered by their employer. The Czech Republic also gives no access to public health insurance for dependent family members of employed third country (non-EU) nationals. The current Czech legislation does not comply with the right to equal access anchored in the EU Single Permit Directive.⁶⁰ In its Article 12 para. 1 (e), this European Directive contains a right to

⁵⁹ Idu.cz, *Zákaz hidžábu v české škole není legitimní. Soud se zastal Somálky*. 6 December 2019.

⁶⁰ EU Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

equal treatment in the areas of „social security as defined in the Regulation (ES) Nr. 8 883/2004“ which includes the Czech public health care scheme. This situation impacts the most vulnerable migrants. It leads to excessive debts occurring to prematurely born children, pregnant women or chronically ill persons. With most private insurance companies, they fall into the category of „uninsurables“.

Already in 2015, the Migrant Integration Policy Index in its chapter on health recommended the Czech Republic to „Guarantee equal access to the public health insurance system for temporary residents and their families“, however no progress has been made.⁶¹

Migrants who have only private health insurance are often required by the emergency aid workers to make a payment or financial deposit in order to receive medical treatment. This is due to uncertainty whether the particular private health insurance will reimburse the health care. Some hospitals charge migrants retroactively for already provided medical care that was subsequently not assessed as emergency treatment.

To illustrate, we include two case studies gathered in the fall 2019 by the Consortium of Nongovernmental Organizations Working with Migrants as part of their campaign to allow migrants to access the public health insurance.

Prematurely born twins with debt of ca. CZK 37 million (EUR 148,000)

Parents from Russia living in the Czech Republic as long-term residing students had twins born prematurely, one of which had a heart condition, the other one had various health conditions. They had to be born prematurely to preserve their lives and required a demanding subsequent care. The parents had no way to prevent this situation, as originally nothing indicated these complications. The mother even had a special additional private birth insurance, however it covered solely a minimal part of the debt. Presently, the children are further in hospital, the costs are covered by the parents. While a private health insurance subsequently insured the babies, they are not covering the costs related to their birth.

A child with a kidney condition has to have check-ups in Russia

A woman living and working in the Czech Republic as an employee had to insure her son at a private health insurance company as he is excluded from the public health care scheme. The private health insurance company refused to cover his chronic kidney condition, for which he needed regular medical check-ups. Therefore, the mother and her son have to undergo the check-ups in Russia, as having to self-pay for the medical check-ups is more expensive than two plane returns tickets to Moscow and back.

We would like to thank the Committee for putting attention to the issues raised above.

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⁶¹ Migrant Integration Policy Index, available at: <http://www.mipex.eu/czech-republic>.