

NGO information to the United Nations Committee on the Elimination of Discrimination against Women

For consideration when compiling the Sixth Periodic Report of the Czech Republic under the Convention on the Elimination of All Forms of Discrimination against Women

Submitted together by the
Organization for Aid to Refugees (OPU) and Forum for Human Rights (FORUM)

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INTRODUCTION

In 2015, there were around 468.000 foreign nationals residing in the Czech Republic, which is 4.4 % of the overall population. They come mostly from Ukraine, Slovakia and Vietnam. 44 % of all foreign nationals were women.¹ In the same year, 492 women asked for the asylum in the Czech Republic, coming from different countries including Ukraine, Syria or Cuba. In 2015, the Czech Republic granted asylum to 71 persons and subsidiary protection to 399 persons.² In its report, the Czech Government gave little attention to the migrant women.³ In their reply to the list of issues, the Czech Government completely omitted to answer the only two questions directed at migrant women.⁴ This, unfortunately, reflects the overall attitude towards this group from the side of state authorities in the Czech Republic.

This written submission provides information on several issues regarding the Czech Republic's compliance with the provisions of the Convention on the Elimination of All Forms of Discrimination against Women with regard to migrant women. In particular, we would like to draw the Committee's attention to the **practice of immigration detention** of migrant women and their children as well as discrimination of migrant women in several areas of life such as **health care, family life** and **access to education**. The submission has been written jointly by two non-governmental organisations, the Organization for Aid to Refugees (OPU) and the Forum for Human Rights (FORUM).

OPU is Prague-based non-governmental with a mission to help migrants, above all asylum seekers who request asylum in the Czech Republic, as well as recognized refugees and persons under the subsidiary protection regime. The main goal is to provide social, humanitarian and legal aid to foreigners and refugees in the Czech Republic with the aspiration to support building of transparent and responsible immigration, asylum and integration policies respecting human rights and dignity. The organization combines provision of direct services - quality and free-of-charge legal, social, and material aid to migrants and refugees with advocacy and strategic litigation in relation to immigration, asylum and integration policies. OPU has been promoting rights of migrant women on a long-term basis, mainly through implementing a number of projects focused on women. These were directed *inter alia* to the assistance with integration, enhancing chances on the labour market, encouraging self-employment and providing legal, psychological and social assistance to migrant women.

FORUM is an international human rights organisation working in the Central European region. It provides support and leads domestic and international litigation and advocacy activities. FORUM has been supporting a number of cases pending before domestic judicial authorities and before the European Court of Human Rights, *inter alia* on violation of social rights, on the rights of women with disabilities, on the protection of vulnerable groups against torture and ill-treatment in different settings. FORUM also co-authored alternative report to the European Committee of Social Rights on implementation of Article 17 European Social Charter by the Czech Republic, the report to the UN Committee the Rights of Persons with Disabilities in respect of the Czech Republic and Slovakia. FORUM also co-authored the alternative report to the Human Rights Committee regarding the situation of migrant families with children in Slovakia.

¹Ministry of Interior of the Czech Republic, Informative reports of foreigners registered on the temporary and permanent residence in the Czech Republic, available at: <http://www.mvcr.cz/clanek/cizinci-s-povolenym-pobytem.aspx>

² Ministry of Interior of the Czech Republic, Statistical report about international protection in the Czech Republic in 2015, available at: <http://www.mvcr.cz/clanek/statisticke-zpravy-o-mezinarodni-ochrane-za-jednotlive-mesice-v-roce-2015.aspx>.

³ Sixth periodic report of States parties due in 2014, Czech Republic, 3 December 2014, CEDAW/C/CZE/6, § 155 (employment agencies), § 158-159 (health insurance), §§ 160-162 (projects), § 188 (insurance benefits not monitored).

⁴ Compare List of issues and questions in relation to the sixth periodic report of the Czech Republic, 3 August 2015, CEDAW/C/CZE/Q/6, §§ 9 and 19; Replies of the Czech Republic, 23 November 2015, CEDAW/C/CZE/Q/6/Add.1.

SPECIFIC COMMENTS

I. Immigration detention of migrant women and their children

In the General Comment no. 32, the Committee held that *“as a general rule, detention of pregnant women and nursing mothers, who both have special needs, should be avoided, while children should not be detained with their mothers unless doing so is the only means of maintaining family unity and is determined to be in the best interest of the child. Alternatives to detention, including release with or without conditions, should be considered in each individual case and especially when separate facilities for women and/or families are not available.”*⁵ The Committee further held that *“failure to address the specific needs of women in immigration detention and ensure the respectful treatment of detained women could constitute discrimination pursuant to Articles 1, 2, 5 (a) and 12 of the Convention.”*⁶ The Czech Republic routinely detains women with children, including pregnant and nursing woman with very young babies for immigration purposes. Families with children can be detained for up to three months; an adult woman can be detained for up to six months regardless of her pregnancy or other vulnerability.⁷ Even asylum seekers can be detained.⁸ The immigration detention affects a considerable number of women and children.⁹ During our work, we encounter cases where women victims of human trafficking and sexual exploitation were detained in immigration centre for several months, even after they have applied for asylum.

Leaving aside the question of the necessity of such detention, the immigration detention centres are absolutely **inappropriate to detain women with children**.¹⁰ The detention centres have a strict prison-like regime, are surrounded with barbed wires and guarded 24/7 by uniformed security forces. The majority of its population are males but women and families with children shall be accommodated separately from men which do not always happen. Families have no means to prepare their own food. Children are served the same food as adults. Daily allowances of milk for kids are limited to one glass a day. Social and outdoor activities are restricted and depend on disposal of the staff responsible for the activities. Health care is very problematic, as detained persons, including children, are entitled only to urgent care. Children in school age are educated by a teacher in the centre, the rest of them stay the whole day within their accommodation units.

The conditions in the detention centre, where families with children are held, were **fiercely criticized by the Czech Ombudswoman** who conducted three on-site visits of this facility. In her reports, she repeatedly concluded that the detention of families with children in these conditions constitutes inhuman and degrading treatment.¹¹ For illustration, the on-site visit revealed that *“women were sharing the toilet (filthy and foul-smelling) with the men”, “women lacked menstrual pads and other sanitary items”: “one woman stated that she had been held in quarantine for 8 days; the quarantine room contained only a toilet and a wash basin and, during the whole time in quarantine, she had not been given a bath or a shower.”*¹² The Ombudsperson

⁵ CEDAW, General recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, 14 November 2014, CEDAW/C/GC/32, § 49.

⁶ *Ibid*, § 34.

⁷ Section 125(1), Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

⁸ Section 46a, Act No. 325/1999 Coll., Act on Asylum.

⁹ In 2014 Czech police have detained 55 children, during first eight months of 2015 up to 375 children were detained, mostly of Syrian, Afghan and Iraqi origin. The number increased rapidly due to the refugee crisis. Newest statistics are not available.

¹⁰ There are three immigration detention centres in the Czech Republic located in different parts of the country: in Bělá-Jezová, Vyšní Lhoty and Drahonice. All centres were rebuilt from former prisons or military objects.

¹¹ The two most recent Ombudswoman's reports from August and October 2015 are available online in English: <http://www.ochrance.cz/en/protection-of-persons-restricted-in-their-freedom/facilities/detention-of-foreigners/>

¹² Public Defender of Rights, Facility for Detention of Foreigners Bělá-Jezová, Evaluation of Systematic Visit, 13 October 2015, pp. 20, 24, 26

also discovered that women were not always accommodated separately from men, including a mother with children who was accommodated among other men without her husband.¹³

Case study no. 1 – Detention of single mother and her small daughter

A Single mother and her three years old daughter residing in the Czech Republic irregularly were detained for the purpose of deportation for 36 days. The child had health problems during detention, was traumatized by transfer to the centre in the police car and overall conditions in detention. No child psychologist was secured. They were released only after filing an action for judicial review, on the basis that the mother had an address to stay.

Case study no. 2 – Afghan family with 9 children

The family of two parents and nine underage children has been detained for almost two months for the purpose of their transfer to Hungary under the Dublin regulation. They complained of the length duration of the Dublin transfer, conditions of detention and the fact that all their savings in the amount of ca. 1000 euros has been consumed for accommodation and food at the detention centre.

Immigration detention of families with children as particularly vulnerable group is criticized by many international bodies, including the UN Committee on the Rights of the Child,¹⁴ the UN High Commissioner for Refugees,¹⁵ the UN Special Rapporteur on the human rights of migrants,¹⁶ as well as the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.¹⁷ The last of the authorities, Mr. Juan Mendez, held that *“immigration detention practices across the globe, whether de jure or de facto, put children at risk of cruel, inhuman or degrading treatment or punishment States should, expeditiously and completely, cease the detention of children, with or without their parents, on the basis of their immigration status. States should make clear in their legislation, policies and practices that the principle of the best interests of the child takes priority over migration policy and other administrative considerations.”*

In the concluding observations adopted in respect of the Czech Republic last year, the UN Committee on Elimination of Racial Discrimination expressed its concern that *“asylum-seekers, including unaccompanied minors and families with children, are detained upon their arrival in the State party for an extensive period of time under poor living conditions and that the alternative arrangements to detention are not applied, despite being provided in legislation”*¹⁸, and explicitly recommended the Czech Republic to **“avoid detention of asylum-seekers under 18 years of age”**.¹⁹ In light of these principles, as well as the standards adopted by the Committee in the General Comment No. 32, we maintain that the practice of immigration detention of women with children and women with vulnerabilities in the Czech Republic constitutes discrimination and is incompatible with Articles 1, 2, 5 (a) and 12 of the Convention. We, therefore, invite the Committee to adopt the following recommendation:

SUGGESTED RECOMMENDATION:

The Committee recommends the State party to immediately stop detaining women with children as well as pregnant, nursing or otherwise vulnerable women in immigration detention and to adopt legislation and practice direction for all relevant authorities to enforce this measure.

¹³ Ibid, p. 20.

¹⁴ UN Committee on the Rights of the Child, Report of the 2012 Day of General Discussion, The Rights of All Children in Context of International Migration, § 78.

¹⁵ UNHCR, Detention Guidelines, 2012, § 52.

¹⁶ High-level Dialogue on international migration and development “Migrant Children should not be Detained”, Statement by the UN Special Rapporteur on the human rights of migrants, François Crépeau, 2 October 2013.

¹⁷; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Ernesto Mendez, 5 March 2015, A/HRC/28/68, § 80.

¹⁸ Concluding observations on the combined tenth and eleventh periodic reports of the Czech Republic, 25 September 2015, CERD/C/CZE/CO/10-11, § 25.

¹⁹ Ibid, § 26.

II. Discrimination against migrant women in the access to education (Article 10)

Migrant girls and women coming from third countries and girls and women with refugee background are discriminated in practice with regard to the **access to education**, especially to the pre-school child-care facilities but many times even to the primary school. At the end of 2014, there were 16 490 migrant kids residing in the Czech Republic. In the school year 2014/2015,²⁰ 7 214 of these kids attended kindergartens which are approximately 43 %.²¹ Only around 60 % of migrant kids attended primary school.²² These numbers are very low.²³

The government acknowledged that there is generally “unsatisfactory situation” in pre-school education²⁴ because of insufficient capacities in the system. It is, therefore, difficult even for Czech mothers to place their kids in the kindergarten. However, for migrant mothers, this is almost impossible. Even if the competent authorities use the argument of full capacity to justify the refusal to accept a migrant child to the kindergarten or school, in many cases the true reason is the migrant background of the child. The prejudice and stereotypes of school management, but also negative attitudes of other parents play a big role in discrimination against migrant children from school and pre-school education.

Another frequently used argument to reject children with migrant background into education facilities is that they do not have permanent residence in the municipality where the school is located. The school authorities refer to the principle that a child having a permanent residence in the municipality where the school facility is located has a priority right to be admitted to this facility.²⁵ We want to point out that the authorities use a wrong interpretation of the term “permanent residence”. For Czech citizens “permanent residence” refers to “the officially reported address of residence”, while for foreign nationals “permanent residence” means a type of residence permit.²⁶ Using this interpretation, the school authorities exclude from education all migrant children with other than permanent residence permit. Such practice is clearly discriminatory.

An additional issue is the system of ineffective legal remedies against refusal to have a kid admitted to the school or pre-school facility. Even though parents may appeal against the decision of the director in the administrative proceedings, this remedy is based on cassation principle. Thus, the superior authority may only revoke the decision but not issue a new one. Due to this principle, many families are trapped in a vicious circle of cancelling one decision and receiving the same one again while their kids remain at home.

Failure of the state authorities to ensure equal access to education for migrant children causes serious consequences for the children including **social exclusion** and **inability to remove language barriers**. All these consequences lead to their exclusion and weaken their future chances to access the labour market and overall economic independence and integration into the Czech society. It has also a negative impact on the whole family, especially mothers. When

²⁰ Czech Statistical Office, *Foreigners in the Czech Republic*, Prague, December 2015, p. 50. The number indicates kids aged 0-4.

²¹ Ministry of Interior of the Czech Republic, *Report on situation in the area of migration and integration of foreigners on the territory of the Czech Republic in 2014*, Prague 2015, p. 90.

²² The data were generated of the two official sources (cited above) neither of which specifically collects data on percentage of migrant kids in education.

²³ This conclusion relies mainly on the fact that the participation rate in pre-school education in the Czech Republic is one of the highest in the EU, considering 90 % of all children with Czech citizenship attend pre-school education and nearly an absolute majority of 100% participate in primary education. PRŮCHA, J. *Česká vzdělanost. Czech education: Multidisciplinary look at the phenomenon of national culture*, Prague 2015, p. 43.

²⁴ Consideration of reports submitted by States parties under article 18 of the Convention, Sixth periodic report of States parties due in 2014, Czech Republic, 3 December 2014, CEDAW/C/CZE/6, § 164.

²⁵ Section 34(4), Act No. 561/2004 Coll., Act on preschool, primary, secondary, higher professional and other education (hereinafter “Education Act”).

²⁶ As opposed to temporary or long-term residence permit, see. Act no. 326/1999 Coll., on residence of foreign nationals in the Czech Republic.

children are not admitted to the pre-school facility, their mothers cannot go to work. Insufficient intake then makes them being dependent on the state social welfare system (if they can access it) or men. Thus, it negatively affects their already very vulnerable position, being a women with migrant background.

We maintain that the situation described above constitutes discrimination in the access to education prohibited by Article 10 of the Convention. We, therefore, invite the Committee to recommend Czech Government to adopt following measures:

SUGGESTED RECOMMENDATIONS:

The Committee recommends the State Party:

- **to secure the access to education to all migrant children, regardless of their residence status,**
- **to substantially increase the attendance rates of migrant children in the pre-school and primary education,**
- **to collect relevant statistical data to follow the progress in these area,**
- **to ensure inclusive education of migrant children in Czech schools.**

III. Discrimination of migrant women with respect to right to health (Article 12)

In its last 2010 concluding observations, the Committee recommended the Czech Government *“that all migrant women and their children are covered by health insurance and have access to affordable health care services, irrespective of their residence status and employment.”*²⁷ In 2014, the UN Committee on Economic, Social and Cultural Rights recommended the Czech government to *“open its contributory health insurance scheme to everyone without discrimination.”*²⁸ Despite these explicit calls and fierce critique from national human rights bodies and non-governmental sector²⁹, the Czech Government was not able to solve this problem.³⁰ In 2016, migrant women are still systematically discriminated **in the access to health care**, including care connected with giving birth.

Certain groups of migrants, depending on the type of their residence permit³¹, are not covered by the public health insurance system, but are bound by law to rely on the **private health insurance** which despite being considerably costly does not cover all necessary health care. Commercial health insurance in the Czech Republic is not specially regulated and it is subject to the general provisions of the Civil Code regarding the insurance contract. As a result of this lack of regulation and control, migrant women often find themselves in a very difficult life situations associated with the arbitrary behaviour of particular insurance companies, exclusions and limitations in insurance contracts, especially in connection with childbirth or the birth of a child with disabilities/birth-defects. As a consequence of exclusion clauses, migrant women are often left indebted because the private insurance company refuses to pay for provided health care.

²⁷ Concluding observations of the Committee on the Elimination of Discrimination against Women, Czech Republic, 22 October 2010, CEDAW/C/CZE/CO/5, § 33.

²⁸ UN Committee for Economic, Social and Cultural Rights, Concluding observations on the second periodic report of the Czech Republic, 23 June 2014, E/C.12/CZE/CO2, § 15.

²⁹ This situation is constantly criticised by other actors, for example, by NGOs, Government Council for Human Rights (2013), Public Defender of Rights (2012) as well as international organisations such as the European Network against Racism (2012).

³⁰ Sixth periodic report of States parties due in 2014, Czech Republic, 3 December 2014, CEDAW/C/CZE/6, §§ 158-159.

³¹ The Czech legislation excludes from public health insurance the following three groups (i) self-employed persons, (ii) family members of non-EU nationals, including children up until the age of 18, parents and partners who are not EU citizens and do not have a permanent residence permit in the Czech Republic, (iii) students who are not covered by international agreements. We talk about approximately 100,000 persons.

Although these women are properly insured, the treatment is not covered by insurance and the high cost of this treatment may have serious existential consequences for the whole family.

The arbitrary insurance policy of the private health insurance companies has created a category of “**uninsurable migrants**”. Most often, private health insurance companies refuse to insure most vulnerable persons, like migrant children born prematurely or with disability, migrants suffering from severe illnesses or psychiatric condition. Uninsured migrants may then access only emergency health care and they have to pay all expenses from their own pocket (often in advance). Also uninsurable persons automatically breach the migration laws and risk losing their residence permit and being deported.

Case study no. 1. – Uninsurable baby

Married couple legal reside and work in the Czech Republic, thus contribute to the public health insurance scheme. Their baby was born prematurely and had to be placed in the incubator. The parents contacted number of commercial health insurance companies in the effort to insure the baby. However, none of the companies insured the baby due to economic disadvantage of such contract. The baby could not be included in the public health insurance scheme, even though both parents have been participating in this scheme. The hospital is now planning to sue the parents for approximately 1.850.000 CZK (69.0000 EUR) plus interest and court fees.

Case study no. 2 – A girl with cancer

The daughter of two Australian researchers working for the Institute of Molecular Genetics of the AS CR suffered from severe form of cancer. Despite both of her parents were working in the Czech Republic and thus contributed to the public health insurance from their salaries, they had to pay private health insurance for their daughter. But the insurance limits were exhausted very quickly due to costly cancer treatment and they had to start to cover all treatment from their pockets.

The current situation constitutes discrimination in the access to health care services and is contrary to Article 12 of the Convention. It is unjustifiable and unethical to differentiate access to health care between EU and non-EU nationals. The only possible and meaningful solution is to amend the legislation in order to **include all foreigner nationals (with long-term permit for more than 90 days) into the public health insurance scheme**, and do certain changes in current legislation. We therefore invite the Committee to adopt the following recommendation:

SUGGESTED RECOMMENDATION:

The Committee recommends the State party to ensure that all migrant women and children enjoy a fair and effective access to health services and adequate standard of health care. The Committee invites the State party to include migrants residing in the Czech Republic on a long-term basis into the public health insurance scheme.

IV. Discrimination against migrant women with respect to right to marriage and family life (Article 16)

The right of migrant women (in particular from Ukraine) to family life is in the past few years significantly affected by the non-functioning consular system intended to make appointments at the embassies of the Czech Republic in Ukraine, called “*visapoint*”. To allow a woman or her family members to come to the embassy and apply either for a tourist visa or for a visa for the purpose of family reunification or long-term residence permit for the purpose of family reunification, they must register via the web system (*visapoint*). This system generates the officially authorised date of appointment at the embassy. Without this appointment, authorised via *visapoint*, it is impossible to apply for any kind of visa or permit.

However, this online-based system (*visapoint*) have been virtually non-functional for a long time and **makes it nearly impossible for families to get the appointment and thus, to live together**. Mainly because all terms are "occupied" and "booked" by local handlers. Families / women / children then do not have any other option than to buy the date of appointment on the black market. Not only they are literally forced to participate in this illegal business but they have also no guarantee that the appointment is real. Due to this dysfunctional system, insufficient capacity of the embassies, and illegal activities connected to the possibility to apply for visa/permit, many women still remain alone without seeing their children and husband in the Czech Republic for even several years. Over the time women are completely losing social contact with their children, the children are brought up by grandparents or siblings and woman's stay in the Czech Republic is limited just to work to provide their families with sufficient funds back home.³²

Another questionable aspect of the already mentioned visa/long-term residence for the purpose of family reunification is the requirement to demonstrate a certain amount of money (in the case of visa) or to prove a regular monthly income (residence permit).³³ This requirement is not questionable itself but what is causing common concerns of relevant NGOs or ombudsman's office is **the extent of this requirement (amount)**. It should be noted that this condition is highly discriminatory and especially if we take into the consideration fact that the amount of income is **unreasonably set at such a high level** that even the most of the Czech families with average income would not be able to meet this condition.³⁴

We are of the opinion that the above-described situation is unsatisfactory and in effect discriminates women in their right to marriage and family life. We, therefore, invite the Committee to recommend the State Party to conduct the following steps:

SUGGESTED RECOMMENDATION:

The Committee recommends the State Party to secure the access to *visapoint* system to all persons and to ensure that persons applying for visa/permit have real possibility to make an appointment *via* this system within a reasonable time.

³² Deficiencies of VISAPOINT contradict the international obligations of the Czech Republic, September 2012, Office The Public Defender of Rights, available at: <http://www.ochrance.cz/aktualne/tiskove-zpravy-2012/nedostatky-systemu-visapoint-odporuji-mezinarodnim-zavazkum-cr/>. See also: The European Commission has opened proceedings against the Czech Republic because of VISAPOINT, September 2013 The Public Defender of Rights, available at: <http://www.ochrance.cz/aktualne/tiskove-zpravy-2015/evropska-komise-zahajila-rizeni-proti-cr-kvuli-visapointu/>.

³³ Section 42b, Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic.

³⁴ For example the couple with two children has to prove the regular monthly income of 29 467 CZK net. Per year it is 88 401 CZK per person. In 2015 the average income per year for person in the Czech households with three and more children was 99 400 CZK. As we can see the amount is lower than the average amount regarding Czech families. However, it is important to note that the average amount regarding Czech families is greatly distorted by factor that it includes all incomes of Czech households, i.e. also large incomes of business owners, high-skilled jobs such as CEOs, top managers, lawyers, judges, senators etc. Therefore, this number can never be the same as for the migrants, who at least in the beginning mostly work in lower-paid professions. This fact, however, does not discredit them at all in relation to the ability to make a living and take care of their family. See: Czech Statistical Office, Household incomes rose, Prague, May 2015.

Thank you for your attention to this submission. If you would like any further information, please contact:

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