

Seminar

„Asylum procedure in the Czech Republic“

Selected texts from
the Seminar organized
on 16 February 2004
at the Ministry of Justice in Prague



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

Seminar “Asylum procedure in the Czech Republic”
Selected texts from
the Seminar organised by the United
Nations High Commissioner for Refugees

Printed in September 2004

We are grateful for the support provided by the following institutions:
Supreme Administrative Court
Ministry of Justice of the Czech Republic
Department of Asylum and Migration Policies of the Ministry of Interior

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UNHCR Prague

Czech Text Editor: Veronika Součková
Published and designed by: Východočeská tiskárna s.r.o.

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Introduction

The “*Asylum procedure in the Czech Republic*” seminar, held in Prague on 16 February 2004, was organised by the Prague Office of the United Nations High Commissioner for Refugees (UNHCR) in cooperation with the Ministry of Justice and the Supreme Administrative Court in Brno. The seminar was attended by officials of the Supreme Administrative Court, judges of all Regional Courts, representatives of the Asylum and Migration Department of the Czech Republic’s Ministry of the Interior, Aliens and Border Police Directorate of the Czech Republic’s Police Headquarters in Prague, legal advisers of non-governmental organisations working with refugees and UNHCR Prague and Geneva representatives.

The seminar aimed at analysing the current asylum system in the Czech Republic in terms of its functionality and establishing whether it is necessary to take certain legislative or other measures to improve its effectiveness. Attention was also paid to the level of legal counselling provided by non-governmental organisations and the enhancing of mutual cooperation and communication among all the bodies concerned.

Besides being an excellent possibility for further training, the seminar also became a unique opportunity for representatives of the judiciary, public administration and non-governmental sector to exchange experience and knowledge about common asylum problems in a constructive way.

Three working groups in the afternoon part of the seminar discussed the following issues:

- Standard procedures for granting asylum;
- Manifestly unfounded applications;
- Legal counselling provided by non-governmental organisations and the cooperation among the bodies involved in asylum procedure in the Czech Republic.

We believe that this publication, which contains a collection of texts from the seminar, will help to raise the awareness of the Czech asylum system, and will be used as a basis for further discussion on legislative changes of the national asylum law in the process of its harmonisation with the international standards and the European *asylum acquis*.

Seminar „Asylum procedure in the Czech Republic“

16 February 2004

at the Ministry of Justice in Prague

Agenda

9.00–9.30 Opening

Opening Remarks: Herman Stuurwold, UNHCR Prague
JUDr. Josef Baxa, Supreme Administrative Court, Brno
Mgr. Petr Novák, Department of Asylum and Migration Policies of the Ministry of Interior of the Czech Republic

9.30–12.00 Chair: JUDr. Oldřich Andrýsek, Chief of Protection Information Section, UNHCR Geneva

- 9.30–9.45 JUDr. Václav Roučka, Regional Court, Plzeň
9.45–10.00 JUDr. Monika Javorová, Regional Court, Ostrava
10.00–10.15 JUDr. Jaroslav Tesák, Regional Court, Brno
10.15–10.30 Mgr. Petr Novák, Ing. Lucie Stárková, JUDr. Alena Hájičková, Department of Asylum and Migration Policies: Experience with the Administrative Procedure on Asylum Applications

10.30–11.00 Break

- 11.00–11.15 JUDr. Beáta Zemková, Czech Catholic Caritas
11.15–11.30 JUDr. Martin Rozumek, Organisation for Aid to Refugees
11.30–11.45 Mgr. Pavla Hradečná – Burdová, Counselling Centre for Refugees
11.45–12.00 Mgr. Pavel Pořízek, Society of Citizens Assisting Migrants
12.00–12.15 Plenary Debate

12.15–13.00 Lunch

13.00–17.00 Chair: JUDr. Josef Baxa, Chairman of the Supreme Administrative Court in Brno

13.00–15.30 Working Groups

Group no. 1

Moderated by JUDr. Monika Javorová, Regional Court, Ostrava
Topic: Standard Asylum Procedure

Group no. 2

Moderated by JUDr. Josef Baxa, Supreme Administrative Court,
Brno
Topic: Manifestly Unfounded Applications

Group no. 3

Moderated by JUDr. Hana Pipková, City Court, Prague
Topic: Legal Assistance Provided by Non-governmental
Organisations and Co-operation between Subjects Involved in the
Czech Asylum Procedure

15.30–16.00 Break

**16.00–16.30 JUDr. Oldřich Andryšek, UNHCR Geneva: Presentation of the
Refworld Information Database**

16.30–18.00 Plenary Discussion on the Results Achieved in Working Groups

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UNHCR

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Opening Remarks

Opening remarks by Herman Stuurwold, Representative, UNHCR Representation in Prague

Distinguished Guests, Ladies and Gentlemen,

It is my pleasure to welcome you to-day to the Seminar “Asylum procedure in the Czech Republic”. UNHCR is very pleased with the positive feedback we received during the preparation of this seminar and your presence to-day is indicative of that support. Please allow me to extend a special warm welcome to the Chairman and Deputy Chairman of the Supreme Administrative Court. UNHCR is also very pleased with their invaluable support in the preparation of this roundtable. Special thanks also go to the Ministry of Justice who so graciously provided this facility.

When discussing the initial concept for this seminar we thought it may be useful to bring all key-players in asylum-processing together in order to define where improvements could be made or good practices be used by others. Therefore, we welcome the presence of key officials of the Ministry of Interior, the Judiciary and the Non-Governmental Organizations. What we have in mind for to-day is a positive, constructive but frank exchange on current practice, legislation and implementation with the view of coming up with a set of recommendations for improvement of the asylumregime.

The profiles of those who are seeking asylum in the Czech Republic are not different from those in other member states of the European Union. The nationalities may differ but what is clear is that any asylum-system should be able to quickly recognize those in need of international protection. Paramount to achieve that is of course to have a system which is able to differentiate between genuine asylum-seekers and those coming from countries not known to be refugee producing. The former category is of course of our primary interest and the latter, whilst deserving of a proper assessment, are for the vast majority not likely to be refugees. Our collective strength lies in providing an asylum-space for those in need. Our limited resources should be fully utilized for this deserving category of genuine asylum-seekers. The asylum-system should not be overly burdened by those who may have

justifiable reasons to leave their country of origin such as a dire economic situation and wishing to seek a better life. But that is not sufficient to be recognized as refugees under the 1951 UN Convention. Unfortunately, at present there are no alternatives in achieving their goals other than using the asylum-system. However, by doing so those manifestly unfounded asylum-seekers are overburdening a system, which was not meant for them in the first place. I am sure that to-day you will be discussing the lengthy period of time it sometimes takes in order to reach first, second and third decisions. Well, the answer may be simple. If you have limited human resources and the number of asylum-seekers exceed the capacity then obviously this will affect the time limits and perhaps also the quality of decisions.

UNHCR is pleased to note that according to the statistics of the Ministry of Interior a significant improvement has been made in 2003 in the duration of the first instance procedure when more than half of the asylum-applications were processed in the accelerated procedure within the 30-day deadline. Furthermore, although regionally a low recognition rate, 2003 saw the highest number of recognized refugees of 208 persons. Another indication of the quality of the first instance decision is reflected in the fact that only 62 out of more than 850 appeals were returned by the courts for review by the Ministry of Interior. This may also indicate that the quality and necessity of the appeals may need to be reviewed.

UNHCR has prepared three working papers for the afternoon sessions on the subjects of legal counseling, standard procedure and accelerated procedure. Undoubtedly, these will provoke discussions and of course differences of opinion. But what we do hope that at the end of the day we will be able to agree on some recommendations which we all hope will result in a better product meant to benefit the genuine asylum-seekers. Thus keeping the decision time to the minimum and enabling them once recognized as refugees to become as soon as possible a contributing member of the Czech society.

I wish you a very fruitful discussion. Thank you.

**Contribution of the Chairman of the Supreme Administrative Court at the
Asylum Procedure in the Czech Republic seminar held on 16 February 2004
at the premises of the Ministry of Justice in Prague**

Dear Ladies and Gentlemen,

First, I would like to express my warm thanks to the Prague Office of the United Nations High Commissioner for Refugees for its idea to organize this seminar. I look forward to exchanging experience and analyzing the current state of the Czech asylum system. I hope that we will manage to identify specific problems and roots of these problems and that concrete solutions will be proposed and agreed upon.

At this moment, being only in the very beginning of our meeting, I would not want to anticipate issues that are to be discussed in individual working groups. However, let me make a brief summary describing the current situation in the area of administrative justice after one year of its existence.

The Supreme Administration Court in Brno has been established ten years after the adoption of the Czech Constitution. New procedural regulations (Administrative Judicial Code) were adopted enabling the review of administrative decisions under the so-called full jurisdiction, and a catalogue of instruments, which can be used by participants unhappy with the decision of the authorities, contains now e.g. tools to combat inactivity of administrative bodies, against illegal interferences etc.

The Supreme Administrative Court started to function as a supreme judicial authority in the area of administrative justice to observe the uniformity and legality of decisions issued by regional courts in the area of administrative justice and, in broader sense, also by public administration authorities. Its activities are reflected, for example, in the regularly issued Collection of Decisions of the Supreme Administrative Court.

From the very beginning, however, the area of administrative justice has been largely affected by the need to decide on an enormous number of asylum complaints. The asylum agenda has in fact seriously limited the administrative justice ability to provide protection in other matters. It certainly is not up to the court to define asylum policy of the country, this is the business of the Government and the Parliament. However, courts are and always will be a part of the asylum procedure mechanism and I will therefore present here several critical notes on the legislation as well as its implementation.

A brief historical summary: during the time of validity of the Act No. 325/1999 Coll. on Asylum (valid until 31 January 2002), asylum claims were assessed under

two-instance administrative procedure. Asylum seekers had a possibility to submit a complaint to the High Court in Prague. The number of submitted complaints was relatively low (several dozens of cases per year).

Dramatic change, however, occurred after the adoption of Asylum Act amendment (published on 7 January 2002 in the Collection of Laws under No. 2/2002, effective as of 1 February 2002). This amendment cancelled, inter alia, the second instance administrative procedure and complaints of rejected asylum seekers started to flow in their hundreds to a completely unprepared administrative department of the Prague High Court. With no preparation at all (the reasoning statement to the legislation draft made no mention about possible consequences of the legislation for the judicial system), a total of 3,746 complaints were submitted. Under the newly approved Act No. 150/2002 (Administrative Judicial Code), these cases as well as all other pending cases from both High Courts were to be transferred to the newly established Supreme Administrative Court. What this would mean, everyone can imagine. Therefore, a new amendment was quickly proposed, assessed and adopted in the end of 2002 (Act No. 512/2002 Coll.), which has distributed these pending and newly submitted cases among individual regional courts.

After 1 January 2003, the influx of new asylum complaints continued and the year 2003 finally saw the submission of 8,014 new complaints. Together with the pending cases received from the Prague High Court, regional courts were to deal with 11,760 cases (55% of the total administrative justice agenda). As of 31 December 2003, 5,405 cases were pending. The Supreme Administrative Court has not been spared either. In the beginning of the second year of its existence it must deal with material as well as personnel problems while two thirds of complaints received against regional courts decision are asylum complaints.

The perspective is uncheerful. Our information from the Interior Ministry indicate that a total of 11,396 asylum claims were submitted in 2003. This is the second highest numbers since 1990 and an increase by 34 percent in comparison with 2002. Asylum was granted to 208 foreigners. It is obvious that rejected asylum seekers will submit complaints to the courts. Will they be granted asylum? Most probably they won't. Why are they doing it then? What is the purpose of the judicial review process? Is a suitable tool to deal with these issues? The result is usually the same – the complaints are being rejected. It is an expensive and long procedure. The procedure costs are further increased by interpreting costs and payments to advocates. The complainants themselves do not behave logically. People, who submit a complaint, are normally interested in having their case processed quickly. And that is reflected in their attitude. They are active, they submit evidence and documents supporting their claims, co-operate with the court. Asylum complainants on the other hand often submit a complaint and then obstruct the procedure and prevent the court from issuing a decision. This gives rise to a suspicion

that the judicial procedure is used as a substitute for another procedure. Lets look at other regulations that relate to asylum seekers. Ongoing asylum procedure legalizes their stay in the Czech Republic and allows them to access medical assistance and later on the job market. The asylum procedure is therefore used as a tool for immigration status regularization. It is not up to the judicial system to formulate proposals how to deal with such situation. However, I would like to strongly emphasize that the administrative judicial system is not able to assess the complaints submitted within a reasonable period of time. Hiring new personnel is not a solution to this problem. Due to the influx of new complaints and due to the priority of the asylum complaints assessment, administrative courts are often unable to protect the rights of Czech nationals, who submitted standard, non-asylum complaints.

I hope that the today seminar will motivate the responsible authorities to adopt quick and conceptual measures leading to a fundamental change of the above described situation.

Opening remarks by Mgr. Petr Novák, Deputy Director, Department of Asylum and Migration Policies of the Ministry of Interior

- Welcoming the representatives of UNHCR, the Supreme Administrative Court, individual regional courts and the City court in Prague, employees of Aliens Police and non-governmental organizations.
- Apologies of Director Haišman for his absence in the seminar and introduction of staff of the Asylum and Migration Policy Department.
- Reference to last year's meeting at the Judicial Academy in Stráž pod Ralskem where the Supreme Administrative Court and regional courts familiarized themselves with the asylum agenda.
- The purpose of this seminar – assessment of practice of all present entities, identification of problems, assessment of communication, particularly between the Ministry and the courts.
- Thanks to courts for their existing cooperation with the Ministry of Interior and for their flexible communication.
- The Ministry's commitment to update digital information on countries of origin of asylum seeker in respect of individual courts. At present, the information is handed over to the courts immediately after elaboration of the current report of the Ministry of Foreign Affairs of USA for 2003.
- Detailed information on administrative asylum procedure shall be provided by representatives of the Asylum and Migration Policy Department in the next part of the seminar.
- The Asylum and Migration Policy Department expects to receive today suggestions and opinions on how to improve the asylum process, how to speed it up and increase its efficiency, and at the same time maintain its correctness and fairness. This seminar should not be a forum where individual participants would enumerate the failures of governmental, non-governmental or judicial attitude to the issue since it is not a commentary legislative procedure. All attendants should spend their time, energy, know-how, money and experience on asylum cases which deserve their attention. All other cases can be resolved in the least complicated way. An this issue, there is an agreement between the Ministry of Interior and UNHCR.
- Summary of the main topics for discussion in plenum and work groups:
 1. Discussion of problems in the area of countries of origin information;
 2. Registration of asylum seekers;
 3. Administrative proceeding on asylum (justification of administrative decisions, cases of manifestly unfounded applications, etc.)
- Finally, thanks to UNHCR for its initiative to organize this seminar; this day shall hopefully bring interesting suggestions and useful recommendations how to move forward the legislative and non-legislative dimension of the asylum agenda.

Summary presentations

Summary presentation of JUDr. Václav Roučka, Vice- chairman, Regional Court in Plzeň

According to the statistics of the Regional Court in Plzeň, the total number of asylum complaints submitted to this court in 2003 was 1,018. The agenda has been processed by a total of nine judges. So far, 579 cases were closed, the average length of proceedings being three to four month. According to the current experiences, the majority of the proposals initiating asylum procedure is motivated by the asylum seeker's wish to legalize his/her residency on the territory of the Czech Republic, not by a need of international protection. Also, the motivation for submission of judicial complaints or submission of cassation complaint is not to correct failures of the administrative procedure, but to extend the asylum seeker's residence permit the territory of the Czech Republic. The high number of asylum complaints, together with the legal obligation to assess asylum cases preferentially affects the speed of decision-making in other cases.

In the speaker's opinion, solutions can be sought in three areas. The work organization at administrative courts can be changed. As of 1 October 2003, changes have been adopted by the Regional Court in Plzeň: asylum cases are being assessed by all nine judges of the administrative court, cases admissible for single-judge assessment are assigned to two single judges (who are dealing also with the pension agenda). The asylum agenda complements the decreasing number of complaints in the field of pensions. Recruitment of new staff members is only a short-term solution and should be refused in future.

As far as the administrative procedure is concerned, improvements can be achieved through efforts to identify applications, which can be assessed as manifestly unfounded.

Support should also be sought at legislative level by extending the deadline for the issuance of a decision rejecting an application as manifestly unfounded (in line with Art. 16, para 2 of the Asylum Act) to 60 days. Another legislative measure,

that would simplify the asylum proceeding, would be to stipulate the inadmissibility of cassation complaints against negative decisions in cases of manifestly unfounded claims.

The benefit of the proposed measures lies in the fact that manifestly unfounded claims would be examined under accelerated procedure and administrative complaints would be assessed by a single judge, not by a whole senate. These measures would also help to make sure that cassation complaints are submitted only by asylum seekers with valid claims.

Summary presentation of JUDr. Monika Javorová, Judge, Regional Court in Ostrava

The speaker informed seminar participants about the situation at the Ostrava Regional Court. The situation there is specific mainly due to the fact that Vyšší Lhoty Reception Centre (housing 580 to 760 people), two refugee residence centers (Havířov and Bruntál) plus detention centre for foreigners (Frýdek Místek) are located within its area of competence. Asylum complaints are being assessed by ten judges – one four-member senate and six single judges. None of the judges work in the field of asylum only, they also act as single general administrative judges at the Ostrava Court. Relatively soon, successful informal cooperation has been established with the employees of the Asylum and Migration Policy Department in Vyšší Lhoty and Havířov and also with SOZE.

In 2003, a total of 2,674 of asylum complaints were filed at the Ostrava Regional Court, 702 of them were received from the High Court in Prague. Over two thirds of cases were assessed by single judge, the remaining one third by senate. As of 1 January 2004, 1,071 cases were still pending. After an initial slow start, up to 200 cases per month are being received by the Court. However, because of the continuous submission of complaints the situation remains very difficult. JUDr. Javorová agreed with the statements presented by JUDr. Václav Roučka in his report.

JUDr. Javorová also commented on the obligation to give priority to the assessment of asylum cases. She understands the need, however, it is a very difficult task taking into account the large number of asylum cases.

JUDr. Javorová finally welcomed the seminar as an opportunity to exchange experience and formulate proposals of potential changes in the asylum proceedings.

Summary presentation of JUDr. Jaroslav Tesák, Judge, Regional Court in Brno

In 2003, the Regional Court in Brno has received a total of 2,056 asylum complaints, out of which 907 cases were received from the High Court in Prague. 1,014 cases were assessed by senates, 135 by single judges. By 31 December 2003, 734 cases forwarded from the High Court were settled together with 355 of the newly filed complaints, out of which 39 were assessed by a single judge. 1,089 cases in total were closed. As of October 2003, six judges participated in the decision-making. Most of the matters were terminated by procedural decisions; decisions of the administrative authority were cancelled in only three cases.

Dr. Tesák objected to the way, in which a Brno-based NGO expressed its disagreement with the decision practice of the Brno Regional Court. In his opinion, the action of the NGO could nearly be considered as interference with the court independence. On the other hand, he welcomed the position of another NGO, which has decided for the future to prepare complaints only in well-founded cases.

Procedural decisions, criticized by the above mentioned NGO, were mostly negative decisions issued under Art. 46, para 1 of the Administrative Judicial Code and issues related to court hearings in native language. The speaker quoted several decisions of the Supreme Administrative Court and the Constitutional Court, which, in his opinion, confirmed the legitimacy of the decisions issued by the Brno Regional Court.

In the end, the speaker made several proposals of legislative changes to help to simplify and speed up the asylum proceedings. The proposals concerned mainly the requirements in the area of asylum seekers' residency reporting and registration and the possible introduction of a deadline for the submission of asylum claims.

**Summary presentations of representatives of the Department
of Asylum and Migration Policies, Ministry of Interior
Mgr. Petr Novák,
Ing. Lucie Stárková,
JUDr. Alena Hájíčková**

Development in the Asylum Area in 2003

PART I – Mgr. Petr Novák, Deputy Director

In the beginning, the speaker presented statistics illustrating the trends in the submission of asylum claims in 2003. In 2003, a total of 11,396 foreigners applied for asylum in the Czech Republic, which is an increase by 34.4% in comparison with 2002. Asylum seekers arriving from the Russian Federation (mostly of Chechen nationality), who currently constitute the largest group of asylum seekers in the Czech Republic, greatly contributed to this increase. The statistics also indicate that the decision-making in the first instance asylum proceeding has been faster (in 51 per cent of cases the assessment took less than 3 months). A total of 208 persons were granted asylum in 2003.

According to the speaker, statistics confirm that the asylum procedure in the Czech Republic continues to be misused for purposes other than for gaining international protection from persecution.

Two distinctive groups of asylum seekers can be distinguished. The first one comprises applicants, who have arrived to the territory of the Czech Republic from the so-called safe third countries and who intend to continue their migration movement to Western Europe countries. The second group of applicants is characterized by the fact that the applicants arrive from states not known to persecute their citizens but where, however, serious economic or social problems prevail. These groups, large in the Czech Republic, are usually insignificant in the European context.

PART II – Ing. Lucie Stárková, Head of Unit

The speaker summarized information on the first instance asylum procedure. The number of pending cases is declining continuously. Currently, the largest group of asylum seekers originates from the Russian Federation and Ukraine. Duration of the asylum procedure is not at present affected by understaffing as it has been the case in previous years. The main problem now is lack of information. The proceeding is often delayed because of long waiting for information on the country of origin or additional information. Another problem is the lack of interpreters, especially in certain exotic languages but also for example in Chinese.

Ms Stárková briefly introduced two new units, which are to be established under the Asylum and Migration Policy Department. The first one is the so-called “Dublin Center”. It is hard to estimate now the future workload of this centre as well as the rate of national and “Dublin” after the Dublin II comes into effect. It will be also influenced by the cooperation between the neighboring newly acceding countries.

The second unit to be established is the Cassation Complaints Unit. In this context, the speaker expressed her surprise at the high number of cassation complaints since this institute is considered to be an extraordinary remedy.

In her presentation, Dr. Hájíčková evaluated experiences gained during the first year of validity of new legal regulations in the area of asylum procedure from the perspective of the Ministry of Interior. In her opinion, last year was a trial period for all subjects involved in the asylum procedure. The most important changes, in her opinion, were the transformation of the asylum procedure from a two-instance procedure into a single-instance administrative procedure and the delegation of decision-making competency on appeals against decisions of the Ministry of Interior to regional courts.

The employees of the Asylum and Migration Policy Department monitor decisions issued by regional courts and seek to conform their application practice accordingly. In some cases, this is complicated by non-uniform decision practice of the courts and senates; however, in many areas uniform decision-making was achieved through judgments issued by the Supreme Administrative Court.

Even after the cancellation of second instance (during which, in line with the previous regulations, the Minister of Interior was deciding on the basis of proposals of the Appeals Committee), complaints were submitted also against decisions of the Minister of Interior. The Appeal Committee was dissolved in the end of 2003. Therefore, in cases where regional courts cancel decisions of the Minister of Interior, they should cancel also the first-instance decision and return the case to first-instance administrative authority since the Minister of Interior is not part of the asylum procedure any more and the Appeal Committee has been cancelled.

**Summary presentation of JUDr. Beáta Zemková,
Legal counsellor, Catholic Caritas**

Dr. Zemková presented Caritas project providing legal and social counseling at the Praha-Ruzyně airport. The project has been launched with the support of UNHCR in 2000. In 2002, the Ministry of Interior opened a reception centre for asylum seekers in the transit area of Prague-Ruzyně airport. The centre is run by the Refugee Facilities Administration and since the autumn 2002, Czech Catholic Caritas has been allowed access to the reception centre in order to provide social and legal counseling to asylum seekers.

The counseling includes mainly the provision of information about the asylum system in the Czech Republic and assistance in the preparation of appeals and complaints against decision of the Ministry of Interior to the City Court in Prague (since 1 January 2003). The August 2003 Asylum Act amendment partially improved the difficult situation of asylum seekers, who had to file judicial complaint on the same day when the negative decision was delivered to them. Currently, applicants have the possibility to file a complaint to the responsible court within seven days after the delivery of the decision.

The speaker also briefly presented the course of asylum procedure in the reception center at Prague-Ruzyně airport and in the end she praised the good cooperation with the Refugee Facilities Administration, Asylum and Migration Policy Department and other non-governmental organizations. The most serious drawback of Caritas presence at the airport is the fact that Caritas employees have not yet been allowed access into the transit area of the airport.

Summary presentation of JUDr. Martin Rozumek, Director, Organization for Aid to Refugees

Dr. Rozumek's presentation introduced the Organization for Aid to Refugees (OPU) and its activities aimed at providing assistance to asylum seekers and migrants in the Czech Republic. Dr. Rozumek focused on the situation in detention facilities in the Czech Republic using the definition of a detention facility contained in the Czech Aliens Act (Act No. 326/1999 Coll.).

The speaker is concerned about the living conditions of asylum seekers and irregular migrants in Czech detention centres. He referred to the example of Bělá Jezová Detention Centre, which has more liberal regime for families with children, and criticized the fact that asylum seekers, who arrived in an irregular manner on the Czech territory, are detained for six months. In his opinion, detention of asylum seekers is not justifiable under the Article 5 of the ECHR since there is no perspective of their deportation within the coming six months. Asylum seekers should be detained only on the basis of state authorities decision and it should be a last-resort option, never a rule.

In the context of detention, the principle of non-refoulement was also emphasised. The 1951 Convention prohibits refoulement of a refugee in whatever manner, however, the current law and practice when asylum and expulsion procedure are carried out simultaneously violates Article 33 of the 1951 Convention. The term „in whatever manner“ comprises all measures aiming at the expulsion of a refugee from the host country territory, with the exception of extradition. Initiation of expulsion procedure with an asylum seeker, decision on prohibition of his/her stay on the Czech territory as well as the fact that in 2003 the Czech Aliens Police in some cases contacted embassies of countries of origin of detained asylum seekers therefore constitute a violation of the non-refoulement principle.

In the conclusion, Dr. Rozumek pointed out to the Final Observation of 18 March 2003 of the Committee on the Rights of the Child, the opinion of the Czech Ombudsman and the Human Rights Committee of the Czech Government expressing their concern over the detention of aliens in the Czech Republic. He asked for the release of unaccompanied asylum seekers from detention, proposed to shorten the detention period and to stop the implementation of the expulsion procedure in cases of asylum seekers after they express their wish to seek asylum in the Czech Republic. Also, speedy judicial review process is necessary.

Summary presentation of Mgr. Pavla Burdová-Hradečná, Legal Counsellor, Counselling Centre for Refugees

The speaker first focused on the issue of selection of clients by the Counselling Centre for Refugees (PPU). The question is whether all asylum seekers who seek help in PPU should be provided with legal assistance. In PPU's opinion, everyone is entitled to independent free counselling. The centre has been established as a human rights organisation and from this point of view it also approaches the issue of the so-called "unfounded" clients. PPU refuses any selection. Non-selective counselling helps to prevent crime and to protect the Czech society and it is therefore clearly beneficial to both the aliens as well as the Czech population.

The second issue presented were PPU's comments on legislative changes in the area of second instance decision making. The speaker mentioned several cases where PPU did not agree with the regional courts' decisions and emphasized cases where family unity was at risk. Another serious problem noted by PPU was the delivery of documents. According to the speaker, this issue affects the whole course of the asylum procedure.

In the next part of her report, the speaker presented several critical remarks on the decision-making practice of the Ministry of Interior. In her opinion, the Ministry does not always pay adequate attention to individual examination of each case. PPU also does not agree with the attitude of the Ministry towards Chechen asylum seekers returned to our territory on the basis of readmission agreement with Austria. Finally, the speaker expressed her concern over the practice where asylum procedure is carried out in parallel the extradition procedure.

In the conclusion, the speaker pointed out to the fact that the recognition rate in the Czech Republic is still very low. In PPU's opinion this number does not correspond to the number of people having a well-founded fear of persecution in the meaning of the 1951 Convention reason and seeking asylum in the Czech Republic. According to the speaker, it is improbable that only migrants without well-founded fear of persecution as per the Czech Asylum Law and the 1951 Convention would arrive to our territory, whereas the "genuine" refugees would seek protection somewhere else.

Summary presentation of Mgr. Pavel Pořízek, Legal Counsellor, Society of Citizens Assisting Migrants

SOZE – Society of Citizens Assisting Migrants – is a non-governmental, non-profit organisation. Its aim is to assist refugees, as well as other categories of aliens arriving to the Czech Republic. SOZE's legal counsellors provide free legal counselling to all asylum seekers, migrants and aliens, staying for various reasons on the territory of Moravia and Silesia, and needing legal assistance. In the course of 2003, the number of asylum seekers who received legal counselling by our counsellors reached 7,099. During the same period, our lawyers spent 5,826 hours in asylum facilities.

After long discussions with UNHCR representatives and NGOs partners and having in mind the aim to enhance protection of genuine refugees, to improve the RSD procedure in general and decrease of the misuse of asylum procedure by asylum seekers not in need of international protection, SOZE has significantly changed its assistance principles in the area of writing appeals against negative administrative decisions to the regional courts. Currently, SOZE counsellors provide direct assistance only to genuine refugees fulfilling criteria for granting asylum as per Art. 12 of the Asylum Act, to asylum seekers with special humanitarian needs (serious illness, old age etc.) and other vulnerable groups of asylum seekers (separated children). This change of practice has not been without problems, many so-called “quasi-attorneys” providing very expensive assistance have appeared, asylum seekers use non-specialized attorneys or draft appeals themselves in their mother tongue and the courts have to translate their complaints into the Czech (which is expensive and further delays the judicial review) etc.

In SOZE's opinion, the main drawbacks of the current asylum system are various opinions and interpretations of many important asylum issues at the regional courts. Courts sometimes issue separate decisions in cases of close relatives (spouses or children) who lodged appeals jointly and this practice causes serious problems (rejected asylum seekers, sometimes small children, are ordered to leave the residential centre while the parents still have a right to stay there etc.). Courts have also various approaches to accepting submissions written in native language of asylum seekers - sometimes courts require Czech translation and refuse to take into account non-translated material, some courts translate the materials themselves or appoint an interpreter to the asylum seeker. Some appeals submitted before the 1 of January 2003 were rejected with reference to the new asylum legislation, without giving the asylum seekers the opportunity to add information to their complaint in line with the new law. Questionable is the practice of termination of the asylum procedure pursuant to Art. 25, para 1, letter h) and the rejection of asylum application as manifestly unfounded as per Art. 16, para 1, letter k). Neither the Asylum and Migra-

tion Policy Department in the asylum procedure, nor the Aliens Police in the administrative expulsion procedure, examine the issue of existence of obstacles to departure, which can lead to a violation of obligations contained in the international human rights treaties (Article 3 and 8 of the ECHR, Article 33 of the Geneva Convention, Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 7 of the ICCPR).

Working Group No. 1

Standard Asylum Procedure

Moderator: JUDr. Monika Javorová, Regional Court Ostrava

A. Questions

1. Do you consider the asylum procedure in the Czech Republic to be flexible and well-functioning? Why? Please, specify your remarks.
2. What are the most common problems you face when you issue decisions on asylum applications or when you decide on claims against administrative decisions in asylum matters under the provision of Art. 32, para 1 of the Asylum Act?
3. Do you believe that in order to build an effective asylum procedure it is necessary to change the legislation (either by concrete amendments of the current legal regulations or by elaboration of new laws)?
4. In your opinion, would non-legislative measures be sufficient to make the asylum procedure more effective? Please, specify your suggestions.
5. Do you think that present legal regulations provide sufficient guarantees that bona fide asylum seekers receive protection during an adequate period of time and that persons misusing the asylum procedure are identified early enough?

B. Other proposals for discussion

- Country of origin information
 - Usefulness of the recently introduced digital system providing country of origin information to the courts; information update; other suggestions or remarks of the courts.
- Database of information on asylum seekers

- Is the database used by courts? Are there any complications, suggestions for improvement?
- Reasoning of the administrative decisions
 - Is the length of the administrative decisions reasoning adequate or too long and detailed (in the context of the proposed concept of the Minister of Justice to stabilize the judicial area and to make the reasoning of courts decisions more brief and simple).
- Humanitarian asylum
 - Is the extent, in which the Ministry of Interior (Asylum and Migration Policy Department) justifies its negative decisions on humanitarian asylum under the Art. 14 of the Asylum Act, acceptable for the courts (after the recent changes made in the Department's practice)?
- Suspension of the proceedings according to the Art. 25, letter h) of the Asylum Act
 - Assessment of the existence of obstacles to departure under Art. 91 of the Asylum Act and of Art. 179 of the Aliens Act when the asylum procedure is terminated because of illegal entry to a neighbouring state during the asylum procedure.
- The asylum seeker's right to use his mother tongue in dealings with the court
 - Is the court obliged to deliver all the documents related to the procedure, information on procedural rights and duties in particular, in a language understood by the asylum seeker or in his/her mother tongue?
- Necessities of administrative complaints
 - What is the regional courts' reaction to cases where appeal against administrative decision in asylum matter was submitted before the new Administrative Judicial Code came into effect (the appeals therefore do not meet the requirements laid down in Art. 71 of this Code)?

Working Group No. 1

Standard Asylum Procedure

Moderated by JUDr. Monika Javorová, Regional Court in Ostrava

Oldřich ANDRÝSEK, UNHCR Geneva

Mgr. Anna GRUŠOVÁ, Counselling Centre for Refugees

JUDr. Ladislav HEJTMÁNEK, City Court in Prague

Mgr. Věra HONUSKOVÁ, Organisation for Aid to Refugees

Mgr. Miroslav JURMAN, Asylum and Migration Policy Department

Mgr. Marie KOLARŤIKOVÁ, Directorate of Aliens and Border Police

Mgr. Jitka KŘENKOVÁ, Supreme Administrative Court

JUDr. Michal MAZANEC, Supreme Administrative Court

JUDr. Petr POLÁCH, Regional Court in Brno

Mgr. Pavel PORÍZEK, Society of Citizens Assisting Migrants

JUDr. Věra ŠIMŮNKOVÁ, Regional Court in Prague

Mgr. Veronika TÝCOVÁ, Asylum and Migration Policy Department

Mgr. Daniela ZEMANOVÁ, Regional Court Ústí n. Labem, Branch office in Liberec

Working Group No. 2

Manifestly Unfounded Applications

Moderator: JUDr. Josef Baxa, Supreme Administrative Court

A. Questions

1. Do you consider the accelerated procedure on manifestly unfounded applications in the Czech Republic to be flexible and well-functioning? Why? Please, specify your comments.
2. What are the most common problems you face when making decisions on manifestly unfounded applications or when deciding on claims against administrative decisions in asylum matters under Art. 32, para 2 of the Asylum Act?
3. Do you believe that in order to build an effective accelerated procedure on manifestly unfounded applications it is necessary to adopt legislative changes either by partly changing the present legal regulation or by elaborating new laws?
4. In your opinion, would non-legislative measures be sufficient to increase the effectiveness of the accelerated procedure on manifestly unfounded applications? Please, specify your suggestions.
5. Do you think that present legal regulations provide sufficient guarantees that bona fide asylum seekers will find protection in a reasonable period of time and that people misusing the asylum procedure are identified early enough?

B. Other proposals for discussion

- Country of origin information
 - Usefulness of the recently introduced digital system providing country of origin information to the courts; information update; other suggestions or remarks of the courts.

- Database of information on asylum seekers
 - Is the database used by courts? Are there any complications, suggestions for improvement?

- Reasoning of administrative decisions
 - Is the length of administrative decisions reasoning adequate or too long and detailed (in the context of the proposed concept of the Minister of Justice to stabilize the judicial area and to make the reasoning of courts decisions more brief and simple).

- Manifestly unfounded applications
 - To what extend is it necessary to examine reasons under Art. 12 of the Asylum Act in decisions on manifestly unfounded applications issued as per Art. 16, para 1, letter g) of the Asylum Act?

- Obstacles to departure
 - To what extend is it necessary to examine existence of obstacles to departure within the meaning of Art. 91 of the Asylum Act in decisions rejecting asylum claim as manifestly unfounded under Art. 16?

- The asylum seeker's right to use his native language in dealings with the court
 - Is the court obliged to deliver all the documents related to the procedure, information on procedural rights and duties in particular, in a language understood by the asylum seeker or in his/her mother tongue?

- Necessities of administrative complaints
 - What is the regional courts' reaction to cases where appeal against administrative decision in asylum matter was submitted before the new Code of Administrative Justice came into effect (the appeals therefore do not meet the requirements laid down in Article 71 of this Code)?

Working Group No. 2

Manifestly Unfounded Applications

Moderated by JUDr. Josef Baxa, Supreme Administrative Court

JUDr. Věra BALEJOVÁ, Regional Court in České Budějovice

Mgr. Michaela BEJČKOVÁ, Supreme Administrative Court

Mgr. Běla HEJNÁ, Counselling Centre for Refugees

JUDr. Alena HÁJÍČKOVÁ, Asylum and Migration Policy Department

JUDr. Milada HAPLOVÁ, Regional Court in Brno

JUDr. HAVLOVÁ, Regional Court in Prague

Mgr. Daniela KADLEČKOVÁ, Regional Court Hradec Králové

Mgr. Petr NOVÁK, Asylum and Migration Policy Department

JUDr. Václav ROUČKA, Regional Court in Plzeň

Mgr. Martin ROZUMEK, Organisation for Aid to Refugees

JUDr. Jan RYBA, CSc., City Court in Prague

JUDr. Marcela SKALKOVÁ, UNHCR Prague

Ing. Lucie STÁRKOVÁ, Asylum and Migration Policy Department

JUDr. Magdalena ŠEBKOVÁ, Directorate of Aliens and Border Police

JUDr. Jana ZÁVISKÁ, Regional Court in Ostrava

Working Group No. 3

Legal assistance provided by non-governmental organisations and the co-operation between bodies involved in the Czech asylum procedure

Moderator: JUDr. Hana Pipková, City Court in Prague

A. The objective of the NGOs legal counseling is to contribute to:

- The improvement of the quality of the Czech asylum procedure;
- Quick identification of persons in need of international protection;
- Better awareness of asylum seekers' rights and duties.

In order to achieve this objective, it is important for NGO legal counsellors to deliver their legal services primarily to those asylum applicants whose cases are pending with the first instance asylum authority. Legal counselling/intervention tools should be used selectively and adjusted according to the individual circumstances of each case.

B. Beneficiaries and the levels of NGO involvement

1. In principle, legal counsellors should pay special attention to the following categories of asylum seekers:

- Applicants arriving from countries known to be refugee producing;
- Persons qualifying for refugee status on the basis of criteria laid down in the 1951 Geneva Convention;
- Persons in need of international protection on other grounds (i.e. cases deserving protection under other international human rights instruments such as 1950 ECHR, the 1989 Convention on the Rights of the Child);
- Persons, who should be allowed to stay in the Czech Republic for other compelling humanitarian reasons (i.e. medical cases, family unity cases, cases of stateless persons).
- Persons, who may qualify for permanent residency in the CR under Article 69a of the Aliens Act because of a previous long-lasting asylum procedure on their asylum application.

There are many forms of NGO legal involvement (apart from standard legal counselling) in the so-called “strong” cases, such as:

- Presence during the first-instance interview with an asylum-seeker;
- Studying the asylum seeker’s asylum file;
- Suggestions to collect evidence before the first instance decision is taken;
- Submitting well-reasoned appeals according to the merit of the asylum claim or according to the legality of the first instance decision. In order to facilitate UNHCR’s monitoring role, NGO legal counsellors are encouraged to provide UNHCR Prague with a copy of judicial complaints submitted on behalf of asylum-seekers to Regional Courts;
- Provision of legal counselling to attorneys representing asylum-seekers in the Supreme Administrative Court;
- Co-ordination/liaison with responsible NGO legal counsellors when applicants are transferred to another residential centre not covered by the same NGO legal counsellor/s.

2. Limited/passive legal counselling should be provided to the remaining groups of asylum seekers, i.e.:

- Applicants with manifestly unfounded asylum claims (stating only economic or purely personal reasons, fear of prosecution and/or implementation of administrative expulsion etc.);
- Applicants arriving from countries not known to be producing genuine refugees, unless initial interview reveals substantive evidence supporting the applicant’s claim for asylum.

As already indicated, asylum seekers with unfounded asylum claims should receive only basic legal counselling, which would include:

- A detailed explanation of asylum seeker’s rights and how to exercise them during the asylum procedure. Asylum seekers kept at detention facilities should be properly informed about their right to ask a Court for the review of the legitimacy of the administrative detention and, if deemed appropriate, they should be assisted with drafting a judicial appeal against the decision on administrative expulsion. NGO legal counsellors should forward to UNHCR office a copy of these submissions.
- Provision of detailed explanation/information on the possible outcome of the asylum procedure and its consequence for an asylum seeker’s continued stay in the Czech Republic. NGO legal counsellors are requested to make sure that asylum seekers are well aware of the possibility to apply for voluntary return within the state funded program governed by the Refugee Facilities Administration.

- On a very exceptional basis, preparing well-reasoned appeals where serious procedural errors in the previous administrative procedure occurred under the condition that the judicial decision could establish a good precedent. NGO legal counsellors should forward to UNHCR office a copy of these submissions.
- When the applicant would decide to apply for voluntary return as a result of the provision of legal counselling, the NGO legal counsellor would ensure liaison with the Refugee Facilities Administration and/or International Organization for Migration (IOM) in Prague in the refugee centre/detention facility.
- The NGO legal counsellors will keep track of the cases that opted for voluntary return after receiving legal counselling and will inform UNHCR accordingly.

A. Questions

1. How do you evaluate the recent standard of legal assistance provided by non-governmental organisations during the asylum procedure?
2. What is the position of your working group towards the above-mentioned UNHCR Recommendation?
3. What measures should in your view be adopted to improve the quality of the legal counselling provided (including proposals related to mutual co-operation etc.)?

B. Other proposals for discussion

- The claimant's possibility to be represented by an organisation providing legal assistance to refugees as per Art. 35, para 4 of the Administrative Judicial Code.
- Necessities of administrative complaints in asylum matters. The opinion of the regional courts on deciding on necessities of complaints/appeals lodged with the High Court in Prague before 1 January 2003.
- The right of the claimant to use his mother tongue in dealing with the courts.

Working Group No. 3

Legal Assistance Provided by Non-governmental Organisations and Co-operation between Subjects Involved in the Czech Asylum Procedure

Moderated by JUDr. Hana Pipková, City Court in Prague

Mgr. Zdeněk HÝBL, Asylum and Migration Policy Department

Mgr. Pavla HRADEČNÁ-BURDOVÁ, Counselling Centre for Refugees

Mgr. Marina MELKONYAN, Society of Citizens Assisting Migrants

Mgr. Marta MIKLUŠÁKOVÁ, UNHCR Prague

Mgr. Pavel MOLEK, Supreme Administrative Court

Mgr. Pavla ROZUMKOVÁ, Organisation for Aid to Refugees

JUDr. Martina STUHLÍKOVÁ, Asylum and Migration Policy Department

JUDr. Jaroslav TESÁK, Regional Court in Brno

JUDr. Beata ZEMKOVÁ, Czech Catholic Caritas

FINAL RECOMMENDATIONS

Issue No. 1: Standard asylum procedure

The workgroup adopted the following recommendations:

1. Administrative courts should be allowed to use senior court officials trained in the area of asylum law (the Act on Senior Court Officials does not currently foresee a role for these officials in administrative justice).
2. A separate decision must be taken as to the proposal to allow a suspensive effect of the cassation complaint. If possible, this decision should be taken within a short period of time; the effectiveness of such decision cancels the validity of toleration visa.
3. The representatives of both courts and NGOs supported the idea to establish special independent bodies or boards that would review asylum decisions of the Ministry of the Interior. This would eliminate the need to discuss asylum matters formally at administrative courts (or such a possibility could be preserved for only a narrow group of cases). The newly created second instance would also be competent to take meritory decisions.
4. In order to facilitate the delivery of judicial communications, asylum seekers should be obliged to inform courts about all changes of their residence. Should they fail to do so, their asylum procedure could be terminated.
5. The quality of judicial proceeding in asylum matter could be improved if refugee assisting NGOs were allowed to participate in the representation of the complainant.
6. The UNHCR REFWORLD database is an extremely useful information tool. All the participants would welcome if the Ministry of Justice could obtain a general licence for this program.
7. Special attention should be paid to the selection and training of interpreters whose services are used by the Ministry of the Interior in the course of an asylum procedure.

Issue no. 2: Manifestly unfounded claims

The workgroup adopted the following recommendations:

1. Provision stipulating a deadline for issuance of decision rejecting an asylum claim of as manifestly unfounded under Art. 16 of the Asylum Act should be removed.
2. The burden should be equally distribution among accommodation centres (and subsequently the courts).
3. Procedural regulations should be simplified (shorter deadlines for the complainant to submit comments to decisions as per Art. 16 of the Asylum Act, more flexible provision of documents etc.).
4. For the time being, it is not recommended to disable cassation complaints against decisions of the Ministry of the Interior rejecting an asylum application as manifestly unfounded.
5. In proceedings related to actions against standard decisions rejecting an asylum application as manifestly unfounded, shorter deadlines for submitting files and comments to complaints should be adopted in order to issue a decision promptly; the maximum two-month period foreseen by Section 74, para 1 of the Administrative Judicial Code cannot be a criterion in this case.
6. Forwarding administrative files from the court to the Ministry should be limited only to cases where the court cancelled the Ministry's decision.
7. Exchange of information between the Ministry of the Interior, the courts and the Aliens Police should be improved.
8. Asylum seekers should have an obligation to inform the court of any changes in their residence.
9. The period set forth in Art. 33 of the Asylum Act, the expiry of which enables the court to terminate the proceeding if the plaintiff's residence cannot be established, should be reduced to 60 days.
10. Courts should be allowed to terminate the procedure if the asylum seeker illegally enters the territory of another state or attempts to do so in the course of the judicial proceedings (similarity to the provisions of Art. 25, letter h) of the Asylum Act).

11. A deadline for the decision-making on whether to allow a suspensive effect of a cassation complaint should be introduced (as is the case in the decision-making on a preliminary ruling in a civil trial).
12. Much too detailed decision reasoning often complicates the situation of administrative authorities. It is questionable, whether detailed description of the country of origin state system is necessary also in cases, where the asylum seeker concerned mentioned no facts invoking the use of Art. 12 of the Asylum Act and only stated e.g. economic grounds (see e.g. the decision of the Supreme Administrative Court, file number 2 Azs 6/2003, published in the Supreme Administrative Court Reports, issue 1/2003, under the number 42).
13. Asylum procedure would also be made more simple and efficient if rules related to postal deliveries were simplified in cases where the asylum seeker's residence is unknown: a decision terminating the procedure would be considered as delivered when posted on an official notice board of the court, without the need to appoint a guardian.

Issue no. 3: Legal counselling given by non-governmental organisations and cooperation of bodies involved in the Czech asylum procedure

The workgroup adopted the following recommendations:

1. One way forward is to allow NGO employees to act as standard legal representatives of asylum seekers (which has not yet been allowed under Section 35, para 2 of the Administrative Judicial Code).
2. Another way is the model adopted by the Netherlands and United Kingdom under which asylum seekers are at the beginning of the procedure assigned a lawyer paid from public funds. The lawyer then works with the applicant throughout the procedure (both administrative and judicial).