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# FOREWORD

It is common knowledge that migration is a phenomenon which has accompanied the existence of human society from the very beginning. Providing asylum to those fleeing persecution is a special form of migration which must be clearly separated from ‘ordinary’ migration in legal terms. Territorial asylum is, in modern international law, based on the 1951 Geneva Convention and its 1967 Protocol – however, one could also quote Grotius on this matter as he already addressed the question of asylum in his seminal work *De iure belli ac pacis* in 1625.

The European Union has undertaken to create harmonized asylum rules of its own, based on international law. The EU’s Common European Asylum System is in place (already in its third phase), the EU has recently also established an Asylum Support Office, but of course that does not mean that it is able to face all challenges without problems. The unprecedented influx of asylum seekers and migrants witnessed in the European Union in recent times has shown cracks in the system at the EU level, and it may also be said that national responses have opted for different solutions, causing a level of disharmony and in some cases aggravating the problem. The papers in this volume provide insight especially into how the Visegrad Countries have responded to the challenges presented by the exponentially increasing number of asylum seekers, addressing legal and political issues as well. As consultation and cooperation between the V4 countries is evidently strong in asylum issues recently, I am convinced that these papers will aid anyone who wishes to see the full picture regarding asylum policy and law in the European Union and in the V4 states as well.

Ágoston Mohay, PhD

assistant professor

University of Pécs Faculty of Law

Department of International and European Law

*VISEGRAD  
REFUGEE FORUM 2015  
BUDAPEST*

Luca KARAFIÁTH – Peter STEPPER

ABSTRACT

*This paper intends to give a brief summary about the conference called Visegrad Refugee Forum 2015, Budapest, organized by the Corvinus Society for Foreign Affairs and Culture. The organizers invited the representative of four different NGO's from the Visegrad countries, namely the Euroatlantic Centre and the Institute for Public Affairs from Slovakia, the Organization for Aid to Refugees and the Multicultural Centre Prague from the Czech Republic and the Helsinki Foundation for Human Rights from Poland. Beside the distinguished experts of these NGO's, governmental institutions such the Ministry of Interior of Hungary and the Ministry for Foreign Affairs and Trade of Hungary were represented at the conference on 6-7 of July 2015.*

*Keywords: asylum policy, European Union, Visegrad Refugee Forum*

## GENERAL TRENDS OF ASYLUM APPLICATIONS IN THE REGION

The first panel of the conference focused on asylum application trends in the Czech Republic, Hungary, Poland and Slovakia in general. The experts highlighted that asylum applications did not show significantly high numbers in the region compared to Western and especially Southern European states before 2014. However, the recent change is obvious if we are looking to the number of applications in Hungary : 42,775 asylum-seekers were registered in 2014<sup>1</sup> and already 66,785 persons<sup>2</sup> have been applied for refugee status in the first to quarters of 2015, while these numbers in Poland are below 9000 persons in the last 12 month, which is the highest compared to the 1470 application in the Czech Republic or the 280 asylum-seekers of Slovakia.

Ms. Marta Szczepanik (from the Helsinki Foundation for Human Rights, Poland) argued that contrary to predictions, very few Ukrainian nationals have applied for international protection in Poland since the beginning of the conflict in 2014. According to the analyses conducted by the Polish asylum authority, the majority of applicants come from conflict zones in Eastern Ukraine and Crimea. In spite of this fact, the recognition rate of their applications is very low which may in turn have an adverse effect on the number of people willing to seek asylum in Poland.

Ms. Helena Kopecká (from the Multicultural Centre Prague) talked about the very basics of seeking asylum: Why are the asylum-seekers have been applying for international protection, from which countries of origin they flee, when there were major asylum waves and what influenced them at the national and EU levels. She argued, that the Czech case presents a historical and partly comparative V4 perspective. Her historical overview focused on the building of the asylum system of the 1990s and the subsequent period of „Europeanization“.

Ms. Martina Sekulová (from the Institute for Public Affairs, Bratislava) argued that although Slovakia did not received the greatest amount of refugees in the past, but they have to face with certain problems in the field of integration policies.

## RECEPTION FACILITY CONDITIONS IN THE V4 COUNTRIES

The second panel of the conference focused on reception facilities in the V4 region. The experts highlighted that several problems are really similar in the case of reception facility conditions, but all of the four Visegrad country has its own specific regulation and legal basis in this regard. Hence, the most delicate issues of reception facilities can be really different in each country.

As Ms. Zuzana Pavelková argued, asylum procedures in the Czech Republic are governed by the Asylum Act and by the Act on the Residence of Aliens in the Territory of the Czech Republic (Aliens Act). The Czech Asylum Act defines three types of so called asylum facilities, namely reception, residence and integration asylum facilities. At present, there are two reception facilities in the Czech Republic. One is situated at the Václav Havel Airport in the capital Prague and the second one is close to Brno. At present, there are two residence facilities in the Czech Republic. One is located in Kostelec nad Orlicí, the second one is a combined residence and integration asylum facility established in 1996 in Havířov. In 2009, several integration asylum facilities (IAF) were established throughout the Czech Republic. They are designed for temporary stays of persons who were granted international protection, offering further support in the transition towards an autonomous life in Czech society. At present, there is only one so-called 'Alien Securing Facility' serving the purpose of administrative detention in the Czech Republic, which is established in 2006 and located in Bělá pod Bezdězem-Jezová. Ms. Pavelková concluded, that the current, dynamic situation is likely to place higher demands on the Czech asylum system. The challenges are twofold: in terms of numbers of places, but also in terms of quality of services provided. It is the task of the Ministry of Interior to ensure it has enough places available not only in detention, but also in the asylum facilities, and that they are of sufficient quality.

## THE EU AGENDA ON MIGRATION AND ASYLUM

The last panel of the conference focused on the European Union's approach towards migration. The experts highlighted that despite

some formidable developments in the harmonization process regarding migration law, there still exist huge deficiencies in the EU's agenda in this field. One of the major difficulties in handling migration lies in the lack of a clear and consensually agreed legal definition of the refugee status, as opposed to other categories of migrants.

Mr. Ágoston Mohay, assistant professor at the University of Pécs, pointed out that the center of gravity of refugee law in general is the fundamental legal dilemma whether the asylum claim is well founded or not. Given that the claim is considered to be well founded, the receiving state is bound by the principle of non-refoulement, a basic tenet of public international law that prohibits returning prosecuted persons to their countries of origin. On the other hand, if there appears to be no justifiable ground on which the right to asylum could be based, the claimant will be deemed as illegal migrant. In addition to the highly dubious qualification process done by national authorities, many asylum-seekers abscond before the decision on their status has been made. The high number of absconders is in many cases due to the poor conditions and inhumane treatment at some of the reception facilities, but that is definitely not the only reason: asylum seekers try to reach EU Member States where they expect to meet the best conditions, get the most support, etc. In order to counterbalance the problems of divergent asylum systems in the Member States, the European Union aims to broaden its relevant competence so as to be able to create more than just minimum standards for legal procedures, qualification methods, reception conditions, etc. as enshrined in Art. 78 TFEU. Nevertheless, it is important to keep in mind that the entire question of migration and asylum belongs to the policy field entitled Area of Freedom, Security and Justice, which is a shared competence, and territorial asylum cannot be granted by the EU itself, only by its Member States. Therefore, harmonization cannot possibly be absolute, although the AFSJ has moved from an intergovernmental cooperation to a supranational level over the last decades. The EU Agenda on Migration and Asylum contains a number of interesting and potentially useful proposals, although it features a lot of delicate and/or problematic questionable elements as well from a legal point of view.

As to the European Commission's new migration agenda Mr. Péter Stauber, migration expert at the Ministry of Interior, drew attention to the fact that the official name of the document itself –

European Agenda on Migration and Asylum – reveals the true nature of current EU policies insofar as they explicitly prioritize the issue of economic migration over refugees. While the economic strains caused by sharply increasing migration fluxes indeed constitute a severe challenge to the European welfare system, protecting fundamental human rights such as the right to seek asylum should in any case prevail. Furthermore, the whole agenda is completely overshadowed by the quota controversy due to a poor communication campaign. Mr. Stauber also stressed the importance of the cooperation with third countries especially in the field of combating organized crime. In the Mediterranean region a CSDP mission has already been launched with the aim of destroying trafficking vessels, however intensive human trafficking in the Western Balkans needs to be addressed as well. According to some, third countries could also play an important role in hosting the so-called “hot spots”, reception facilities with huge capacities where different agencies could assess asylum claims. Definitely, the creation of such facilities outside EU territory would bring up several legal dilemmas and would be exposed to fierce criticism.

In Mr. Gábor Gyulai's assessment, despite the deficiencies and setbacks in implementing refugee law within the EU, a very important development is the approximation of concepts and shared understandings among different member states. Nevertheless, the harmonization process is far from being complete. One of the most concerning flaws of common legislation is the question of non-harmonized statuses such as that of stateless persons or vulnerable groups. Divergence exists in procedural terms as well, just as the number of instances in different legal frameworks. After all, the core problem of the European attitude towards migration is the lack of solidarity. In order to counterbalance this, the EU should take the lead in creating and implementing common policies throughout the Union that are able to tackle migration while dealing separately with asylum-seekers.

## CONCLUSION

Visegrad Refugee Forum from 6<sup>th</sup>-7<sup>th</sup> of July 2015 helped the participants and the audience to get a deep insight into recent asylum and immigration issues on the regional and the European level as well. Based on the findings of the conference Corvinus

Society edited a special issues about V4 refugee situation in the present volume of Biztpol Affairs. Hereby, we would like to say thank you for all of the contributors, authors and editors of this volume and we owe to special thanks to the International Visegrad Fund for the financial support of this project.

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# *ESSAY*

## A RE-ASSESSMENT OF SOCIETAL SECURITY: A FEW THOUGHTS ON IMMIGRATION FROM THE PERSPECTIVE OF INTERNATIONAL BURDEN-SHARING

Péter MARTON<sup>1</sup>

### ABSTRACT

*This essay highlights a few key considerations related to current developments in the field of immigration. It offers reflection on a recently published overview of Security Studies [Marton-Balogh-Rada: Biztonsági tanulmányok...; AJTK: Budapest, 2015], and the assessment therein of the challenges of migration, as a baseline of evaluation to be critically reviewed in light of recent events. Along with weaknesses of the present system of international burden-sharing related to refugee protection, the essay points out pros and cons as to whether a fundamental re-assessment of the situation is truly necessary, and concludes by asking some basic questions that ought to be answered before it is possible to strategically conceive of the road ahead.*

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<sup>1</sup>The author benefited from the Bolyai János Research Scholarship of the Hungarian Academy of Sciences in conducting research for this essay.

*Keywords: refugees, migrants, immigration, European Union*

## INTRODUCTION<sup>2</sup>

In a recent overview and revision of the state of the art in the field of Security Studies this author has, together with co-authors István Balogh and Péter Rada, taken a critical position on the Copenhagen School's perspective on societal security.<sup>1</sup> Whilst the latter's definition of societal security as "the ability of a society to persist in its essential character under changing conditions and possible or actual threats"<sup>2</sup> leaves room for different interpretations, much of the academic discourse on the subject has focused on issues of identity, and came to see the security of collective identity as the primary determinant of a society's security and immigration as a key threat to it.

Without denying the importance of identity, even as one takes account of its elusive nature and the need to avoid an essentialist perspective of what is at its core, this approach to societal security may seem naturally more valid in the context of Western European countries experiencing large-scale immigration. This does not imply that in the case of Western Europe exaggerations do not permeate the discourse as to the dangers of immigration to collective identity and the true scale of the phenomenon: to the contrary, in our book we found that the number of immigrants does not at the present justify the expectation that indigenous populations will be in the minority any time soon in the countries concerned, and that consequently it is difficult to see collective identity as truly threatened in them. The actual contrast between Central-Eastern and Western Europe is that Central-Eastern Europe has not experienced immigration to the same extent in recent history, up till very recently. We thus thought it necessary to re-interpret the notion of societal security, and the above definition, given that much else other than immigration can generate a sense of insecurity in the societal realm.

With a Central-Eastern European perspective, immigration promised to be an issue of lesser interest on our agenda. The region was, at the time of the writing of our book in 2014, clearly a source

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<sup>2</sup> Work on this article was closed at the end of August 2015 and the article in its present state reflects developments up to this point.

rather than a target of migration, with several hundred thousand Hungarian citizens working and living abroad, mostly in European Union member countries. We have also noted a clear trend of growth in trans-migration but assessed the long-term burden generated by this for Hungarian institutions as low given that migrants are near-exclusively interested in getting into a few rich, economically strong countries such as Germany, the Netherlands or the United Kingdom, and thus do not stay in Hungary. At the same time we maintained that refugee flows are largely contained in the regions immediately neighbouring on source countries and that consequently the refugee issue may be “over-securitised” in Western European countries.

In the wake of the influx of a great number of people from Kosovo at the beginning of 2015, the continued experience of a surge in the number of migrants from other places in the wake of this wave, the rise of anti-immigration organisations, parties and popular sentiment across Europe, the decision to erect a security fence along a section of Hungary’s southern border (the border with Serbia), the declaration of a state of emergency in parts of Macedonia during the summer of 2015, along with the visible breakdown of measures that were meant to stem the tide of trans-migration there – a string of these and other developments – the time seems to have come for a fundamental re-assessment of the above position on immigration. A crisis after all is a situation where extraordinary steps may be necessary; where changes in existing practices and policies may be called for.

This brief essay does not attempt to provide a comprehensive and decisive answer as to what is necessary in the present state of affairs. Inasmuch as it has a normative aim, it is to inspire a more sober, empirically informed discussion of the subject – in particular the questions of how much refugee flows continue to be contained, what share of European populations refugees and other immigrants constitute, what imminent dangers the present situation may pose, and what all of this implies from the point of view of international (including intra-EU) burden-sharing.

### THE REFUGEE PIPELINE

The share of developing countries (i.e. Low or Middle Income Countries) in hosting refugees grew from 70% to 86% in the decade between 2004 and 2014.<sup>3</sup> Syria has become the top source in the

course of 2014, overtaking Afghanistan, and per consequence of this, countries neighbouring Syria have become the countries hosting the largest number of refugees – especially Turkey, with 1.59 million refugees, and Lebanon, with 1.15 million as of end-2014.

There was a total of 19.5 million refugees worldwide in 2014 according to UNHCR. This represented a significant increase of 14.8% over the previous year. The rise was also reflected in the number of internally displaced persons – among other conflicts, developments in Iraq and Syria account for this as well.<sup>4</sup>

Whilst in UNHCR's figures the top nine host countries (Turkey, Pakistan, Lebanon, Iran, Ethiopia, Jordan, Kenya, Chad, and Uganda) are clearly countries neighbouring on the source regions, as our aforementioned analysis assumed as well, one should keep in mind that these populations exist per definition in extraordinary circumstances in places where administrative capacities may be limited. To assume that exactly these numbers of people would stay in place in their locations, as registered by UNHCR or national authorities, would be in all likelihood erroneous. Even though refugee flows have been historically contained in regions in the direct vicinity of conflict zones, and this continues to be the case even today, any rise in the number of internally and externally displaced may translate into a rise in the (smaller) number of people who venture further abroad in an attempt to join more distant diaspora groups in rich countries. The population concerned may in effect be imagined as moving along a pipeline, given that transit countries are largely inconvenient destinations for the refugees.<sup>3</sup>

The pipeline metaphor may facilitate understanding that the burden taken by Germany (in terms of the number of people hosted) cannot be larger than the burden originally taken by countries such as Turkey. The transitory burden taken by Hungary similarly cannot be larger than the burden taken at an earlier point in time by Greece. This is true even as migrants from different sources also join the movement of people between Turkey and Europe. They enter the pipeline upstream and arrive at a point downstream later on. Peak presence downstream cannot exceed the peak upstream.

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<sup>3</sup> This is why the idea of introducing EU-wide country quotas is bound to fail. Refugees and other migrants are interested in going to specific countries, and are unlikely to stay in a country chosen for them by bureaucratic actors.

This is relevant in that refugee migration – while it often appears in public discourse as a process fed by a limitless reservoir of migrants – does in fact have a human reserve of a measurable size. It is of course concerning that these reserves may grow in the case of continued conflict just as it is a possibility that an increasing share of the displaced population hosted by Turkey and other countries may decide in favour of moving towards Germany. Still, in terms of the number of refugees compared to GDP per capita, the largest burden for now clearly falls on comparatively poorer countries (Ethiopia, Pakistan, Chad, Uganda and Kenya are the top five hosts in the world in this respect). Per population the largest burden is taken by Lebanon and Jordan.

Germany, a country of 81 million people, with a GDP of \$3.8 trillion, received only 19,200 claims from asylum-seekers in 2007. This has risen to 109,600 by 2013 and further to 173,100 in 2014. Against a backdrop of up to 800,000 asylum requests expected in Germany in 2015 in total,<sup>5</sup> the country has, by the month of August, received double the number of asylum seekers in 2014.<sup>6</sup> Projecting from these August figures, a proportionate estimate would indicate the likely arrival of over 0.5 million people by year's end. Given that there seems to be an accelerated increase in the influx of new migrants an even higher number (closer to the 800,000 figure) cannot be ruled out. At the same time, other countries, such as, for instance, Sweden, have also been receiving a growing number of applications. Sweden saw 75,100 asylum requests in 2014.

To make sense of these numbers: Just as it is reasonable to expect that Syria will never become completely deserted of people, and that all refugees will not leave neighbouring countries such as Turkey, it is sensible to expect that the majority of those who have made their way to Germany, Sweden or other EU destination countries will eventually permanently stay where they are.

The rich core of the European Union thus clearly serves as a magnet, exerting a strong pull, and the transit countries that experience the movement of migrants headed their way are in a dependent position vis-à-vis policy choices by this EU core. Should Germany or other countries decide in favour of a stricter asylum policy and/or stronger border control measures (along with a revision of the Schengen regime), the current transit countries would be facing a challenge of a new nature. This is a concern even if Germany for now seems to be moving in the opposite direction, indicating an increased readiness to host refugees from Syria.<sup>7</sup>

Such signals are not entirely reassuring as in the meantime Germany is still pushing for the introduction of mandatory hosting quotas and a common list of safe countries to which refugees may be deported – such a list would presumably include EU member states and among them Hungary, too.

Even with the transitory presence of migrants in their territory, countries of transit are already taking a significant burden (again, especially with measures of GDP and population in mind), and already the present level of exposure to the challenges of a protracted refugee situation has proven sufficient to evoke attempts from their part to escape some of this burden by diverting the flow of migrants towards other countries.<sup>8</sup> A country such as Hungary finds itself in the difficult situation of standing to be criticised either for trying to impede the movement of legitimate refugees or for inadequately protecting the borders of the Schengen Zone.

It seems on the basis of this overview that even as there is no certainty in all of the numbers (e.g. when it comes to estimates of the displaced in locales in Turkey or Lebanon), refugee flows are clearly more weakly contained than before. This has come about as gradual change – hence the accelerating tempo of the influx. Factors playing an important role in this transformation include that in the case at hand an extraordinarily large number of refugees found itself in a protracted refugee situation nearer to the rich core areas of Europe than in any other case before (with the exception of the crisis in the Balkans in the 1990s). Poor camp conditions in the countries of first asylum, which still continue to carry the (by far) greater burden as of August 2015, are also conducive to refugees' departure. As UNHCR recently indicated, its funding request for its Syria program has been met to only 33% by donors.<sup>9</sup> If European countries are interested in avoiding the arrival of more refugees, more could be done in this respect.

Moreover, more not only could but *should* be done, on the grounds of considerations of equity as well. The present international practice in the protection of refugees puts a disproportionate share of the burden on the countries of first asylum. For example, as recently as in January 2014 Germany was offering a mere 11,000 slots for refugee re-settlement for refugees from Syria – ironically, given that they may easily end up with as much as several dozen times that many Syrian refugees eventually. This clearly indicates the naiveté of sticking to the present

approach whereby little in re-settlement options and similarly little in funding for the countries of first asylum is formally offered by the international community. The result may be that countries that do not consider themselves overly interested in refugees may in the end find that refugees will be all the more interested in them. That those attracting most of the influx can then attempt to burden countries on the periphery of the European Union with the task of slowing down and temporarily housing refugee flows and with the prospect of quota-based repatriation schemes, citing the Dublin arrangement as a source of responsibility for these states, is no substitute for a global solution to a challenge in which even Gulf, Asian and North American countries might be expected to share.

Not all asylum seekers originate from Syria or other countries in conflict, it is important to add. Of the 340,000 who arrived in Germany so far this year only 44,000 were Syrian nationals.<sup>10</sup> A significant number of people came from countries far more complicated to assess with a view to entitlement to asylum, such as Pakistan, China, Nigeria, Iran,<sup>4</sup> or from places where clearly economic factors dominated migrants' calculations, such as Kosovo. The refugee pipeline's infrastructure is available due to other movements of people and this ought to have policy implications as well.

#### CONCERNING IMPLICATIONS OF THE PRESENT SITUATION

Even the numbers at the present point only towards a future of slow demographic transformation where, more distantly than gut assessments have it, Europe's societies become merely more heterogeneous rather than dominated by a single immigrant ethnic group. In the United States, where popular discourse similarly reckons with the prospects of a fundamental demographic shift, and some expect the U.S. to become the largest "Latin-American" country one day, the Pew Research Center projects that Hispanics would constitute only 29% of the population by 2050;<sup>11</sup> it is also worth adding that the so-called "Hispanic" population is no less heterogeneous than Europe's immigrants are.

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<sup>4</sup> Armed conflict causes displacement in both Nigeria and Pakistan. It is nevertheless questionable if the entirety of these countries' territory can be legitimately regarded as unsafe or if groups of the displaced.

Greatly differing fertility rates may seemingly logically point to a distant future in Europe where “indigenous” populations may lose their majority hold but it is worth keeping in mind that the official immigrant population in most of the European Union does not currently exceed 1% of society.<sup>12</sup> Besides immigrants there may be others of foreign origin (including illegally) in a country, of course, and the children of previous generations of immigrants may also count in the case of poorly integrated segments of immigrant communities.<sup>5</sup> Still, the numbers are lower than assumed. It is the currently (spectacularly) accelerating influx and the wild assumption of an endless human reserve waiting to migrate in its wake that makes people think and expect otherwise. In the meantime, Eurostat still warns, for its part, that “migration alone will almost certainly not reverse the ongoing trend of population ageing experienced in many parts of the EU.”<sup>13</sup>

This does not mean that on the micro level of urban and rural communities or on the macro level of national domestic politics immigration cannot lead to problems. The rise of far-right political forces is one way in which indigenous populations are seeking to escape the feared consequences of continued immigration. Meanwhile, an economy offering less attractive prospects than a decade ago, pressure on state welfare services and benefits, and the ethnic balance in specific locales may aggravate intergroup tensions on the level of individual communities where a demographic shift may be much more real and visible than overall in Europe. Violent protests and even rioting may occur with increasing frequency, with the involvement of anti-immigration groups as well as settled and recently arrived immigrant communities. This is a concern for transit countries, too, where especially the coming winter times may very soon prove to be a major challenge in handling trans-migration.

## IN CONCLUSION

Given that, as pointed out before, a significant part of the current flow of migrants is not strictly speaking part of the refugee pipeline as such, any solutions sought have to lie partly outside

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<sup>5</sup> The Organisation for Economic Cooperation and Development (OECD) thus presents higher figures for “foreign populations” from its part. See at <https://data.oecd.org/migration/foreign-population.htm> (accessed: 18 September 2015).

conceivable improvements to the refugee regime hinted at above. There can be no silver bullet as the variables that may affect the flow of migrants from their source countries are diverse and very different from one country to the other. They are not very easy to strategically manipulate, either. Development aid, for example, cannot realistically be expected to achieve direct results in this respect. Also, people who are determined to make the perilous journey to Europe under the presently known conditions cannot easily be hindered in this.<sup>6</sup>

It may be some consolation to those concerned about the impact of immigration that it is a complex system – one where changing conditions form an important input to which the system reacts as an organism. If economic prospects truly become worse at the destination, the flow of migrants eventually adjusts.

This, in fact, is the uncertain bottomline of the Great Immigration Crisis. Do refugees and migrants constitute, as unambiguously as is often voiced in public discourse, a “burden,” and their arrival a “crisis,” if Europe’s economy and ageing societies continue to need them? Or does the challenge lie rather in managing the influx so that some of the actually negative consequences can be partly or wholly avoided?

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<sup>4</sup> „UNHCR Global Trends: Forced Displacement in 2014,” *UNHCR*, accessed: 29 August 2015, at <http://www.unhcr.org/556725e69.html>.

<sup>5</sup> „Migrants crisis: Merkel vows 'no tolerance' of migrant hatred,” *BBC*, 26 August 2015, at <http://www.bbc.com/news/world-europe-34061532>.

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<sup>6</sup> Security fences may have some effect in diverting migrants towards softer borders as long as such exist. They are not impossible to penetrate, however, and their actually useful effect may lie more in channeling migrants towards controlled entry points – a positive result in terms of the Schengen Zone’s (or any country’s) border and homeland security, to the extent that it works.

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# *ESSAY*

## CAPACITIES AND CHALLENGES OF CZECH ASYLUM AND DETENTION FACILITIES

Zuzana PAVELKOVÁ

### INTRODUCTION

Asylum procedures in the Czech Republic are governed by the Asylum Act<sup>1</sup> and by the Act on the Residence of Aliens in the Territory of the Czech Republic (Aliens Act)<sup>2</sup>. The Czech Asylum Act defines three types of so called asylum facilities, namely reception, residence and integration asylum facilities.<sup>3</sup> Asylum facilities are established by the Ministry of the Interior of the Czech Republic (MI), who is also the main decision making body in asylum and migration matters. Since 1996, the asylum facilities are run by the Refugee Facilities Administration (RFA)<sup>4</sup> an agency of the MI.<sup>5</sup> In addition to the asylum facilities, the RFA administrates since 2006 also so-called ‘Alien Securing Facilities’<sup>6</sup> which serve the purpose of administrative detention.

#### *Reception Facilities*

Reception facilities serve the purpose of asylum seekers’ identification, first health screening, and initial basic interviews with the relevant authorities, mainly representatives of the MI’s Department for Asylum and Migration Policy (DAMP)<sup>7</sup> and the Foreign Police.<sup>8</sup> In the course of these proceedings, the asylum seekers are not allowed to leave the facility.<sup>9</sup> Reception facilities are consequently rightly to be understood as a type of detention at

the very entrance in the country.<sup>10</sup> The stay in a reception facility takes around 30 days on average,<sup>11</sup> but can be prolonged up to 120 days in total, particularly in cases where the applicant's identity could not be sufficiently established.<sup>12</sup> The RFA offers basic information and orientation services. At present, there are two reception facilities in the Czech Republic. One is situated at the Václav Havel Airport in the capital Prague, with the total capacity of 45 beds.<sup>13</sup> The second one is close to Brno, the second largest city of the Czech Republic, with 202 beds in total.<sup>14</sup>

### *Residence Facilities*

Once the procedures in reception facilities finish, the asylum seekers are transferred to a residence facility. Asylum seekers are allowed to stay in residence facilities until the decision on their asylum applications enters into force. They have the right to daily meals and pocket money and are offered access to social services, including psychological, social or legal consultancy, as well as leisure time activities, provided either by RFA or NGO workers. Asylum seekers are allowed to search employment 12 month after launching the application and are asked to participate in the costs of living in cases when they dispose with a monthly income above the Czech subsistence minimum (3 410 CZK at present<sup>15</sup>). Under certain conditions, the asylum seekers are allowed to leave residence facilities for private housing, about 50 % of them usually do so.<sup>16</sup>

At present, there are two residence facilities in the Czech Republic. One is located in Kostelec nad Orlicí, established in 2001 it has 275 beds at its disposal.<sup>17</sup> The second one is a combined residence and integration asylum facility. Established in 1996 in Havířov, the facility disposes with 43 beds in the residential section and 108 beds in the integration asylum part<sup>18</sup>.

### *Integration Asylum Facilities*

In 2009, several integration asylum facilities (IAF) were established throughout the Czech Republic. They are designed for temporary stays of persons who were granted international protection, offering further support in the transition towards an autonomous life in Czech society. Persons who were granted international protection in the form of asylum<sup>19</sup> are entitled to

accommodation in IAF for the duration of 18 months, which can be in case of well-grounded need prolonged up to 24 months in total. Persons granted subsidiary protection<sup>20</sup> are entitled to accommodation in an IAF only when considered in special need and for the maximum duration of 3 months only.<sup>21</sup>

There are three integration asylum facilities in the Czech Republic: in Brno (established in 2009 with 20 beds in total)<sup>22</sup>, Jaroměř (established in 1994 with 36 beds in total)<sup>23</sup>, and Předlice (established in 1994 with 44 beds in total)<sup>24</sup>. In addition to that, the combined residence and integration asylum facility in Havířov offers 108 beds in the integration asylum part.<sup>25</sup> Usually, the RFA together with NGOs offer language classes, legal consultancy or socio-cultural services.

### *Detention Facilities*

At present, there is only one so-called 'Alien Securing Facility' serving the purpose of administrative detention in the Czech Republic. Established in 2006 with total capacity between 270 and 330 beds, the facility is located close to Bělá pod Bezdězem-Jezová.<sup>26</sup> Generally, foreigners and asylum seekers can be put into detention in cases where their identity cannot be sufficiently established, for reasons of security or for implementing their voluntary or forced return to a country of origin or transit. They can be kept in these facilities for up to 180 days.<sup>27</sup> In 2012, the average duration of stay in a detention facility was 75,5 days, in 2013 it was 55,5 days.<sup>28</sup>

## QUANTITATIVE ANALYSIS

### *Current and Future Needs Assessment*

As illustrated above, the Czech Republic has at present 4 reception and residence facilities, 3 asylum integration facilities, and 1 detention facility at its disposal, with the total capacity of up to 565, 208, and 330 places respectively. The currently rather limited capacities are due to a long-term continuous decrease in the amount of asylum applications ever since joining the European Union in 2004. With only around 500 new applications received annually between 2009 and 2013,<sup>29</sup> the reception capacities were reduced accordingly throughout the years. Thus if compared to the highest capacity levels in Czech history, the Czech Republic

possesses at present about 25 % of reception and residence places it used to have at its disposal in 2003 and only about 42 % of detention places it had at its disposal in 2007.<sup>30</sup>

Current developments might pose a challenge to the Czech asylum system in two regards. First, in accordance with the results of the European Council meeting from 23 June 2015, the Czech government agreed on July 13 to resettle and relocate 1.500 persons to Czech Republic between 2015 and 2017.<sup>31</sup> With family members enjoying the right to reunification, the MI estimates to be accepting 3.500 persons in total.<sup>32</sup> As these measures allow to be planned well-ahead in a coordinated manner, their implementation should, however, pose fewer difficulties to the asylum systems. Likely far more challenging might prove the fact that also the Czech Republic has seen the numbers of spontaneous arrivals and transits rising recently, for the first time in ten years. With 1.156 new applications in 2014, the amount of asylum applications increased last year by 68 % as compared to 2013<sup>33</sup> and continues to grow further this year, exceeding the levels of the first six months of 2014 by 70 % so far. In addition to that, the authorities registered an increase in irregular entries to Czech territory. In the first six months of 2015, 3.003 migrants entered Czech Republic irregularly for the purpose of either asylum application or transit, equaling to a 48 % increase as compared to the same period in 2014.<sup>34</sup> As for 2016, the MI expects to receive up to 4.200 asylum applications and to intercept up to 7.200 migrants entering Czech territory irregularly.<sup>35</sup>

In the short-term, the MI estimates the reception facilities designed for initial short-term stays to be sufficient if moderate investments are made in increasing human capacities.<sup>36</sup> Regarding other types of asylum facilities, it suggests to increase by the end of 2016 the residence facilities by 900 additional placed and the asylum integration facilities by 250 integration apartments in total.<sup>37</sup> In addition, to that 550 additional detention places shall be created by the end of 2016, at latest. Some of them are, however, to be made ready for use within several weeks already, as the current ones risk to be fulfilled within a few days.<sup>38</sup>

In the long-term, further capacity-building might prove necessary. With a presumable continuation of the conflicts in Ukraine and Syria, as well as further increase in significance of the Western Balkans route to Europe, the numbers of arrivals and transits are likely to grow further in the upcoming years.

Consequently, additional and well-thought capacity investments in terms of material as well as human capacities are likely to prove necessary.

### *Opportunities for Capacity Increase*

The MI has several options for strengthening the capacities of Czech asylum system. First and foremost, the MI can seek to enhance the number of places in already existing facilities, a measure easily to be implemented in case of short-term, urgent need. At present, container housing units are to be added to the detention facility in Bělá-Jezová, creating up to 120 new places.<sup>39</sup> This measure might, however, prove problematic in the long-term, as it risks worsening the basic living conditions in these facilities, including the risk of deterioration of hygienic, heating, cooking or other minimum standards.

Second, the MI can re-open several formerly closed facilities, provided they are well-preserved and not being used for other means at present or have not been privatized in the past. In its resolution from 13 July 2015, the government agreed to re-open for the purposes of detention a former facility in Vyšní Lhoty and to prepare for the case of further need a former facility in Bálková, making 430 additional places in total.<sup>40</sup> Similarly, the MI can make use of unutilized facilities already offered by the Ministry of Health and the Ministry of Education, Youth and Sports. Due to their current poor condition, making use of these facilities might, however, require considerable further investment.<sup>41</sup>

Third, the MI can hire additional beds in less utilized private accommodations, a measure particularly useful when resettling or relocating larger groups at once. Several experiences exist in this regard, as the MI made use of this practice when resettling refugees fleeing conflicts following the breakdown of former Yugoslavia the 1990's.

Fourth, the MI can make use of offers by individuals and institutions to accommodate refugees free of charge in their private facilities. For example, Nadační fond Generace 21, a Christian humanitarian foundation, is at present trying to secure funding for bringing to Czech Republic and accommodating in private up to 152 Christian and Yazidi refugees from Syria and Iraq.<sup>42</sup> Similarly, the Czech Bishop's Conference, as well as the Ecumenical Council of Churches in the Czech Republic called upon the government in the

beginning of July to accept more refugees and offered help in seeking accommodation in facilities administered by the church.<sup>43</sup> And also individuals or families turn regularly to NGOs with an offer to accommodate refugees and asylum seekers in their private housing.

The greatest challenge might, however, pose the fact that the implementation of all the measures named is, at times opposed by the respective city councils, as well as local inhabitants. With local majors contesting above all the poor communication with the MI,<sup>44</sup> the implementation of the above mentioned might prove difficult without further attempts to better inform local governments and populations as to the potential benefits of opening asylum facilities in their immediate surroundings, mainly in terms of employment, as well as to the already agreed on extensive security measures to be taken by the MI.

Last but not least, in addition to creating new capacities, the MI should strive to limit or change practices leading to an unnecessarily high utilization of asylum and detention facilities. These include systemic or factual obstacles asylum seekers and persons under international protection face when trying to move to private accommodation, as for example a factual discrimination in the real estate market. The tendency to a rather extensive use of administrative detention by the government authorities, which is with regard to the newly adopted resolution and its focus on building detention rather than asylum facilities likely to be pursued further, might prove unsustainable in the long-term. Resorting increasingly to the alternatives to administrative detention provided by the Aliens Act, namely paying a bail or reporting on a regular basis to the police, would not only be a more humanitarian response but also considerably decrease the pressure on the detention facilities. A change of practice should be thus seriously taken into consideration as a means of strengthening the asylum system.

## QUALITATIVE ANALYSES

When evaluating qualitative conditions of asylum and detention facilities, a range of factors can be taken into account. In the following, two of them will be assessed which might prove of significant importance in the future, due to the nature of applicants on one hand, as well as due to the increased resort to their

detention on the part of governmental authorities, on the other hand.

### *Treatment of Particularly Vulnerable Groups*

Persons fleeing war, children, persons with disabilities or severely ill in general, as well as victims of sexual violence are usually considered as particularly vulnerable groups of refugees. With most of the asylum applications being submitted by Ukrainians and Syrians,<sup>45</sup> the RFA and NGO workers are likely to encounter persons falling in the first, or several of these categories, more frequently than in the preceding years. In addition to that, vulnerable refugees and asylum seekers are by their nature also more likely to be selected for resettlement or relocation to Czech Republic.<sup>46</sup> Particularly vulnerable groups are usually distinctive in one or all of the following aspects: first, they are likely to need access to specialized health care services, including long-term psychological treatment, and second, their condition might considerably deteriorate in detention<sup>47</sup>.

Crucial challenge may arise from the need to identify members of particularly vulnerable groups at an early stage of the procedure and to treat them accordingly as particularly members of the Foreign Police, who the applicants usually encounter first after their arrival, might still be lacking the necessary knowledge and training. A widespread use of detention poses an increased risk in this regard in that it increases the likelihood of persons suffering war-related, post-traumatic disorders ending up in facilities which are in no way appropriate to their mental condition. The same is true for detaining unaccompanied minors between 15 and 18, as well as children with their families, who may at the same time very likely fall into the first category of war traumatized, as well.<sup>48</sup> In addition to that, remaining systemic obstacles in access to specialized services can pose a major difficulty to treating vulnerable groups accordingly. With the location of the facilities outside of major cities, access to highly specialized medical is reduced to severe cases alone, whereas continuous psychosocial care can be usually provided only with the help of non-governmental organizations.<sup>49</sup>

*Access to Legal Aid*

Most recently, challenges arouse as to guaranteeing the free of charge access to legal aid to detainees, as provided by the Asylum Act. In practice, legal aid is usually delivered by NGOs, supported financially by the MI, who obtains on its part funding for these activities through various funds of the EU. However, most recently, the MI announced that with the current project financed through the European Return Fund ending on 30 June 2015, it will not be able to provide further financial support for these activities from the 1<sup>st</sup> of July 2015 on until a new project is approved, meaning preliminary until the end of September, yet possibly also until end of the year. In the meantime, it is only the Charity who will be able to send some of its legal advisors regularly to the detention facility. This development is of particular significance with regard to the noted tendency of governmental authorities to resort more increasingly to administrative detention. It is at time of extensive use of administrative detention that access to legal aid becomes increasingly important. The inability to finance these activities poses thus a risk of severe infringement in the rights of asylum seekers in the future.

## CONCLUSION

The current, dynamic situation is likely to place higher demands on the Czech asylum system. The challenges are twofold: in terms of numbers of places, but also in terms of quality of services provided. It is the task of the MI to ensure it has enough places available not only in detention, but also in the asylum facilities, and that they are of sufficient quality. The MI can hereby rely on a large variety of different measures, which might best function as complements to one another. It is also indispensable that the MI responds sensitively to uncertainties expressed by majors, local inhabitants as well as broader public and communicates with them well-advanced the planned changes concerning their immediate surroundings. At the same time, the MI should encourage and facilitate activities of individuals, NGOs or religious organizations aiming at offering accommodation in private or church-owned facilities. Furthermore, the MI should reconsider its policy of extensive use of administrative detention, where alternatives are available a might prove a more humanitarian and sustainable

solution. This is especially true for cases involving particularly vulnerable groups, such as children or persons suffering war-related disorders. The MI should abstain from detaining these persons at all and should ensure their access to medical and psychosocial treatment in the short-term by increasing the human resources of RFA or supporting financially NGOs providing similar services, and in the long-term by opening new asylum facilities close to cities with important health and psychosocial service. Should the practice of administrative detention become the rule, ensuring financial support for NGOs providing legal assistance will be crucial to ensure the lawfulness of the processes.

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## *ESSAY*

### ALL QUIET ON THE EASTERN FRONT: ASYLUM TRENDS AND RECEPTION OF REFUGEES IN POLAND DURING THE 2013- 2015 EUROPE'S MIGRATION CRISIS

Małgorzata JAŻWIŃSKA and Marta SZCZEPANIK<sup>7</sup>

#### ABSTRACT

*This article analyses the impact of the recent migration crisis on forced migration to Poland, with a particular focus on the situation of Ukrainian asylum seekers. Contrary to predictions, very few Ukrainian nationals have applied for international protection in Poland since the beginning of the conflict in 2014. According to the analyses conducted by the Polish asylum authority, the majority of applicants come from conflict zones in Eastern Ukraine and Crimea. In spite of this fact, the recognition rate of their applications is very low which may in turn have an adverse effect on the number of people willing to seek asylum in Poland. The authors argue that this situation is a result of application of the concept of 'internal flight alternative' to Ukrainian cases without a genuine assessment of individual situation of each asylum seeker. Contrarily to the information*

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<sup>7</sup> Both authors work at the Legal Assistance to Refugees and Migrants Program of the Helsinki Foundation for Human Rights in Warsaw.

*contained in recent international reports, Polish authorities take as a general rule that civilians fleeing Eastern Ukraine can, as internally displaced persons, relocate safely in other parts of the country. Other persisting human rights concerns and deficiencies of Polish reception system, in particular the amount of social aid offered to asylum seekers and lack of the system of identification of vulnerable groups, may further deter Ukrainians from seeking asylum in Poland.*

*Keywords: Poland, immigration, Ukrainian asylum-seekers*

## INTRODUCTION

Turbulent geopolitical and social changes of the last few years in the countries of Europe's immediate neighbourhood resulted in an unprecedented raise in the number of people seeking asylum in Member States. The EU external border countries, particularly Greece and Italy have been under an extreme migratory pressure having to face more arrivals than their reception systems have the capacity to deal with. Yet the crisis in the Mediterranean has had a relatively small, if any, effect on Poland's migratory situation in terms of the number of arrivals. In 2014, after the outbreak of the military conflict in eastern Ukraine, a migratory crisis similar to the Greek and Italian ones was expected in Poland due to several factors: the country's location at the EU external border, geographical proximity of Ukraine and its tradition of being a destination country for thousands of Ukrainian migrant students and workers. However, the expected exodus of Ukrainian asylum seekers escaping violence in eastern parts has remained minimal.

## IMPACT OF THE UKRAINIAN CRISIS ON MIGRATION TO POLAND AND ASYLUM SEEKERS' PROFILES

Before 2014, Ukrainians rarely applied for international protection in Poland. In 2013 for example, there were only 46 Ukrainian citizens among the asylum seekers. The number of

asylum applications lodged by Ukrainian citizens increased in 2014 and in the first half of 2015, but did not exceed 5 000 in total: 2 318 asylum applications were lodged by Ukrainians in 2014 and 1311 between January and June 2015<sup>1</sup>. These numbers constituted 28% and 32% of all asylum applications lodged in Poland in the given period respectively.<sup>2</sup> Ukrainians are, as of now, the second most common nationality among the asylum seekers, after the citizens of the Russian Federation (mostly residents of northern Caucasian republic of Chechnya, Ingushetia and Dagestan) who have historically been the largest groups of forced migrants in Poland. Importantly, the total number of asylum seekers in Poland is not high either, in comparison to other EU bordering countries such as Italy (64 625 applicants in 2014) or countries of the region like Hungary (42 775)<sup>3</sup>, and does not make the reception system overburdened. The influx of asylum seekers is lower than predicted at the outbreak of Ukrainian conflict.

Since the beginning of the conflict, the Polish Office for Foreigners which is the first instance asylum institution, has been conducting an evaluation of the scale and character of forced migration from Ukraine. The most recent data report is based on data collected from a 300 people's sample.<sup>4</sup> According to this evaluation, the majority of asylum seekers from Ukraine are ethnic Ukrainians (82 %), however there are also persons of Russian, Tatar and Armenian ethnicity among the applicants. The vast majority come from the three conflict-affected areas, i.e. Donetsk and Luhansk regions (around 60%) and the Crimea (13%).<sup>5</sup> On the basis of the information contained in the asylum applications as well as obtained during asylum interviews, the Office established several profiles of Ukrainian asylum seekers in Poland.

Asylum seekers belonging to the 'Crimean profile' (13%) and the 'Eastern-Ukrainian profile' (59%) come from conflict zones. The 'Crimean profile' is comprised of both ethnic Ukrainians and Tatars who refused to accept the Russian rule over Crimea and fear persecutions of the newly formed authorities because of their ethnic and religious belonging (in the case of Muslim Tatars). Many applicants had refused to accept Russian citizenship, therefore they could no longer stay in Crimea. Asylum seekers belonging to the 'Eastern-Ukrainian' group report a generally unsafe situation in the region caused by constant military actions, inability to find employment or receive proper medical treatment in areas affected by the conflict. The third group – the so-called 'political

profile’/’Maidan profile’ refers to individuals who declared having participated in the Euromaidan protests in Kiev or other Ukrainian cities, openly supported participants of those protest or assisted the Ukrainian army in the East by providing food or medicines to the soldiers. Those individuals, making up around 15% of the sample, feared consequences of their actions and of publicly expressed criticism of the political situation in the country. They reported persecutions and threats of imprisonment or death. Importantly, the ‘political profile’ overlaps with the above-described categories, meaning that some persons from Crimea and Eastern Ukraine also feared persecutions related to their previous support for the protests. All three profiles are heterogeneous with regard to sex, age, education, profession or marital status.

Apart from those three major categories, there are also applicants who fear military conscriptions due to religious or personal beliefs or report persecutions on ethnic or religious grounds (individuals who are non-Russian and non-orthodox). Other motives include: lack of effective support from the part of Ukrainian authorities, inability to relocate within Ukraine due to limited financial resources, lack of employment and general resentment of local communities in eastern Ukraine towards internally displaced persons (later referred to as: IDPs) from the East.

#### RECOGNITION OF ASYLUM SEEKERS FROM UKRAINE AND *AD HOC* HUMANITARIAN MEASURES

The recognition rate of asylum applications lodged by Ukrainian citizens is extremely low. According to the recent data, only 2 persons were granted the refugee status since January 2015, both following an appeal procedure, and 15 received subsidiary protection.<sup>6</sup>

The low recognition rate of asylum applications of Ukrainian nationals comes as a surprise. The political discourse of the early 2014 in Poland was focused on moral support of the Polish government and society to the so-called Euromaidan revolution and the role of the Polish-Ukrainian alliance in relation to the Russian violent policy.<sup>7</sup> At the same time Poland was preparing to provide assistance to potential thousands of wounded civilians and

refugees.<sup>8</sup> Yet the present reality is very different, as no particular form of assistance is provided to Ukrainian asylum seekers arriving in Poland. Nevertheless, the Polish authorities argue that Poland keeps receiving and helping Ukrainian migrants.<sup>9</sup> Regular migration from Ukraine indeed increased significantly (for example, in 2014 the number of Ukrainian nationals in procedures for legalisation of stay in Poland has almost doubled as compared to 2013 with regard to both applications and positive decisions<sup>10</sup>) but the number of asylum seekers remains low which can be linked with a very small number of positive decisions on asylum. The Helsinki Foundation for Human Rights legal aid beneficiaries who had their asylum applications rejected expressed severe disappointment pointing to the fact that the Polish authorities discourse allowed them to believe that they could benefit from international protection in Poland.

At the same time Poland has implemented extraordinary measures to assist a selected group of Ukrainian nationals coming from conflict zones. In January 2015, Polish authorities have organised a humanitarian transfer of 178 Ukrainians of Polish origin from the Donbas region.<sup>11</sup> This action is highly problematic from the ethical and humanitarian point of view, as those individuals were evacuated and granted stay permits in Poland on the basis of documents confirming their Polish origin. Their Ukrainian ethnic neighbours, or those persons of Polish descent who did not apply to be evacuated at the given period, could not benefit from such protection. Incidentally, the problem of discriminatory treatment in relation to asylum seekers reappeared few month later, where Polish authorities agreed to assist the transfer of 60 Christian families from war torn Syria, following a lobbying action of one of non-governmental organisations.<sup>12</sup> The worrisome aspect of such actions is their underlying rhetoric that implies a distinction on the basis of nationality or religious belief instead of the urgency alone. Overly repeated by Polish highest authorities, the reason why Poland decided to help Ukrainians was their Polish nationality, or, in the case of Syrians – the Christian faith.

## WHY ARE THERE SO FEW RECOGNISED UKRAINIAN REFUGEES IN POLAND?

In order to give a comprehensive answer to this question it is necessary to look at factors which cause both the low number of applications and the low recognition rate, bearing in mind that the latter may, in turn, have an adverse effect on the number of people willing to seek asylum in Poland. Such an analysis should include a study of preferences and motives of various groups of asylum seekers that lead to a certain choice of a migratory destination (mostly, the EU countries and the Russian Federation<sup>13</sup>), political situation in the destination countries that may influence the asylum-granting process and the reception conditions in all receiving countries (including Russia) in a comparative perspective.

In this paper, however, we focus predominantly on the reception conditions in Poland, pointing to the fact that, in our view, the relatively low number of Ukrainians seeking asylum and recognised refugees in Poland may be connected to the deficiencies of the Polish asylum and reception system and persisting human rights challenges in this area. We look at several aspects which are especially troublesome, including the: practical implementation of the ‘internal flight alternative’ concept, the reception conditions, in particular the low amount of social aid provided to asylum seekers and the malfunctioning of the system of early identification of vulnerable persons. They will be later analysed in detail.

## ‘INTERNAL FLIGHT ALTERNATIVE’ IN UKRAINIAN CASES

The low recognition rate of asylum applications lodged by Ukrainian nationals in Poland could simply mean that the asylum-seekers from Ukraine do not meet the qualification criteria and therefore cannot be granted asylum. Yet if we look at recognition rates of Ukrainian asylum-seekers across EU countries we can see a great divergence. Recognition rates vary from 0 to 68 %. Since EU is trying to establish a Common European Asylum System with common standards as to the procedure<sup>14</sup>, qualification<sup>15</sup> and reception of asylum-seekers<sup>16</sup>, it is legitimate to ask about the root of those differences.

One of the reasons why recognition rates vary so greatly is a different approach towards the concept of 'internal flight alternative' among the EU countries.<sup>17</sup> The concept of 'internal flight alternative' reflects a rule according to which in order to be granted a refugee status in EU an asylum seeker must prove that the country of origin cannot provide them with protection in any other part of the country.<sup>18</sup> This rule was introduced as a reflection of the principle of subsidiarity of international protection.<sup>19</sup> International protection should be granted only when a country is not willing or able to protect its own citizens or permanent residents.

How is this concept relevant while thinking about asylum seekers from Ukraine? The majority of asylum applications from Ukraine relate directly to the conflict in eastern parts of the country.<sup>20</sup> Those are mainly people fleeing from rebel held territories.<sup>21</sup> Yet the conflict is contained to Eastern Ukraine, no fights are taking place in western parts of the country and the Ukrainian government introduced a policy to assist and protect IDPs coming from war zones. Therefore, if an asylum seeker from Eastern Ukraine flees persecution or risk of serious harm in Eastern Ukraine, Member States could still expect them to prove that they cannot live in western parts of the country that are not affected by the war. This is precisely how the concept of internal flight alternative works in practice in Ukrainian cases.

In Poland, the majority of negative refugee decisions concerning Ukrainians fleeing rebel-held Eastern Ukraine is based on the application of the concept of 'internal flight alternative'.<sup>22</sup> Polish authorities take as a general rule that those fleeing Eastern Ukraine can freely and safely move and reside in Western Ukraine. This rule sees very few, if any, exceptions. Regardless whether an asylum seeker supports the government or rebel forces, whether they are fit to work, disabled or at a retirement age, unaccompanied minors or large families, whether they have been refused registration as an IDP, have experienced harassment or discrimination in Western Ukraine or did not even try to relocate in other parts of the country, Polish migration authorities assume the existence of a general 'internal flight alternative' within Ukraine that justifies refusal to grant international protection. In other words, no genuine case-by-case assessment of the individual situation and possibility to find sustainable protection in the west of Ukraine is provided.

Polish authorities seem to ignore reports of international organisations highlighting a rapid deterioration of the situation of IDPs in Ukraine. Based on most recent reports apart from the difficulties in registration as an IDP<sup>23</sup> Ukrainians seeking protection in Western Ukraine face various kinds of discrimination, including discrimination in access to the labour market<sup>24</sup> and shortage of housing.<sup>25</sup> All in all some categories of asylum-seekers from Ukraine might not be reasonably expected to seek protection in western parts of their country and therefore the concept of “internal flight alternative” should not be applied to them. Up till now Polish decision makers seem to disagree.

There is, however, a chance for a change of attitude of the Polish authorities which may be achieved through litigation at the level of administrative court.<sup>26</sup> At the end it will be for the court to decide when the ‘internal flight alternative’ is actually possible and when it is a merely a theoretical possibility. At the time of writing we are waiting for the justification of a yet unpublished ruling of the administrative court which overruled a negative refugee decision pointing to the lack of possibility of ‘internal flight alternative’. It can be expected that this ruling may bring a durable change in the Polish practice of handling Ukrainian asylum cases.

Without the change of policy and practice of Polish authorities as to the individual assessment of the possibility of ‘internal flight alternative’ Ukrainians may be reluctant to seek asylum in Poland. The possibility that they will be granted protection is very slim.

#### DEFICIENCY OF THE RECEPTION SYSTEM: SOCIAL AID IN THE ASYLUM APPLICATION PROCEDURE

Another human rights concern which might deter Ukrainians from seeking asylum in Poland is the deficiency of Polish reception system, in particular the amount of social aid offered to asylum seekers.

In Poland, if asylum seekers decide to live on their own rather than in an open reception centre, which they are allowed to do, they will be offered a cash benefit by the state. This amount of money will have to be sufficient to cover all their needs, including accommodation, food, clothing, medicines, etc. For most asylum seekers it is the sole financial resource, as the right to work is

restricted during the procedure. In Poland, only those asylum seekers who did not receive a decision of the authority of first instance within the first six months after the request to grant asylum has been made can work legally. In reality, it rarely applies to Ukrainian nationals, as their asylum applications are processed relatively fast, and the decisions are usually issued within the first six months from the application date. It means that the majority of Ukrainian asylum seekers have no possibility to work in Poland and they will need to live either in open reception centre or live of the cash benefit received.

The amount of cash benefit offered to asylum-seekers is way below the so called 'social minimum'.<sup>27</sup> This is an indicator which evaluates the costs of living in Poland at a relatively low level below which poverty and deprivation begin.<sup>28</sup> Asylum seekers in Poland receive from one and a half to more than two times less than what is essential according to the 'social minimum indicator. The proportion varies depending on the size of the family of asylum-seekers. The larger family the greater divergence.<sup>29</sup> Such an amount of cash benefit does not allow an asylum-seeker to live a dignified life. If he or she does not have savings of his or her own or a material support from a family or friends he or she will be doomed to poverty if not homelessness.<sup>30</sup>

According to EU law Member States are obliged to ensure that material support provided to asylum seekers is sufficient to guarantee them a dignified standard of living and subsistence.<sup>31</sup> It should lead to harmonised reception conditions across all EU countries.<sup>32</sup> Yet Poland still lags behind many of its EU counterparts and cannot be said to meet its commitment as to the conditions of reception of asylum-seekers. Not only does the cash benefit for asylum-seekers remain way below the 'social minimum' but its amount has not been changed since 2003 while simultaneously the costs of living in Poland have increased by 35 to 50 % depending on the type of the household.<sup>33</sup> As there is no legal mechanism which could be used to address this problem nor a political will to do so, the gap between the amount of money necessary to ensure the dignified standard of living and the amount of money actually received by the asylum-seekers can only increase making it even harder for Polish authorities to comply with EU and human rights standards.

## DEFICIENCY OF THE RECEPTION SYSTEM: IDENTIFICATION OF VULNERABLE PERSONS

Another defect of the Polish reception system is the lack of proper mechanism of early identification of vulnerable groups, such as amongst others unaccompanied minors, torture victims, the elderly or pregnant women.<sup>34</sup> Up till today in the Polish legal system there is no definition of a “vulnerable group” nor is there any mechanism which would enable their identification and meeting their specific needs. In consequence, those people are very often left on their own. They are not being provided with appropriate medical and psychological aid nor, again contrary to the EU reception directive, do they receive the cash benefit enabling them to live a dignified life and taking into account their specific financial needs.<sup>35</sup>

Bearing in mind that many asylum-seekers from Ukraine are leaving war zones they might require a special care from the Polish authorities which would take into account their precarious psychological or physical condition. Now such a care is provided to asylum seekers in Poland at the moment. What is more, most of those asylum seekers would not even be recognised as vulnerable.

With the amendment of the Polish legislation on asylum-seekers inspired by the need to implement the new asylum directives recast<sup>36</sup> Poland is to introduce a definition of a ‘person with special needs’ and a system of their identification. Yet, although the deadline for transposition of the directives passed on the 20 July 2015, the new legislation is still not in place<sup>37</sup> and the exact shape of the future mechanism of early identification of vulnerable groups is unclear. What is more troublesome is the fact that being recognised as a person with special needs might slightly improve procedural rights, however reception conditions, including the amount of cash benefit received, will remain unchanged.<sup>38</sup>

## CONCLUSIONS

In contrast to other EU countries situated at the external frontier of EU which experience a great influx of asylum seekers, namely Italy, Greece and from recently Hungary, Poland is not currently facing any significant migratory pressure. The number of asylum seekers remains low considering Poland’s geopolitical location and the ongoing unrest in its immediate neighbourhood.

Due to the low numbers of asylum seekers up until now the issue of migration, asylum and humanitarian aid seemed to be of little interest in the Polish public debate. Although Polish government often expressed its compassion for those in need they believed it is an obligation of others to alleviate that suffering. Recently it is slowly beginning to change. With the outbreak of the military conflict at the Polish eastern border, namely in Ukraine, the possibility of a massive influx of people in need of protection became a political issue.

Polish debate over its international role and its responsibility to protect those in need has only began. That is why it is important to remember to shape it correctly, using non-discriminatory rhetoric which encourages openness towards people coming from different cultural backgrounds.

Apart from the change of the public discourse Polish authorities have still a long way to go in order to catch up with European standards of asylum and reception system. Improving the quality of asylum decisions-making process, guaranteeing that every asylum seeker has their case fairly and individually assessed, augmenting the cash benefits to a level which allows for a dignified life or identifying and meeting the needs for those especially vulnerable are just first steps that should be taken.

Without those changes Poland will remain a transfer and not a destination country for most asylum seekers, Ukrainians included. It should not be surprising that asylum seekers want to reside in a country which offers them decent conditions and best possibilities for future life. As long as differences in terms of asylum procedure and reception conditions between Western EU countries and Poland will remain so significant the level of secondary movements within EU will remain high.

Only by achieving a common EU standard by all countries can the Member States realise the idea of a real common European asylum area where secondary movement of asylum seekers remains a margin and not a rule. Without steps in the direction mentioned above asylum seekers will continue to migrate within EU countries and Member States will continue its efforts (organizational, financial and time effort) doomed to failure to limit those movements and transfer asylum seekers back to the EU country of first entry, responsible to handle their asylum case according to EU legislation.<sup>39</sup>

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# *ESSAY*

## GENERAL TRENDS OF ASYLUM APPLICATIONS IN THE CZECH REPUBLIC

Helena KOPECKÁ

### ABSTRACT

*The aim of this paper is to analyse and evaluate the current asylum trends in the Czech Republic. The focus is mostly on the grounds why the asylum-seekers have been applying for international protection, from which countries of origin they flee, when there were major asylum waves and what influenced them at the national and EU levels. The Czech case will be presented in a historical and partly comparative V4 perspective. The historical overview will focus on the building of the asylum system of the 1990s and the subsequent period of "Europeanization." Because this complex understanding might lead to the conclusions that there are more similarities with the historical asylum trends than it is obvious at first sight. There might be also interesting conclusions that asylum trends might differentiate from other V4 countries, not to say the whole Europe with regard to the current wave of asylum-applications in each of the EU Member States.*

*Keywords: asylum-seekers, V4 countries, Dublin Regulation, abuses of human rights, war conflict, economic migrants*

## GENERAL ASYLUM TRENDS IN THE NEWLY EXISTING CZECH REPUBLIC (1990S)<sup>1</sup>

As part of the political transition after 1989, it was necessary to create a completely new asylum legislation. During the nineties, all the countries of Visegrád region ratified the Convention Relating to the Statutes of Refugees (Geneva Refugee Convention 1951),<sup>2</sup> which is the key legal document in defining who can obtain the statute of refugee and what are refugee rights. All the Visegrád countries also started to harmonize its legislation with the *acquis communautaire* – the law of the European Union. The Czech Republic was not the exception. Since 1995, the Czech Republic started to harmonize its legislation, including asylum law, with the *acquis communautaire law*, and in 1999, the first Asylum Act (the Czech Asylum Act, 325/1999 Coll.), was issued. The second half of the nineties was in the sign the first large wave of asylum-seekers. The Employment Act was issued, therefore the asylum-seekers could work legally in the Czech territory and the possibility to work legally started to be in certain cases the ground for their applications for international protection. Therefore, during the second half of the nineties and during the end of this period, the Czech Republic for the first time faced the larger wave of asylum-seekers, and the need to mitigate asylum requests arose.<sup>3</sup>

Nevertheless, it would be indeed wrong and misleading to state that “economic migrants” asking for international protection were the only group of applicants who tried to obtain the protection in the Czech Republic. Concerning general asylum trends in this period, there were definitely asylum-seekers from the war conflict countries or from the countries with gross violations of human rights coming. The official statistics of the Czech Ministry of Interior in 1998 registered the largest number of Afghani nationals who applied for international protection in the Czech history. In the second place, there were nationals from the former Yugoslavia, and in other places nationals from Sri Lanka and Iraq.<sup>4</sup> In former Yugoslavia, there were ongoing war conflicts (including war in

Kosovo during 1998 and 1999), which, *inter alia*, influenced the increase of applications for international protection in the Czech Republic. In comparison to general asylum trends of other countries of the Visegrád region of this period of time, Hungary's asylum-seeker's numbers were the highest. Why such an increase of the numbers in Hungary? It is possible to conclude that the numbers were certain reflection of the Yugoslavian war and regime in Romania, and due to Hungary's geographical location, Hungary has already in this period of time started to be a certain gateway for asylum-seekers from other parts of the world to get to Europe.<sup>5</sup> Well, does this situation look familiar with nowadays? It certainly does.

#### IMPORTANT PERIOD OF “EUROPEANIZATION” (2000-2005)

The period between the years 2000 – 2005 might be considered as the period when the harmonization with the EU and acceptance of the Dublin Regulation (Regulation of EU 2003/343/ES) significantly influenced future asylum trends in the Czech Republic. Although, there were issued Amendments of the Czech Asylum Act and the Employment Act before the year 2000, the number of asylum applications in the Czech Republic was still growing.<sup>6</sup> A significant change is connected with the acceptance of the Dublin Regulation. As the highest number of asylum application in the history of Czech state was in the year 2001,<sup>7</sup> the situation already dramatically changed in the year 2004<sup>8</sup> (just one year after the existence of the Dublin Regulation). In the year 2001, 18.091 asylum-seekers applied in the Czech Republic for international protection, which is a crucial difference compared to the year 2004, when there were only 5.459 registered applications.<sup>9</sup> This significant change tends to consider the reasons of the applications before the year 2003. Between the years 2000-2003, among the most common countries of origin of asylum-seekers belonged Russian Federation, Afghanistan, Ukraine, Slovakia, Moldavia, Armenia, Sri Lanka, Vietnam, India, Georgia, Romania, China, Belarus, and Iraq. There were even 13 applications from the USA. Obviously, there was a number of applicants who might be considered as economic migrants, it is necessary to put this period of time to the context of ongoing situation in the world and abuses of human rights in many

countries. In Vietnam, India, Georgia, Belarus, Ukraine, Russian Federation, Sri Lanka and China, the world human rights reports from this period state that there were serious violations of human rights, police use of torture, and restrictions of freedoms, such as freedom of press, assembly and many others. Some of the applicants were political prisoners in these countries.<sup>10</sup> In 2003, the wars in Afghanistan and Iraq were happening. The Chechnya war was continuing as well.<sup>11</sup> Therefore, it would be indeed wrong to consider large numbers of applications before the year 2004 (before the existence of Dublin Regulation) only due to economic migrants. Even though, it might seem at first sight, there were mostly economic migrants before the year 2004, it is necessary to view asylum trends in the whole context, especially with regard to the situations in the countries of origin. One might think that Dublin Regulation was an amazing invented tool which helped to restrict undesirable numbers of asylum applications. Well, if we observe current situation in Europe where certain countries, including Hungary from the V4 region,<sup>12</sup> have been facing still growing numbers of asylum applications, the system ( as it was proposed and invented) does not in fact reflect equal distribution of asylum applications and sharing responsibility between EU states.

#### GENERAL ASYLUM TRENDS IN THE CZECH REPUBLIC SINCE 2006 UNTIL NOWADAYS

Although the previous period was named the period of “Europeanization,” it does not mean that there were not the significant influences and changes from the EU since that time. Lisbon Treaty (2009), for instance, enabled the EU organs new competences on asylum (in the sense more than minimum standards of asylum systems), strengthened the role of the EU institutions and other bodies, and the Charter of Fundamental Rights has become binding. Czech Republic is bounded by this Treaty, therefore by the obligations arising from it, too.<sup>13</sup>

Concerning general asylum trends since 2006, an interesting trend in the Czech asylum applications has begun, meaning that most asylum-seekers have been coming from Ukraine. There might be more grounds for this fact. The crucial fact is, that Ukrainian minority is very well settled in the Czech Republic, a lot of asylum-seekers from the Ukraine have family ties to the Czech territory, and there have been certain similarities between those two nations

and languages. Therefore, when the Ukrainian nationals should decide to which country they should go to seek protection, the Czech Republic seems to be an obvious choice. This asylum trend, that the most applicants are from the Ukraine, lasts until nowadays.<sup>14</sup> The same trend concerns Russian nationals seeking protection in the Czech Republic. However, there is another country where they seek protection, and that is Poland.<sup>15</sup>

Another trend, which occurred in the period between the years 2006-2010, is, that since these times, there are two similarities between countries of V4 region. The first one is already stated above (Russians and Ukrainians seeking protection in the Czech Republic and in Poland). The second one is, that already in this period, there was in Slovakia always a certain number of asylum-seekers coming from Afghanistan and Somalia. This was similar to content of nationalities of asylum-seekers in Hungary (especially talking about Afghani nationals), but not with the Czech Republic and Poland.<sup>16</sup> This asylum trend lasts until nowadays, too.<sup>17</sup>

The new trend in the Czech Republic established in this period a few years later, since 2011/2012 until nowadays, was the trend of asylum-seekers fleeing Syria. The Syrian asylum-seekers have started to apply for international protection since 2008. Due to Arab Spring movements in 2011, armed groups supported by government did not hesitate to use violence and torture, therefore a huge number of protesters was killed or suffered from serious injuries. The conflict escalated into civil war in 2012 and human rights abuses get worse.<sup>18</sup>

The new asylum wave of applicants from Syria influenced asylum trends in the Czech Republic (and in the whole V4 region) in 2014 and 2015, too. Due to Syrian asylum-seekers (and Ukrainians as well - see below) **it was for the first time in 2014 since the existence of Dublin Regulation when the numbers of asylum applications in the Czech Republic have increased.**<sup>19</sup>

In general all Syrian asylum-seekers obtain international protection **in the form of subsidiary protection** under Article 14a (2c) of the Czech Asylum Act (that means, because of the real threat of serious harm, more precisely according to the Czech Asylum law due to *“serious and individual threat to a life or inviolability of civilian by reason of indiscriminate violence in situations of international or internal armed conflict.”*). This is a specific for the Czech Republic. However, asylum trends concerning Syrian nationals in the rest of the Europe are diverse. For instance, in

another V4 country, in Poland, Syrians were in 2014 mostly granted refugee status (this is a similar trend as in Germany, Denmark, the United Kingdom, or in Bulgaria). While in another V4 country, in Hungary, there was a quite an equal distribution between subsidiary protection and refugee status (as in France or Norway). In Switzerland, Syrians obtain mainly humanitarian protection.<sup>20</sup>

For reasons stated above, it is not surprising that according to official statistics of the Czech Ministry of Interior, Syrians took second place between all the nationalities seeking international protection in the Czech Republic in 2014. Ukrainian nationals took the first place.<sup>21</sup> Not only Syrians, but the Ukrainians coming from Donetsk and Lugansk, in general obtain in the Czech Republic international protection **in the form of subsidiary protection**. Nevertheless, not all of them, but those coming specifically from the eastern part of Ukraine. What is very interesting asylum trend in the Czech Republic - the reasoning in the decisions of international protection provided by the Czech Ministry of Interior is different, than with regards to Syrian nationals. The Ukrainian nationals coming from the eastern part of their country are provided by the form of subsidiary protection under Article 14a (2b) of the Czech Asylum Act, that means because of serious threat of “*torture or inhuman or degrading treatment or punishment.*” The reason is that the situation in eastern part of Ukraine is not recognized by the Czech authorities as internal or international armed conflict.<sup>22</sup> However, there is a wave of asylum-seekers coming also from the western part of Ukraine and generally men fleeing due to the obligation of military service. Czech Republic, nonetheless, does not provide them any form of international protection.

The general asylum trend in the Czech Republic is, *inter alia*, implying, also from the mentioned above, that the subsidiary protection is generally granted much more often than asylum itself.<sup>23</sup> This might be considered as another current trend in the Czech applications for international protection.

It might be worthy to note that in the third place for the most typical nationalities seeking international protection in the Czech Republic in the year 2014 were Vietnamese, in the fourth place Russians and the fifth place Cubans. There are still a lot of human rights abuses in these countries which last until now, and to which different world reports repeatedly refer.<sup>24</sup>

In the situation of increasing power of terroristic Islamist organization Boko Haram, it is not surprising, that there was also a slightly increased number of asylum applications from Nigerian nationals in the Czech Republic in 2014. According to the Human Rights Watch World Report 2015, the situation of Boko Haram in Nigeria has been worsened as they extended to other cities and towns (*such as Kano, Jos, Kaduna, Gombe, Bauchi, Lagos, Abuja etc.*), and not all of them are only in the north and north-east part of the country. Although, the Czech Ministry of Interior uses the argument of possibility of internal relocation, and because of that usually declines their applications for international protection. Concerning possibility of internal relocation, UNHCR Guidebook says, that it is not enough to state that actors of persecution are not presented in a certain area. There has to be a convincing reason to claim that their activities will remain restricted and will not reach the area of internal relocation.<sup>25</sup> According to the Norwegian Refugee Council, internally relocated persons in Nigeria, most of them women and children, face threats of their physical safety and restrictions to their freedom of movement.<sup>26</sup> Therefore, it is an interesting different approach concerning asylum applications of Nigerian nationals fleeing Boko Haram and seeking international protection in the Czech Republic, in comparison to the Ukrainian nationals coming from the Eastern part of Ukraine. The argumentation of possibility of internal relocation remains, however, slightly unclear.

There were in TOP 10 of the Czech applicants seeking international protection in 2014, inter alia, asylum-seekers coming from Kosovo, Mongolia and Serbia. However, the Czech Ministry of Interior has been preparing a proposal of edict where the safe countries of origin and safe third countries will be stated and between these safe countries of origin, Mongolia, Kosovo and Serbia will be included.<sup>27</sup> Although, there might be a certain number of economic migrants coming from these 3 countries of origin, it is hard to imagine they should be regarded as safe countries.

For instance, in Mongolia, there has been traditionally a certain number of women seeking international protection in the Czech Republic because of the situation of serious (life-threatening) domestic violence or other serious abuses (such as human trafficking). The human rights situation in Mongolia has certainly changed in comparison to the past, but not to such an extent, that

it might possible to consider Mongolia as a safe country of origin. The same situation, from the view of keeping human rights, is in Serbia and Kosovo. According to the US Department of State: Country Report on Human Rights Practices 2014, even though the Serbian constitution provides freedom of speech, threats and attacks on journalists speak for themselves; furthermore, discrimination and violent behaviour against members of the LGBT community were still a significant problem.<sup>28</sup> Concerning Kosovo, torture and other cruel, inhuman, or degrading treatment or punishment are officially prohibited, nonetheless, there were some reports that government officials administrated them. The similar situation concerns prisons and detention centers conditions.<sup>29</sup>

It seems that one of the current trends in the Czech Republic regarding asylum cases is effort to mitigate numbers of asylum applications using different means – for example to officially state that the countries mentioned above are safe and no abuses of human rights have been happening there.

Among other asylum trends might be worthy to note that numbers of unaccompanied minors have been quite low. The current trend is also that there are more men seeking international protection in the Czech Republic than women.<sup>30</sup>

## SUMMARY - NUMBERS SPEAK FOR THEMSELVES

It is possible to summarize the current Czech asylum trends in relatively simple way: asylum-seekers have recently been coming from the war conflict countries and from the countries of origin with gross abuses of human rights - as they were always. They seek international protection from the very same reasons as they were already in the nineties or between the years 2000 – 2013. These are people who have left their homes, where they had everything, to get the feeling of safetiness and hope again. To get hope that their children have a chance to grow up in a safe country without everyday threat of killings or serious injuries because of permanently falling bombs or possibility of torture or other serious threats.

In 2014, the numbers of asylum applications in the Czech Republic have increased for the first time since the existence of Dublin Regulation. But in comparison to the trends in the asylum

applications from the Czech history, it does not seem that something breaking has been currently happening. The new asylum wave of applicants from Syria and Ukraine have indeed partially influenced the current asylum trends in the Czech Republic. Nonetheless, if we compare „Czech asylum numbers“ with numbers from the official statistics from the V4 countries and available UNHCR statistics, it is obvious, that the Czech numbers have been recently still very low. They were low a few years ago and they are low now. It is hard to imagine how any Czech person could perceive the 1156 asylum-seekers that applied in 2014. Czech Republic is more likely a transit country serving asylum-seekers to get to the countries in the western part of the Europe hoping to obtain international protection there and finally get a feeling of safetiness and chance for a brand new life. Although, the numbers of other V4 regions countries, especially Hungary and Poland, speak differently. Maybe it is more than time for the Czech Republic to show solidarity and responsibility.

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