

## **Managing Refugees: The Transformation of Asylum in the Post-communist Czech Republic**

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This article analyses the legal-political construction of ‘refugee’ in the post-communist Czech Republic before and after its accession to the European Union (EU). It focuses on the role of the state and explains the gradual shift that took place towards treating asylum as a matter of migration management rather than a fundamental human right. The article briefly maps the evolution of the construction of ‘refugee’ in the 1990s. Next, the focus is on changes in asylum and immigration legislation in 1999 and their long-term effects on the asylum policy-making in the country. Migrants’ reactions to these legislative changes are also examined. The article concludes with an assessment of the latest changes in the construction of ‘refugee’ following the accession of the Czech Republic to the EU in 2004 and its joining to the Schengen area in 2007. Finally the recent introduction of a resettlement programme for selected groups of refugees is analysed.

### *Early 1990s: Asylum as a ticket into the world of ‘civilised’ nations*

After the regime change in 1989, Central and Eastern European countries, eager to disassociate themselves from the communist past, sought to provide asylum in line with the international standards of Western liberal democracies. The first groups of post-1989 asylum seekers arrived in Czechoslovakia in the middle of 1990. They were mostly from Romania, Bulgaria and the Soviet Union (DAMP 2010), making use of relaxed border controls. Their reception was characterised by a legal and institutional void. Passing the Refugee Act was a first step towards establishing the foundation for the country’s new asylum policy since it constituted a necessary precondition for the ratification of the 1951 Convention relating to the Status of Refugees (also called the Geneva Convention) and its 1967 Protocol.

There was a certain euphoria about receiving refugees within the newly established political elite, many of whom had actively engaged in dissident activities against the communist regime. The majority of MPs saw the Refugee Act as a step into the club of free and ‘civilised’ countries and also as a way to symbolically ‘pay back the debt’ for those Czechoslovak citizens who were accepted as refugees in the West (Czechoslovak Federal Assembly 1990). It laid out basic measures for the reception of refugees and, beyond the scope of the 1951 Geneva Convention, it also allowed for granting refugee status based on human rights and humanitarian considerations. Thus, ‘a refugee’ was initially understood in a wider sense as someone in need of both protection and assistance.

When contrasted with the numbers of granted refugee status after the mid-1990s, the period between 1991 and 1993 clearly demonstrated a more welcoming attitude on the part of the emerging Czechoslovak refugee system. People granted asylum in this three-year period represented 37% (N=1,307) of the total for the period up to the end of 2009 (N=3,268) (DAMP 2010). Among the main recipients were people from Romania, the former Soviet Union and Vietnam (DAMP 2010).

Thus the early 1990s - a period when Western European countries were already tightening up their asylum systems - could be characterised as a relatively generous period towards people claiming refugee status in Czechoslovakia. This period was driven by a political and moral stance towards refugees who could be used as a demonstration of

democratic standards and of the progress made by the post-communist state. Thus the attitude towards refugees played an important role in the process of building a new post-communist national identity.

*Mid-1990s: Becoming a 'buffer zone'*

A change in direction came soon after the dissolution of Czechoslovakia. After 1994, the asylum law allowed a criterion adopted from the legislation of EU member states for quicker identification of those seen as not eligible for refugee status through the notion of 'manifestly unfounded applications'. In 1995 the Czech Republic also concluded an agreement with Germany on the readmission of refugees who had travelled through the Czech Republic to reach Germany. Thus the argument for receiving refugees as a symbolic reciprocation of previous assistance granted to Czechoslovak refugees by the Western countries was now replaced by a requirement to be a better neighbour, capable of policing its borders and integrating itself into European structures of migration control. The Czech Republic thus came to be seen as part of a new 'buffer zone' holding back migrants unwanted in Western Europe (Wallace & Palyanistsya 1995).

*Early 2000s: From labour migrants to asylum seekers*

In 2000, a new Asylum Act (No. 325/1999 Call.) took effect. It was driven by the need to deal with numerous deficiencies of the 1990 Refugee Act and the pressure to harmonise national asylum legislation with the EU. This took place in the context of the ongoing supra-nationalisation of migration and asylum policy at the level of the EU inaugurated by the Amsterdam Treaty in 1997 and the Tampere European Council in 1999.

Although the parliamentary debate about the new law referred to increasing misuse of the asylum system (Parliament of the Czech Republic, 1999a), a greater emphasis was also placed on formal justice in the proceedings. The new Asylum Act brought about some significant improvements in the rights of asylum seekers. For example, they were no longer required to stay in refugee camps for the whole time of the asylum procedure and could claim financial benefits when living in private accommodation. Moreover, the amendment of the Employment Act that coincided with the adoption of the Asylum Act allowed asylum seekers to work legally from the day they applied for asylum without any administrative obstacles. The widening of asylum seekers' rights can be explained by the determination of the Social-Democratic government of the time to integrate into the structures of the EU, not only in terms of increased migration control, but also by improving the general conditions of the asylum procedure and bringing it in line with European standards.

These improvements, however, stood in striking contrast to the highly restrictive character of the new Alien Act (No. 326/1999 Call.), which was proposed by the same government on the very same day as the Asylum Act. The Alien Act introduced a number of new measures in an attempt to increase control over the rising numbers of foreigners. It changed conditions of several tens of thousands of foreign residents; put them into legal insecurity and/or deprived them of their legal status altogether. The justification of these measures by the Ministry of Interior of the Czech Republic was based on a one-sided portrayal of immigration as an uncontrolled security threat (Parliament of the Czech Republic, 1999b). Between 1993 and 1999 the number of registered foreign residents in the Czech Republic almost tripled from 77,000 to 228,000 (MI 2009). However, they still represented less than 2% of the population in 1999.

The effect of the new law was immediate. In 2000, the number of residing immigrants fell by 12% (27,911 registered foreigners). It was the first decline since the beginning of the 1990s and the only one up until 2009 (MI 2009). Following the introduction of the Alien Act

visa-free entry was abolished for citizens of the Russian Federation, Ukraine, Belarus and Moldova.

Many immigrants who had been made newly illegal moved into the asylum system. They were seeking asylum not so much from persecution in their home countries but from the immediate consequences of the harsh new immigration law that required expulsion and detention for those without visas. In order to obtain the status of a 'legal resident', migrants are prompted to pass as people of a certain category (Epps, Valens & González, 2005). Labour migrants' strategy of utilising the asylum procedure as a legalising mechanism illustrates how migrants' strategies adjust to changes in the content of legal categories. Such strategies can have long lasting effects. The notion of 'refugee' has been redefined by migrants' actions and it had a significant influence on how asylum was to be perceived in the coming years.

The years 2000 and 2001 saw an unprecedented increase in the numbers of asylum seekers by more than 100%. This increase was particularly remarkable with regard to migrants from Ukraine, who had constituted one of the major groups of labour migrants coming to the Czech Republic since the mid-1990s. Whereas 94 Ukrainian nationals applied for asylum in 1999, 1,145 applied in 2000 and 4,416 applied in 2001. This was despite the fact that there was no major social or political change in Ukraine that could bring about such a significant increase in the number of people seeking protection. With the exception of 2003, which was marked by a large influx of asylum seekers from Chechnya, Ukrainian nationals remained on the top of the list until the end of 2009 (DAMP 2010). This represents an anomaly in comparison to other Visegrád countries where Ukrainians have never been a significant group of asylum seekers (UNHCR 2006, 2008a, 2008b). Thus, claiming asylum has become an established strategy of labour migrants seeking means to extend their stay in the country.

It can be argued that the Alien Act not only failed to fulfil the promise of increased control over immigration but had exactly the opposite effect, namely the process of illegalisation of a large group of foreigners. Besides, it significantly widened the scope for corruption and increased the alienation of foreigners from the legal system that regulated their conditions of stay in the country (see also Uhl 2005). Before 2000, the approach towards foreigners living and working on Czech territory resembled that of a *laissez-faire* (Baršová & Barša 2005). It was relatively easy to come, live and work in the country. As a result, many potentially eligible candidates for asylum did not consider it necessary to apply for formal refugee status (Lavenex 2002; Wallace & Palyanistsya 1995). After the legislative changes of the early 2000s the opposite trend started to dominate.

In order to understand migrants' utilisation of the asylum procedure, it is not enough to accept the government rhetoric and conclude that they simply misuse the system. Asylum legislation has to be assessed as embedded in other institutions and legal frameworks. The fact that people who should, under normal circumstances, take the immigration route end up applying for asylum is the result of interplaying factors. There was a tension between the restrictive regulation of migrants' residence and a strong demand for their cheap, unregulated labour that characterised the Czech labour market until the economic downturn of 2008. On the other hand, an inefficient and lengthy asylum procedure offered a temporary legal shelter. It was estimated that in 2002 the median length of the asylum procedure was approximately two-and-a-half years (DAMP 2003).

The notion of an asylum-migration nexus reflects international migrants' multiple motivations and the growing difficulty of distinguishing between forced and economic migration (Castles & Van Hear, 2005). The nexus is manifested in 'mixed flows' of migrants

and refugees who increasingly move alongside each other, often making use of the same irregular routes and human smugglers. These flows are seen to require new policy responses in destination countries (Castles, Crawley & Loughna, 2003); mostly aiming at curbing irregular movements of people. The analysis of the Czech case expands the understanding of this concept by showing that the nexus can itself be produced by migration and asylum policies of destination countries. These policies made asylum the only available access point for those migrants who were filling local labour market demands.

In response to the dramatic increase in the number of asylum seekers described above, restrictive changes to the Asylum Act followed in 2001. Many previously granted rights were swiftly taken away. For example, the financial subsidy for those in accommodation outside the refugee camps was reduced to three months only, which forced many asylum seekers to move from private accommodation back to the socially excluded refugee camps (Hronková *et al.* 2002). Also, the right to seek legal employment was revoked for the first year of the asylum procedure and the opportunities for confinement of asylum seekers were widened by making it possible to carry out asylum procedure in detention centres.

These amendments had an immediate effect. Already in 2002, the number of new asylum applications decreased by 10,000 and within a year it returned to the 2000 level (DAMP 2010). The decrease in numbers demonstrated to policymakers that they were now endowed with a newly realised power to curb the numbers of asylum seekers through *ad hoc* legislative changes. Consequently, the construction of asylum seekers as abusers of the system was reinforced.

#### *Mid-2000s: Towards the Common European Asylum System*

After accession in 2004, EU regulations and directives became the main driving force for changes in Czech asylum legislation. Two further amendments of the Asylum Act in 2006 and 2007 were significant for making further changes in the definition of 'refugee'. The first amendment (No. 165/2006 Coll.) brought a major change by introducing the category of 'subsidiary protection'. This minor form of international protection could be granted alongside more stable and secure refugee status. The second amendment (No. 379/2007 Coll.) gained much attention and aroused significant discontent among the NGOs, the United Nations High Commissioner for Refugees (UNHCR) and some sections of the general public, but nevertheless, only a few minor adjustments were made in response to their criticisms. As a result, as of December 2007, asylum seekers in the Czech Republic can be deprived of freedom of movement for up to four months. Moreover, the conditions for the reception of asylum seekers at Prague International Airport have been tightened. The entry of people who declare their wish to apply for asylum in the transit zone of any international airport in the Czech Republic can be rejected and they can be regarded as never having entered Czech territory. This makes them easily deportable and strips them of the right to claim asylum altogether.

As these developments signify, further integration of the Czech asylum system into that of the EU has brought about a drastically reduced notion of what being a 'refugee' stands for. Although the existence of subsidiary protection can potentially increase the number of people receiving some form of protection, it also turns the category of asylum, with its relative legal security, into an even more exclusive commodity that can only be reached by a small minority. Furthermore, the opportunity to claim asylum was reduced because it has become significantly more difficult for potential asylum seekers to actually gain access to Czech territory. It is therefore no wonder that since 2004 the number of new asylum applications has been steadily decreasing, culminating at 1,258 in 2009 (DAMP, 2010).

### *Asylum as a tool of migration management*

This decrease in numbers of applications has served as evidence in support of an argument in favour of the Czech Republic's stronger engagement in refugee resettlement (DAMP, 2009). The idea of resettlement is to accept refugees who were granted asylum by the UNHCR but reside in countries, which are not seen as capable of providing a durable protection to them. This marks a programmatic shift towards the acceptance of selected refugee groups in a wider context of conditions that make it even more difficult for the majority of refugees to claim asylum in a destination country of their choice.

The Czech Republic started a pilot resettlement programme in 2005 with a small group of Uzbek refugees from Kyrgyzstan. They were followed by three families of refugees from Cuba in 2007 and 23 Burmese refugees from Malaysia in 2008 (DAMP 2009). The Resettlement Conception adopted by the Ministry of Interior (DAMP 2008) clearly indicates that the programme is designed in accordance with the logic of migration management, controllable by the state for the alleged benefit of all involved parties. Even though this programme has been promoted by the EU and hailed by the UNHCR, which has long tried to convince the Czech government to participate, there are few guarantees that it will represent a more sustained effort, rather than a gesture that helps the Czech Republic to 'strengthen its reputation as the country that subscribes to solving global refugee problems' (DAMP 2008, p. 4). As contrast to other countries that resettle refugees, there is no quota set by the Czech Republic. The whole programme, including its timing and the number of resettled refugees, is decided *ad hoc* by the Minister of Interior of the Czech Republic. The conception openly states that the foreign policy priorities of the Czech Republic will be among the key criteria for selecting the refugees. Such criteria also include refugees' 'integration potential' which is defined as their 'preconditions and willingness to integrate into Czech society' (DAMP 2008, p. 6). This represents another shift in the construction of 'a refugee'. Similar to the time of the Cold War, the logic of migration management favours refugees whose profiles fit the country's political interests but who can also demonstrate the readiness to fit into the Czech society. Moreover, the resettlement programme facilitates differentiation between (obviously genuine) resettled refugees and (obviously bogus and potentially criminalised) refugees seeking to enter the EU without the required documents. Such differentiation delegitimises spontaneous entry of asylum seekers that is still being used by the vast majority of refugees entering the EU.

The Czech Republic's engagement in the resettlement programme indicates the most recent example of a dangerous convergence between the logic of migration management and humanitarian principles of asylum. Refugees whose neediness is pre-approved by international humanitarian agencies, and among whom the 'fittest for integration' can be selected by the representatives of the Czech state, are the preferred group, as opposed to those who come spontaneously in a manner that is hard for the authorities to control. Moreover, the resettlement programme also makes sure that only refugees from countries whose designation as human rights abusers is in line with the political interests of the receiving country will be granted international protection. Such a narrow understanding of 'a refugee' is far removed from asylum as a fundamental human right.

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