CONDITIONS IN RECEPTION OF ASYLUM SEEKERS IN THE CZECH REPUBLIC

Czech Republic

Annual Report

Association for Legal Issues of Immigration
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I. INTRODUCTION

The annual report submitted summarises the results of the project entitled „Conditions in Reception of Asylum Seekers in the Czech Republic“ performed in the period between 15 January 2012 and 31 December 2012 by the civic association called Association for Legal Issues of Immigration (hereinafter also as “ASIM”) in cooperation with the offices of UNHCR in Prague and Budapest. This project is a follow up of similar project carried out by ASIM in detention centres in Bělá-Jezová and Poštorná in 2011.

Within the framework of the above mentioned project, both legal status and conditions of applicants for international protection (hereinafter also as “asylum seekers”) as well as foreigners detained in the detention centres in Bělá-Jezová were examined. The project aimed at surveying the situation of both asylum seekers and detained foreigners and drawing attention to some problematic aspects of their legal status. For this reason the team of ASIM concentrated, in providing legal counselling and in monitoring and in other activities, on both the issues concerning the access of the foreigners detained to the international protection and the related issues - such as administrative detention, its review and deportation.

The purpose of this annual report is to provide a structured simultaneously complex overview of the above referenced themes. For this reason, on one hand the report contains a brief summary of the legal provisions and related case law and on the other hand it draws attention to individual cases registered in the course of the project realization. The annual report follows up findings included in the annual report for 2011 emphasising the development in legislation, case law and individual cases that occurred in 2012.

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II. CHAPTER I
DETENTION MONITORING FRAMEWORK

1.1 Implementation of activities related to the access to territory and asylum procedure *(including implementation of Art.35 of the 1951 Convention)*

The access of the foreigners detained to international protection proceedings and also the material conditions related to the service of the detention are monitored in the Czech Republic basically by three different institutions. Firstly, it is UNHCR. In connection to Article 35 of the Geneva Convention, Section 38 of the Asylum Act institutes the „right" of every applicant to international protection, including the applicants deprived of liberty, „to be in touch, in the course of the entire proceedings, with the Office of the United Nations High Commissioner for Refugees and other entities which deal with the protection of the refugees' rights." Hence, according to this, the Ministry of the Interior is obliged to enable, under Section 37 (1) of the Asylum Act, the UNHCR to „enter into contact with the party to the proceedings (concerning international protection) anytime" and in addition "to examine the file of the party to the proceedings" and "assist in the conversation and oral trial". Similarly, equal rights and obligations shall be used in relation to the persons who have not applied for international protection, however, have formally shown their intention to do so (Section 40 of the Asylum Act).

The second institution participating in the monitoring of conditions is the ombudsman. According to Section 1 (3) of the Ombudsman Act the same performs systematic visits of the places where persons deprived of liberty by public authority are encountered [...], aiming to strengthen the protection of these persons against torture, cruel, non-human or degrading treatment or punishment and other ill-treatment". Although the monitoring of the detention conditions is more or less irregular by the ombudsman, this institution plays, in the Czech Republic, a key role in solving particular problem aspects of the detention.[1]

And lastly the third important players in this area are non-government organisations. Basically they are the only institutions visiting the establishments for foreigners' detention regularly, mainly to provide legal consulting to the persons placed there. The importance of the position and activity of the non-government entities is reflected in the law on the stay of foreigners according to which the foreigner detained is authorised to receive, without limitation, the visits not only of an attorney-at-law but also of a representative of the legal entity who proves that a subject of its business is to provide legal assistance to foreigners" (Section 144 (3) the Foreigners Residence Act). In addition, non-government organisations can represent the foreigners in any administrative proceedings or proceedings held before regional courts, if they are disputes concerning international protection, and according to a new regulation from 1 January 2012, also if they are disputes concerning detention and deportation and other related proceedings (Sec. 35 (5) of the Rules of Administrative Procedure).

1.2 Methodology

The gathering of the information mentioned in this monitoring report happened mostly in the period between 15 January 2012 and 31 December 2012. In the course

[1] The latest report of the Ombudsman Office on the conditions in the detention centres was published in 2010 (please see: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/2010/2010-zarizeni_pro_cizince.pdf)

of this time, lawyers of ASIM regularly visited the only premise for detention of foreigners situated in the territory of the Czech Republic, namely the detention centres in Bělá-Jezová (the other detention centre in Poštorná was closed at the end of 2011 and the premises currently serve as a prison). The frequency of the visits remains to be once in 2 weeks, namely every second Saturday. In total of 25 visits took place in Bělá-Jezová.

The information used in the monitoring report is based on several different sources. The extent of rights and obligations of the foreigners detained and the corresponding extent of the authorisation and obligations of the bodies of state administration were determined in accordance with valid legal regulations. The report also considers the legal amendments that become effective in 2012 as well as the latest governmental proposal of new foreigners residency act expecting to be effective as of 1 January 2015 (the proposal is currently discussed within the government and hence some further changes in the proposal can be expected to be done). Besides the legal regulations, the report brings about the summary of most significant case law ASIM works on during the year which best reflects development in the detention of asylum seekers and foreigners in 2012 (please see Chapter V. below).

As to the information describing factual dealing with the foreigners detained, it was gathered through the everyday realization of the project, i.e. through the legal counselling provided to detained foreigners, ad hoc intervention ASIM did in individual cases and contact with social workers of the Refugee Facilities Administration of the Ministry of the Interior of the Czech Republic (hereinafter also as “RFA”) during the course of the project.

III. CHAPTER II
ACCESS TO ASYLUM PROCEDURE IN DETENTION

2.1 Legal Framework

The access of a detained foreigner to the international protection proceeding is regulated under the Czech law by a numerous group of regulations of different origin and legal force. These are regulations based on international law, European Union law, in-country law, constitutional and other legal norms.

The fundamental source of legal norms of the Czech law is the Constitution of the Czech Republic. The issue of access of a foreigner to the international protection proceedings is not specifically provided for in this document, however, its importance for the analysis of the issue is indisputable. Firstly, the Constitution implements in the Czech legal order most of the international treaties - including human rights treaties and the Geneva Convention on the legal position of refugees from 1951[2] – and in case of a discrepancy with the law it provides its priority of application.[3] Secondly the Constitution in its Article 3 classifies the Charter of Fundamental Rights and Freedoms as a part of the Constitutional order of the Czech Republic (hereinafter only the "Charter").

The Charter itself then provides for international protection or asylum issues in its Article 43, according to which "the Czech and Slovak Federative Republic grants asylum to foreigners persecuted for using political rights and freedoms". However, the case law of the Constitutional Court is relatively scarce and to determine the meaning of this provision as to the access of the foreigner to international protection is thus very difficult. While some authors refuse to assign to the "right of asylum" the nature of a subjective right whose protection can be sought through court[4], others on the contrary conclude that Article 43 institutes the "right" of the foreigner in case of compliance with determined terms to obtain asylum and the corresponding "obligation" of the state to grant asylum.[5] A middle way in between these positions is represented by an opinion according to which "Article 43 confirms *public subjective law of asylum*, whose content is a permission addressed to a foreigner persecuted for using political rights and freedoms and *to apply to be granted the asylum* and simultaneously to seek through *a legal way*, that a relevant public authority *decide on such matter."*[6] Thus according to this interpretation Article 43 does not constitute the claim of a foreigner to obtain asylum nor the obligation of the state to grant it, however, it makes it possible for a foreigner (prosecuted for using political rights and freedoms) to apply for asylum in the Czech Republic and if he does so, it fixes an obligation of the state to decide duly on such application.[7] From the point of view of

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[2] Where the text alludes to „Geneva Convention", it means the 1951 Convention relating to the Legal Status of Refugees itself and the 1967 Protocol to the Convention.

[3] See Art. 10 of the Constitution which is worded as follows: "The international treaties declared and approved by ratification by the Parliament and hence binding on the Czech Republic are part of the legal order and if the international treaty provides otherwise than statute law it is the international treaty which applies."

[4] PAVLÍČEK, V. *Ústava a ústavní řád České republiky. Commentary – 2nd volume. Rights and Freedoms.* Praha: Linde, 1999, p. 341 and 344.

[5] KOSAŘ, D. et al. *Asylum Act. Commentary*. Praha: Wolters Kluwer, 2010, s. 557-558.

[6] KRYSKA, D., VĚTROVSKÝ, J. The Right of the Foreigner to the international protection proceedings and the constitutional order of the Czech Republic. In *Právní rádce*, 2011, no. 7, p. 11. J. Větrovský is also a co-author of this study.

[7] Ibidem, p. 12.

guarantees concerning the access of the foreigner detained to the proceedings of international protection can Article 43 of the Charter thus play a fundamental role.[8]

As to the international treaties with the application priority before the statute law, it is necessary to place (in addition to the Geneva Convention, see below) mainly the European Convention on Human Rights, 1950 (hereinafter only "European Convention") within this category. The importance of this convention, in particular of its Article 3 and 13, is indisputable from the point of view of guarantees of access to the proceedings on international protection.[9] In the context of the Czech Republic this is testified to by a recent judgment of the European Court for Human Rights (hereinafter only the „European Court") in the matter of *Diallo v. Czech Republic.* The European Court unequivocally found in relation to the complainants that the case represented an infringement of Article 13 in relation to Article 3 of the European Convention since „none of the domestic authorities examined the merits of the applicants' arguable claim under Article 3 of the Convention".[10] „[T]he applicants' claims that there was a real risk of ill-treatment in their country of origin were not subjected to close and rigorous scrutiny by the Ministry of the Interior as required by the Convention, or in fact to any scrutiny at all".[11]

A second large group of regulations governing the issue of foreigners' detention and their access to international protection proceedings is formed by the norms of the European Union. First of all it should be pointed out that on 1 December 2009 the so-called Lisbon Treaty came into effect and as a consequence the Charter of Fundamental Rights of the European Union became legally binding. The key provision of the Charter which could be used as a legal basis for access to international protection proceedings is then represented by Article 18, according to which "the right of asylum is guaranteed". However, this provision is usually not applied by the domestic courts and its potential remains unexploited so far. The courts in their decision-making practice concentrate on application of the secondary law of the EU, mainly on relevant "asylum" directives, the Dublin Regulation, and as the case may be the so called "Return directive". The directives in question are used not only for interpretation of related precepts of a domestic nature but their provisions used to be directly applied where required by the manner of their implementation and circumstances of the case.

As to domestic legal regulations concerning the detention of foreigners and their access to international protection proceedings, most of the norms are included in two key acts: The Foreigners Residence Act and the Asylum Act.[12] The former governs the issue of deprivation of personal freedom for the purpose of deportation or for another similar purpose, in relation to all foreigners situated in the territory of the Czech Republic, the latter then concerns international protection proceedings including the conditions under which such proceedings with a foreigner, detained foreigner included, can be initiated (see below, chapters 2.4 and 2.5).

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[8] The proof is for instance the Resolution of the Regional Court in Hradec Králové, ref. 30 A 2/2010-116, as of 15.7.2010, in which it submitted to the Constitutional Court a motion to evaluate the constitutionality of a part of Sec. 3a (a) (4) of the Asylum Act. This was done for the reason that the provision in question is inconsistent with the Constitutional Rule of the Czech Republic, mainly with Art. 1 (2) and Article 10 of the Constitution of the Czech Republic and Article 43 of the Charter of Fundamental Rights and Freedoms". The Constitutional Court proceedings have not finished so far.

[9] Compare e.g. judgments of the ECHR *Jabari v. Turkey*, 11.7.2000; *Gebremedhin [Gaberamadhien] v. France*, 26.4.2007; *M.S.S. v. Belgium and Greece*, 21.1.2011.

[10] ECHR, *Diallo v. Czech Republic*, 23.6.2011, Sec. 85.

[11] Ibidem, Section 77.

[12] Acts No. 326/1999 Coll., or 325/1999 Coll.

2.2 The implementation of Article 31(1) of the 1951 Geneva Convention

The essential regulations which makes it possible to detain a foreigner residing without authorisation in the territory of the Czech Republic is included in Section 124 (1) of the Foreigners Residence Act. The latter provision entitles the police (upon compliance with other conditions) to detain every foreigner aged 15 years and more who was served a notice on the initiation of deportation proceedings or whose deportation has been decided on and has become enforceable or upon whom another member state of the European Union imposed prohibition to enter the territory of the member states of the European Union. The initiation of the proceedings on deportation or existence of an earlier decision on such deportation is thus a necessary pre-condition for every detention.

Section 119a (1) of the Foreigners Residence Act provides that the deportation order "shall not be issued" if a situation mentioned in Article 31 (1) of the Geneva Convention occurs. The wording of Article 31 (1) is implemented by this statutory provision almost literally. However, it cannot be said that the implementation of the prohibition mentioned in Article 31 (1) of the Geneva Convention into the Czech legal order is entirely without problems. The request of "non-issuance" of the decision on deportation refers expressly, according to Section 119a (1) of the Foreigners Residence Act, only to situations where the foreigner "passes the state frontier in hiding himself or attempts such course of action" or where "the foreigner passes the state frontier in a place outside a frontier crossing". Although these are beyond any doubt the most frequent situations governed by Article 31 (1) of the Geneva Convention, they are not the only situations which may happen. However, other situations are not covered by the prohibition mentioned in Section 119a (1) and nothing in the text of the Foreigners Residence Act prevents the Police from deciding on deportation and to detain the foreigner for instance for residing in the territory of the Czech Republic without a travel document or visa not being authorised to do so. This is so also in the event that such foreigner complies with all conditions stipulated in Article 31 (1) of the Geneva Convention.

2.3 Respect for the principle of non-refoulement and Article 33(1) of the 1951 Geneva Convention

The protection of a foreigner against refoulement guaranteed by Article 33 of the Geneva Convention is regulated in two ways in the Czech legal order. In accordance with Section 120a (1) of the Foreigners Residence Act the Police - when deciding on deportation – are obliged to request a binding opinion of the Ministry of the Interior whether the foreigner can travel abroad. In accordance with Section 179 of the same act the foreigner cannot travel abroad if in his country of origin he is under a threat of (a) imposition or execution of the death penalty, (b) torture or inhumane or degrading treatment or punishment, (c) serious danger to life or human dignity due to frivolous violence in situations of armed conflict or (d) if such travelling abroad were contradictory to the international obligations of the Czech Republic. At least the last reason listed, preventing from travelling abroad, fully reflects the requirements of Article 33 of the Geneva Convention for which in such event would be applied directly.

Despite this, again it cannot be said that the implementation of the Geneva Convention is flawless in this case. Firstly, the decision on deportation is not the only title for the foreigner to travel abroad and hence there is a threat that the obstacles to

travelling abroad mentioned in Section 179 will not be applied at all in such case.[13] Secondly, what is evidently even more important, the decision making (issuance of binding opinion) of the Ministry of the Interior concerning the impediments for travelling abroad is very superficial and does not provide any guarantee that Art. 33 (1) of the Geneva Convention will really be respected in the case of a particular foreigner. The Ministry issues the binding opinion within a very short time (several tens of minutes, several hours at maximum) without knowledge of factual circumstances of the particular case and hence without providing any reasons directly concerning the foreigner. For that matter the European Court in the above referenced case *Diallo v. Czech Republic* did not consider the issuance of the binding opinion on the impediments for travelling abroad as an efficient means for correction within the meaning of Article 13 of the European Convention.

Under the governmental proposal for new foreigners residency act the practice of issuing binding opinions on impediments for travelling abroad should remain the same with the exception of the following specifications. Firstly, the requirements on the content of binding opinion should be set out (under the current legal regulations there are only general requirements on all binding opinions to be issued by an administrative body). Also, in cases where it is uncertain whether a foreigner shall be deported to a country of origin or country of transit, it should be guaranteed that the impediments to travel are considered towards both countries. Finally, impediments to travel abroad shall be assessed in any decisions on the obligation to leave a territory of the European Union and the decision on deportation.

As a matter of fact, the institute of the asylum and international protection proceedings within the meaning of the Asylum Act remain the sole legal instrument in the Czech Republic ensuring the protection of a foreigner against *refoulement* in accordance with Article 33 of the Geneva Convention. The foreigner's access to such proceedings is thus fundamental for the Czech Republic from the point of view of compliance with the obligations of the Czech Republic resulting from the Geneva Convention (see chapters 2.4 and 2.5).

2.4 Safeguards for persons in need of international protection provided in the readmission agreements

Except for a general reference on the Geneva Convention, or other international treaties providing protection against *refoulement,* the readmission agreements do not include any guarantees for persons in need of international protection. This concerns both the readmission agreements concluded by the Czech Republic and the readmission agreements concluded on the European Union level. Only the Agreement concluded between the Government of the Czech Republic and the Socialist Republic of Vietnam on 12 September 2007 on extradition and admission of citizens of both countries is an exception. According to Article 1 of the Agreement this only applies to persons on whose "deportation an enforceable judgment exists". Thus the Agreement ties the execution of readmission of Vietnamese nationals to the existence of an enforceable decision on deportation. As mentioned above (chapter 2.3) every decision on deportation must also include

[13] See for instance resolutions on the obligation to leave the territory within the meaning of Sec. 50a of the Foreigners Residence Act or directly applicable provisions of some of the readmission treaties (see below, point 2.4).

considerations whether travel abroad of the particular foreigner is not contradictory to the international obligations of the Czech Republic.[14]

As emphasized above the manner in which the possibility of travelling abroad is considered in the proceedings on deportation provides only a minimum guarantee that Art. 33 of the Geneva Convention will be respected in the case of a particular person. Even in the case of foreigners whose obligation to leave the country is vested directly in the readmission agreement, international protection proceedings can hence be considered as the sole legal instrument capable of providing an effective protection against *refoulement*. Generally there is the valid principle that a foreigner falling within the scope of the readmission agreements is entitled to apply for international protection (certain restrictions are valid for some foreigners who are detained for the purpose of extradition in accordance with the readmission agreement; see chapter 2.5 below).

2.5 Access to asylum procedure while being in administrative detention and right to appeal

The access to international protection proceedings in relation to persons detained in the establishment for foreigners' detention is governed by Section 3a (a) (4) and Section 3b of the Asylum Act. In accordance with the former provision "the foreigner is authorised to make a declaration of international protection to the police in the establishment for foreigners' detention, with the exception of a foreigner detained for the purpose of his extradition or transit according to an international agreement negotiated with other EU countries before the date of 13 January 2009 or the legal regulation of European Communities". The provisions of Sec. 3a (a) (4) of the Asylum Act then on one hand generally institutes the right of the foreigner detained to apply for international protection in the Czech Republic; on the other hand it identifies a group of foreigners to whom such rights do not belong. They are foreigners who should be extradited to another EU member state on the basis of a readmission agreement concluded by the Czech Republic before 13 January 2009[15] or on the basis of the Dublin Regulation. The Czech asylum law is built on the presumption of security of EU member states for third countries' nationals, i.e. on the presumption that the extradition of a foreigner to another EU country can never be incompatible with the *non-refoulement* principle. However, it should be emphasised that such presumption cannot be considered as legitimate nor legal, which has recently been confirmed by both the European Court for Human Rights and the European Court of the European Union.[16]

The provision of Section 3a (a) (4) of the Asylum Act is followed up by the provisions of Section 3b (1) which set several conditions to be complied with in the case of a foreigner applying for international protection in the establishment for foreigners' detention. First of all it is a requirement that the foreigner formally shows intention to apply for international protection within a 7-day period. This period does not start at the moment of the detention of the foreigner but from the moment when "he was informed by the police about the possibility to apply for international protection in the territory and about the consequences related to the elapse of this

[14] The provisions of Section 120a (1) and Section 179 of the Foreigners Residence Act.

[15] Such an agreement was concluded with the following countries: Poland, Romania, Hungary, Federal Republic of Germany, Bulgaria, Slovenia, Slovakia and Austria.

[16] Resp. ECHR, *M.S.S. v. Belgium and Greece*, 21.1.2011 and CJEU, united cases C-411/10 and C-493/10, 21 December 2011.

period". The above referenced shows that the police are obliged to instruct every foreigner detained or at least every foreigner entitled to ask for international protection in the establishment for foreigners' detention on such right. This obligation of the police is in addition, explicitly mentioned also in Section 3b (2) of the Asylum Act. The police are obliged to instruct the foreigner in a language "in which the foreigner is able to understand".

As to the corrective measures available for the foreigner detained, in relation to the international protection proceedings, the Asylum Act stipulates that every "decision on the matter of international protection should be reviewed by a court. The review in question is conceived as a two-staged review and should be performed by Regional Courts (first instance) and the Supreme Administrative Court (second instance). A Petition against the matter of international protection has, as a rule, a suspensive effect by operation of law and hence a filing of such Petition is connected with the right of the foreigner to stay in the territory in the period until the proceedings concerning the Petition are over.[17] Cassation complaint in the matters of international protection filed with the Supreme Administrative Court always has a suspensive effect by operation of law. So, both of these remedies correspond, on a general level to the criteria of an effective remedy within the meaning of Article 13 of the European Convention.

One of the latest amendments to the Asylum Act effective as of 1 January 2012 newly regulates the cases when an asylum seeker is subject to deportation or to transfer to another country. Under this amendment both the Regional Courts and the Supreme Administrative Court should decide as soon as possible on the international protection of these asylum seekers and in cases where they do not find grounds for annulment of the decision of the Ministry of the Interior on the international protection, deportation or any kind of return should be carried out timely. For that reason, the courts have a maximum of 60 days to make a decision on the international protection of these asylum seekers.

A more complex situation arises when the foreigner wants to plead that he has not been given the possibility to apply for international protection, whether due to the reason mentioned in Section 3a (a) (4) of the Asylum Act or due to another reason. In this respect the provisions of the Rules of Administrative Procedure concerning petition against an illegal intervention of the public administration authority cannot be used, nor can the provision enabling a foreigner to plead lack of activity of such authority be used.[18] A letter, if written by the police alleging that the foreigner is not authorised to apply for international protection cannot be taken, according to the Supreme Administration Court, as a decision in the matter of international protection and hence it is not possible to claim in this case the guarantees connected with a court review which were mentioned in the previous paragraph (mainly the suspensive effect of the Petition and Cassation complaint).[19] In addition most of the regional courts came to the conclusion that the above mentioned letter does not represent a

[17] An important exception to this rule is formed by the Application against this resolution in which the application for international protection is rejected by reason that the foreigner filed this application repeatedly and failed to state in it any new facts which have not been subjected to evaluation so far (Sec. 32 (3) and Sec. 10a (e) of the Asylum Act.

[18] Provisions of Section 79 and 82 of the Rules of Administrative Procedure (No. 150/2002 Coll.). Concerning this point see KRYSKA, D., VĚTROVSKÝ, J. The Foreigner's Right to International Protection Proceedings, p. 16-17.

[19] Compare resolutions of the Supreme Administrative Court ref. Nad 42/2010 – 37, 15.9.2010 and other decisions stated here.

decision at all and hence it cannot be reviewed in a judicial procedure.[20] However, the Supreme Administrative Court did not uphold this conclusion of the regional courts. To the contrary, in its judgement of October 2011 it explicitly stated that the above referenced letter by the police is a decision in which the Police de facto negatively decided on the right of a foreigner to apply for international protection in the territory of the Czech Republic.[21]

2.6 The Issue of Lawfulness of the detention of foreigners who applied for international protection or have shown a formal intention to do so

The situation where the foreigner detained is an applicant for international protection can basically occur in one of the following two manners. Firstly, the foreigner shows his intention to apply for international protection only after it has been decided on his detention (see previous clause 2.5). Secondly, the foreigner shows his intention to apply for international protection and subsequently it is decided on his detention.

Should the first of the above referenced situations happen, i.e. the foreigner applies for international protection only after he has been placed in the detention centre the foreigner is normally not released. The provisions of Section 127 (2) of the Foreigners' Residence Act expressly provide that "a filing of application for international protection in the course of detention does not constitute a reason for termination of the detention". Despite the wording of this provision the lawfulness of the foreigner's detention is questionable in these cases. Art. 15 (4) of the Return directive provides that, if it shows that the real precondition for deportation ceased to exist due to legal or other reasons [...], the detention loses its grounds and the person concerned must be released without delay". The Supreme Administrative Court expressed its doubts in the past concerning the application of the Return directive to the cases of the applicants for international protection, however, the same obligation results for the Czech Republic from Article 5 (1) of the European Convention.[22] As it has been mentioned above (chapter 2.5), by filing an application for international protection the foreigner earns the right to stay in the territory of the Czech Republic until the final decision about such matter that is until a decision of the Supreme Administrative Court. The length of the international protection proceedings is obviously different in various cases. However, basically it is never shorter than 6 months in the course of which the foreigner's detention may last generally (even though there was an amendment to the Asylum Act effective as of 1 January 2012 saying that the Regional Courts as well as the Supreme Administrative Court have a maximum of 60 days to decide on the international protection of asylum seekers with decision on deportation). Thus a question arises whether in a case where a foreigner files, after his detention, an application for international protection and mainly if it is the first such application filed in the Czech Republic, it could be further asserted that deportation of such foreigner in the period of the detention remains really possible.

The case law of the regional courts has not been uniform so far. While some courts, specifically the court panels, request that in the event of a detention or prolongation of the detention period, police should also always examine the applicants for international protection from the point of view of the real existence of a

[20] For further details see KRYSKA, D., VĚTROVSKÝ, J. The Foreigner's Right to International Protection Proceedings, p. 18.
[21] NSS, ref. 7 As 83/2011-77, 27.10.2011.
[22] ECHR, *A. and others v. Great Britain,* 19.2.2009; *Agnissan v. Danmark*, 4.10.2001 etc.

pre-condition for deportation; other courts, or panels, consider such considerations purposeless and emphasise the literal meaning of the above mentioned provision of Section 127 (2) of the Foreigners Residence Act. As to the case law of the Supreme Administrative Court it distinctly reveals a tendency to incline more to the first of the specified procedures. According to the Supreme Administrative Court "it should be insisted that the Administrative Authorities in decision-making concerning the foreigner's detention whether the execution of a deportation order is at least potentially possible."[23] In one of the judgments of the Supreme Administrative Court also expressly stated: "In the case under scrutiny the petitioner in her comments about the cassation complaint declared that "owing to the fact that it has not been decided so far on the matter of international protection, it is not possible to carry out the deportation order from the Czech Republic and the reasons for the foreigner's detention continue". Such an expression of the defendant to a certain extent denies the sense of the detention itself as it should serve mainly to carry out the deportation order. If a foreigner is not detained with prospects that he will really be deported within the period fixed for detention, such detention ceases to be justifiable."[24] In the year of 2012 the case law of the Supreme Administrative Court followed this path and hence the obligation of police to duly consider the proceeding on the international protection (stage of the proceeding, expected duration etc.) in terms of real existence of possibility to be deported when deciding on the detention or the prolongation of the detention was confirmed (please see Chapter V. below).

The second situation in which the applicant for international protection can be detained in accordance with the Foreigners Residence Act seems to be even more questionable. According to Section 124a of the Foreigners Residence Act the Police are "authorised, for the purpose of deportation, to detain a foreigner who made a declaration of international protection or filed an application for international protection, if his deportation has been decided about and such decision became effective or such deportation proceedings are initiated due to reasons according to Section 119 (1) (a), or Section 119 (1) (b) (6) or (7) of the Foreigners Residence Act". In the case in question the obtaining of the status of an applicant for international protection (or a person who formally manifested the intention to become one) precedes the detention itself. According to Article 18 (1) of the Procedural directive it has been agreed that "the countries will not detain a person only for the reason that he is an applicant for asylum". However, the regional courts prefer that in these cases the provisions of Section 124a of the Foreigners Residence Act should be applied in their literal meaning and consider Article 18 (1) of the Procedural directive "irrelevant" to determine the importance of the Foreigners Residence Act".[25] The Supreme Administration Court has not issued any decision in this matter so far and these cases only very rarely occurred (in 2012 we did not monitored any such case).

2.7 Dublin II Regulation

The Dublin Regulation is in its essence a piece of law, which is directly applicable to in-country relations without the necessity of its transposition. As described in the preceding text, the position of a foreigner falling within the scope of the Dublin Regulation who should be extradited to another EU country for this reason

[23] NSS, ref. 1 As 12/2009-61, 15.4.2009, published under ref. 1850/2009 Coll. NSS.
[24] NSS, ref. 1 As 132/2011-59, 7.12.2011.
[25] KS Brno, ref. 36 A 45/2011-25, 20.12.2011.

is basically identical with the position of a foreigner who should be extradited to another EU country pursuant to the Readmission Agreement. This means that the foreigner in question can be deprived of personal freedom for the purpose of his extradition and is not entitled to apply for international protection in the Czech Republic (for a more detailed explanation on this question see mainly point 2.5. above). If, despite this, the international protection proceedings were initiated with the foreigner before, the application filed is marked as inadmissible.[26] The decision on the inadmissibility of the application can be sued at the administrative court. However, such petition does not have a suspensive effect by operation of law and hence the filing of the petition cannot prevent the foreigner from leaving the country.

As to a foreigner falling within the scope of the Dublin Regulation, in whose case the Czech Republic is competent to evaluate his application for international protection - such foreigner can also be deprived by the Police of his personal freedom and placed in an establishment for foreigners' detention. But this is not a foreigner "detained for the purpose of his surrender [...] according to the legal regulation of the European Communities" within the meaning of Section 3a (a) (4) of the Asylum Act. Such foreigner is not prevented from applying for international protection in the establishment.

[26] Provisions of Section 10a (b) of the Asylum Act.

IV. CHAPTER III.
DESCRIPTION OF MONITORED LOCATIONS AND FACILITIES

3.1 Places of Monitoring – Detention centres

The detention centre Bělá-Jezová is seated in the cadastral area of the town of Bělá pod Bezdězem. Bělá pod Bezdězem has 4 876[27] inhabitants and is situated approximately 15 km from the statutory city of Mladá Boleslav. The detention centre is placed on the grounds of a former barracks approximately 4 km far from the city. There is almost no connection to the city by the Public Transport System. The overall capacity of detention centre totals 270 persons and is spread among several buildings. Three buildings are reserved for administration officers - Ministry of the Interior - Department of Asylum and Migration policy, Foreign Police and the Refugee Facilities Administration, where a dining room and consulting and visiting rooms are. The compound is further formed by four buildings, Building A is reserved for women and families, buildings B and D are for men, and a separate building for unaccompanied minor children. The external security is ensured by the Police of the Czech Republic, whereas the internal security services are provided by the private security company. In the compound there is also the office of the medical doctor.

[27] http://portal.gov.cz/wps/portal/_s.155/696?kam=obec&kod=535443.

V. CHAPTER IV.
FINDINGS OF THE MONITORING, WITH SPECIAL ATTENTION TO THE RESPECT OF RIGHTS GUARANTEED BY LEGISLATION

4.1 Exercising the right to asylum in practice

As mentioned above, also a foreigner detained in the detention centre is authorised to make a declaration of international protection before a police (Section 3a (a) (4) a Section 3b of the Asylum Act) under the following conditions: (i) he is not a foreigner detained for the purpose of his extradition or transit in accordance with an international treaty agreed with other member states of the European Union before 13 January 2009 or a legal provision of the EC, (ii) the foreigner formally showed his intention to ask for international protection within a period of 7 days, since the moment when he was informed by the police of the possibility to apply for international protection in the territory and the consequences related to the elapse of this period. Except as stated below, in the course of the monitoring period we did not record a case when a foreigner detained in the establishment for foreigners' detention was prevented from making a declaration of international protection within a period of seven days.

In 2011 ASIM dealt with the cases where the end of the seven-day period in which the declaration on international protection should be made fells on a Saturday that was a day when the police in the establishment for foreigners' detention “did not work” and the declaration for international protection was not allowed to be made on the following business day, i.e. on Monday. In the year of 2012 we did not report any cases of foreigner who was denied to make a declaration for international protection under this situation.

4.2 The right to information

It was already stated that Section 3b of the Asylum Act implies the police’s obligation to instruct any foreigner detained of his right to apply for international protection in the establishment for foreigners’ detention about using a language in which the foreigner can make himself understood. During the monitored period there was no single case recorded when/in which a foreigner was not duly instructed about this right of his; as the clients testify that the police communicate this fact both orally and in writing in the form of prepared printouts translated into several language versions. It is necessary to comment that the awareness of the foreigners about their entitlement to ask in the establishment for foreigners' detention for international protection is also supported by the attitude of the Administration of Refugee Facilities who operates the establishment for foreigners' detention. Within the consulting business the RAF employees perform with every new detainee an introductory interview. During the same the foreigners are briefed about their rights and obligations including the information on the possibility to ask for international protection. The foreigners are also briefed about the internal rules of the establishment on such issues as meals, medical care, conditions for visits, legal consulting, etc. It should be appreciated that the fundamental information is obtained by the foreigners in the beginning of their detention; the foreigners questioned

consistently said that they did the introductory interviews in the course of the first three days from the moment of their detention.

The instruction on rights and obligations related to the detention of the foreigners in the detention procedure is communicated by the social workers both orally and in writing through printouts translated into several language versions. However, the fact is that in practice not everyone can fully understand the information provided and comprehend their practical meaning. In many cases the only comprehensible sources of information are the other foreigners detained, especially the ones who are detained repeatedly and hence are well briefed about their rights and obligations. This practise of sharing information is not of course ideal and can quite easily lead to misrepresentation. For this reason an important role is played by non-governmental organisations who provide consulting services in the establishment for foreigners' detention; in particular they are the Organisation for Aid to Refugees / Organizace pro pomoc uprchlíkům (OPU), Association for Legal Issues of Immigration / Asociace pro právní otázky imigrace (ASIM) or Archdiocese Charity / Arcidiecézní charita.

4.3 Right for interpreting

According to Sec. 16 (3) of the Administrative Proceeding Act, “every person who declares that he has not mastered the language in which the proceedings are conducted is entitled to use an interpreter entered on the list of interpreters whom he will ensure at his own costs. In the application proceedings, an applicant who is not a citizen of the Czech Republic shall provide for the interpreter at his own costs, unless otherwise stipulated by law“. Every person who declares that he has not mastered the Czech language is authorised to obtain an interpreter. Then the administrative authority is obliged to provide to such party the assistance necessary to select an interpreter. The administrative authority in such case does not assign the interpreter for the party, it only provides this option and, within its capabilities, also support for this option.

The law which stipulates an exception to this is the Asylum Act which in its Section 22 expressly confirms the right of every participant to the proceedings to obtain international protection „to participate in the proceedings in his mother tongue or in another tongue in which he is able to make himself understood. For this purpose the Ministry shall provide a free of cost interpreter for the party for the acts in the proceedings and related to the proceedings. The party is authorised to engage an interpreter according to its selection “. It should be commented that the right to a free of cost interpreter in the proceedings of international protection is, as a basic right on the part of the Ministry, fully respected. During the monitored period we did not record any indication to the contrary.

Although we cannot find a similar provision in the Foreigners Residence Act in relation to the deportation proceedings, the right to an interpreter in the deportation proceedings is guaranteed in Section 3 of the Administrative Proceeding Act. This provision requires that “the body of a public administration proceeds in a way to find out the status of things in which there are not well grounded doubts and this should be done to the extent which is necessary for the compliance of its act with the requirements specified in Section 2“. So if the foreigner with whom the proceedings are conducted is not able to comment on all circumstances of the case and despite his request no interpreter is appointed for him it is obvious that the requirement of Section 3 of the Administrative Proceeding Act cannot be complied with, namely the

police authority cannot find and put down details of all circumstances of the case which are necessary for the issuance of the decision on deportation.

However, important guarantees are confirmed in the provisions of Sec. 126 (b) of the Foreigners Residence Act, in relation to the decision on the detention of a foreigner. According to the provision quoted, the police are obliged to "immediately after the detention instruct the foreigner detained, in a language in which the foreigner can communicate, on the possibility of a judicial review of the lawfulness of the detention and of the extension of the period of duration of the detention. If such language cannot be identified and it is impossible to perform this briefing in another manner, the police shall instruct the foreigner by handing over to him printed instructions written in Czech, English, French, German, Chinese, Russian, Arabic, Hindu, and Spanish, on the possibility of a judicial review of the lawfulness of the detention and of the extension of the period of duration of the detention. The police shall write a record of the handover of the instructions in writing".

In relation to the above referenced it should be stated that in the course of the period monitored there were several cases of foreigners who, according to the records made by the police in relation to the deportation proceedings, declared that they understood the Czech language in reading and writing and that they did not apply for appointment of an interpreter. In the case of these foreigners it transpired, through talks with clients, that they had not mastered Czech in reading nor in writing and that they did not understand the information on the initiation of the deportation proceeding, neither were they able to understand. Reflecting the existence of their declaration that they did not ask for appointment of an interpreter, the decision on the deportation were not found unlawful by the respective police authorities. The situation was different, however, in cases where the foreigner was not provided with an interpreter even though he had asked for one. In these cases, the body of appeal considered the absence of an interpreter during the deportation proceedings a sufficient reason for the revocation of the decision.

4.4 The right to use one's native language

The abovementioned right of the participants of the proceedings to an interpreter needs to be distinguished from the extent to which detained foreigners can use their native language during their stay in the detention centres. The Foreigners Residence Act contains two provisions relevant to this matter. The first of these is the provision of Section 131 according to which the RAF is obliged to inform the detained foreigner with her rights and obligations in the facility and with the internal rules of the facility in her native language or a language which the foreigner understands. The monitoring of the practical implementation of this provision has shown that the presence of an interpreter during the initial interview is only sporadic (in some cases the translation is performed telephonically) and that most of the foreigners are instructed only in writing. In practice, the possibility to use one's native language or a language that one understands in the initial social interview is thus dependent on the language capabilities of specific social workers leading the interview.

The second provision regulating the use of the foreigner's native language or a language comprehensible to the foreigner during her residence in the detention centre is Section 138 of the Foreigners Residence Act, according to which the internal rules regulating the functioning of the facility must be made available in Czech, English, French, German, Russian, Spanish, Chinese, Arabic, Vietnamese,

Hindi and other languages, if this is necessary for informing the foreigners detained. With respect to the delivery of instructions about the internal rules, we have not registered any complaints.

In other cases, the extent of the usage of the foreigners' native or other comprehensible language depends on the specific needs of the detained foreigners and the material and personal capacities of the facility. Day-to-day organizational matters are usually settled by the employees of RAF in English, Russian or with translation from another detained foreigner.

4.5 The right to legal remedies

The foreigner has the right to contest the detention order within 30 days by filing an action in administrative proceedings under Section 65 and onwards of the Rules of Administrative Procedure. The foreigner also has the right to submit a proposal to commence the proceedings on the release from detention under Section 200o and onwards of the Rules of Civil Procedure. Both these proceeding have to comply with requirements stated in Article 5 (4) of the European Convention, according to which anyone deprived of his freedoms through arrest or any other measure has the right to propose the initiation of proceedings in which the court could in a timely manner decide on the legality of such apprehension and order his/her release if such apprehension proves illegal.

In the case of actions against detention or against the extension of the detention period, the court is obliged to decide within 7 workdays from the delivery of the legal documentation. If the action is delivered through the police, the police is obliged to deliver the administrative files within 5 days from the receipt of the complaint. In other cases, i.e. when the complaint is filed directly with the relevant court, the deadline for the delivery of the administrative files is not set – a fact that could be interpreted as a certain legislative deficiency. However, no significant delays in this process were registered during the monitoring.

Cases where foreigners were repeatedly detained after a revoking decision was made by the court have, on the other hand, proven to be a problematic aspect. According to the Rules of Administrative Procedure, the court has no authority to order the release of the foreigner if the detention is found to be illegal. Under Section 78 of the Rules of Administrative Procedure, the court can either reject the action if the detention is found reasonable or to revoke the contested decision and return the matter for further proceedings by the defendant. The deficiency in the court's authority to order the release of the foreigner in administrative proceedings is compensated by Section 127 (1) (b) of the Foreigners Residence Act, according to which the detention must be ended without unnecessary delay e.g. in cases where the court, in administrative proceedings, rules to revoke the decision on the detention of the foreigner. The obligation of police to release a foreigner from the detentions is, however, not absolute. Under the mentioned provision, the release of detained foreigner can occur only if the police do not issue new decision on detention of foreigner within 3 days from the legal force of judicial decision that revoked the initial decision on detention. Although, the police uses the authority to issue a new decision on detention only occasionally, it is evident, that this legal regulation and relevant legal practise is incompatible with clause 5 (4) European Convention. Under this clause everyone, who was deprived of its liberty, has a right to file an appeal, is entitled to take proceedings by which "the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful".

Despite of the regulation of Section 127 (1) (b) of the Foreigners Residence Act, a duty of police should be to terminate the detention of each and every foreigner, if the court revoked the decision on detention in administrative proceeding.

In 2012 the above mentioned argumentation was in terms of Return Directive confirmed by the Supreme Administrative Court's decisions saying that "it can only be concluded that if the decision regarding detention of the foreigner for the purpose of enabling administrative deportation was overturn regardless of the reason, it is necessary to release the foreigner immediately. Only such approach is possible in order to comply with the requirement in Article 15 (2) of the Return Directive (in details please see below)". Based on this case law, Section 127 (1) of the Foreigners Residence Act is not applicable anymore.

In the case of the proceedings on the release of the foreigner from detention under the Rules of Administrative Procedure, the most significant deficiency must be seen in the inadequate duration of the proceedings which lies in contradiction with Article 5 (4) of the European Convention. This is because, in contrast to the proceedings on the complaint against the detention decision, no deadline is set in which the decision must be made and, as a result, these proceedings regularly take 2-4 months. Given that the examination concerns the deprivation of personal liberty, this proposal cannot be considered an effective measure for improvement.

In 2012 ASIM applied based on the Act No. 106/1999 Coll., on the free access to the information, for the information on the duration of proceeding under the Rules of Civil Procedure in order to support the above mentioned argumentation. Even though the information provided by the relevant courts confirms that the proceeding last from 2 to 4 months, the relevant decision of the Regional Courts or of the Supreme Administrative Court has not been issued yet.

Since neither of the above mentioned legal remedies fully comply with the requirements of Article 5 (4) of the European Convention, there were represented several scenarios for the new regulation in 2012. Those include the proposals that the Courts (not police) would decide on detention in the first instance or establishment of new legal remedy combining the advantages of both legal remedies under the Rules of Civil Procedure (authority to release foreigner) and the Rules of Administrative Procedure (speedy proceedings).

In the area of deportation orders, the short deadline for appeal is the most problematic aspect. According to Section 169 (5) of the Foreigners Residence Act, the foreigner is entitled to apply against the deportation order within 5 days from the announcement of such decision. At the same time, the standard deadline for appeal under the Administrative Proceeding Act is 15 days. Given the limited capacities of detained foreigners, cases may occur when these foreigners submit appeals after the deadline with a request for excuse of missed deadline according to Section 41 of the Administrative Proceeding Act. However, in the year of 2012 ASIM did not report any case when a foreigner missed the deadline for appeal for some relevant objective reason.

4.6 The right to maintain unsupervised contact with the legal representative or representative of consular authorities

The person with restricted freedom has the right to receive in the establishment visits of an attorney-at-law or of a representative of a legal entity who

proves that the business of the company is providing legal assistance to foreigners[28]. The visits of an attorney-at-law as to its number are not limited, unlike common visits (see chapter 4.7). The sole restriction is in the time schedule of the establishment where in the course of the delivery of meals no visits are possible. For the purposes of legal consultations a special self-contained room is available. In the case of detention centre Bělá-Jezová it is a room with an area of approx. 3x3 m2, only with a table and chair. The legal consultations occur without participation of the police or a private security agency. Similarly there are also visits by the representatives of embassies of the countries concerned and in such cases the meetings may take place also in the administrative buildings of the police.

4.7 The right to send and receive packages and correspondence and to receive visitors

Persons with restricted freedom including applicants for international protection are entitled to receive correspondence without restrictions. The letters received do not pass through any control or censorship. In the case of letters sent by the clients, they may address social workers who can send the letter in the Czech Republic by ordinary mail through Česká pošta s.p. In urgent cases it is possible to send a fax message through the social workers. As to the parcels, a detained foreigner may receive a parcel with food, books and personal necessities once a week up to the weight of 5 kilos. The restriction does not apply to parcels with clothes sent for replacement. The parcels intended for a detained foreigner are received by the establishment manager[29]. The police check the parcels if requested by the establishment manager. The police will take out and keep things whose carrying into the establishment or keeping is prohibited by law or internal rules. The belongings intercepted are either sent back to the sender or are kept and delivered to the foreigner upon release from the establishment. As to a possible sending of a parcel, the client should address non-government organisations. During all monitored periods we did not mark any deficiencies in this area. On the contrary, the social workers provided efficient cooperation in sending letters to courts or other authorities.

The detained foreigner is authorised to receive a visit twice a week for one hour, 4 persons at maximum at a time. In well-grounded cases the chief of the establishment or his deputy, after an agreement with the police, may allow more frequent visits or longer time of their duration; if this is permitted by the size of visit rooms, the number of persons may be increased as well.[30]. The routine of the visits is restricted by the establishment routine, mainly reflecting the delivery of meals. The visits to the persons with restricted freedom are allowed every day of the week from 9:30 to 12:00, from 14:00 to 17:00 and from 18:30 to 20:00 hours. The visits take place in a reserved room and there may be two to three persons visited at a time. The person with restricted freedom has the right to receive an attorney or a person providing legal consulting without limits. During the period monitored we did not mark any infringement of the above described right, we only marked complaints about interrupted visits due to the reason of delivery of meals, and once the meals were delivered the visit could complete its hour of duration. In relation to the visits we marked repeated complaints on restrictions of telephone contacts. At the introductory interview the foreigner obtains a telephone card. Mobile telephones are prohibited

[28] Sec. 144 (3) Act no. 326/1999 Coll., on Foreigners Residence in the territory of the Czech Republic
[29] Sec. 145 (1) of the Foreigners Residence Act.
[30] Sec. 144 of the Foreigners Residence Act.

from being kept in the establishment and thus the foreigner is referred for telephone contacts with outside world only to a public telephone where his family and friends can call him. However, due to the placement of telephones in the corridors there is no privacy.

4.8 The right to exercise one's religion

The persons with restricted freedom have a special room where they can practice their faith. Upon the client's request it is possible to provide a clergyperson (Catholic, Orthodox, or Muslim religion). In the period monitored we did not experience any request concerning religious practice or complaints on restrictions of the same.

4.9 The right to use available public education possibilities

A foreigner who is under the obligation of compulsory schooling according to a separate law[31] – i.e. aged 6 to 15 -- must be allowed to attend an elementary school. The foreigner may leave the detention centre for the purpose of fulfilment of compulsory schooling, if it is not secured in the detention centre, and for the purpose of other activities supporting the development of his personality[32]. In well-grounded cases the transport is provided by the operator of the facility. The foreigner placed in the detention centre who attends obligatory schooling has the cost of textbooks and school equipment covered, if he is not able to cover them otherwise. Minor persons detained in detention centre subject to obligatory school attendance attend the elementary school in Bělá pod Bezdězem, if their knowledge of Czech is relatively good, where they are categorised into classrooms according to their capabilities. Children also participate in out-of-school activities, e.g. go to the school canteen for lunch and go on trips. The children are driven to school by the social worker. In the other case, if the child's knowledge of the Czech language is bad or zero, teachers from the elementary school in Bělá pod Bezdězem go to teach them at detention centre. In the period monitored we did not mark any child aged adequately to be subject to obligatory school attendance.

4.10 The right to food, wearing one's own clothes and open air exercise

The foreigner detained is provided with food three times a day, in the event of minor children up to 18 it is five times a day. In food selection the requirements of the cultural and religious traditions of the foreigner detained are considered possible[33]. The food for persons with restricted freedom is prepared directly in detention centre in accordance with public catering regulations. There is always a selection of three types of meals: standard, non-pork, and vegetarian. Pursuant to medical order it is possible to have a special diet. Food and mainly its quality and frequency are the most frequent topics for complaints for persons with restricted freedom. In the course of Ramadan, practising believers obtain food packets in their rooms. Tea for drinking is available all day long. An electric kettle is situated in every corridor.

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[31] Act no. 561/2004 Coll., on Pre-school, Elementary, Secondary and Higher Professional and Other Education (Schooling Act).
[32] Sec. 142 of the Foreigners Residence Act.
[33] Sec. 143 of the Foreigners Residence Act.

If a person has, at the moment of detention, any financial resources they are secured and kept in the safety box of police. The persons detained whose monetary resources have been kept this way can use them for purchase of things for daily use, books, newspapers or magazines, including cigarettes. The shopping shall be secured by the RAF employees in accordance with a written custom order made by the foreigner once a week; this frequency is fixed by the home regulations of the establishment. Taking over of belongings and their accounting is confirmed by the foreigner's signature; the establishment manager writes the sum used on the list of the pecuniary means safeguarded; the financial limit for one purchase is CZK 300. From the financial means secured, the foreigner is obliged to cover the costs related to his detention. After an overall accounting of the financial means a minimum of CZK 400 must remain to the foreigner, which is only valid in the event of his release to the territory, not in the event that he is driven by the police to the asylum establishment or to a frontier crossing[34].

The persons with restricted freedom may wear their own clothes without limits; they are not under obligation to wear uniform clothes. Clothes in the detention centre in Bělá-Jezová are distributed by the non-governmental entity, Diocesan charity / Diecézní charita as a so-called public wardrobe.

In detention centre Bělá-Jezová individual buildings are surrounded by a park and every building has a fenced area. The movement of the detained persons in the outside area is only limited by night-time requirements for quiet; otherwise it is not restricted. The outside areas include sporting places - a volleyball court and table tennis tables.

4.11 The right to medical treatment

In the detention centres there are, in addition to the asylum seekers who are entitled to free-of-costs medical care and are included in the system of public healthcare[35], also foreigners who are not insured and are entitled to receive only urgent medical care in the event of a life- or health-threating situation. The costs related to the providing of medical care to the asylum seekers are thus borne by the government and the costs incurred by the medical establishment are covered by the public medical insurance. Since 2009 the medical care in the establishments of the Ministry of Interior is provided by "Zdravotnické zařízení MV ČR". At detention centre Bělá-Jezová a medical doctor is present every day and a registered nurse is present non-stop. In addition a nurse is always present at delivery of meals to persons detained. The medical doctor of the establishment decides on assignment of treatment to specialised medical doctors. In practice, visits to a specialised medical doctor are rare, with the exception of gynaecological consultations during a pregnancy.

In 2012 ASIM have monitored the cases of limited access to psychological care due to the limited financial resources of the RAF. In our observation the psychological care is provided only in urgent cases on ad hoc basis and the long-term psychological treatment can be provided only with the financial contributions of non-governmental organisations. On the other hand ASIM did not report any substantial complaint regarding to the access to or quality of medical treatment.

[34] Sec. 146 of Foreigners Residence Act.
[35] Sec. 81 of the Asylum Act.

4.12 Protection of vulnerable categories of asylum seekers, including unaccompanied minors and single women

In the monitored period ASIM have reported several cases of vulnerable asylum seekers. The first category of cases includes the persons with psychological problems very often relates to the situation in the country of origin and further deepen by the stay in detention centre. In particular, we have monitored two men from Algeria and Ukraine dealing with serious mental problems who were provided only with limited psychological treatment and only upon ad hoc contribution of non-governmental organisations. The second category was single women. Within this group the most significant case was of a single pregnant woman coming from Peru who was trafficking from Spain to the Czech Republic. She was subject to the medical treatment and offered to participate in special program for victims of sexual violence (since she was not represented by ASIM in her asylum proceeding, we do not have any detailed information on the treatment she was provided with). After 2 months in detention centre she was released to open camp which she arbitrarily left. The last vulnerable group ASIM monitored was single women with children who coped in terms of material conditions of detention especially with the low quality of food for children.

VI. CHAPTER V.
SELECTED CASE STUDIES OF PROBLEMATIC ASPECTS OF ENSURING PROTECTION FOR FOREIGNERS

5.1 Application of a repatriation directive for the situation of foreigners who have submitted applications for international protection

Case No. 1

Basis of dispute

The basis of the dispute and the decision by the Regional Court in Ústí nad Labem (ref. no. 15 A 31/2011-23, 27 April 2011) were described in the previous report for 2011. It involves proceedings in which the Supreme Administrative Court questioned the application of Return Directive on the situation of foreigners who after having been detained had filed applications for international protection. In its ruling dated 22 September 2011, the Supreme Administrative Court suspended the proceedings regarding the cassation complaint and decided to submit to the EU Court Tribunal two preliminary questions with the following wording:

1. Is it necessary to interpret Article 2 (1) in connection with point 9 of the explanation of the Return Directive such that this directive does not apply to a citizen of a third country who has submitted an application for international protection?

2. In a potential affirmative response to the first question, must the detention of the foreigner for the purpose of deportation be halted if the foreigner files an application for international protection and no other reasons exist for continuation of the foreigner's detention?

(Decision of the Supreme Administrative Court with reference no. 1 As 90/2011-59, 22 September 2011)

EU Court Tribunal (Attorney General's opinion)

The proceedings regarding preliminary questions are being conducted at the EU Court Tribunal under reference no. C-534/11 and have not yet been completed. However, on 31 January 2013, the opinion of the Attorney General, M. Wathelet, was presented, in which he proposed that:

1. The preliminary questions posed by the Supreme Administrative Court be labelled as inadmissible, or

2. Should the EU Court Tribunal opt to address these questions based on their merit, they are responded to as follows:

With the exception of the case of abuse of rights, the Return Directive does not apply to a citizen of a third country who has submitted an application for asylum in relation to which proceedings are still on-going. Detention of the citizen of a third country based on the provisions of the directive therefore must be ended as soon as the

foreigner submits an application for asylum in relation to which proceedings are still being conducted.

Article 7 (3) of Council Directive 2003/9/EC (the reception directive) allows a member state within its domestic regulations regarding asylum to stipulate that an applicant for asylum may under certain conditions be ordered to remain in a particular location if this is essential, for example for legal reasons or for the purpose of ensuring public order. In such case, the domestic body prior to ending detention of the particular foreigner based on the repatriation directive has at its disposal a short period, limited to the duration absolutely necessary, for adoption of a decision to detain the foreigner based on domestic regulations regarding asylum, and

In the event of abuse of asylum rights, particularly if there are clear and apparent indications that the legal definition of asylum granting was used for the purpose of preventing application of the Return Directive, the particular foreigner can be kept in a secure facility pursuant to this directive, and all of the preparations for the foreigner's deportation can continue (...). This also means that the continuation of detention based on the Return Directive must respect all guarantees defined in Articles 15 to 18 of the directive, including guarantees regarding the maximum duration of detention."

5.2 Release of the foreigner after the decision regarding detention has been overturned by a court, but a new decision has been issued

Case No. 2

Basis of dispute

The foreigner was detained for the purpose of administrative deportation for 90 days. Following the expiration of that period, the police extended the foreigner's detention by another 90 days. The foreigner filed a lawsuit against that decision, which the regional court agreed with, and the court overturned the police's decision and referred the matter for further proceedings. The reason for the court's decision to overturn it was a procedural defect amounting to the inability to examine the statement based on which the duration of detention was set as 90 days. However, instead of releasing the foreigner, the police within 3 days replaced the overturned decision with a new decision to extend the foreigner's detention, which is expressly allowed by Section 127 (1) (b) of the Foreigners Residency Act. The foreigner filed a new lawsuit against the new decision. In it, the foreigner mainly argued in objection that the police's approach did not comply with Article 5, paragraph 4 of the European Convention, according to which "everyone who has been deprived of freedom by arrest or in another manner has the right to file a request for proceedings in which a court would quickly decide about the legality of his/her detention and would order his/her release, if the detention is deemed unlawful."

Decision of the Regional (Municipal) Court

The court did not share the plaintiff's opinion that the issuance of the challenged decision had led to a breach of the Convention on Human Rights in the provisions cited in the suit. The court is required to comply with the law, and this requirement

also applies to the defendant. The provisions of Section 127 (1) (b) of the Foreigners Residency Act calls for ending of a foreigner's detention if the police do not issue a new decision within three days from the date when the overturning verdict legally comes into force. This authorisation was used in the judged matter, and the challenged decision regarding the plaintiff's detention was issued on the day following the date on which the overturning verdict legally came into force, and therefore by the legal deadline. The issuance of the challenged decision did not prevent the legal situation, but enabled it. Upon the issuance of the decision, the legal effects claimed in the lawsuit came into force, and the original decision was not overturned due to unlawfulness, but for defects of a procedural nature, and in such situation nothing prevented the issuance of a new decision free of defects that would correct the procedural errors discovered by the court. That also happened in the judged matter (decision of the Regional Court in České Budějovice with reference no. 10 A 51/2012-21, 13 June 2012).

Supreme Administrative Court's decision

Article 5 (4) of the Convention set a general right for everyone who has been deprived of freedom by arrest or in another manner to file a request for proceedings in which a court would quickly decide about the legality of his/her detention and would order his/her release, if the detention is deemed unlawful. This is a right that can be exercised by all persons detained for any of the reasons specified in Article 5 (1) of the Convention, including foreigners detained for the purpose of arranging administrative deportation. In situations when a foreigner has been issued a decision regarding detention by an administrative body, Article 5 (4) of the Convention becomes more significant, since it guarantees re-examination of such decision by an independent curt, which must have the authority to order the foreigner's release based on rulings by the European Court for Human Rights, most recently in the decision dated 25 October 2012 in the case of *Buishvili v. Czech Republic*, no. 30241/11.

The possibility of speedy judicial review in this respect represents a guarantee of lawfulness of the administrative decision regarding detention of the foreigner, which in the case of the complainant was not upheld, and therefore the Regional Court overturned it and ruled that the defendant had not sufficiently justified the duration of detention set as 90 days. The overturning of the original decision regarding detention of the complainant was due to defects in the proceedings (...) amounting to the inability to examine the challenged decision to identify a lack of reasons for the additional statement by which the duration of detention was set. However, the fact, that procedural defects were the reason for the overturning, changes nothing about the fact that the original decision regarding administrative deportation of the complainant was issued at variance with the law. (...) The court examination pursuant to Article 5 (4) of the Convention must comply with and take into consideration the standards of material law as well as procedural standards set by domestic regulations, and these must not be differentiated from each other, which is also confirmed by expert literature, according to which from judicial practice regarding Article 5 of the Convention, repeated emphasis on the procedural and material lawfulness of the deprivation of freedom can be identified as one of the related principles. In relation thereto, it is also necessary to interpret Article 15 (2) of the repatriation directive, which, like Article 5 (4) of the Convention, guarantees the right to commencement of speedy court proceedings regarding examination of the

lawfulness of the foreigner's decision, and "if the detention is unlawful, the particular citizen of a third country must be released immediately". (…)

Therefore, it can only be concluded that if the decision regarding detention of the foreigner for the purpose of enabling administrative deportation was overturn regardless of the reason, it is necessary to release the foreigner immediately. Only such approach is possible in order to comply with the requirement in Article 15 (2) of the Return Directive, which of course did not occur in the complainant's case, since the complainant was not released, and a new decision regarding maintaining detention was issued, with citing of Section 127 (1) (b) of the Foreigners Residency Act. There is therefore an evident non-conformity of the Return Directive with domestic law, which de facto even legally enables postponement of the end of a foreigner's detention, although the decision based on which the foreigner was detained cannot stand up in court and has been cancelled by the court in administrative proceedings (the Supreme Administrative Court's decision with reference no. 9 As 111/2012 - 34 dated 1 November 2012).

5.3 Requirement for periodic court examination and the related issue of setting the length of detention in the police's decision

Case No. 3

Basis of dispute

Based on a decision by the police, the foreigner was detained for a period of 120 days. In the foreigner's opinion, this decision breached the foreigner's right to regular court examination of the lawfulness of detention, which is guaranteed by Article 15 (3) of the Return Directive and Article 5 (4) of the European Convention on Human Rights (see for example *Chichlov v. Bulgaria*, no. 38822/97, dated 9 January 2003, Section 88). In the lawsuit filed with the Municipal Court in Prague, the foreigner emphasised that verification of the lawfulness of deprivation of freedom occurs in the Czech Republic primarily in connection with the issuance of an administrative decision regarding detention or its extension. Each foreigner is entitled to file a lawsuit against such decision, which the court must decide regarding within 7 business days. This ensures the speediness of the court examination of detention and its conformity with Article 5 (4) of the European Convention from this point of view. However, based on the challenged decision, it was decided to keep the foreigner in detention for 120 days. Through this approach, the police basically did not enable periodic court verification of the lawfulness of the detention, since the police's obligation to decide again regarding the extension of the foreigner's detention and the related court verification of its legality do not arise until after 120 days.

Decision of the Regional (Municipal) Court

The Municipal Court in Prague rejected the lawsuit as unjustified (decision with reference no. 2 A 24/2012-20, dated 26 April 2012).

Supreme Administrative Court's decision

According to Article 5 (4) of the European Convention, whoever has been deprived of freedom by arrest or in another manner has the right to file a request for proceedings in which a court would quickly decide about the legality of his/her detention and would order his/her release, if the detention is deemed unlawful. The guarantee enshrined in the cited article includes the right to regular court examination of the reasons for the duration of the deprivation of personal freedom. This can be conducted by courts automatically; it is sufficient to enable the foreigner to initiate such examination in reasonable intervals (...). If other means of remedy regularly last for two or more months without any reasons on the side of the detained foreigners themselves (particularly obstructions caused in relation thereto), it is necessary for the administrative bodies to stipulate in decisions regarding detention periods for the duration of such detention that in a maximum of approximately monthly intervals there is an ensured possibility of effective court examination of the reasons for such detention. (...) In the particular situation, it is necessary to take into consideration that the foreigner based on the act on the stay of foreigners is detained for fundamentally less serious reasons than a suspect in custody being prosecuted in criminal proceedings, and therefore it is necessary for the standard of court protection of the foreigner's personal freedom to be at least at the same level as that in relation to custody (the Supreme Administrative Court's decision with reference no. 7 As 97/2012 - 26 dated 4 September 2012).

5.4 Evaluation of a real expectation for deportation

Case No. 4 (non-deportable foreigner)

Basis of dispute

Between 2008 and 2012, the particular foreigner was deprived of personal freedom 5 times for the purpose of deportation. For approximately 4.5 years, he spends more than 20 months in detention. For the entire period, it was not managed to deport him. The main obstacle to the foreigner's deportation was that he had neither a passport nor another identity document, and the (Ukrainian) embassy never issued him a passport or other identity document.

Verdict of the Regional (Municipal) Court

It is possible to agree with the plaintiff's claim that detaining a foreigner for the purpose of his deportation can done only if there is a real expectation that the foreigner can actually be relocated to his country of origin. However, the plaintiff did not in any way prove that he had been detained repeatedly without a purpose, without it being possible to carry out deportation due to the position of the relevant Ukrainian authority. The administrative file includes an instruction from the state prosecutor regarding postponement of the matter due to the approach of the relevant authority in Ukraine, which refuses to accept the plaintiff, although the instruction is dated 3 November 2009. Following the lapse of more than 1 year, a different approach from the authorities in Ukraine cannot be ruled out. (...) It can also be concluded reasonably that the plaintiff alone is not resolving his stay situation, and therefore it is to his detriment that the defendant may have repeatedly limited his

personal freedom due to him not having left the country or due to his lack of travel documents (the Prague Municipal Court's decision with reference no. 7 A 245/2011-15 dated 21 July 2011).

Supreme Administrative Court's decision No. 1

From the contents of the examined decision of the defendant (...) it is apparent that the deportation of the complainant has not been managed, since the complainant lacks a valid travel document, which complicates the verification of his identity. A request for determination of the complainant's identity has been submitted to the representative office of Ukraine, but a decision has not yet been issued. This situation of course has not been resolved – the foreigner's identity was not determined even during the most recent proceedings regarding his deportation, and this situation has lasted at least since 2004. (...) Neither the defendant in the administrative proceedings nor the Municipal Court in court proceedings has devoted enough attention to this matter, even though the complainant has raised objections during the administrative and court proceedings and even though this circumstance, if proven, would have decisive significance for evaluation of the legality of the defendant's decision. (...) If the obstacle to the foreigner's deportation continued because according to both parties the complainant's home country, Ukraine, refuses to confirm his identity and issue substitute documents to him, the defendant should consider whether that obstacle can be eliminated and within what time frame (in view of the repeated unsuccessful attempts and should also consider whether due to such obstacle it can decide regarding detention of the complainant for administrative deportation and whether in the particular case it can decide regarding extension of the duration of his detention. However, the defendant has not addressed these circumstances (the Supreme Administrative Court's decision with reference no. 5 As 96/2011-53 dated 31 May 2012).

Supreme Administrative Court's decision No. 2

The Municipal Court, basically in agreement with the regional directorate, reached the conclusion that enforcement of the decision regarding deportation of the complainant can be expected, since the approach of the Ukrainian state authorities cannot be foreseen. However, this conclusion is not supported by the actual findings from the administrative file. The complainant has been repeatedly placed in detention since 2004 for the purpose of deportation within criminal or administrative proceedings, but always without a result. (...) If the obstacle to the complainant's deportation has persisted because his country of origin Ukraine refuses to confirm his identity and issue him replacement documents, the regional directorate should assess whether this obstacle continues to exist and whether there has been any change in the Ukrainian authorities' approach to the complainant (in view of the hitherto repeatedly unsuccessful attempts) and should assess whether with consideration for that obstacle it can decide regarding detention of the complainant for the purpose of administrative deportation. (...) If the regional directorate and the Municipal Court without any real indications were to assume that in this case the deportation of the complainant could occur, such assumption would conflict with the determined facts of the case and would be groundless (the Supreme Administrative Court's decision with reference no. 7 As 121/2012-47 dated 1 November 2012).

Case No. 5 (applicant for international protection)

Basis of dispute

The foreigner was detained for the purpose of administrative deportation. The period of his detention was set as 90 days. The foreigner subsequently filed an application for international protection. Following the expiration of the specified 90 days of detention, the police issued a new decision that extended the foreigner's detention by another 60 days. The foreigner considered the decision to prolong his detention to be unlawful, and therefore, he challenged it with a lawsuit, about which the Regional Court in Prague decided. In the lawsuit, the foreigner argued that since he had applied for international protection, the decision regarding administrative deportation of the foreigner could not be enforced for the duration of the proceedings regarding international protection (including court examination). The plaintiff argued that in his case there was not a realistic expectation that during the period of his continued detention the authorities could manage to deport him and that therefore there was no longer any justification for his detention. He mainly pointed out that by the date of issuance of the decision regarding extension of his detention, no decision had been issued regarding his application for international protection, and the period allowed for issuance of such decision had been extended by the Ministry of Interior for a period that exceeded the maximum allowed length of his detention (180 days). The Regional Court agreed with the lawsuit and subsequently overturned the challenged decision by the police.

Decision of the Regional (Municipal) Court

Therefore, it can be concluded that in the particular case (...) there was no reason to continue the foreigner's detention. It can be repeated that if the maximum possible length of detention was to expire on 28 April 2012 and the period allowed for the decision regarding the plaintiff's application for international protection was extended until 20 May 2012, it was already apparent at the beginning of April, when the defendant evaluated the particular circumstances, that the realisation of the plaintiff's deportation, which moreover had not yet legally come into force, within the maximum period for detention was entirely unrealistic (decision with reference no. 44 A 14/2012-22 dated 16 May 2012).

5.5 Extension of detention above 180 days

Case No. 6

Basis of dispute

The foreigner was detained by a police patrol in Prague, and when asked to identify himself, he gave as his name L. V. K. and his date of birth X. However, no person with that name was found in the police's database, and the foreigner was therefore subsequently detained. On the same day, the foreigner was asked again for details regarding his identity. He said his name was N. C. L and also gave a different date of birth. Based on the last specified details, the police contacted the diplomatic mission of Vietnam with a request for issuance of a travel document for the foreigner. However, that request was not satisfied during the first 180 days of the foreigner's

detention, and therefore the police decided to extend the foreigner's detention to more than 180 days, based on the reason specified in Article 15, paragraph 6, letter a) of the repatriation directive (Article 15, paragraph 6, letter b) of the directive had not been transposed into Czech law).

The foreigner challenged the specified decision regarding extension of his detention with a lawsuit addressed to the Regional Court in Prague. In it, the foreigner stated that the police's request for issuance of a replacement travel document did not contain his actual name, N. C. L. Therefore, the fact that immediately after his detention by a police patrol he had given different information did not have any effect on the process of securing a replacement travel document, since the name L. V. K. does not appear anywhere in the request addressed to the diplomatic mission. It was stated that no connection existed between the fact that the foreigner had stated untruthful information about his identity and the fact that it had not been managed to obtain a replacement travel document for him.

Verdict of the Regional (Municipal) Court

The Regional Court in Prague rejected the lawsuit as unsubstantiated (verdict with reference no. 44 A 12/2012-20 dated 26 April 2012).

Supreme Administrative Court's verdict

The Supreme Administrative Court convinced the complainant that a connection must exist between the stating of untruthful identification details and the fact that the foreigner could not be deported. This condition is partially apparent already from the very wording of the (particular) provisions (of the act on the stay of foreigners), according to which it must involve untruthful stating of details about a foreign national's identity that are essential for securing a replacement travel document. Such document for a foreigner who does not possess a valid travel document is one of the conditions for deportation. The direct connection between the foreigner's conduct (stating of untruthful details) and the inability to deport him is more obvious if the (relevant provisions of) the Foreigners Residency Act is read in accordance with Article 15 (6) (a) of the Return Directive, which was its prototype. (…)The opposite interpretation that detention can be extended beyond the basic maximum duration of six months based on facts that are not directly related to the reason that prevents the foreigner's deportation would conflict with the extraordinary nature of the institution of detention (...). Nor would it correspond to the meaning and purpose of the legal situation adopted in the repatriation directive, according to which the duration of detention should be as short as possible (see Article 15 (1) of the Return Directive) and should be subject to the principle of proportionality, and interference with personal freedom should be limited [see point 16 of the explanation of the repatriation directive, explanatory report regarding this directiv KOM (2005) 391 in its final wording and the verdict *El Dridi*, point 43). As the complainant also has correctly pointed out, such interpretation would lead to absurd consequences and would mean that the administrative body could at its own discretion extend a foreigner's detention even exceeding the maximum period of 180 days if the foreigner had at any time in the past stated untruthful information, regardless of the actual reason preventing the foreigner's deportation. The consequences of the described approach would also conflict with the mentioned judicial practice of the European Court for Human Rights

(the Supreme Administrative Court's decision with reference no. 8 As 67/2012-54 dated 31 August 2012).

5.6 Submission of an application for international protection for persons detained for the purpose of their transfer pursuant to a readmission agreement

Case No. 7

Basis of dispute

As a result of a decision by the police, the foreigner was detained for the purpose of transfer to another country based on a readmission agreement. The legal basis for the foreigner's detention was Section 129 (1) of the Foreigners Residency Act, which in the assessed period read: *"The police shall detain for a period absolutely necessary a foreigner who has unlawfully entered or remained in the territory, for the purpose of his transfer pursuant to an international agreement or directly applicable legal regulations of the European Communities (Dublin Regulation)."* Immediately after his detention, the foreigner expressed his intention to apply for international protection. However, the police did not allow him to do so, citing Section 3a (a) (4) of the Asylum Act. The particular provisions at the time read: *"A foreigner is entitled to issue a declaration seeking international protection to the police at a facility for detention of foreigners, except a foreigner detained for the purpose of his transfer or transit pursuant to an international agreement or legal regulations of the European Communities."* The police notified the foreigner in writing. The foreigner filed a lawsuit against the police's written decision with the Municipal Court in Prague. In the lawsuit, the foreigner mainly emphasised that the controversial written decision by the police needed to be considered a decision examinable by a court, since it interfered with the foreigner's right to request international protection in the Czech Republic. He also described the written decision as unlawful and proposed that it be overturned.

Decision of the Regional (Municipal) Court

The Municipal Court rejected the lawsuit and argued that the controversial written statement from the police did not amount to a "decision" as defined by Section 65 of the code of administrative court procedure and therefore could not be challenged by a lawsuit in administrative court proceedings (verdict with reference no. 5 A 226/2010-35 dated 8 February 2011).

Supreme Administrative Court's decision

The term "decision" represents a legislative shortened term contained in Section 65, paragraph 1 of the code of administrative court procedure. A decision as defined by those provisions means an action by an administrative body that establishes, amends, overturns or bindingly determines persons' rights and obligations. In those provisions, the term "rights" needs to be interpreted in the context of Section 2 of the code of administrative court procedure as public subjective rights. Therefore, it is necessary to assess whether the police's statement amends, overturns or bindingly determines the public subjective rights of the complainant. (…)

If in the particular case the administrative body reacted to the complainant's filing in which the complainant applied for international protection by the

administrative body adding the statement to the file without taking any further action and only informally notifying the complainant, then the administrative body through such approach prevented the complainant from filing an application for international protection. As a result, the body basically decided negatively about the complainant's right to apply for international protection in the Czech Republic. Therefore, the particular notification can be qualified as a decision in the material sense. The complainant's objecting argument that the Municipal Court had incorrectly legally assessed the nature of the police's notification is therefore justified. Therefore, it is necessary for the Municipal Court in additional proceedings to address this "decision" with merit and determine whether the police acted in accordance with Section 3a, letter a), point 4 of the asylum act, when it reached the conclusion that the complainant was not entitled to apply for international protection (the Supreme Administrative Court's decision with reference no. 7 As 83/2011-77 dated 27 November 2011).

5.7. Decisions about lawsuits against detention without a court file

Case No. 8

Basis of dispute

Based on the police's decision, the foreigner's period of detention was extended to beyond 180 days, since reportedly during the administrative proceedings the foreigner untruthfully stated the identifying information that was necessary for obtaining a replacement travel document. The foreigner filed a lawsuit against that decision, which, however, the Regional Court in Ostrava rejected. However, the Regional Court decided regarding the lawsuit without the complete administrative file and only based on selected documentary evidence. The complete administrative file at the time was located at the Supreme Administrative Court, and for that reason the court discussed the cassation complaint, which the foreigner filed in connection with one of the previous decisions regarding detention.

Supreme Administrative Court's decision

The Regional Court will have to examine carefully in new proceedings whether the selected copies of the administrative file comprising the administrative file for the particular matter will suffice for the conclusions of its new decision. It is necessary to remember that one of the basic principles of administrative court proceedings is the need for decisions based on reliable determination of actual situations, which in administrative court proceedings are usually determined from the contents of the administrative file. Therefore, if the complainant also were to file a cassation complaint against the new decision by the Regional Court in which the complainant objected to the breach of the specified principle and stated how it had been breached with consideration for the determined situation, the Supreme Administrative Court's only option would be to agree with such objection, if it determined that the Regional Court during examination of the situation did not have the complete administrative file available (the Supreme Administrative Court's decision with reference no. 9 As 105/2012-39 dated 9 August 2012).

LEGAL REGULATIONS REFERENCES

Administrative Proceeding Act – Act No. 500/2004 Coll.

Asylum Act – Act No. 325/1999 Coll.

Charter of Fundamental Rights and Freedoms

Charter of Fundamental Rights of the European Union

Dublin Regulation - Council Regulation (EC) No. 343/2003 of 18 February 2003

European Convention on Human Rights

Foreigners Residency Act – Act No. 326/1999 Coll.

Geneva Convention

Ombudsman Act – Act No. 349/1999 Coll.

Procedural Directive – Council Directive No. 2005/85/EC of 1 December 2005

Return Directive – Directive No. 2008/115/EC of the European Parliament and of the Council of 16 December 2008

Rules of Administrative Procedure - Act No. 150/2002 Coll.

Rules of Civil Procedure – Act No. 99/1963 Coll.

Schooling Act – Act No. 561/2004 Coll.

VIII. ANNEXES

1. STATISTICAL DATA

1.1 *Total Number of Adult Detainees in detention centre Bělá-Jezová*

Date of the Monitoring Visit	Detained Persons in Total	Detained Asylum Seekers			Detained Foreigners without Application for Asylum		
		In Total	Male	Female	In Total	Male	Female
Jan 28	61	24	22	2	37	33	4
Feb 11	60	23	21	2	37	33	4
Feb 25	69	19	18	1	50	46	4
Mar 10	66	21	19	2	45	44	1
Mar 24	66	20	18	2	46	44	2
Apr 7	75	22	20	2	53	50	3
Apr 21	72	24	22	2	48	43	5
May 5	74	19	16	3	55	49	6
May 19	70	19	15	4	51	48	3
Jun 2	66	18	15	3	48	42	6
Jun 16	52	12	10	2	40	39	1
Jun 30	56	11	10	1	45	41	4
Jul 14	57	11	10	1	46	42	4
Jul 28	56	11	8	3	45	43	2
Aug 11	52	15	13	2	37	34	3
Aug 25	58	11	10	1	47	40	7
Sep 8	59	17	13	4	42	40	2
Sep 22	54	13	11	2	41	34	5
Oct 6	61	11	10	1	40	11	51
Oct 20	63	11	9	2	52	44	8
Nov 3	65	13	10	3	52	45	7
Nov 17	65	9	8	1	56	53	3
Dec 1	56	7	6	1	49	45	4
Dec 15	58	18	16	2	40	36	4
Dec 26	52	14	12	2	38	34	4

1.2 *Detained and Accommodated Minors in detention centre Bělá-Jezová*

Date of the Monit. Visit	Minors in Total	Asylum Seekers			Foreigners without Application for Asylum		
		Minors Accommodated with Their Parents	Minors Detained with Their Parents	Unaccompanied Minors	Minors Accommodated with Their Parents	Minors Detained with Their Parents	Unaccompanied Minors
Jan 28	0						
Feb 11	0						
Feb 25	0						
Mar 10	0						
Mar 24	0						
Apr 7	0						
Apr 21	1					1	
May 5	0						
May 19	1				1		
Jun 2	0						
Jun 16	0						
Jun 30	0						
Jul 14	0						
Jul 28	0						
Aug 11	0						
Aug 25	0						
Sep 8	0						
Sep 22	0						
Oct 6	0						
Oct 20	1				1		
Nov 3	2		1		1		
Nov 17	2				2		
Dec 1	6		1		5		
Dec 15	6		1		5		
Dec 26	4		1		3		

2. LIST OF MONITORING VISITS

DATE OF MONITORING:	MONITORING CONDUCTED BY:
Jan 28	**Iva Ulmannová, Jaroslav Větrovský**
Feb 11	**Iva Ulmannová, Gabriela Kopuletá**
Feb 25	**Jaroslav Větrovský, Jiřina Neumannová**
Mar 10	**Iva Ulmannová, Jiřina Neumannová**
Mar 24	**Jaroslav Větrovský, Gabriela Kopuletá**
Apr 7	**Iva Ulmannová, Gabriela Kopuletá**
Apr 21	**Jaroslav Větrovský, Jiřina Neumannová**
May 5	**Jiřina Neumannová**
May 19	**Jaroslav Větrovský**
Jun 2	**Jaroslav Větrovský, Jiřina Neumannová**
Jun 16	**Jiřina Neumannová, Jan Procházka**
Jun 30	**Iva Ulmannová, Jaroslav Větrovský**
Jul 14	**Gabriela Kopuletá**
Jul 28	**Jaroslav Větrovský,**
Aug 11	**Iva Ulmannová, Jan Procházka**
Aug 25	**Jaroslav Větrovský, Gabriela Kopuletá**
Sep 8	**Iva Ulmannová, Jiřina Neumannová**
Sep 22	**Jaroslav Větrovský,**
Oct 6	**Jiřina Neumannová, Jan Procházka**
Oct 20	**Iva Ulmannová, Jaroslav Větrovský**
Nov 3	**Jiřina Neumannová, Jan Procházka**
Nov 17	**Jaroslav Větrovský, Jan Procházka**
Dec 1	**Iva Ulmannová, Jiřina Neumannová**
Dec 15	**Jaroslav Větrovský, Jan Procházka**
Dec 26	**Jiřina Neumannová, Jan Procházka**