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## **EUROPEAN SOCIAL CHARTER**

Observation of the Czech Republic Government on the  
comments by FORUM on the 12<sup>th</sup> National Report on the  
implementation of the European Social Charter

submitted by

## **THE GOVERNMENT OF CZECH REPUBLIC**

(Article 16 and 17)  
for the period  
01/01/2010 – 31/12/2013)

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**CYCLE 2015**



# **Observation of the Czech Republic to the Additional information to the 12th Report on Application of the European Social Charter by the Czech Republic submitted by Forum for Human Rights**

## **I. Introduction**

The Czech Republic, or the Ministry of Interior as the authority responsible for the issue of the detention of foreigners, strongly protests against the allegations contained in the information submitted by Forum for Human Rights (hereinafter referred to as "Forum"). The Ministry of Interior disagrees with the allegations of inhumane conditions and degrading treatment of foreigners in the detention facilities. Nor is it possible to agree with the alleged violation of the Czech Republic's international commitments, i.e. the rights enshrined in Articles 16 and 17 of the European Social Charter of 1961 (hereinafter referred to as "Charter"), in this case.

## **II. Compliance with the Charter**

The scope of the Charter covers foreigners only in so far as they are nationals of other contracting parties lawfully resident or working regularly within the territory of the contracting party concerned. Member states also grant to their nationals and nationals of other contracting parties civil and political rights and freedom as well as provide protection and assistance to migrant workers and their families who are citizens of a contracting party.

However, the content of the Additional information refers only to foreigners who are not citizens of the Charter contracting parties and who stay in the territory of the Czech Republic illegally. With respect to that fact, they are not covered by the scope of Charter.

Moreover, the reference period of the 12<sup>th</sup> Report on the application of the Charter by the Czech Republic was from 1 January 2010 to 31 December 2013 and not the year of 2014 as erroneously stated by the Forum.

## **III. Situation in the Czech Republic**

### Definitions

First, it is necessary to clearly define the persons placed in the detention facilities for foreigners. Only the persons who entered the Czech Republic illegally and stay here without proper entry or residence permits are placed in these detention facilities.

In contrast, people who have applied for international protection in the Czech Republic are primarily not placed in the detention facilities. These people can voluntarily apply for accommodation in centres for applicants for international protection or in private property ("asylum seekers"). The regime in these centres is completely liberal and the accommodated persons may freely leave the centre.

A foreigner who stays at the territory of the Czech Republic without proper entry or residence permit has received an administrative decision of banishment which stipulates the period for departure the territory of the Czech Republic and period during which the foreigners will not be allowed to entry any of EU member states territory. In case of a legal title, the detention decision can be issued. In case of detention, the foreigner has been duly informed of the possibility of requesting for granting an international protection within 7 days after receiving this information.

Foreigners placed in the detention facilities for foreigners in the Czech Republic mostly do not want to apply for international protection.

Thus, the number of asylum seekers placed in the detention facilities for foreigners is very small. As of 10 November 2015, there was a total of 229 foreigners placed in all detention facilities for foreigners, of whom 12 had the status of asylum seekers (foreigners who requested for international protection within 7 days period). Placement or continuation of detention of the person who expressed their intention to ask the Czech Republic for international protection after their detention fully complies with Czech and European legislation.<sup>1</sup>

Placements of families with children

Concerning placements of families with children in these facilities, once again, we refer to the applicable regulations which permit such placements and which does not conflict with the European legal framework. In all cases of detention of persons accompanied by minors, the parents or other accompanying persons are asked whether they are able to provide care for the minors in another way, to avoid their placement in the detention facility (e.g. with family members living in the Czech Republic). In case there is not such a possibility, a placement of minors in detention facilities for foreigners is always carried out in the form of an "accommodation facility" so as to ensure the unity of the family.

In case the adult persons accompanying a minor wanted to entrust the care of the minor to another appropriate and responsible person, such a request would be granted. However, in an overwhelming majority of cases the persons want to stay together, which is possible in a detention facility for foreigners only.

In terms of equal treatment of all foreigners, the Ministry of Interior's steps were fully in accordance with Czech law. Czech law does not allow setting of different conditions and approach of state authorities to foreigners who violate the law and also accompany minors and foreigners who violate the law but do not accompany a minor.

We fundamentally disagree with the description of communication between the public defender of rights (the Ombudsperson) and the responsible authorities of the Czech Republic. We cannot agree with the statement that the letter sent by the Ombudsperson to the Minister of Interior on 27 August 2015 was not reflected. The Minister of Interior is in a regular written, as well as a personal contact with the Ombudsperson. The last personal meetings were held on 20 October 2015 and 12 November 2015. We refer to the press release dated 5 November 2015 which was published on the Ombudsperson's website and which states that: *"The public defender of rights acknowledges that the conditions of foreigners detained in Bělá Jezová improved in accordance with the recommendations made by the public defender of rights. Today, the conditions are vastly different from the ones we saw during our visits"*

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<sup>1</sup> The detention institute is governed by law, namely by Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic, as amended. The Act stipulates that a detention may be carried out only upon fulfilment of legal conditions.

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

*in September or early October.*” Thus, it is not true that the competent authorities have not taken any action. On the contrary, this area is being paid an increased attention and care in order to provide standard-quality conditions for detained foreigners.

In the summer of this year, especially in July and August and part of September, an unexpected migratory wave culminated affecting the whole EU. In this period, the numbers of incoming foreigners were exceeding 100 persons a day. The primary objective was to ensure the basic needs of these people, i.e. shelter, food, and basic hygiene products.

Although the preparation of measures had already begun at the first signs of the subsequent developments in June this year, the responsible authorities were not capable of providing standard accommodation conditions for all detained foreigners. Despite this, however, the situation was continuously tackled and all efforts were made to improve the accommodation conditions of the detained foreigners to a common standard.

#### Basic conditions when detaining a foreigner

The legal regulation of detention facilities for foreigners is contained in Chapter XII of Act No. 326/1999 Coll., Act on the Residence of Foreign Nationals in the Czech Republic (hereinafter referred to as "the RFNA"). The provision of Sec. 130 et seq. sets out the rights and obligations of detainees and the rights and obligations of the facilities' administrator, i.e the Refugee Facilities Administration of the Ministry of Interior. The provision of Sec. 134 defines the basic conditions of detention (the detainee's right to a bed, food, and basic hygiene supplies, the right to receive and send written messages, the right to receive visits in the facility, the right to access to the available printed media and books).

In accordance with Sec. 138 of the RFNA, the specific conditions of individual services are then governed by the internal rules (Internal orders) of each facility. These include, among other things, rules for the provision of health services, psychological and social care, timetable for provision of food with a full account of cultural and religious traditions of each detained foreigner (Sec. 143 of the RFNA). The Internal order also regulates the rules and the scope of cultural and sporting activities (these shall be provided in facilities with parents and children or unaccompanied minors in the form of cultural, sport, and other activities for various age groups - Sec. 138 para. 2 of the RFNA). The facility administrator shall allow fulfilment of the compulsory education attendance for the minors (Sec. 142). Schooling methods shall be defined by the Internal order. The Internal order also defines visit regime, shopping schedule for detained foreigners, and other technical issues.

In response to the significant increase in the number of people without a residence permit in the Czech Republic in the summer of this year, the responsible authorities, namely the Refugee Facilities Administration of the Ministry of Interior and Police, continuously implemented measures not only to ensure the basic needs of the detained foreigners, but also to improve the conditions of their accommodation.

The primary measure was the continuous increasing of accommodation capacities. First, the capacity of detention facilities for foreigners in Bělá – Jezová was increased from 270 persons (standard capacity) to 700 persons (an emergency capacity) and in Vyšní Lhota from the standard capacity of 340 persons to the emergency capacity of

640 persons. Later, a new facility was opened in Drahonice with a capacity of 240 persons.

As of 11 November 2015, the standard capacity of none of the detention facilities for foreigners was exceeded. There were 100 foreigners detained in Drahonice, 84 in Vyšní Lhota, and 45 in Bělá Jezová. Despite the fact that the number of detained foreigners is changing every day, the situation is stabilised at the moment. It is controlled by the Police of the Czech Republic. Additional measures to handle any possible further migration waves are being implemented, e.g. steps to increase personnel capacities of the relevant bodies, including financial resources.

With respect to the needs of detained foreigners that are changing in relation to the composition of groups of migrants coming to the Czech Republic (there has been a higher number of families with children recently), state authorities always try to adapt the facilities to the specific needs of detainees. The facility in Bělá pod Bezdězem has been earmarked as a facility for the placement of families with children. The facility has been newly painted and fitted with new mattresses. The exterior premises are continuously being equipped with additional leisure-activity equipment for children.

Children, as well as adults, have always access to clothing and footwear appropriate to the season. Furthermore, adequate specific hygiene supplies and food are provided for the children. Children are provided with snacks and food for infants is also provided. Other refreshments will be provided in the classroom and the children's centre. Below is a detailed description of conditions in the Bělá pod Bezdězem facility which has been earmarked for families with children.

#### Hygienic conditions

Bathrooms with showers are available for foreigners 24 hours a day. Each bathroom is shared by two rooms, the same applies to sanitary facilities. Due to capacitive insufficiencies, there were sanitary units installed for the foreigners who were accommodated in tents or living units. The sanitary units were connected to the water supply and the sewer system. **At present, no foreigners are accommodated in living units.**

Foreigners have access to washing machines and dryers installed in the facility. Beddings are changed once in 14 days, or more often if necessary.

#### Hygiene products

Foreigners are provided with hygiene products with respect to the gender and age. For example, the hygiene kit for children aged 12-18 months contains washing powder (1kg for six weeks), paper diapers (5 for day), baby soap (1 piece for 4 weeks), baby body lotion (250 ml for 12 weeks), diaper cream (150 grams for 3 month), baby wipes (4 packages for 4 weeks), baby shampoo (250 ml for 12 weeks), children's toothbrush (1 piece for 8 weeks).

Other products are available on request. If necessary, foreigners may ask the facility staff (social worker, accommodation officer) for these.

#### Facilities for children

There is a children's centre in the facility the equipment of which corresponds to a kindergarten. An employee - educator (with the same functions as kindergarten teacher) is permanently present in the children's centre. The facility is equipped with

outdoor elements for children (climbing frame, slide, sandpit), there are also indoor playrooms and children's areas. Last but not least, there is an outdoor playground and gym for bigger kids (and adults). There is a television room on each floor of residential buildings.

### Schooling

Children completing their compulsory schooling use classrooms located directly in the facility. Every school day, teachers from local elementary school teach in the classrooms (there are no classes in summer and during the holidays). Children are provided with all the required school aids (at the expense of the Refugee Facilities Administration of the Ministry of Interior).

### Health care

Paramedical staff (nurses) are present at the facility 24 hours a day. During the regular working hours there is a general practitioner for adults. In case a specialised health care is needed, the foreigners are sent to contracted external medical facilities. Pediatric care is provided directly in the facility.

### Meals

Meals are provided 3 times a day (5 times a day for children - they get morning and afternoon snacks with their breakfast and lunch), 3 types of meals are offered (A-standard, B-with no pork, and C-vegetarian). If the GP indicates some diet (pregnant women, infants, gluten-free, diabetes, etc.), the food for the client is adjusted according to their needs (including infant milk). Current menus can be found at [www.suz.cz](http://www.suz.cz).

### Leisure activities

The basic offer of leisure activities includes TV, board games, sports equipment, foreign newspapers, other periodic press and books, cinema, gym, fitness, sports and handicraft workshops. There is a children's centre (see above) and also playrooms in each building. Given that children under 15 years are not considered detainees under RFNA, they are allowed to leave the facility. Thus, leisure educators occasionally take children on trips outside the facility.

### Room equipment

Rooms are equipped with beds, tables, cabinets to store personal items, and chairs. The equipment corresponds to the number of accommodated foreigners. The facility operator shall give each foreigner a lock by which they can lock their cabinet in the room. Each of the accommodation buildings has spaces for children (playroom) and facilities for parents (seating areas, changing tables, kitchen with a microwave and a kettle).

For the sake of completeness, we add the information on the current number of persons under 18 years of age placed in detention facilities for foreigners. As of 11 November 2015 a total of 17 minors aged 2 -17 years was accommodated in the detention facility for foreigners in Bělá Jezová, out of which 12 persons were from Afghanistan, 3 persons from Syria, and 2 persons from Iran.

Finally, we explain alternative forms of detention within the meaning of provision 123b of the RFNA regulating the "special measures for the foreigner's departure from the territory." Imposition of this measure is preceded by evaluation of the foreigner's action, not only in the Czech Republic, but also in the territory of other EU Member

States. So the individual situation of a particular foreigner and his previous conduct established in other Member States has been always evaluated (the secondary illegal migration within the EU).- Thus the individual situation and the known previous actions of a particular foreigner are always assessed. Therefore, we cannot agree with the allegation in the text that *“the police always find a reason for a formal referral to Art. 28 of the Dublin Regulation”*. It is not just a formal link, but the evaluation of the specific circumstances of the individual case. Explicit introduction of the obligation to consider the possible imposition of special measures (alternative to detention) in case of transfer, is enclosed into the recent RFNA amendment (becomes effective most probably by the end of 2015). This procedure is already applied in practice, based on case law.

As a part of any decision for administrative expulsion is a justification of the decision for administrative expulsion indicating the reason why the special measures (alternative to reinsurance) were not implemented. According to information provided by the Directorate of Foreigner Police, in the period from January to September 2015 such a special measure was applied in 82 cases. Thus it can not be concluded that the Police of the Czech Republic does not consider detention alternatives.

#### **IV. Conclusion**

The Czech Republic believes that proved that fulfils its international obligation with full responsibility. Although is not bound by the text of the 1961 Charter in this case, believes that credibly sustained that provides treatment as favorable as possible for all foreigners in its territory, including those who entered illegally in the Czech Republic.

#### **V. Annexes**

To illustrate the situation, we attach photographs of the facility interiors and exterior premises taken in October this year.. Other photographs illustrating the conditions in the facility, including playground, sewing and art workshops, gym, and children's centre, can be found on the RFA MOI CR website on the link below.

<https://www.flickr.com/photos/125160797@N03/22578288391/in/photostream/>





