FAMILY MIGRATION POLICIES IN THE
CZECH REPUBLIC

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WP5: Gendered patterns of migration: Empirical developments &
WP6: Comparative legal and policy analysis
About the project

Family related migration has been the dominant legal mode of entry in Europe for the past decades, but has become increasingly contested in recent years. Granting migrants the right to family union traditionally has been considered as promoting the integration of migrants into receiving societies, however, in current debates over ethnic closure of migrant communities and over the alleged “failure” of integration, the “migrant family” is increasingly seen as an obstacle to integration - as a site characterised by patriarchal relationships and illiberal practices and traditions such as arranged and forced marriages. As a result, family related modes of entry have been increasingly subject to restrictions, while the existing conditionality has been tightened up.

The research project analysed family migration policies in nine European countries from two angles. First, the project analysed policies and policy-making in regard to family related migration in a “top-down” perspective through the analysis of legislation, public debates, as well as through expert interviews. Secondly, the project analyses family migration policies from a “bottom-up” perspective, by investigating the impact of conditions and restrictions on migrants and their families and the responses and strategies migrants adopt to cope with these and to organise their family lives.

This project was financed under the programme New Orientations for Democracy in Europe (NODE, www.node-research.at) which is committed to exploring the future democratic development of Europe and its effects on citizens as well as politics. Within the perspective of the NODE-Research, the project on Civic Stratification, Gender and Family Migration Policy in Europe aimed at:

- Providing an empirically grounded analysis and evaluation of family migration policies in a broad range of immigration countries in Europe, including Eastern Europe;
- Investigating how family migration policies create civic stratification;
- Providing empirical evidence for the consequences of stratified rights for migrants immigrating for family related reasons;
- Analysing how migrants challenge and cope with the constraints imposed by family migration policies;
- Analysing the relationship between “civic integration” and social and political integration, and conversely, relationship between civic stratification and social and political exclusion;
- Applying a gender based analysis both to the analysis of family migration policies and the impact of these policies on migrants; and
- Developing basic principles that might help governments to design and implement fairer immigration legislation.
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1. Introduction

This report aims at providing a complex description of the conditions of family migration in the Czech Republic. This description has been inspired by a particular theoretical position towards current trends of migration policies in Europe – the concept of civic stratification. One of the proponents of this approach, Lydia Morris, explains it as an unequal system of rights that “finds its formal expression in the range of immigration statuses and the associated rules of transition which govern duration and security of stay” (Morris, 2002, p. 122). This system, created by migration policies and ways of implementing these, also produces less formal and perhaps less visible inequalities – those concerning people’s actual access to officially assigned rights. In this analysis of the past and present state of migration policies in Czechoslovakia/Czech Republic, I highlight that rights are always mediated through “embodied” distinctions of diversity importantly defined by gender, race/ethnicity and class (Morris, 2002, p. 141).

The following text is divided into five parts. In section two, I briefly describe how migration policies regarding migrants and refugees developed in Czechoslovakia/Czech Republic in the second half of the 20th century and the early 2000s. I outline some continuity, especially with regard to current flows of Vietnamese migrants who were recruited to work and study in socialist Czechoslovakia in the 1970s and 1980s. I then offer a general evaluation of the post-1989 migration developments both in terms of numbers and in the direction of policies. As a basis for further discussion I provide an overview of various residence statuses available to migrants in the current legislative system. Finally, I contextualize migration trends to the Czech Republic in relation to the other three Visegrád countries.

Section three indicates why is there so little public and informed political debate about migration policy in the Czech Republic. I discuss some impacts of the European Union (EU) which has become a significant factor in shaping Czech migration policy and I outline that it sometimes plays a rather contradictory role in the process of migration policy-making. Finally, I introduce a recent case of proposed amendment to the Czech Alien Act and opposition it provoked among non-governmental organizations (NGOs), migration lawyers and academics. Participant observation on which these insights are based produced some interesting insights into the mechanisms by which migration policy is produced and what space do various non-state players have to influence these processes. I focus on the issue of sham marriages which have become one of the targets of the new piece of proposed legislation.

Section four provides an overview of legislation and the dramatic changes it underwent up until 2006: from a law regulating the presence of foreigners on four pages to a highly complicated and difficult to understand document consisting of over a hundred pages. The process of transposition of the Council Directive 2003/86/EC on the right to family reunification is described in more detail, compared to the state before the transposition and the choices that were made by Czech policy makers with regard to the space of manoeuvre given to the individual Member States.

The fifth section describes four main forms of family reunification and provides an overview of concrete conditions that foreigners have to fulfil in order to reunite or to found a family with a Czech citizen. I elaborate on the example of the current practice of proclamations of fatherhood by migrant men and show how the so-called sham behaviour affects foreigners and Czechs in different ways.
Finally, I conclude by highlighting some of the main findings and observations in the framework of civic stratification approach.

1.1 Sources for the country report

a) Legislation
   - Alien Acts and their amendments in the period between 1965 and 2007
   - Asylum Act

b) Interviews, focus group and questionnaires
   - Interview with Pavel Čižinský, lawyer of the Counselling Centre for Citizenship, Civil and Human Rights
   - Interview with the representative of the Department of Asylum and Migration Policy, Ministry of Interior
   - Interview with the representative of the Alien and Border Police
   - twenty individual interviews with migrant women and men and their Czech family members
   - one focus group with eight migrants, April 17, Multicultural Centre Prague
   - questionnaires sent out to six nongovernmental organizations - filled in and returned by three of them: Counselling Centre for Refugees, Caritas, Centre for Integration of Foreigners

c) Public events – debates and hearings related to migration policies 2006-2007
   - public debate on the state of the Czech Alien law, December 12, 2006, Multicultural Centre Prague
   - public debate on Illegal migration in the Czech Republic and the possibilities for solutions, February 6, 2007, UN Information Centre Prague
   - hearing of the Petitionary Committee of the Lower House of the Parliament, June 20, 2007, the Chamber of Deputies of the Parliament, Prague
   - public seminar about the amendment to the Alien Act and the Asylum Act, June 21, 2007, the Chamber of Deputies of the Parliament, Prague
   - hearing of the Security Committee of the Lower House of the Parliament, September, 13, 2007, the Chamber of Deputies of the Parliament, Prague

d) Data from available reports and statistics
   - SOPEMI migration reports published by the OECD
   - data from databases of statistics published by the Czech Statistical Office and the Department of Migration and Asylum Policy (OAMP)

e) Media articles related to the topic of migration policies and proposed amendment of the Alien Act and the Asylum Act
   - major Czech dailies
f) Material composed by NGOs for the Members of Parliament in reaction to the proposed amendment of the Alien Act and the Asylum Act

2. Development of migration trends

2.1 Migration to Czechoslovakia/Czech Republic prior to 1989

Scholars researching migration in the Czech Republic have agreed that up until the 1990s, it was a country of emigration rather than immigration (Baršová & Barša, 2005; Drbohlav, 2001). Only the aftermaths of World War One and World War Two mark larger waves of immigration in 1918-1920 and in 1945-1949. These were constituted mostly by expatriates returning to the country. In the case of WWII, the immigration wave was also influenced by the expulsion of the people of German descent and the subsequent resettlement of the “emptied” borderlands. The resettlement was ethnically selective, aimed at populating the borderlands with people of Slavic origin, preferably the ethnic Czechs who emigrated in previous centuries (Baršová & Barša, 2005).

Temporary labour migration before 1989 was regulated by intergovernmental agreements between the countries of the Council of Mutual Economic Assistance, based on the needs of centrally planned economy and international aid within the Socialist bloc. It was especially prominent during the 70’s and the 80’s when many Polish and Hungarian workers lived and worked in Czechoslovakia (Boušková, 1998). Apart from the neighbouring countries, workers and students also came from other socialist countries such as Vietnam, Cuba, Mongolia, Angola, North Korea and Laos. Among these, Vietnam was by far the most important source. The attitude of the Czechoslovak state to Vietnamese migrants illustrates pre-1989 conditions for labour migrants.

In the early 1970s, a number of contracts with the Socialist Republic of Vietnam were signed, based on which Vietnamese citizens had been coming to the country to obtain their degrees at Czechoslovak universities and vocational training institutes and to work in the industry (Boušková, 1998). The conditions for the stay of foreign workers and students were marked by the requirement of segregation and the prohibition of family formation and family reunification (Baršová & Barša, 2005). In case of a pregnancy, a woman would be immediately sent home which constituted a great shame not only for herself, but also for her family in Vietnam (Brouček, 2003). The same sanction applied to a Vietnamese man whose relationship with a Czech woman was discovered (Brouček, 2003). As to the working conditions of Vietnamese labourers, for example, the Regulation of the Ministry of Foreign Affairs no. 19/1975 stated that they were obliged to pass Czech language courses to be able to study and work in Czech. Although Vietnamese workers were officially eligible to have the same rights and duties as the Czechoslovak citizens, in reality they were often used as auxiliary labour force in less attractive labour position and assembly line production, and some factories depended on their hard work to fulfil production plans (Brouček, 2003). On the other hand, they were allowed to buy shortage goods and their salaries allowed them to

1 For example, 20,825 workers from Poland have been registered in 1974 working mostly in textile and glass industry (dominated by women) and mining and metallurgy (dominated by men) (Boušková, 1998).

2 The number of Vietnamese workers peaked in 1983, when there were 27,100 Vietnamese citizens living and working in Czechoslovakia (Boušková, 1998).
support their families back home (Jedlička, 2006). Those who got university degrees from Czechoslovakia often obtained high positions in the state administration and in the economic sphere upon their return to Vietnam. As stated in an article mapping the history of Vietnamese immigration to Czechoslovakia/Czech Republic: “There is no other country in the world where you find so many people occupying influential positions and speaking fluent Czech” (Jedlička, 2006). When the Czechoslovak-Vietnamese contracts expired in 1990, there was an increase in the number of mixed marriages of Vietnamese and Czechoslovak citizens. As research indicates, for some, this could be a strategy to legally remain in the country or to stabilize their resident permit (Brouček, 2003). Others avoided their return to Vietnam by establishing small businesses. Many would return after some time spent in Vietnam, this time together with their families, and start working as small entrepreneurs (Jedlička, 2006).

The agreements regulating the presence of a foreign temporary workforce were abandoned shortly after 1989 and as Table 1 illustrates, the majority of the workers and students returned to their countries of origin, at least for some time after 1990. However, the legacy of these migrations remains strongly present even in the post-1989 immigration in the Czech Republic. Most notably, at the end of 2006, Vietnamese citizens constituted the third most numerous group of legally residing migrants in the Czech Republic. Although the Czechoslovak official policy worked against the settlement and integration of the temporary migrant workforce, relatively liberal migration policies following 1989 have made it possible for many to stay or to return and settle, often based on previous contacts and knowledge of the environment.

Table 1 Foreign workers on the territory of the Czech Republic based on intergovernmental agreements signed before 1.1. 1990

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam</td>
<td>23 113</td>
<td>1 110</td>
</tr>
<tr>
<td>Poland</td>
<td>3 790</td>
<td>210</td>
</tr>
<tr>
<td>Mongolia</td>
<td>274</td>
<td>0</td>
</tr>
<tr>
<td>Cuba</td>
<td>101</td>
<td>0</td>
</tr>
<tr>
<td>Angola</td>
<td>142</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>27 420</td>
<td>1 330</td>
</tr>
</tbody>
</table>

Table adopted from: (Boušková, 1998)

2.2 Immigration after 1989: Policy developments and their evaluation

The regime change in 1989 had a crucial effect on immigration to the Czech Republic. As in other Central European countries, the former predominance of labour migration now became more diversified: refugees, return migrants, undocumented and trafficked migrants became part of this new “migratory space” between East and West (Morawska, 2000; Morokvasic, 2000).
Despite the often problematic validity of statistical data about both emigration and immigration in Czechoslovakia/Czech Republic at the beginning of the 1990s, demographers agree that the overall balance of the population has been positive particularly due to immigration, i.e. more people arrived to settle in the country than left (Pavlík & Kučera, 2002). The number of foreigners living in the Czech Republic has been increasing constantly. While there were 77,668 legally residing foreigners (on a long-term or permanent residency permit) in the country in 1993, this number grew to 321,465 in 2006 (CSO, 2006). The change in stock of foreign population has indeed been remarkable, with an average annual growth rate of 19 percent for the period between 1990 and 2002 the Czech Republic occupied the first place among selected OECD countries followed by South Korea and Spain with 14 percent growth (OECD, 2005).

The key factors that have shaped the character and intensity of the post-1989 immigration have been identified by Baršová and Barša (2005, p. 221) as the following:

- Organized labour migration during the state-socialism, such as guest labourers from Vietnam who then continued to come based on private business activities and subsequently family reunification
- Visa regime that kept visa-free entry for many countries of the former socialist bloc up until the end of 1990, in particular with Ukraine and the Russian Federation.
- Family ties, cultural, historical and language similarity especially relevant for migrants from neighbouring Slovakia and Poland as well as from Ukraine
- Relative socio-economic stability in the Czech Republic throughout the 1990s and the emergence of new economic opportunities
- Increasing demand for cheap labour on the part of employers based in the Czech Republic (going hand in hand with the spread of foreign direct investment)
- Relatively liberal immigration regime up until 2000
- The prospect of the European Union (EU) membership as an attraction for migrants selecting between different European countries

The 1965 Alien Act of the Czechoslovak Socialist Republic was replaced by the new Alien Act in 1992. It introduced a standard modern structure of residence titles (short-term residence up to 6 months, long-term residence up to 1 year and permanent residence) and posed almost no bureaucratic obstacles to foreigners’ legal stay in the country (Čižinský, 2007). The second half of the 1990s could be characterised by increasing influence of the EU going hand in hand with the development of more restrictive migration policies. The new Alien Act No. 326/1999 aimed at harmonising Czech migration legislation with the EU approach to migration. Some mechanisms of a “remote control strategy” (Guiraudon & Joppke, 2001) were applied to control the entry of immigrants into and via the Czech

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4 The only exception was a slight decrease that happened due to the introduction of a more restrictive Alien Act in 1999.
5 Migration from Ukraine has been dominated by people coming from its western part close to the border with the Slovak Republic. The region is called Zakarpattia Oblast and it used to be a part of Czechoslovakia between 1918 and 1938 under the name of Carpathian Ruthenia.
Republic. For example, visa policy towards Ukraine, Russia, and other countries of the Commonwealth of Independent States (CIS) was introduced in order to comply with the Schengen rules. Moreover, the previous practice of switching from a temporary/tourist status into a long-term stay on the Czech territory was abolished. From then on migrants had to apply for a long-term visa at a Czech consulate abroad (Čaněk & Čižinský, 2006).

This new law represented a shift in migration control policy. Indeed, the number of legal migrants dropped for the first time since the beginning of the 1990s by approximately 28,000. However, it has been argued that many of these migrants switched into an informal regime and this situation has been accentuated by increased and often deliberate administrative obstructions that threw many migrants into general legal insecurity. This trend was reflected by a rising popularity of the practice of legalizing one’s stay by applying for asylum. The effects of the new Alien Act are clearly visible in the rise of asylum applications from 8,788 applications submitted in 2000 to 18,094 in 2001. This increase was particularly remarkable with regard to migrants from Ukraine: 6 94 applied for asylum in 1999, 1,145 applied in 2000 and 4,416 applied in 2001 (Čaněk & Čižinský, 2006). In this way, the stricter Alien Act has made the asylum procedure the most convenient way to legalise one’s irregular presence. Coined as the “abuse” of the asylum system, it in turn provoked major restrictions of the Asylum Act (Čaněk & Čižinský, 2006).

On the other hand, the law also introduced a measure that, for the first time since 1992, allowed migrants holding a Long-term Residence Permit (LRP) to apply for a Permanent Residence Permit (PRP) after ten years of stay. The PRP, that gives foreigners rights equivalent to the rights of Czech citizens, was previously available only to the family members of Czech citizens or could be granted on the ground of exceptional humanitarian circumstances. In this way, an important step has been made towards recognising that previously temporary immigrants can become permanent residents and subsequently also Czech citizens7 (Baršová & Barša, 2005, p. 224). Moreover, despite the overall restrictive climate, the liberal regime of granting trade licenses to foreigners has remained in place. These licences (together with a regular labour contract) also serve as a precondition for the LRP and have been widely used as such by migrants (Drbohlav, Horáková, & Jánská, 2005, p. 2).

The Alien Act No. 326/1999 was followed by a number of amendments, especially due to the development of migration policies at the EU level and the need to harmonise the Czech legislation. It created an important workload for the Czech bureaucracy dealing with migration, exhausting both their professional and human capacities (Baršová & Barša, 2005, p. 223). While some of the approved directives have been deemed as rather minimal standards in the old EU Member States, this was not the case in the Czech Republic. For example, the transposition of the Council Directives regarding the right to family reunification enhanced the rights of migrants substantially. Family reunification has become, for the first time, understood as a “right”. Moreover, the previously required ten years of the LRP qualifying migrants to apply for the PRP have been cut by half to five years and the status of permanent residency has become even more secure (Čaněk & Čižinský, 2006).

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6 There was not any major social or political change in Ukraine that would give legitimate reasons to apply for asylum for such a large group of migrants over the period of three years.
7 Currently, it is possible to apply for Czech citizenship after living in the country for at least five years based on a PRP.
On the other hand, the process of transposing the EC/EU legislation into the Czech migration law has also brought many changes which significantly worsen the situation of certain groups of migrants in the Czech Republic (both directly and indirectly by serving as a justification for new “indigenous” legislative restrictions). Most notably, the latest amendment of the Asylum Act, currently waiting to be passed in the Chamber of Deputies (lower house) of the Parliament, proposes a radical change to the system of refugee reception. It allows for asylum seekers to be detained for extended periods of time at the international airport as well as in other detention centres in the country in prison-like conditions. The Ministry of Interior has justified and legitimized this change as a necessary measure required by the Directive 2005/85/EC on minimum standards on procedures for granting and withdrawing refugee status.

Or, to give another example that will be elaborated in the later sections of the report, the new amendment to the Alien Act, which is currently being debated in the Chamber of Deputies together with the Asylum Act, proposes to introduce a probationary period of two years after which foreigners who marry Czech citizens will be allowed to apply for the PRP. So far, they could apply immediately after entering the marriage or after proclaiming fatherhood to a Czech child. If passed, this measure will put off their chances to be granted Czech citizenship from five to seven years and it will have some significant consequences for their daily lives with regard to public health insurance, eligibility for welfare benefits or the possibility to buy property to mention just a few examples. This change has repeatedly been justified by the claim that all other EU countries have already instituted some kind of a probationary period and that the EU regulations allow for an even longer period of maximum five years.

Moreover, the process of transposing EU regulations in the field of migration has been criticised for being conducted as a sort of “technical process” which lacks a consistent and comprehensive conception of Czech migration policy (Baršová & Barša, 2005, p. 224; Drbohlav, 2003). This critique, however, has not been supported by an in-depth scholarly analysis of the Czech migration policy-making so far.

It was only in 2003 that the Czech Government approved a list of Migration Policy Principles (resolution 55) – the first document of this kind in the history of the post-1989 migration policy. Listing the six major principles, the Government argues that the migration policy of the Czech Republic will:

1. sustain the leading role of the state in the sphere of migration and at the same time comply with its obligations stemming from the EU membership
2. base its migration policies on a coordinated approach of all state institutions, local and regional administration and other bodies dealing with migration
3. aim at eliminating all forms of illegal migration
4. not hinder legal migration but rather support it if proved beneficial for the Czech society in the long term
5. acknowledge the involvement of nongovernmental organizations and other civic society bodies in the implementation of the policy

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This document is available in Czech from: http://www.mvcr.cz/azyl/integrace2/koncepce/priprava/zasady.pdf
6. participate in efforts of international and European community to solve and prevent negative migration consequences of humanitarian crises

Apart from the very general and hardly enforceable character of these principles, the problem lies in the fact that the question: What kind of migration is beneficial for the Czech society in the long term? has remained unanswered since 2003 (Baršová & Barša, 2005, p. 225). Moreover, it is worth noticing that the involvement of nongovernmental and civic society bodies is seen only at the level of implementation and not conceptualization or formulation of the policy. This has been demonstrated by the “behind the closed door” character of migration policy-making and the lack of public discussion about the topic on the one hand, and by clear attempts to instrumentalize nongovernmental organizations as a kind of an “extended arm of the state” on the other.9

The current state of the Czech alien law has also been criticised by a number of nongovernmental organizations, migration specialists as well as by some of the former employees of the Alien Police or the Department of Asylum and Migration Policy (both operating under the Ministry of Interior). For example, migration specialist and a SOPEMI correspondent for the Czech Republic, Jarmla Marešová, argued that the Ministry of Interior which governs the development of alien law tends to specify all the rules and regulations into the most detailed form which, in fact, leads to further confusion not only among migrants but also among those who implement the law (interview with Jarmila Marešová, 12.4.2007).

Other critical points have been summarised at a public debate on the state of the Czech Alien law which took place in December 2006 and was organized by a nongovernmental organization the Multicultural Centre in Prague. “For years, the actual migration policy has been substituted by constructing barriers which ensure that some groups of people will simply not get in” stated Pavel Čižinský, the lawyer of the Counselling Centre for Citizenship, Civil and Human Rights. He concluded by claiming that:

Far too often has the law been amended not in order to reflect the situation of foreigners but to make the work of these officials easier and to make the orientation in the document more complicated for foreigners and the public. Over the time, it has become extremely difficult for the public to control and publicly discuss the changes of the law as it has become very extensive and complicated. (Čižinský, Prague, 12.12. 2006)

The former director of a local department of the Alien Police, Vratislav Tauber, revealed that, based on his own experience, the prevailing attitude of the Alien Police officers is to focus their efforts on limiting the number of foreigners in the country. He found it highly problematic in the situation when these officers are the main actors responsible for granting residence permits to foreigners. Tauber suggested that this responsibility should be transferred to civil servants as the Alien Police is primarily a repressive body. However, current developments of the migration policies and their implementation do not seem to be heading in this direction.

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9 These attempts have been successful to a large extent particularly with regard to NGOs assisting asylum seekers and recognized refugees whose funding has been often conditioned by a compliance with the priorities of the state agency dealing with asylum (based on an ongoing PhD research by the author in this sphere).
2.3 An overview of foreigners’ residence permits

The Alien Act No. 326/1999 currently in force defines a complex scheme of different residence statuses available to foreigners. Before presenting some basic statistical data about migration in the Czech Republic, it is useful to briefly outline what these different permits entail and highlight the main differences (see Table 2). The two most common residence permits are: the Long-Term Residence Permit (LRP) and the Permanent Residence Permit (PRP). What is the difference between the two permits from the point of view of an immigrant? Let me mention just four major differences that seemed to be the most relevant for the informants during migrant interviews conducted within the framework of this research.

- **Stability of the status**: The LRP has to be renewed usually every year or every two years. This often means that the person has to start preparing all the necessary documents at least half a year in advance. Apart from various certificates (of employment, accommodation, health insurance, etc.), the person has to prove that he or she possesses a certain amount of money which usually equals up to six average monthly salaries. Most of the informants found this process to be very stressful. It involves spending a lot of time waiting in queues at various institutions and most prominently at the department of Alien Police which is usually overcrowded by foreigners. Some are not able to provide all the documents and therefore use services of semi-legal, expensive and not always reliable intermediators who prepare the necessary evidence for them. The PRP is usually granted for five or more years and is renewed almost automatically. It therefore provides much more legal security and stability in the life of a foreigner. While the LRP may simply not be renewed by the Alien Police, the cancellation of the PRP is less common and there is a possibility of appeal. The PRP gives a foreigner almost the same rights as the Czech citizenship does. Officially, the right to vote and occupy some positions in the state administration are currently the only exceptions. In reality, the most common complaint has been voiced with regard to difficulties and rare success when a foreigner wants to obtain a loan in a bank or buy something on instalments. Despite these, the PRP is perceived as the more secure and stable status preferred (and dreamed of) by the majority of foreigners.

- **Health insurance**: Foreigners having other than the PRP and who are not employed in an organization or a company based in the Czech Republic cannot join the Public Health Insurance system and have to be insured in allocated private insurance companies or in insurance companies in their countries of origin. These kinds of insurance are much more

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10 Foreigners coming for short-term purposes (tourists, visits, short-term employment) eligible for obtaining Visa for a stay up to 90 days are excluded from the table. It is worth mentioning that they cannot shift from the short-term stay to the long-term stay because the long-term visa application must be submitted at an embassy abroad.

11 Including the Visa for a Stay Longer than 90 days as a necessary prerequisite

12 This system of health insurance is used by Czech citizens.
expensive (the price often depends on the health state of the client) and the companies are not obliged to insure foreigners or to prolong a contract with them in case of illness. This leads to a lot of insecurity and some foreigners prefer not to be insured at all. If they need to visit a doctor, they pay in cash; this can easily put them in debt in case of a serious health problem (Jelíňková, 2007). To give an example, while a pregnant woman insured within the Public Health Insurance only pays for extra services during the birth in the hospital, a foreigner outside of the Public Health Insurance has to pay some EUR 1 800 (if she is from an EU country) or EUR 3 600 (if she is a third country national) for both the delivery and the prenatal care.\(^\text{13}\)

- **Work permit**: People holding the PRP do not need a work permit, as opposed to the foreigners holding the LRP whose residence is dependent on having this permit (in case they were not given this permit based on family reunification). This makes a significant difference in terms of their position in the labour market. Officially, they are obliged to change their permit (stating the purpose of stay) if they change the employer. In reality, however, this is often not the case and people work in various positions not changing their permits. This however opens a space for discretion on the part of Alien Police officers who are responsible for controlling the permits. The employer, on the other hand, has to prove that there is no Czech citizen available to work in the position offered to a foreigner. Usually, the position has to be announced and left unoccupied for a minimum of three months.

- **State Social Support**: Having the LRP makes a foreigner eligible for the State Social Support (welfare benefits) only after a year of residence on the territory while the PRP allows them to become eligible for most of these benefits straight away.\(^\text{14}\)

Table 2 describes the typical way to obtain the LRP and the PRP and indicates which groups of migrants are entitled to these permits.

\(^{13}\) The average monthly salary in the Czech Republic is approximately EUR 780.

\(^{14}\) with the exception of unemployment benefit for which a foreigner has to be employed in the Czech Republic for a minimum of one year
<table>
<thead>
<tr>
<th>Group of foreigners</th>
<th>Long-Term Residence</th>
<th>Permanent Residence</th>
<th>Comments and examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Immigrants taking the standard immigration route a) – c)</td>
<td>a) 1st year: <em>Visa for a Stay Longer than 90 days</em></td>
<td>c) After 5 years of temporary stay: <em>Permanent Residence Permit</em> can be granted</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) 2nd to 5th year: <em>Long-term Residence Permit</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Foreigners whose rights have been recently amended by transposing the EU legislation into the Czech migration law:</td>
<td>a) 1st to 5th year: <em>Long-Term Residence Permit</em></td>
<td>b) After 5 years of temporary stay: <em>Permanent Residence Permit</em> can be granted</td>
<td></td>
</tr>
<tr>
<td>- migrants applying for family reunification with a third country national</td>
<td></td>
<td>E.g.: Vietnamese child (under 18) reunified with his or her parents living in the Czech Republic on a Long-Term Residence Permit will be granted the same kind of permit</td>
<td></td>
</tr>
<tr>
<td>- long-term residents of other EU Member States</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- students</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- victims of trafficking in human beings</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Family members of the EU citizens (other than of Czech citizens)</td>
<td>a) 1st to 5th year: <em>Temporary Residence Permit</em></td>
<td>b) After 5 years of temporary stay: <em>Permanent Residence Permit</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>E.g.: Ukrainian wife of a Slovak citizen living in Czech Republic</td>
<td></td>
</tr>
<tr>
<td>4. Family members of Czech citizens</td>
<td></td>
<td>Permanent Residence Permit</td>
<td>They can apply for the permanent residence permit straight away.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>E.g.: American husband of a Czech woman, Ukrainian minor child adopted by a Czech couple, Vietnamese man who proclaims to be a father of a Czech baby</td>
</tr>
<tr>
<td>5. Specific cases (humanitarian or reasons that are worthy of consideration)</td>
<td></td>
<td>Permanent Residence Permit</td>
<td>E.g.: former Czechoslovak citizens, ethnic Czechs from Eastern Europe and Central Asia, famous sportsmen, children of aliens on a permanent residency</td>
</tr>
<tr>
<td>6. Toleration</td>
<td><em>Visa for a Stay Longer than 90 days for the Purpose of Toleration</em> (subsequently after 1 year <em>Long-Term Residence Permit for the Purpose of Toleration</em>)</td>
<td></td>
<td>This status is often being granted to rejected asylum seekers.</td>
</tr>
</tbody>
</table>

Source: Adapted from (Cižinský, 2007)
2.4 Asylum and refugees pre and post-1989

The early 1990s marked the establishment of an internationally recognized asylum regime in the Czech Republic. Refugees could also be received during the state-socialist regime based on ad hoc decisions of the Communist Party and the Constitutional law (Act 100/1960, Art. 33) which stated that

The Czechoslovak Socialist Republic grants asylum to foreign citizens who are persecuted for defending the interests of the working people, for participating in liberation movements, for scientific or artistic activities or other actions in defence of peace.

For example, a group of 13,000 Greek refugees escaping the civil war in their country were received and resettled between 1948 and 1950.

In 1991 and 1992, the then Czechoslovak Republic joined the 1951 United Nations Refugee Convention and the 1967 Protocol relating to the Status of Refugees. Due to its geographical location, namely because of its borders with Germany and Austria, the Czech Republic has long been perceived as a transit country by refugees heading towards Western Europe. This can be, among other reasons, explained by the fact that the ratio of asylum seekers accepted in the Czech Republic has remained among the lowest in Europe.\(^{15}\)

After the Czech Republic joined the EU in May 2004, the forecast of a huge increase in asylum applications filled in by those eager to get into the EU has not come true. On the contrary, the Czech Republic has been following the downward shift in Western Europe, with a massive 48 percent reduction in the number of asylum claimants between 2003 and 2004, continuing with an annual average 25 percent decrease in the following years (OAMP, 2007). This can be interpreted as both a reflection of the general decrease in the number of asylum seekers coming to Europe and as an outcome of changes in national law after joining the EU, especially with respect to the Dublin II Regulation (EC Directive No.343/2003). Under the terms of the Dublin II, an asylum claim can only be made in one EU country, which should be the first country asylum seekers arrive in, unless they have relatives or other specified ties in another EU country. Once a decision is made on this asylum claim, it should stand for all of the EU countries. The aim of the Dublin II, i.e. to avoid one person making multiple asylum claims in different countries, has clearly influenced the strategies of people who are seeking international protection in Europe. Many try to avoid “stopping” in the countries of Central and Eastern Europe, where their chances of being recognized are relatively low.

Also in this area of migration, the EU legislation has had a profound impact, especially the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection

\(^{15}\) According to the Czech Ministry of Interior, there have been 81,351 asylum claims received from 1990 to 2005. Only 2,817 asylums were granted up to the end of 2005 (OAMP, 2006a, 2006c).
granted. The last amendment of the Asylum Act came to force in September 2006. Among other changes, it diversified the kinds of protection which could be granted to refugees. The status of Subsidiary Protection has been added for those who do not correspond to the strict definition of the Geneva Convention. It has to be granted for a minimum of one year and can be prolonged only if the reasons for this kind of protection remain. It represents a much less stable status lacking the majority of support mechanisms offered to Convention refugees (Kučera, 2007). However, subsidiary protection allows for the possibility of family reunification.

As far as the national structure of asylum seekers and recognized refugees is concerned, in the period from 1990 to 2005, citizens from countries of the former Soviet Union represented the most common group of asylum seekers as well as recognized refugees in the Czech Republic. Three kinds of asylum can be obtained: 1) based on persecution defined in the Geneva Convention, 2) humanitarian and 3) based on family reunification. In 2005, asylums granted were distributed in the following way: 47 percent – persecution based, 15 percent – humanitarian, 38 percent – family related (OAMP, 2006b, p. 12). Thus, also in the area of refugee migration, statuses granted based on proving predefined family relations constitute a significant proportion of asylums.

2.5 Trends and numbers

2.5.1 Migration to the Czech Republic in the context of the Visegrád countries

This section briefly situates migration processes in the Czech Republic in the context of Central and Eastern Europe in particular with regard to the other three Visegrád countries: Hungary, Poland and Slovakia.

First of all, it is worth noting that the Czech Republic has the highest proportion of foreigners with regard to the total population (see Table 3).

Table 3).

---

16 According to the statistics the Czech Ministry of Interior, people coming from the fifteen republics which constituted the Soviet Union before its collapse in 1991 represented 44 percent of all asylum seekers and 40 percent of recognized refugees in the period from 1990 to 2005. The two most significant groups of people who were granted asylum in recent years are Russian citizens (the majority of them from Chechnya) and Belarusians while the most common source country of asylum seekers has been Ukraine (OAMP, 2006a, 2006c).

17 Data about migration from the four countries are not always easily comparable and should be treated only as orientation figures.
Table 3 Stocks of foreign population (1000)

<table>
<thead>
<tr>
<th>Country</th>
<th>Foreign population (1000)</th>
<th>% of total population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic (2004)</td>
<td>254.3</td>
<td>2.5</td>
</tr>
<tr>
<td>Hungary (2004)</td>
<td>142.2</td>
<td>1.4</td>
</tr>
<tr>
<td>Slovakia (2004)</td>
<td>22.3</td>
<td>0.4</td>
</tr>
<tr>
<td>Poland (2002)</td>
<td>49.2</td>
<td>0.1</td>
</tr>
</tbody>
</table>

Source: SOPEMI report 2006

Moreover, as Table 4 shows, drawing from the net migration figures in the Visegrád countries it is clear that the Czech Republic benefited most from immigration in terms of its population growth.

Table 4 Net migration

<table>
<thead>
<tr>
<th>Country</th>
<th>Inflows (1000)</th>
<th>Outflows (1000)</th>
<th>Net migration (1000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic (2004)</td>
<td>50.8</td>
<td>33.8</td>
<td>17</td>
</tr>
<tr>
<td>Slovak Republic (2004)</td>
<td>7.9</td>
<td>5.0</td>
<td>2.9</td>
</tr>
<tr>
<td>Hungary (2004)</td>
<td>18.1</td>
<td>3.4</td>
<td>1.4</td>
</tr>
<tr>
<td>Poland (2005)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1st half-year</td>
<td>4.3</td>
<td>9.6</td>
<td>-5.2</td>
</tr>
<tr>
<td>2nd half-year</td>
<td>5.1</td>
<td>12.6</td>
<td>-7.5</td>
</tr>
</tbody>
</table>

Source: SOPEMI report 2006

An overview of the countries of origin of immigrants in the Visegrád countries (table here)

---

18 Holders of the permanent residence permit and the long-term residence permit
19 Holders of the permanent residence permit and the long-term residence permit
20 Holders of the permanent residence permit and the long-term residence permit
21 Excluding foreign permanent residents who had been staying abroad for more than 12 months and foreign temporary residents who had been staying in Poland for less than 12 months.
22 Data for Poland: only migrations related to the changes of “permanent” residence, derived from SOPEMI report for Poland, 2006
Table 5) demonstrates that with the only exception of Hungary, Ukrainian migration is far the most important in the region.

Table 5 The three most numerous groups of immigrants in the Visegrád countries

<table>
<thead>
<tr>
<th>Country</th>
<th>Migrants’ country of origin</th>
<th>(1000)</th>
<th>Out of all immigrants in the country (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czech Republic</td>
<td>Ukraine</td>
<td>78.3</td>
<td>31</td>
</tr>
<tr>
<td>(2004)</td>
<td>Slovak Republic</td>
<td>47.4</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Vietnam</td>
<td>34.2</td>
<td>13</td>
</tr>
<tr>
<td>Poland</td>
<td>Ukraine</td>
<td>9.9</td>
<td>20</td>
</tr>
<tr>
<td>(2002)</td>
<td>Russian Federation</td>
<td>4.3</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>Germany</td>
<td>3.7</td>
<td>8</td>
</tr>
<tr>
<td>Hungary</td>
<td>Romania</td>
<td>67.5</td>
<td>47</td>
</tr>
<tr>
<td></td>
<td>Serbia and Montenegro</td>
<td>13.6</td>
<td>10</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>Ukraine</td>
<td>4.0</td>
<td>18</td>
</tr>
<tr>
<td>(2004)</td>
<td>Czech Republic</td>
<td>3.6</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Poland</td>
<td>2.5</td>
<td>11</td>
</tr>
</tbody>
</table>

Source: SOPEMI report 2006

2.5.2 Some general indicators of migration to the Czech Republic with the focus on family migration

Graph 1 indicates that the number of migrants granted the LRP has always exceeded those having the more stable PRP. However, the number of migrants holding the PRP has been growing more rapidly than that of the LRPs.
Table 2 describing residence permits for different groups of foreigners according to the Alien Act No. 326/1999 shows which kind of status is granted to particular groups of migrants and what are the typical routes a foreigner has to take to get the LRP and the PRP. Graph 2 and Graph 3 give a more specific overview of those purposes and their frequency. It is clear that family reunification is the most significant purpose of stay in case of the PRP and does not have much relevance for obtaining the LRP where other purposes prevail. Thus, those staying because of family relations are more likely to have a more stable status. In the past ten years,\textsuperscript{23} there were 51,221 marriages between a foreigner and a Czech citizen. The most recent data of the Czech Statistical Office (CSO, 2007b, 2007c) show that in 2006, it was more common for a Czech woman to marry a foreigner (2,549 cases) than it was for a Czech man to marry a foreign woman (1,907 cases). In the same year, the most typical countries of origin of foreign husbands were Slovak Republic (612 cases), Germany (239 cases) and the United Kingdom (154 cases) while foreign wives were coming mostly from the Slovak Republic (722 cases), Ukraine (444 cases) and Vietnam (144 cases).

\textsuperscript{23} from 1996 to 2006
Graph 2 Permanent residence permits according to purposes of stay, 31.12.2005

Source: (CSO, 2006)

Graph 3 Long-term residence permits according to purposes of stay, 31.12.2005

Source: (CSO, 2006)

It is also interesting to look at the purposes of stay for the gender categories. Graph 4 confirms a trend identified in other European countries: while a typical route of women

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24 The term settlement refers to the PRPs granted after ten or five years of the LRP or based on humanitarian reasons.
migrants is family reunification, migrant men tend to legalize their residence via the route of employment or business.

Graph 4 Foreign men and women based on the four main purposes of stay (both LRPs and PRPs), 31.12.2005

Finally, let us have a look at the five most common groups of foreigners according to the type of residence and gender (Graph 5). These data give us some hints about particular groups of migrants. There are some interesting differences referring to different migration strategies taken by the selected groups to be observed. While the most populous group of migrants – Ukrainians – tend to stay on the LRP, the majority of Vietnamese immigrants managed to secure the more stable PRP. Interestingly, there are more male holders of the PRP than female; this could be due to the fact that it has been more acceptable for a Vietnamese man (often the primary migrant) to marry a Czech woman than it was for a Vietnamese woman to marry a Czech and thus obtain the PRP. Women represent 49 percent of all migrants holding the PRP. Therefore, it can be argued that they have more or less the same chances to stabilize their residency as immigrant men. Looking at the gender structure of holders of the PRP according to their country of origin indicates that high percentage of migrant women is characteristic of the movements within the former Eastern Bloc. Out of official list of 167 countries of origin of migrants living in the Czech Republic, there are 36 nationalities where women outnumber men among holders of the PRP. If we take these 36 countries of origin where there are more women than men holding the PRP and select only those where there are at least 500 representatives, we end up with the list of six countries. Five of these are the former republics of the Soviet Union (Ukraine, Russia, Kazakhstan, Belarus and
Moldova) and the fifth one is Poland. Thus we see that out of the group of five most common national groups of migrants living in the Czech Republic (Ukraine, Slovakia, Vietnam, Poland, Russia), women represent larger group of those holding the PRP in three of them (CSO, 2006). In case of Slovakia the number of women and men holding the PRP is almost equal and in case of Vietnam, women represent 45 percent of this group of foreigners. It is worth acknowledging that all these five countries bear the legacy of some form of the state-socialist regime. Each of these regimes promoted some kind of gender equality policy which found its common denominator in high employment and education rates for women. In other words, it made the majority of women of working age economically active. These characteristics can be seen to (at least partially) explain higher mobility of women in the post-socialist space (Morokvasic, 2003, p. 120).

Table 6 provides an elaboration of these data and shows that more than half of Polish immigrants in the Czech Republic are holding a residence status based on family reunification and being a member of a family. They are followed by Vietnamese citizens with 41 percent of “family migrants” and Russians with 29 percent. In all the five countries except Vietnam, women represented more than 54 percent of all family migrants.

Graph 5 Five most common groups of foreigners according to the type of residence and gender, 31.12.2005

Source: (CSO, 2006)
Table 6 Family members and family reunification as the purpose of stay according to the most common five countries of origin of migrants, 31.12.2005

<table>
<thead>
<tr>
<th>Country of origin</th>
<th>Total number of permits based on family members and family reunification</th>
<th>Percentage of family members and family reunification permits out of all permits granted</th>
<th>Number of women</th>
<th>Percentage of women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vietnam</td>
<td>15 159</td>
<td>41</td>
<td>6 971</td>
<td>46</td>
</tr>
<tr>
<td>Slovak Republic</td>
<td>13 141</td>
<td>26</td>
<td>7 139</td>
<td>54</td>
</tr>
<tr>
<td>Ukraine</td>
<td>12 026</td>
<td>14</td>
<td>8 265</td>
<td>69</td>
</tr>
<tr>
<td>Poland</td>
<td>9 262</td>
<td>52</td>
<td>6 648</td>
<td>72</td>
</tr>
<tr>
<td>Russian Federation</td>
<td>4 780</td>
<td>29</td>
<td>2 903</td>
<td>61</td>
</tr>
</tbody>
</table>

Source: (CSO, 2006)

To sum up, the relatively scarce data that are available about family migration indicate that family migration represents a significant proportion of migrants in the Czech Republic. Out of 44 percent of all migrants who are holders of the PRP, as much as 71 percent are people who were granted this permit based on family reunification or a family relation with the Czech citizen. For some of the five most numerous national groups of foreigners residing in the Czech Republic, family represents the main point of entry into the country (Polish immigrants with 52 percent and Vietnamese immigrants with 41 percent of all resident permits being granted on the basis of family migration).\textsuperscript{25}

\section{Family migration as a political issue}

Despite the above demonstrated significance of family migration as one of the crucial streams of current immigration in the Czech Republic and the largest source of permanent-settlement immigration, it has not been widely discussed either in the political and media arena or in academic research.\textsuperscript{26} It is partly because migration in general does not constitute an important political topic in the Czech Republic. The last Parliamentary elections in the summer 2006 are a clear illustration: although some of the political parties made a brief mention of migrant workers in their program statements, this topic has not been extensively discussed in any of the pre-election debates and it did not make it into the headlines. The parties have so far not formulated and promoted

\textsuperscript{25} Unfortunately, it is not possible to comment on the development of the number of family migrants as the statistics which indicate the purpose of residence are only available for 2005 and 2006.

\textsuperscript{26} This finding has also been confirmed by two Czech migration scholars with whom expert interviews were conducted within the framework of this project.
any specific approach to migration. Moreover, migration policy-making remains almost fully under the control of the Ministry of Interior whose appointed representatives have tended to present it as a “technical matter” driven by the need to harmonise the national legislation with the EU without much space for consideration let alone for a debate. It is not unusual for the Ministry to “cover up” some more “indigenous” changes in the legislation – mostly those taking a restrictive direction and cutting migrants’ rights and possibilities of entry short – by emphasis on the requirements to transpose the EU legislation.

In their report about the current immigration debates in the Czech Republic, Drbohlav et al. (2005) identify some of the main issues that have emerged in the public debate around migration since 2003. These could be divided into demographic concerns (connected with declining fertility rates and the aging of the Czech population) and economic/labour market concerns (related to the conditions of foreign labour force in the Czech Republic and the needs of the Czech economy with regard to foreign workers) (Drbohlav et al., 2005, pp. 2-4). Family migration is not mentioned among the discussed issues.

It has been publicly discussed only (although very marginally) in relation to the pilot project “Selection of Qualified Foreign Workers” launched in July 2003 by the Ministry of Labour and Social Affairs under the Social Democratic government. This project allows selected qualified employees to apply for the permanent residence permit after a shorter period – already after two and a half years of their work and stay in the country (other foreigners have to wait for five years). Together with the project participants, their family members are also allowed to settle in the Czech Republic and obtain the PRP. What is more, having a family can be an advantage. The applicants must reach a minimum of 25 points to be considered eligible for the project. Apart from the criteria of employment, work experience, age and education, up to 12 additional points can be received for the evaluation of a spouse and children who are still minors. Thus, family migration is supported within this scheme because it was designed as a response to both economic and demographic concerns. However, the scope of the project has remained rather limited, up until 31.3.2007, only 588 persons applied (355 men and 233 women).

Another factor is that no far-right party made it into the Parliament to become a significant political player.

The project is currently being open for: 1) citizens of Belarus, Bosnia and Herzegovina, Croatia, Canada, Kazakhstan, Macedonia, Moldova, Russian Federation, Serbia and Monte Negro, and Ukraine; 2) graduates of Czech universities coming from all states worldwide (except those who studied in the CR in the frame of development assistance provided to their state), who graduated in 1995 or later; and 3) graduates of Czech secondary schools from all states worldwide, who finished their studies and passed school leaving exam in 2000 or later. For more information about the project see the project website [http://imigrace.mpsv.cz/?lang=en&article=home_en](http://imigrace.mpsv.cz/?lang=en&article=home_en)
3.1 Sham marriages and the opposition to legislative changes

The position of bi-national families and in particular the position of foreigners who marry Czech citizens or claim fatherhood to Czech children has become a topic of some public discussion as this report is being finalised (end of September 2007); it is in fact a response to the currently prepared amendment of the Alien Act, although this time the Ministry of Interior presented it as a set of changes necessary to complete the process of joining the Schengen area by the Czech Republic already set for January 1, 2008.

This package of changes, however, includes also a significant change to the status of foreigners entering into marriage with Czech citizens or claiming fatherhood of Czech children. The underlying assumption behind this change is that those seeking entry on the basis of family relationships are undermining state control of immigration flows. According to the current legislation, these foreigners can be immediately granted the PRP (the only exception to this rule is when there are serious reasons to consider this a sham marriage or proclamation of fatherhood), while the new amendment proposes to provide them only with the temporary residence permit that could be turned into the PRP after two years unless the purpose of stay changes, i.e. if the marriage still exists. In case of a divorce, there would be no entitlement to the PRP and the foreigner would have to change the purpose of stay or leave the country. Travelling abroad would be necessary in any case because it is possible to apply for the change of residence permit only from outside the Czech Republic.

The Ministry of Interior justified this move as a means to fight the practice of sham marriages and claims of fatherhood that are indeed being used as the fastest way to obtain the PRP (“Vládní návrh 191,” 2007). The issue of sham marriages has also been perceived as a major control problem by the representative of the Alien Police responsible for granting residence permits to foreigners. He argued that foreigners are becoming more and more sophisticated in covering up sham marriages and false claims of fatherhood and that therefore the law should both restrict the conditions for granting the residence permits based on marriage and claims of fatherhood, and to allow the Alien Police more power of prevention. (Interview with a representative of the Alien Police, 16.4.2007).

A public debate about this amendment was initiated by a coalition of non-governmental organizations, independent lawyers and academics, who published a declaration in response to some of the suggested changes. They argued that after

passing this amendment, a bi-national couple (Czech citizen-third country national) would have less rights than an EU citizen and his or her family member (also a third country national) living in the Czech Republic. As already mentioned above, bi-national families would have more restricted access to Public Health Insurance and some welfare benefits if the amendment were to be passed. Work permits would not be required. The change would also mean that to apply for Czech citizenship would only be possible after seven years, as opposed to the current five years of the PRP. In this way, a foreigner who forms such a significant family relationship with a Czech citizen would be treated by law in a similar way as any other foreigner with no family ties in the country. Moreover, from the interpretation of the proposed legislation, it seems that the couple would be obliged to prove that their marriage is not a sham, as opposed to the current situation, which requires the Alien Police to prove that the marriage is not genuine. This debate began at the end of April 2007 and the coalition has already managed to push its arguments into parliamentary discussion via some MPs, and into the media. One minor achievement of this coalition was the postponement of crucial hearings in the Chamber of Deputies of the Parliament to September and October 2007. This gave them with more time to get in touch with individual MPs and to try to convince them to adopt and propose some changes in the upcoming hearings. While these negotiations might sometimes seem successful, ultimately only a small minority of these changes have been passed in the preliminary hearings of the specialised committees assigned to discuss the amendment.

Conducting participatory observation at a number of these hearings proved to be a useful exercise in understanding the kinds of debates that lie behind migration and asylum legislation. As already mentioned above, the increasingly complex character of both the Asylum and particularly of the Alien Act, makes it difficult to discuss it in a public arena. Logically, this applies also to the sphere of official politics. Nevertheless, I was astonished by the lack of knowledge and understanding on the part of the MPs who were discussing this important piece of legislation in the committees. Such ignorance creates the potential for the Ministry of Interior to use its powers unchecked in shaping the legislation according to its own needs.

The EU and “Schengenland” also work as crucial frameworks for convincing the MPs that this or that change is actually “out of discussion”, either because it is required by the EU or necessary to enter the Schengen Area and therefore the Czech Republic simply “has to adopt it”. A deeper insight shows that in the majority of measures to be adopted, the Member State still exercises a significant level of freedom in deciding upon the actual form of the amendment, not to mention the process of implementation of these measures.

The EU also served as the key reference and legitimiser in introducing the two year probationary period for foreign wives and husbands of the Czech citizens and fathers of Czech children before the eligibility for the PRP. The Ministry of Interior has repeatedly alerted the public to the “worrying extent” of the practice of sham marriages and claims amendment moved to the Chamber of Deputies of the Czech Parliament. However, the consequences of the suggested change that were brought up by the coalition were not mentioned in the report.
of fatherhood, despite not being able to support these claims by statistics. When asked about these the spokeswoman of the Alien Police said that they: “do not have any statistics about discovered or suspected sham marriages and proclamations of fatherhood” and thus she was not sure “where these statements that appeared in the media are coming from” (telephone interview, 14.8.2007). The argument about the abuse of the system has been strongly supported by pointing to other EU countries, most of which have already introduced some kind of a probationary period. Thus, the reference to the EU seemed to exert sufficiently convincing power even without an analysis of the actual situation of foreigners marrying and becoming fathers of Czech citizens. It seemed to easily override the arguments of the coalition that such a measure will not only fail to solve the problem of sham family relations formed as a way to get a legal status, but it will also wrongfully deprive the majority of genuine marriages from a number of rights and more generally from an easier way to integration into the Czech society.

4 Legislation and the evolution of the debate (1965 – 2006)

4.1 Family Migration Policies in the Period of 1965 - 1992

The 1965 Alien Act (No. 68) on the Residence of Aliens on the Territory of the Czechoslovak Socialist Republic and the regulation (No. 69) also from 1965 which lays down more detailed regulations regarding the stay of foreigners do not mention family reunification as a legal entry for foreigners at all. The dynamics of the Czechoslovak migration policy can be assessed thoroughly, based on the fact that these two documents consist entirely of four pages, and for twenty-three years there was not a single amendment. Workers and students whose countries signed contracts with the Czechoslovak Socialist Republic (see section 12.1 Migration to Czechoslovakia/Czech Republic prior to 1989) were not allowed to bring their families with them as they were all expected to return home after the expiry of the contract. The other most significant group of foreigners were people who married Czech citizens. With regard to this group, the Act on Acquiring and Losing Czechoslovak Citizenship from 1969 (No. 39) speaks openly in gendered terms:

A female foreigner who got married to a Czech citizen acquires Czech citizenship if approved by the National Committee of the given district. She has to apply within 6 months after entering into marriage. Her children under 15 can be included into the application and will also be granted Czech citizenship. (Act 1969/39, section 9)

Men and other categories of foreigners could be granted Czech citizenship only after five years of their continuous stay on the territory (Act 1969/39, section 10). This law was in force up until 1992. Since then, marriage is no longer significant for a change of a citizenship status. The waiting period for being eligible to apply for Czech citizenship for other categories of foreigners has also been significantly prolonged.
4.2 Diversification of legislation in the Period of 1992 – 2006

It was only the 1992 Alien Act on the Residence of Aliens on the Territory of the Czech and Slovak Federal Republic (No. 123) which dealt with the permanent residence permit being granted on the basis of family reunification. On its five and a half pages a fairly open and (in comparison to the current situation) also quite “generous” definition of family reunification can be found. The PRP could be granted to “a spouse, a relative in a direct kinship relation or a sibling of a foreigner who holds the PRP in the Czech and Slovak Federal Republic” (Act 1992/123, section 7).

The last Alien Act so far is from 1999 (No. 326). Initially, it consisted of 41 pages; after fourteen amendments in seven years it grew to 128 pages. In its version from 1999, there was a possibility of a residence based on a Visa for a Stay Longer than 90 days for the purpose of family reunification. This temporary residence could be granted to a spouse or an unmarried child under 18 years old of a foreigner legally residing in the country (section 32). It could be then repeatedly prolonged unless the purpose of the foreigner’s stay changed. There was also a possibility of bringing in parents if they were lonely (meaning divorced, unmarried or widowed) and above the age of 70. This kind of residence could be turned into the PRP only after eight years of the foreigners’ stay in the Czech Republic and the marriage had to last at least five years. Other categories of foreigners had to wait for ten years to be eligible for the PRP, so there was a slight advantage for the family members (section 66, section 67).

On the other hand, the situation of foreigners with a family relation to a Czech citizen was different and much more advantageous: immediate PRP was granted to: a spouse, lonely parent over 70 years old, minor child, child above 18 in case s/he is joining a parent who is a lonely Czech citizen or above 70, a person who adopted a Czech citizen of minor age or a child who was adopted by a Czech citizen (section 65). There were no probationary periods defined and the foreigner basically received a status similar to the citizenship. It could be revoked should it turn out that the couple entered into marriage “only for the purpose of acquiring the residence”. However, if there was a child born of this marriage the PRP could not be revoked at all (section 80). Thus, even if there were a means to prevent sham marriages, respect for a family defined as a space for raising children prevailed over the power of the Alien Police to withdraw the residence permit.

4.3 Transposition of EU Directives

The process of transposition of the EU legislation into the Czech Alien law started already at the end of the 1990s and it has not been accompanied by any noticeable political and public debate (Honusková, 2007, p. 2). Since 2002, the law separates

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31 Unfortunately, due to a lack of statistical data from this period of time, it is impossible to find out, how many foreigners could settle in the Czech Republic based on family reunification.
32 Its latest unofficial version was published on the website of the Ministry of Interior on 28.4. 2006, is also available in English, see: http://www.mvcr.cz/azyly/migrace/legislativa/326_99_angl.pdf
33 However, this provision is about to be revoked and the fact that there was a child born into the marriage will only be “something to consider” but will not “protect” the foreigner from cancellation of his or her residence permit anymore, in case the amendment is passed in its current form.
foreign nationals into two major categories: 1) EU citizens (and their family members) and 2) Foreign nationals from non-EU countries (so-called “third-country nationals”). After several amendments, the Alien Act has started becoming more complicated and bewildering. It expanded to more than a hundred pages. Apart from the overall restrictive character of the majority of changes, a few more liberal amendments of the Alien Act were adopted up until 2006, necessitated or inspired by EU regulations. In the field of family migration, the following three have been the most important: 1) the Council Directive 2003/86/EC from 22 August 2003, on the right to family reunification, 2) the Council Directive 2004/38/EC of 29 April 2004 on the right of Union citizens and their family members to move and reside freely within the territory of the Member States, and 3) the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

All these are now parts of the Czech legislation. The document most relevant for this study – The Directive on the right to family reunification – has been transposed by several amendments to the existing Czech laws, most notably by the amendment to the Alien Act that entered into force in November 2005 and by the amendment to the Asylum Act which entered into force in February 2005 (Honusková, 2007). The Directive (Article 3, paragraph 5) allows the Member States to adopt or maintain more favourable provisions than provided for in the Directive. The Czech Republic was among the few who used this opportunity. For example, it made family reunification possible even in the absence of “reasonable prospects of obtaining the right of permanent residence” on the part of a foreigner (Groenendijk, Fernhout, Dam, Oers, & Strik, 2007, p. 24). Moreover, as opposed to the Member States that decided to apply privileged provisions regarding the right to family reunification only to Convention refugees, the Czech Republic was among those who included also persons who have been granted subsidiary protection (Groenendijk et al., 2007, p. 42). These examples corroborate what was mentioned above about the space for manoeuvre that the Member States have with regard to the transposition of the EU migration legislation. Although this space has been used rather in favour of family migrants by Czech policy makers, it has, at another level, been often disregarded in parliamentary debates when certain interpretations of EU measures were presented as the only possible and unquestionable. Such rhetoric consequently helped to persuade some MPs about the necessity of such a measure and silenced the opponents.

What impact the transposition of the family reunification Directive had on the situation of migrants? The major difference as opposed to the previous legislation regarding family reunification is that since 2006, it has to be dealt with as an entitlement. Before the transposition, rules on family reunification were vague and there was more space for discretion on the part of the Alien Police officials in charge of granting residence permits (interview with Pavel Čižinský, the lawyer of the Counselling Centre for Citizenship, Civil and Human Rights, 19.3.2007). Another advancement mentioned by Eva Valentová, the lawyer from the Counselling Centre for Refugees, lies in the fact that the group of foreigners who can be reunited with the primary migrant (or sponsor) has been widened by adding a category of a dependent adult, a person who cannot care for herself/himself either in the country of origin or in the Czech Republic. She argued that after this change
a number of foreigners seeking advice of her organization about bringing in their family members increased significantly (questionnaire filled in by Eva Valentová, Counselling Centre for Refugees, 12.4.2007). Thus, it can be assumed that more people actually used the opportunity to reunite with their family members. Despite the fact that the new rules allow for more forms of family life than the previous law, Valentová argued that in order to reflect the realities of migrants’ lives, there should be more categories of foreigners allowed to enter based on family relationships (e.g. adult siblings, uncles and aunts, etc.). Valentová also criticised the length of the reunification procedure which can take up to 270 days altogether. When including the time of fifteen months which is a required stay of a sponsor in the Czech Republic, the whole procedure of reunification can mean up to two years of waiting.

To sum up, the influence of the EU accession had an indisputably positive effect on embedding and extending the right to family reunification in the Czech alien law. On the other hand, an unintended consequence can be observed: in the future, it could endanger some remarkably stable features of the law regulating family migration. As described above, the newest amendment of the Alien Act that is currently being discussed in the Chamber of Deputies of the Parliament threatens to impose a two-year period of temporary residence status on a foreigner before acquiring the PRP based on the marriage with a Czech citizen or a proclamation of fatherhood. This change has been neatly wrapped together with other “necessary” legislative changes that have to be passed “swiftly” before the Czech Republic will join Schengenland in 2008. Except for a few alert individuals based in NGOs, independent lawyers and migration experts, nobody discussed this change in public. If not for the modest media campaign which has been launched by these individuals, there would most probably be no public discussion on the issue. Therefore, the EU can also effectively serve as a “cover up” for the legislators who want to push through less popular changes.

5 Current policy framework in the Czech Republic (2007 - )

5.4 Current regulations and conditions of family migration

The Alien Act has been last amended with effect from 1 September 2006. Under the rules on family reunification, four types of family reunification exist.\(^{34}\) It is important to note that although registered partnership is not yet included in the law the amendment of the Alien Act currently being discussed will include it as a legitimate form of a family relationship for the sake of family reunification. A general rule applies in case of a death of a sponsor with regard to the first three types of family reunification. Family members can be granted an autonomous residence permit if the sponsor dies. However, the family member must have resided in the Czech Republic for at least two years continuously.

\(^{34}\) Apart from these four types, there is also a fifth type: whole family migration. This form of migration has been, to a certain extent, induced by the already mentioned project “Selection of Qualified Foreign Workers” launched by the Ministry of Labour and Social Affairs in July 2003. However, as mentioned above, the impact of the project has remained limited as it did not address a larger group of immigrants.
before the date of death of the sponsor. The two-year period will not be required if the
death of the sponsor was due to a work-related accident or occupational disease or if the
family member lost his or her Czech citizenship because s/he married the sponsor
(Groenendijk et al., 2007, p. 38). In the event of divorce, the marriage must have lasted
for at least five years prior to the day of the divorce and the family member must have
fulfilled at least two years of continuous residence in the Czech Republic during those
five years in order to be granted an independent residence status (Groenendijk et al.,
2007, p. 38).

5.4.1 Family reunification with a third country national leading to a long term
residence permit (LRP)

A foreigner who wants to be joined by a family member (from now on sponsor) must fulfil
two basic criteria to be eligible for family reunification: 1) S/he must be residing in the
Czech Republic based on the LRP or the PRP 2) for a period of at least fifteen months.³⁵
The request must be submitted to the Czech embassy, but in some cases, the Alien Act
also allows for lodging the request on the territory of CR. After successfully passing the
procedure, the family member obtains the LRP.

Who can join a sponsor?

- spouse (in the case of the reunification of a married couple, each of them must be at
  least 20 years old)
- minor children of the sponsor
- dependent adult child of the sponsor³⁶
- minor child and dependent adult child of the sponsor’s spouse
- alien of minor age who has been placed in the foster care of the sponsor or the
  sponsor’s spouse or who was adopted by either of them
- parent of the sponsor who is a solitary alien older than 65 years, or without regard to
  age if s/he cannot take care of him/herself due to health reasons

³⁵ Recognized refugees are also considered to be holders of the right to request family
reunification (sponsors); they can be reunited with their spouse or a minor child under more
favourable conditions (see the next section) but they can also reunite with adult dependent
children or a lonely parent and other categories of foreigners who are then granted the LRP.
Similar conditions apply also to people who were granted subsidiary protection, and they also
have the right to family reunification.
³⁶ A foreigner is considered to be dependent if s/he: a) is systematically preparing for a future
occupation; b) cannot systematically prepare for a future occupation or cannot perform gainful
activity due to illness or injury; or c) is unable to perform systematic gainful activity due to a long-
term unfavourable state of health (Alien Act 326/1999, section 15a).
- parent of a minor child – in the case that the minor child does not have a parent, any relative in the direct ascending line is entitled; if there is no such a relative, the request can be submitted by a legal guardian

**What documents have to be submitted with the application?**

When submitting an application for the LRP for the purpose of family reunification, the following documents (apart from a travel document and photographs) have to be attached\(^{37}\):

- a document certifying the family relationship
- consent to a minor’s stay in the Czech Republic provided by the minor’s parent, legal representative, or a guardian (other than the one residing in the Czech Republic)
- a document confirming that accommodation has been secured for the foreigner for the period of his/her stay;
- a document certifying that the aggregate family income after reunification will be sufficient for ensuring the subsistence and other basic needs for all family members and indispensable household expenses
- a Criminal Register Extract as supporting document for determining a clean criminal record;

Documents which can be requested by the embassy or the Alien Police as additional documentation:

- a confirmation that the foreigner does not suffer from a serious disease
- a document resembling a Criminal Register Extract but from the migrant’s country of origin

Administrative fee for processing this claim is approximately EUR 36.

These foreigners have a legal entitlement to be granted the LRP for at least one year (in case the sponsor has the LRP) or for two years (in case the sponsor has the PRP). The permit is renewable and provides them with the right to be employed. If they are

\(^{37}\) If the application for the LRP is submitted by a recognized refugee within three months of the date on which the decision to grant asylum became legally enforceable, the foreigner is required to submit only a travel document and photographs together with the application and an ability to prove the family relationship.
reunited with a foreigner who has the LRP, they will need to get a work permit. If they are reunited with a foreigner who has the PRP, no work permit is required. Both groups can also pursue a self-employed economic activity. So far, no probationary periods before the right to work is granted have been introduced. However, a foreigner is eligible to change the purpose of stay (for example, if s/he wants to stay in the Czech Republic after a divorce with a sponsor) only after two years of stay on the territory and at least five years of the existence of the marriage. There are no special provisions for victims of domestic violence who want to change the purpose of stay but do not yet fulfil these conditions explicitly mentioned in the law.

Children have the right to attend public schools free of charge. However, for extracurricular activities such as pre-school care and youth centres foreigners have recently started to be charged more than double what the Czech population pays. This change caused a significant disagreement among foreigners and, with the pressure of NGOs, led to the revision of educational law, currently in process. After one year of stay, families also have the right to claim the benefits of the State Social Support. Thus, if the foreigner does not have either a paid job or some savings, s/he becomes materially dependent on the sponsor for this period of time. Such a situation is especially problematic for elderly migrants who often lose the right to their pensions (if a special contract between the Czech Republic and their home country does not exist). The LRP also does not imply the right to be registered within the Public Health Insurance system and the reunified family members are required to take out insurance with a private insurance company, which is more expensive and often unreliable, as such companies do not like to insure people with health problems and people of an advanced age. These family members can obtain the PRP only after five years.

5.4.2 Family reunification with a third country national leading to the permanent residence permit (PRP)

Under special circumstances a minor child of a foreigner with the LRP can be granted the PRP straight away without the necessity to reside in the country for five years. In practice, this status is often being granted to newly born children of foreigners. It is especially important for them as it opens the door to the Public Health Insurance; if they were to remain within the private insurance for foreigners with the LRP, infant care would become unaffordable for many.

The spouse or a minor child of a recognized refugee will also be granted the PRP straight away if s/he manages to get physically to the Czech Republic where the application has to be lodged. This is not always possible as the fact of a person travelling to the Czech Republic in order to apply for the family reunification does not give him or her any preferential treatment when applying for a visa. The Asylum Act recognizes that it may not be always possible to produce all the necessary documents to prove the family relation and therefore other forms of evidence are also accepted.

Finally, a person who was granted the PRP on the basis of “humanitarian reasons or reasons that are worthy of consideration” (an option very rarely used by the Alien Police
but nevertheless mentioned in the Alien Act), can be reunited with her or his family members, who are then also granted the PRP. Ethnic Czechs from Eastern Europe or Central Asia fall into this group. They have been resettled in the Czech Republic with substantial support by both the Ministry of Interior and nongovernmental organizations, especially during the 1990s.

5.4.3 Family reunification of a third country national with an EU citizen

This group has been defined by the Council Directive 2004/38/EC of 29 April 2004 on the Right of Union citizens and their family members to move and reside freely within the territory of the Member States, which was transferred to the Czech Alien Act in 2006. To become a sponsor, an EU citizen must be residing in the Czech Republic. The following family members of the sponsor are entitled to the TRP:

- spouse
- parent, if the sponsor is younger than 21 years of age
- child younger than 21 years of age or such a child of the sponsor’s spouse
- a dependent direct relative in the ascending or descending line or such a relative of the sponsor’s spouse
- person living in a common household with the sponsor and person who cannot care for him/herself due to health reasons without personal care provided by the sponsor

These foreigners have a legal entitlement to be granted the Temporary Residence Permit for a period up to five years. It is renewable and guarantees them more or less the same rights as EU Member States nationals enjoy in Czech Republic. Citizens of other EU countries and their family members do not need a work permit in order to work in the Czech Republic.

Theoretically, we could imagine a situation in which nationals from other EU countries could still use the relatively liberal Czech migration policies in order to reunite with their family members – third country nationals – and then “move back” to their countries of origin already as a family with EU mobility rights. Currently it is easier for the Member States to make conditions of family reunification more restrictive for their own citizens (such as the proposed two year period significantly affecting Czech spouses of foreigners) but not for other citizens of the EU (based on personal communication with Pavel Čičinský, 17.9.2007). However, I have not been able to gather data indicating whether this practice of EU citizens travelling around the EU in search of better conditions is widespread in the case of the Czech Republic.

5.4.4 Family reunification with a Czech citizen

So far, marrying a Czech citizen or proclaiming fatherhood of a Czech child have been the fastest ways to get the PRP. Entitled persons are the same as in the previous section 5.4.3 Family reunification of a third country national with an EU citizen).
Foreigners can immediately apply for the PRP, which grants them rights comparable to the rights of Czech citizens. Important differences to the LRP include the access to the Public Health Insurance system (even without the employee status), no need for work permit, and eligibility for all welfare benefits after a year of residence. The PRP is usually granted for a period of five years. In the case of a couple divorcing before this period, the extension of the permit is not usually threatened. Moreover, after the Czech Republic enters the Schengen area, the PRP will also give migrants extra mobility rights that they might not have possessed before. Visas will not be required from them to travel to any Schengen country, regardless of their country of citizenship.

### 5.4.5 Sham proclamations of fatherhood

I have already discussed the issue of sham marriages in the section 3.1 Sham marriages and the opposition to legislative changes. Let me now pay more attention to the issue of sham proclamations of fatherhood. Recently, the Alien Police reported that there has been an increase of declarations of fatherhood which are being held in suspicion ("Vládní návrh 191," 2007). What does this process look like in practice? The evidence of biological fatherhood is not required according to the Czech law. A mother of a child (usually newly born but can also be older) agrees with a man and they together declare at the registry office that he is the father of that child. If the child is a Czech citizen and the father is a foreigner, he can immediately apply for the PRP. No evidence of the father supporting the child or living together with a family is required. At several public debates and meetings, Alien Police officials argued that since the beginning of 2007, there were a few hundred cases of foreigners proclaiming fatherhood to Czech children. They suspected that in many of these cases the procedure was misused in order to allow a foreigner to gain the PRP. They also indicated that these were typically cases of Roma women living in socially excluded communities. For a sum of money, they conclude an agreement with migrant men and allow them to officially become fathers of their children. Several articles appeared in the daily newspapers in the past months describing this practice and directly referring to Czech Roma women (e.g. Čápová, 2007; Grohová, 2007; Vaca, 2007). The consequences of claiming fatherhood by a foreigner with whom women do not live in one household and whose actual place of residence they often do not know can be very difficult for them. For example, some welfare benefits are calculated based on the income of all family members. If a woman cannot document the income of the father of her child, she can lose right to these benefits. Although the sham fathers benefit from their family relation to a Czech citizen, the reports from social workers in socially excluded areas where mothers engage in such activities indicate that they do not support “their” children with alimony.

These factors are also being mentioned as a justification for the introduction of a two year period of lasting family relationship required from foreigners to be eligible to apply for the PRP. It is, however, unclear whether this probationary period will deter migrant men from abusing the proclamations of fatherhood. It seems that other measures could more effectively prevent those practices, which often have dire consequences for women seeking some extra money. To mention just a few possible steps put forward by
the coalition of NGOs, lawyers and academics - relevant institutions could start an information campaign about the possible consequences of sham proclamations of fatherhood in socially excluded communities, and claims of fatherhood could be investigated and confirmed based on evidence of the alleged father’s support of the child and his interest in his or her development (Čižinský, Jelínková, Burdová-Hradečná, Faltová, & Brož, 2007, p. 17).

Despite the possible negative consequences of sham family relationships for Czech citizens, it is important to stress that the position of foreigners is nevertheless much less secure. Their residency permit can be revoked at any time if there is any proof that they formed a family relationship with the aim to gain the PRP. The testimony of their Czech family members is often considered as sufficient evidence for this revocation. According to Czech law, the only person who is criminally responsible for this behaviour is the foreigner; a Czech citizen will not be prosecuted. This balance clearly favours Czech citizens’. Indeed, the NGO representatives mentioned that they often deal with cases of abuse. Most commonly, it is a situation when migrant women are being exploited by their Czech husbands under the threat of a denouncement to the Alien Police (a questionnaire filled in by Margita Barnášová, Caritas, 7.4.2007). There are also examples of Czech women who wanted to “get rid of their husbands-foreigners” and therefore testified in court that these men married them only for the sake of a residence permit.

To summarize, the right to family reunification has been reinforced through the transposition of the three Council Directives into the Czech Alien Act. The negative and in a way paradoxical effect accompanying this process is increasing complexity and the length of the Alien Act, which makes access to these rights more difficult for migrants and their family members. Furthermore, it opens more opportunities for mediators who benefit from this complexity when offering their often overpriced and unreliable services to foreigners who are not able to orient themselves in the Alien Act. Moreover, this high level of complexity has given far too much power to the Ministry of Interior and made the whole process of migration policy-making less accessible for public discussion and control.

6 Concluding remarks: Current framework from the perspective of civic stratification

In this final section of the report, the above described conditions for family migration and debates that surround them will be briefly analysed from the perspective of civic stratification. Civic stratification has been defined by Lydia Morris, among others, as “the system of inequality generated through the differential granting of rights by the state” (Morris, 2002, p. 122). When applying this concept to the situation of migrants in today’s Europe, she argues that “this system finds its formal expression in the range of immigration statuses and the associated rules of transition which govern duration and security of stay” (Morris, 2002, p. 122). Less formally, the system of inequalities is shaped by the processes of actual access to rights. The rights here are understood not only as abstract systems but as mediated through “embodied” distinctions of diversity
significantly defined by gender, race/ethnicity and class (Morris, 2002, p. 141). Moreover, “the machinery for the delivery” of rights is open to incorporate stereotyping, prescription and devaluation (Morris, 2002, pp. 122-123). In this way, immigration regulations can produce new forms of inequality (Kofman & Kraler, 2006, p. 10).

Looking at the past and present state of Czech migration policies, it is clear that the recent developments of alien and asylum law described above produce further proliferation of different statuses, creating categories of foreigners having different rights and levels of security and protection. To give an example, foreigners with the PRP have access to the Public Health Insurance regardless of their employment status and state of health. Foreigners having the LRP can only use private insurance companies that are more expensive and are less reliable systems of health insurance, and they can also choose not to insure them against some situations, such as delivering a baby. Their position is thus much less secure. Similar trends apply also to the work permit – it is needed by the LRPs and not required from the PRP. All this pertains despite the fact that legally working foreigners – regardless of their residence status – pay the same taxes and make contributions to the social security system.

The trend towards diversification and stratification of rights can be observed even within previously more homogeneous categories of migrants. For example, as demonstrated above, there are various categories of foreigners who can settle in the country based on reunification with their family members, and they are being granted different levels of rights and entitlements based on who is a sponsor (Czech citizen, EU citizen, foreigner holding the LRP or the PRP, recognized refugee or person granted subsidiary protection). While there has been a tendency to expand the rights of some groups driven by the EU harmonisation process, the position of other groups have at the same time been questioned. Overall, the system of statuses and rights has become more complicated and bewildering, often creating a significant barrier to accessing even existing rights.

Thus, apart from the selective mechanisms already formally embedded in the alien law (i.e. ability to produce evidence of sufficient income, accommodation, health insurance and others) a less visible selection is underway: access to correct and reliable information about the procedure of granting various kinds of residence permits, about the possibility to appeal and about other options to legalize one’s stay in the country. The current situation creates a breeding ground for semi-legal and often unreliable, overpriced and exploitative intermediaries and corruption (Baršová & Barša, 2005; Čaněk & Čižinský, 2006). Moreover, it pushes large groups of migrants into dependence on these irregular service structures and prevents them from an active approach to fulfilling their rights and entitlements in Czech society.

Considering the gender selectivity of the discussed policies, I have demonstrated above that women have more or less the same chances to stabilize their stay by being granted the PRP. Especially migrant women from a number of former socialist countries are well represented among those holding the PRP and in the cases of Ukraine, Poland and Russia, they outnumber the men. However, the ways to obtain the PRP are gender specific as the majority of women are granted this residence permit based on family reunification. It has been argued by a number of authors that this form of migration often
results in increased levels of dependence and vulnerability to abuse of migrant women (Bhabha & Shutter, 1994; Kofman, 1999, 2004; Morris, 2002).

In the case of family reunification with a Czech citizen, this dependence and vulnerability to abuse are being structurally endorsed by the fact that the PRP can be revoked, based on the testimony of sham behaviour by the Czech family member, who however does not commit a legal offence by entering into such a relationship. Moreover, widespread lack of information about the fact that according to current legislation, the foreigner does not lose the entitlement to hold the PRP even after a divorce often keeps migrants in abusive relationships because they fear the loss of the residence permit (this problem was mentioned by NGO representatives in all the questionnaires). If the currently proposed amendment to the Alien Act introducing a two-year probationary period for foreign husbands and wives of Czech citizens is passed by the legislators, this state of exploitable dependency will even be strengthened. If the state does not create a reliable and accessible space where women suffering domestic abuse and violence nurtured by this dependency can turn to without losing their residence permit in the Czech Republic, gender bias of this new measure will be even more troubling. Indeed, also a gender-blind approach can produce discrimination by not recognizing the circumstances most commonly encountered by women (Morris, 2002).

In the case of family reunification with a third country national leading to the LRP, the aspect of dependency is even more pressing. A foreigner is not entitled to the State Social Support benefits for the first year of the residence. If s/he is not able to find a paid job or does not have enough savings, it is very likely that s/he will be materially dependent on the sponsor. Moreover, the costs of health insurance required for the prolongation of the permit can become very high. Certain age groups of migrants can also fall into the trap of dependence; especially elderly or handicapped foreigners who are less likely to be able to find employment are dependent on their children or a care person lacking even the basic form of the state social protection in the first year of their stay in case the relationship breaks up. Third country nationals whose countries of origin have not signed a contract about pensions with the Czech Republic will only be eligible for the subsistence level as the years of their work back home will not be recognized.

As far as stratification based on the country of origin/ethnicity is concerned, NGO representatives have mentioned that they have encountered increased number of cases when men coming from Arab countries are subject to various forms of scrutiny and suspicion, for example when they marry a Czech citizen abroad and then apply for Czech Visa in order to apply for the PRP. As the individual interviews with migrants and the focus group revealed, the country of origin also plays a role during the routine procedures of residence prolongation which are handled by the Alien Police. It seems to be a general rule that in everyday contact with the Police, migrants from less developed non-EU countries east of the Czech Republic are treated more harshly and with higher levels of suspicion and disrespect than EU citizens or non-EU foreigners coming from economically advanced countries such as the United States, Canada, Australia or Japan. Especially migrants from Ukraine often encounter humiliating attitudes. They are being lumped together as those who are (despite overall high levels of education)
predominantly occupying working-class positions and willing to do any kind of work however lowly paid and degrading it might be.

To conclude, the Czech legislation towards family migration has so far been relatively open to receive migrants and to support their way to a more stable residence status which provides them with legal security and can be a step to citizenship. However, migrants’ access to rights has been hampered by an increasingly complicated and bewildering array of legislative changes, which proliferated into a number of various residence permits and amendments to migrants’ entitlements and obligations. Despite the non-existence of a widespread official migrant selection policy, there are various forms of informal selection processes that disadvantage certain groups of migrants with regard to age, gender, nationality/ethnicity and class.

I have only touched the surface of how a genuine entitlement to rights is shaped by what Lydia Morris calls “embodied diversity” (2002, p. 131). This topic will be further explored in the text more substantially drawing on the analysis of migrant interviews and the migrant focus group. There, I will focus on how family migration is transacted and experienced “from below”.

7 References


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