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CZECH REPUBLIC AT ECHR IN THE ISSUE OF TREATMENT OF NON-EUROPEAN UNION NATIONALS

This article considers the treatment of the non-European Union national by the Czech Republic in the framework of the European Union's Legislation on the one side and the approach of the European Court of Human Rights on the other side. It discusses the international legal standards to the treatment of the non-EU national, focusing on the Czech Republic, in its contemporary situation.

Keywords: migration, migrants, European Union, third-country nationals, non-European union nationals, Czech migrant law, European Court of Human Rights

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НЕГРАЖДАНЕ ЕВРОПЕЙСКОГО СОЮЗА В ЧЕШСКОЙ РЕСПУБЛИКЕ. ПРАКТИКА ЕСПЧ

В данной статье изучается режим обращения с не-гражданами Европейского союза в рамках законодательства Европейского союза, с одной стороны, и подхода Европейского суда по правам человека, с другой стороны. Рассматривается современное состояние международных правовых стандартов обращения с не-гражданами Европейского союза, в частности, в Чешской Республике.

Ключевые слова: миграция, мигранты, Евросоюз, граждане третьих стран, Чешское миграционное законодательство, Европейский суд по правам человека.



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Introduction

In our contemporary world every human being is abide by the international law. International law, as every branch of law, gives us the rights and obligations. Otherwise it even gives us a status: Article 1 of the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights. However none of the rights, even fundamental could be absolute. Every right of the every human being ends there, where starts to exist the right of the other human being.

Although, we have right to live in the other State, not the State of birth, in order to study or to live in better conditions, still the treatment of the citizen by the State differs from the treatment of the non-citizen. Arguably we could talk about the confrontation of the laws – an international human rights law on the one side, and the law of the international sovereignty of the State – on the other side. Thus even the principle of equality offers two levels: the ordinary level, which is provided by the Universal Declaration of Human Rights, and the other one – the constitutional, which is given by the State, where we live. That is more relevant in the European Union context, where the European citizenship is essential regarding the rights of the human being.

However, the fact, that the citizen of the State has more rights than the non-citizen of the State, doesn't contradict the principle of non-discrimination given us by the Charter of the United Nations or the European Convention on Human Rights.

Although the issue of the third-country nationals' or non-European nationals' rights within the European Union is very essential, it is however often neglected, and the treatment of the so-called third country nationals differs from one EU Member State to another. The reasons of it could be different, starting with the economical attractiveness of the particular person – third country national. The situation gets more complicated if the normative framework is not followed by the local authorities.

In this essay the author deals with the issue of treatment of non-European nationals by the Czech Republic, accordingly to the statistics of the European Court of Human Rights. This topic

is important given to, besides the main factors such as economic or political reasons – economic migrants play a big role in the cooperation between states, and essential respect for human rights, also the following facts:

1. The growth role of the Common Immigration Policy of the EU and its harmonization process among the Member States, considering the fact that there are still considerable disparities between one Member State and another concerning the immigration law, and the fact that the European Council is in the process of following the provisions of the European Pact on Immigration and Asylum and completion of the establishment of a Common European Asylum System.

2. The Czech Republic is the one of the Central Eastern European States, with the strategic placement.

The questions this article explores are whether this treatment by the Czech authorities constitutes a serious threat to the legal coherence of the law in Europe or whether this is the way of proclaiming the protection right of the member state within the European Union.

Through an analysis of the jurisprudence of the court, the work investigates the inconsistency of the respective approaches of the local authorities in relation to the specific area of treatment of non-European Union citizens or third-country nationals.

It needs to be stressed that the assignment will regard the treatment by the Czech Republic of the non-European nationals or third-country nationals, without drawing the line between the refugee and economical migrants, which are different categories. A refugee is defined, besides the International Convention Relating to the Status of Refugees (1951), also in the local Act of the Czech Republic No 325/1999 – Asylum Act, a seeker of the help, and the law of the Czech Republic particularly allows him to get it. Migrants are also defined in the international acts, particularly in the Act No 326/1999 of the Czech Republic – Act on the Residence of Foreign Nationals in the Czech Republic. The state can admit the application of the migrant to come and stay in the territory voluntarily by providing the visa, however it is no obligation for

the state to provide the visa. There are several cases when the migrant can apply for a visa, including the reasons of studying, working, making a research, and to reunite with the family-member(s) living within the territory of the EU, but there are also strict rules to follow for the migrant not just to get entry visa, but to stay in the territory.

Methods and outlines

The aim is to provide some preliminary reflections on how the treatment of non-European nationals by the specific state can meet the common concepts and understanding via the fundamental rights discourse.

Given the aim of the assignment, the paper will cover and critically analyze the points mentioned below:

- 1) the international and European legislation regarding immigration and asylum;
- 2) overview of the existing literature;
- 3) case law of the ECtHR;
- 4) discussion on the basis of some specific domestic provisions.

To achieve its objectives, the article uses a comparative methodology. It opposes the approach employed by the Czech authorities with the one applied by the ECtHR related to the protection of third country nationals, particularly concerning their expulsion from the European territory.

There are two approaches to the problematic – one is the approach from the side/in context of the European Union, where the nationality or the citizenship of the person is important, the other is the approach of the ECtHR, which has interpreted the Convention with the sole consideration of human rights regardless of the country of origin of the individual¹.

By implementing a comparative analytical framework, the text will examine the treatment of the non-European nationals, its reasons, as well as touch on its application background and its effects on the international area.

The second section will focus on the European legal system in treatment of third country nationals in Europe, by introducing the essential characteristic of the Union law regarding this area: Treaty of Functioning of the European Union, the Directive on Third Country Nationals.

The third section will examine the cases which got the European Court of Human Rights regarding the treatment of the third-country nationals by the Czech Republic. Moreover, it will provide author's interpretation on the case of the reasons of such treatment.

Finally, in the fourth section attempt is made to make some preliminary conclusions.

1. European Legal System in the Treatment of Third Country Nationals

From the time of creation of the European Union itself and after the signing of the Treaty of the European Union, the term of the European Citizenship received its official meaning. In the case of the migration, moreover in a case of a person seeking asylum in the states of the European Union, the treatment by the authorities of the EU citizen and non-EU citizen is different. In determination of the EU citizen obviously the principle of the territoriality is used. Thus, the person who enters the borders of the EU is an alien, or non-citizen, or in the other words refers to a class of so-called third country nationals.

At EU law level the flow and volume of migration is left to the autonomy and control of Member States, but once the migrants are within EU borders, EU law regulates residence and expulsion².

Mostly the "Third Countries", or the states, which are not members of the EU, have special agreements with the EU in a case of visa-policy, in order to prevent the illegal migration. However the categories of the third country nationals are different, and then here comes a distinction – between the immigration law, which is about controlling entry, and asylum or refugee law, which is about providing international protection. Nevertheless, since the 1980s refugee policy has been seen as a specialized branch of immigration policy.

The Member States face the migration pressures on many levels from many countries. However members of the EU have to find the balance between the economic and humanitarian considerations in line with European legislation and key international agreements³.

Therefore, it is initial issue on building the common immigration policy inside the EU, where the Member States in a solidary and fair way will share the responsibility, including its financial implications (Article 80 TFEU).

Article 79 of the Treaty on Functioning of the European Union states that the Union shall develop a common immigration policy at all stages, and prevent the illegal immigration and unauthorized residence, and trafficking in persons.

Although, the EU-citizens have the privileged status, the status of the third country nationals also varies. It depends on whether the alien has a legal residency, how economically attractive he/she is, whether he/she has the family member-citizen of the EU etc. Depending on these points the alien will have different rights, one of them is free movement within the EU.⁴

The Directive 2004/38 on Third Country Nationals who are Long-Term Residents, which based on Article 79 TFEU, provides for a secure residence right and free movement for economic and other purposes across the EU for third country nationals, who have completed five years' lawful residence in a Member State. The other third country nationals, which have the legal permission of the stay in the EU, have the right to free movement, but within the Schengen Area.

The Directive of the European Parliament and Council Directive 2011/95/EU provides the definition of those, who will get the additional international protection, as well as information about the unified status of refugees or people, who are eligible for the subsidiary protection, and the nature of the protection granted.

The Regulation of the European Parliament and of the Council No 604/2013 examines application for international protection of a third country national in one of the Member States. Moreover, the so-called Dublin III Regulation establishes the criteria and mechanisms for determining the Member State. The criteria are, for example, family ties of asylum seekers, or legal or illegal residence of particular person, and where, in which state, this person first time entered the territory of the EU.

Nonetheless, that process may create complications, as, for example, in 2012 Amnesty International reported, that "while negotiating new EU asylum legislation, EU member states failed to address deficiencies in their asylum systems and in arrangements for transferring asylum-seekers back to the first EU country

2 Ibid.

3 Nicholas Moussis: Access to European Union law, economics, policies, 19th updated edition, Rixensart, 2011.

4 R. Byrne & G. Noll & J. Vedsted-Hansen "Understanding refugee law in an enlarged European Union", E.J.I.L. 2004, 15(2), 355–379.

1 S. Morano-Foadi & S. Andreadaki, "The convergence of the European legal system in the treatment of third country nationals in Europe: the ECJ and ECtHR jurisprudence" (2011), E.J.I.L. 2011, 22(4), 1071–1088.

which they had entered.”⁵ Nowadays the situation went worse. In that context, the measures have been taking for strengthening co-operation between states. Therefore, on 23 April 2015 a meeting was held, as a respond to the recent situation, called by press as “Mediterranean crises” when the countries faced the sudden third-country nationals migration flow. The European Council accepted two decisions (Decision 2015/1523 and Decision 2015/1601) for the benefit of Italy and Greece, to reinforce internal solidarity and responsibility <...>, as well as to deploy European Asylum Support Office teams in frontline Member States for the joint processing of applications for international protection⁶.

Even though the Member States of the European Union abide two-level legal system – international and European law, some academics see the contradictions in the approaches of the regional courts on implying one or another provision. However, the European Court of Human Rights attempts to grade the possible fragmentation of law towards two different approaches of local courts. Given the importance of the European Convention on Human Rights, the Court stresses *jus cogens erga omnes* norms regarding human rights.

The judgment in the case *Üner vs Netherlands* 46410/99 states that “the Convention does not guarantee the right of an alien to enter or to reside in a particular country and, in pursuance of their task of maintaining public order, Contracting States have the power to expel an alien convicted of criminal offences. However, their decisions in this field must, in so far as they may interfere with a right protected under paragraph 1 of Article 8, be in accordance with the law and necessary in a democratic society, that is to say, justified by a pressing social need and, in particular, proportionate to the legitimate aim pursued.”

Although, regarding the expulsion issue, there is strong position of the European Convention on Human Rights, J. Caellewaert in his article stresses the interplay between the ECHR and EC laws, looking at the extent to which the two have converged to further harmony and legal certainty, and concludes that they both claim the right to set standards applicable to a substantial part – if not all – of the continent⁷. However, it is worth to mention the Joint Dissenting Opinion of judges Costa, Zupančič, and Türmen in the case *Üner vs Netherlands* 46410/99. The judges argued that in decision-making process in the ECtHR, the Article 8 of the Convention must be construed in the light of the texts, such as the 1989 United Nations Convention on the Rights of the Child together with Council of Europe’s Recommendations⁸, and the conclusions of the Tampere and Seville European Council of 1999 and 2002 respectively⁹.

5 Report of Amnesty International 2012, p. 34 URL: <http://www.amnesty.eu/content/assets/AIR12-Report-English.pdf>

6 N. Moussis: Access to European Union law, economics, policies, Rixensart, 2011. URL: http://www.europedia.moussis.eu/books/Book_2/3/8/1/3/?all=1

7 J. Callewaert „The European Convention on Human Rights and European Union law: a long way to harmony“ E.H.R.L.R. 2009, 6, p. 783.

8 *Üner vs Netherlands* 46410/99, Joint dissenting Opinion. URL: [http://hudoc.echr.coe.int/eng-press#{"itemid":\["001-77542"\]}](http://hudoc.echr.coe.int/eng-press#{)

<...> paragraphs 36 to 38 of the judgment cite Committee of Ministers Recommendation Rec(2000)15, Parliamentary Assembly Recommendation 1504 (2001) and Committee of Ministers Recommendation Rec(2002)4. One has only to read the judgment to realise that these instruments – which admittedly are not binding – emphasise, among other things <...> to restrict the *penalty* of expulsion to particularly serious offences affecting State security and to give particular consideration to the interests and well-being of children.

9 Ibid <...> conclusions of the Presidency of the Tampere European Council on 15 and 16 October 1999 stressed the need for approximation of national legislation on the conditions for admission and residence of third-country nationals; the Presidency added that a third-country national <...> should be granted in that member State a set of uniform

As have been mentioned, third-country nationals, due to their legal residence in some point can enjoy the rights up to the level of Union citizens, as the right of free movement, for example. Though, the Article 12(1) of the Directive 2004/38 states that Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security. Withal the decision to expel a long-term resident shall not be founded on economic considerations and a number of factors <...> should be taken into account before adopting such a decision¹⁰. Directive 2004/38 also stresses the need to consider the EU citizens’ health in case of expulsion, and there is extra protection for those who have the right of permanent residence after five years, those who have resided for the previous 10 years, and minors¹¹. Such cases can be expelled on ‘imperative grounds of public security’ only. In spite of this, S. Morano-Foadi and Andreadakis, in their article further state, that the third-country nationals are “always potentially subject to deportation by the host EU Member State.”¹²

It should be stressed that the reasons given by the legislation are threats to the public security. This phrase we could also find in the provision of the Czech Act on the Residence of Foreign National and Asylum Act. Given the importance of the supranational legislation, each Member State however introduces specific legislative measures dealing with immigration and asylum law. At the domestic level, the language of asylum (and immigration) law and policy is formally determined by the electorate, legislature and executives of a specific state.¹³

It is worth to mention that out of the 28 EU’s countries the EU-wide immigration rules generally apply only in 24 countries. Moreover, Denmark does not apply such rules, and Ireland and the United Kingdom choose, on a case-by-case basis, whether or not to adopt EU rules on immigration, visa and asylum policies¹⁴.

2. The Czech Republic in the ECtHR regarding Immigration and Asylum Law

As a Member State of the European Union, the Czech Republic is bound to meet all engagements given it by the European Union. The Czech Republic is attempting to comply its obligations under the international and European law, except in a case of the treatment of the non-EU nationals, or the third country nationals. However, it worth to mention, that the cases against the Czech Republic in the European Court of Human Rights regarding the immigration issues are only few, in comparison with other countries, as the United Kingdom, France, Netherlands, Greece, Italy, which are leading countries in the ECtHR in that problematic.

In the author’s opinion, the third country nationals, as has been mentioned above, vary not only in order of the legal permission of the stay, but also in the country of origin. There is no doubt that the State-acceptant will always look at the economic attractiveness and usefulness of the alien. But what if the person

rights which were as near as possible to those enjoyed by EU citizens. This was reaffirmed by the Seville European Council of 21 and 22 June 2002 <...> They added that the integration of immigrants entailed on their part both rights and obligations in relation to the fundamental rights recognised within the Union.

10 R. Byrne & G. Noll & J. Vedsted-Hansen „Understanding refugee law in an enlarged European Union“, E.J.I.L. 2004, 15(2).

11 S. Morano-Foadi & S. Andreadakis, “The convergence of the European legal system in the treatment of third country nationals in Europe: the ECJ and ECtHR jurisprudence“.

12 Ibid.

13 R. Byrne & G. Noll & J. Vedsted-Hansen „Understanding refugee law in an enlarged European Union“, E.J.I.L. 2004, 15(2).

14 ec.europa.eu

is renouncing a regime, where he/she cannot live in? What if the alien is endangered of ill-treatment in his country and could lose the absolute and fundamental human right – his life?

The Czech Republic from the early 1990s, from the beginning of the existence of its contemporary form of the State, has encountered a huge immigration flow, for example in 1993 it has faced roughly 800 applications (submitted) for refugee status per year. This number had even increased till the Czech Republic became a Member State of the European Union in 2004. The biggest numbers of asylum-seekers the Czech Republic faced in 2001, there were 18 000 applications.¹⁵

There is no coincidence, that in (and not only) 1990s the Eastern States, such as the Czech Republic, Slovak Republic, and the Republic of Poland, became the place of the migration flow. These are the States of the preferred transit route to Western Europe¹⁶.

Nowadays, according to the Dublin system the Czech Republic does not meet with big number of applications for asylum. In other words, comparing with the other Member States of the EU, as Italy or Greece, in the Czech Republic the number of refugees is low¹⁷.

Treatment of the non-European nationals or third-country nationals by the Czech Republic at the state level is determined in the Acts regarding the Immigration and Asylum Law: Asylum Act and Act on the Residence of Foreign Nationals in the Czech Republic. Also the issue of immigration and asylum is tightly interconnected with the Administrative Code, Act on Administrative Fees, as well as with the Civil Code and Labour Code of the Czech Republic.

“In the context of the Council of Europe, applying to the European Court of Human Rights to immigration cases has always been a difficult balancing exercise between the effective protection of human rights and the Contracting States’ autonomy to regulate migration flows.”¹⁸

There is no arguing about some cases, where the Czech Republic is using appropriate sovereign power for its national security and public safety. The Czech Republic is trying to keep the international legal acts in a case of protection the country from the criminals from non-Europe.

However each case should be considered individually. Each situation is unique, and cases of expulsion ordered for the protection of society against serious crime cannot be judged by the same criteria used for those of ordinary removal¹⁹. In order to find a fair balance between the rights of the individual and the interests of the community precise steps in analytical and decisive work should be taken, while the competence and willing to work of the employees of the State Apparatus are of great importance.

Unfortunately, in addition to the laziness and incompetence of the employees of the State apparatus, many different applications for the short- or long-term residency, and for the asylum-status, have been rejected. Thankfully to some cases, which had reached to the European Court of Human Rights, we are informed about the lack of the lawful treatment of non-EU nationals.

The case *Singh vs the Czech Republic* may be seen as such an effort of protectionism from the side of the Czech Republic. The Singhs were arrested in the Czech Republic, where they were lawful residents, and were prosecuted for assisting others to cross the border illegally. The Singhs were detained pending deportation for two and half year. Then they applied to the European Court of Human Rights and relied on Article 5 (1), (4), right to liberty and security, of the European Convention on Human Rights. The European Court of Human Rights considered that the Czech authorities had not shown due diligence in handling the applicants’ case, and that the length of their detention had not been reasonable. Also the Court considered that such length of proceedings did not satisfy the requirement of speediness contained in Article 5 § 4 and concluded that there had been a violation of the Convention in this respect.²⁰

In the author’s opinion, in that case the Czech Republic could be hardly accused by violating the international law, although the European Court of Human Rights concluded so. The purpose of the detention of the applicants – was the protection of the State. Taken as a comparison decision of the ECtHR in the case *Üner vs Netherlands*, Court confirmed the importance of the State’s interest, concluded that the expulsion of the applicant was proportionate to the aims pursued and necessary in a democratic society.²¹

On the other hand, in the case *Singh vs Czech Republic*, the inactivity of the Czech authorities could be hardly disputed. The lack of competence of the State apparatus is unarguable.

Unfortunately, a lot of cases, which could prove this sentence, had not reached the European Court of Human Rights, though the High Official – the Ombudsman – of the Czech Republic has been facing them for the very long period. The office of Ombudsman has been monitoring the decisions on expulsion issued by the Foreign Police Inspectorate Prague-Ruzyne from January to November 2011. Ombudsman found that only 68 cases out of 286 decisions on expulsion have been decided on the ground of classical administrative decision, while 218 foreigners were deported by issuing the order on the place (command on spot). By that the Foreign Police Department have violated national and international laws and obligations²². Even for the last year, the Ombudsman has received more than 650 cases about the violation of the law by the Czech authorities in a case of expulsion. Regarding the cases of migrants, including excessive length in the visa issue during the first half of 2015 114 complaints were made.²³

The other case of the negligence of the Czech authorities is brightly shown in the case *Diallo vs Czech Republic*. Czech authorities have expelled asylum seekers (two Guinean nationals) to the Country of origin (Guinea) without examining the risk of ill-treatment. Although both of the applicants applied immediately for asylum claiming that they would be detained or even killed in their country, the police of the Czech Republic issued expulsion orders for the applicants to leave the country and their appeals against those orders were rejected. Furthermore in the early morning without prior notice and without lawyers of the applicants being informed, the Diallos were both removed to Guinea by plane. Relying on Article 13 in conjunction with Article 3, the applicants complained that they had no effective remedy for their arguable claim that they would be ill-treated if they will be returned to Guinea. Article 3 constitutes an absolute minimum standard entailing the obligation for a state not to extradite or expel

15 Cizinci: Mezinárodní ochrana URL: https://www.czso.cz/csu/cizinci/2-ciz_rizeni_azyl

16 G. Gilbert „Is Europe living up to its obligations to refugees?“E.J.I.L. 2004, 15(5).

17 Právní pohled na otázky migrace a uprchlictví - podklad pro současnou debatu URL: <http://www.pravniprostor.cz/clanky/mezinarodni-a-evropske-pravo/pravni-pohled-na-otazky-migrace-a-uprchlictvi-podklad-pro-soucasnou-debatu>

18 G. Gilbert „Is Europe living up to its obligations to refugees?“E.J.I.L. 2004, 15(5).

19 S. Morano-Foadi & S. Andreadaksi, “The convergence of the European legal system in the treatment of third country nationals in Europe: the ECJ and ECtHR jurisprudence“ (2011), E.J.I.L. 2011, 22(4).

20 *Singh vs the Czech Republic* 60538/00.

21 *Üner vs Netherlands* 46410/99.

22 CTK, Brno, 20.06.2013. URL: <http://www.flymag.cz/article.php?id=8580>

23 Statistické údaje o činnosti: <http://www.ochrance.cz/zpravy-o-cinnosti/statisticke-udaje-o-cinnosti/>

a person to a country where there is a risk of exposure to torture or inhuman or degrading treatment or punishment. The European Court of Human Rights considered its application, and concluded that there was the violation of those both articles²⁴.

The other bright example of the violation of international law by the Czech Republic is *Macready vs Czech Republic*. In that case the Czech Republic violated Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 8 (right to respect for private and family life, as the basis for contesting a decision to refuse entry to or deport aliens, when the excluded person has family connections in the relevant country) of the European Convention on Human Rights, where *Macready* complained about the proceedings he had brought seeking his son's return after he had been removed by his ex-wife²⁵.

As a democratic European state, the Czech Republic in its protection policy should carefully weigh the pros and cons in order of treatment. It should respect first of all the universal values, one of them is the Fundamental human rights -given us, among the others, by the European Convention on Human Rights, Universal Declaration of Human Rights of the United Nations, and by the Charter of Fundamental Human Rights of the European Union. The other thing is to solve problems of migration but with a regard to a possible violation of human rights. Given the centrality of equality and non-discrimination legal principles at the international and European legal level the cases of the aliens should be solved carefully.

The Czech Republic should act according to the principle of non-discrimination, violation of that principle we may see in case of "phallometric test", which had place in 2008–2009. That test was required by the Ministry of the Interior and conducted by the Ministry of Health as a medical proof of homosexuality from individuals seeking asylum for reasons of fear of ill-treatment in domestic country due to their sexual orientation. Lawyers found this test violating the Article 3 and 8 of the European Charter. After several disputes, that test was recognized as unlawful and was annulled.²⁶

Despite the fact, that that "phallometric issue" hadn't reached the European Court of Human Rights, it still had place in the Czech Republic for more than 2 years.

As have been mentioned, there are a lot of cases of breaching the international law by the Czech Republic in a case of treatment of non-EU nationals, which hadn't been reported to international community for several reasons. One of them is a fear of the alien to apply against the European State. The other thing is the costs and expenses of the procedure. Furthermore there is an ambiguity of how that procedure could end.

In 2012 Amnesty International presented its report, where it profoundly concerns about the extension of the maximum period of immigration detention to 18 months, and about the possible discriminatory two-tier system for Czech nationals and their non-EU family members. Moreover, that report mentioned not equal labor conditions concerning trafficking in foreign migrant workers.²⁷

In addition it worth to give some examples from the practice of the author:

1. Unreasonable excessive length of long-term visa deciding-process regarding the extension of the long-term residence. While the terms given by the Czech Law in that case is 30 days (accord-

ingly to the Administrative Code of the Czech Republic, and §169 of the Act on the Residence of Foreign Nationals in the Czech Republic), the applications are being examined for 2, 3 and even 4 years, making the complications for the applicants, one of which is crossing the borders.

2. Disinformation of applicants given by the representatives of the Ministry of Interior Office Department for Asylum and Migration Policy has not been a rare thing, however, the situation, which faced one applicant, can be described as illegal. First of all, in the information link he got a prescription to send his application to the post on the name of the Police for Foreigners of the Czech Republic, which was at the same address as an Office of the Ministry of Interior. When he got back the letter, he immediately corrected his mistake by going to the MOI office personally with the letter of the NGO organizations, describing his mistake. The employees of the MOI Office accepted his documents, and at the same time put to his passport – Expulsion Order, without any official decision. When it's occurred, that the expulsion order was given without legal ground, the employees advised to the applicant to get the other Bridging visa.

In order to avoid such violations of not only domestic, but also European and the international law, I would suggest this requires to pay greater attention to the systematical education of the whole employee apparatus of the Ministry of Interior, to make the regular monitoring and control over the personnel's knowledge about their work priorities, in order to make the apparatus of the State competent.

Conclusion

This assignment focused on the treatment of non-European nationals or the third-country nationals by the Czech Republic, according to the statistics of the European Court of Human Rights.

It was demonstrated that the treatment of the third-country national by the European Union Member State differs from the treatment of the European Union citizen. Nonetheless, the treatment by each Member State varies. It is due to the different factors, such as position of the state and whether it is the European Union border state, or located inside the EU, where the strength of migration flow from the third countries is contrastive.

Hence, the provisions of the EU are aimed to harmonize migration flow process inside the EU, and appear not to contradict to the international law. Therefore, Member States are facing the two-level legal system, international and European. Still, for the provisions being applied in the Member States, the national legislations have their own additional requirements.

Given the wide scope of this topic, the author pointed out some of the key Union legislative norms in the issue of immigration and asylum law. Some preliminary reflections on how the treatment of non-European nationals by the specific state can meet the common concepts and understanding of the fundamental rights discourse were provided. Particular norms of the international and European legislation regarding immigration and asylum were examined, as well as specific cases against Czech Republic in the European Court of Human Rights.

The clash between the rights of the individuals and right of the State in protection of its interests, and the views of the ECtHR to it has been mentioned in this article.

It was concluded that the situation in the Czech Republic in the issue of treatment of non-European nationals, was created by the incompetent State apparatus, and suggested to provide systematical education to employees of the State.

24 *Diallo vs the Czech Republic* 20493/07.

25 *Macready vs the Czech Republic* 4824/06, 15512/08.

26 E-pravo (2010) "Falometrie je nutna k ziskani dukazu, tvrdi ministr John".

27 Report of Amnesty international, p. 125. URL: <http://www.amnesty.eu/content/assets/AIR12-Report-English.pdf>

References

Legislation

1. Charter of Fundamental Rights of the European Union, 2000.
2. European Convention on Human Rights, 1950.
3. Convention Relating to the Status of Refugees 1951.
4. Treaty on Functioning the European Union, 1992.
5. Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
6. Directive 2003/109 on the status of third-country nationals who are long-term residents.
7. Directive of the European Parliament and Council Directive 2011/95/EU.
8. Regulation of the European Parliament and Council Regulation 604/2013.
9. Europe Council Decision 2015/1523 and Decision 2015/1601.
10. European Pact on Immigration and Asylum 2008.
11. Act on the Residence of Foreign nationals in the Czech Republic No 326/1999.
12. Asylum Act of the Czech Republic No 325/1999.
13. Administrative Code of the Czech Republic.
14. Antidiscrimination legislation implemented by the Czech Republic from the EU Race Equality Directive (Council Directive 2000/43/EC) and the Employment Equality Directive (Council Directive 2000/78/EC) - Zákon č. 198/2009 Sb., o rovném zacházení a o právních prostředcích ochrany před diskriminací a o změně některých zákonů (antidiskriminační zákon), ve znění pozdějších předpisů.

Cases

1. Database of the European Court on Human Rights, HUDOC, case law, judgments, decisions
2. Case 20493/07, Diallo vs the Czech Republic [2007].
3. Case 30241/11, Buishvili vs the Czech Republic [2011].
4. Case 60538/00, Singh vs the Czech Republic [2000].
5. Case 298/07, Rashed vs the Czech Republic [2007].
6. Joint cases 4824/06, 15512/08, Macready vs the Czech Republic [2008].
7. Case 75455/01, Tariq vs Czech Republic [2001].
8. Case 46410/99 Üner vs Netherlands [1999].

Books and Journals

Books

1. Moussis, by Nicholas. Access to European Union: law, economics, policies. 19th updated ed. Rixensart: Euroconfidentiel, 2011, kapitola 8.1.3. ISBN 9782960104509.
2. Čepelka, Čestmír a Pavel ŠTURMA. Mezinárodní právo veřejné. 1. vyd. V Praze: C. H. Beck, 2008, xli, 840 s. Beckovy právnické učebnice. ISBN 978-80-7179-728-9.
3. Tomášek, Michal. Czech law between europeanization and globalization. 1st ed. Prague: Karolinum, 2010, 368 s. ISBN 978-80-246-1785-5. Capitol of the Book: Šturma P. a kol., Universality of international law: what is the role of general international law in the period of its fragmentation? P. 208–226.
4. Handbook on European Law relating to asylum, borders and immigration, Ed. 2014, Luxembourg: Publications Office of the European Union, ISBN 978-92-871-9958-4.

Journals

1. Byrne, R., G. Noll A J. Vedsted-Hansen. Understanding refugee law in an enlarged European Union [online]. E.J.I.L., 2004, 15(2), p. 355-379 [cit. 2015-09-29]. Academic article.
2. Callewaert, J. The European Convention on Human Rights and European Union law: a long way to harmony [online]. E.H.R.L.R., 2009, 6. P. 768-783 [cit. 2015-09-29]. Academic article.
3. Gilbert, G. Europe living up to its obligations to refugees? [online]. E.J.I.L., 2004, 15(5), p. 963-987 [cit. 2015-09-29]. Academic article.
4. Morano-Foadi, S. a S. Andreakis. The convergence of the European legal system in the treatment of third country nationals in Europe: the ECJ and ECtHR jurisprudence [online]. E.J.I.L., 2011, 22(4), p. 1071-1088 [cit. 2015-09-29]. Academic article.
5. Singh, R. Equality: the neglected virtue [online]. E.H.R.L.R., 2004, 2, p. 141-157 [cit. 2015-09-29]. Academic article.

Internet Resources

1. European Court of Human Rights. Wwww.echr.coe.int [online]. [cit. 2015-09-29]. Available on: www.echr.coe.int
2. European Commission. Ec.europa.eu [online]. [cit. 2015-09-29]. Available on: www.ec.europa.eu
3. Web page of the Ombudsman: Statistics. Ochrance.cz [online]. 2014 [cit. 2015-09-29]. URL: http://www.ochrance.cz/sledovani-vyhosteni-cizincu/prehled-aktivit/
4. Amnesty International. Report 2012.: The State of the World's Human Rights. Amnesty International [online]. 2012 [cit. 2015-09-29]. URL: http://www.amnesty.eu/content/assets/AIR12-Report-English.pdf
5. Honusková, Věra. Právní pohled na otázky migrace a uprchlictví - podklad pro současnou debatu. Právní prostor [online]. 2015 [cit. 2015-09-29]. Available on: http://www.pravniprostor.cz/clanky/mezinarodni-a-evropske-pravo/pravni-pohled-na-otazky-migrace-a-uprchlictvi-podklad-pro-soucasnou-debatu
6. Dementová, H. Jak se (ne)vysetruje trestni oznameni na ministra vnitra Kubiceho. HELP A MAN [online]. 2012 [cit. 2015-09-29]. Dostupné z: http://helpaman.org/new/?p=157
7. Aktualne.cz: porusuje unijni pravo, cizinci trapi registrace. Aktualne.cz [online]. 2012 [cit. 2013-10-20]. URL: http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=757074
8. Epravo.cz: Falometrie je nutna k ziskani dukazu, tvrdi ministr John". Epravo.cz [online]. 2010 [cit. 2013-10-20]. URL: http://www.epravo.cz/zpravodajstvi/falometrie-je-nutna-k-ziskani-dukazu-tvrdi-ministr-john-69208.html
9. Flymag.cz: Ombudsman: Cizinci nesmějí být na letištích v ČR vyhoštěni hned. flymag.cz [online]. zdroj: CTK, Brno, 2013, 20.06.2013 [cit. 2013-10-20]. URL: http://www.flymag.cz/article.php?id=8580
10. Statistics of submitted and rejected residence, asylum status, refugee status and providing of international protection by Ministry of Interior of the Czech Republic. URL: http://www.mvcr.cz/clanek/cizinci-s-povolenym-pobytem.aspx; http://www.mvcr.cz/clanek/mezinarodni-ochrana-253352.aspx; https://www.czso.cz/csu/cizinci/2-ciz_rizeni_azyl; http://www.mvcr.cz/clanek/statisticke-zpravy-o-mezinarodni-ochrane-za-jednotlive-mesice-v-roce-2015.aspx