

Czech Republic: Conference highlights role of judges in protecting rights of migrants and asylum seekers

Judges play a crucial role in protecting the rights of migrants and asylum seekers, and refugees, experts emphasized at a conference for judges in the Czech Republic held by the International Commission of Jurists (ICJ), Forum for Human Rights and Czech judicial academy on 22-23 March 2021.

The right of asylum seekers to an effective remedy is guaranteed in international and EU law, and it requires a full and *ex nunc* examination of both facts and points of law. Conference participants discussed how specific vulnerabilities of people in asylum proceedings must be identified as early as possible and [the important role that judges play](#) in ensuring that this is the case.

Speakers emphasized that the “best interest of the child” principle, and the right to private and family life, have to be taken into consideration when termination of residence of migrants is in question.

The training, “Selected discourses of asylum and migration law from the international and national perspective” addressed relevant topical questions on the protection of human rights in asylum proceedings in the Czech Republic. Participants included international experts and about 100 participants from among Czech judges and judicial assistants. The speakers included highly experienced European judges, and Czech legal experts and judges. The event was co-organised with Forum for Human Rights, a Czech and Slovak nongovernmental organization, and the Judicial academy of the Czech Republic.

Background

The event took place as part of the [FAIR PLUS project](#). You can find the agenda of the national training [here](#) and more details on the issues covered by the training [here](#) below:

In the first session, **Hugo Storey**, a recently retired judge of the Upper Tribunal (UK) and the former Chairperson of the European Chapter of the IARMJ, spoke about Article 46 of the Asylum Procedures Directive (APD) which covers the need for *ex-nunc* effective remedy in decisions about asylum. Lively discussion unfolded, especially related to the specific obligations of higher administrative courts related to examinations of facts and law when reviewing decisions about access to international protection. Especially the question whether the Czech rules of procedures are legislatively adjusted to the approach of Article 46.3 APD, which requires that an “effective remedy provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs.”

Further, the Vice-President of the Polish Supreme Administrative Court and Professor at the University of Łódź **Jacek Chlebny** shared his experience with filing preliminary references with the Court of Justice of the European Union (CJEU) in cases regarding judicial review of national visa cases. He also spoke about the European Court for Human Rights (ECtHR) case *M.K. and Others v Poland*, which concerned the State practice of systematic push back of asylum seekers at the borders between Poland and Belarus. The judge stressed the need for individual assessment in all such cases. The question of the lack of suspensive effect of the refusals of entry was further discussed among participants.

Assistant at the Czech Constitutional Court **Hana Lupačová** discussed the impact of the pandemic on asylum procedures (in procedures on international protection, in countries of origin for non-refoulement purposes and in Dublin procedures). Briefly, the impact of Covid-19 on the rights of migrants and refugees in the Czech Republic and some other EU countries – Ireland, Poland, Slovenia and the UK – were discussed.

The event further covered the issue of the right to family life of migrants. **Nuala Mole**, senior lawyer from the AIRE Center, discussed the right to private and family life especially in the context of termination of stay – in cases of expulsion and refusal to renew residence permits or refusal to regularise. She focused the relationship between the European Convention on Human rights and the Convention on the Rights of the Child in the context

of the right to family life, especially the “best interest of the child” principle and the need for the authorities to demonstrate that the best interests of the child have been taken into consideration when children may be affected by the decision. **Jan Kratochvíl**, a Czech judge, commented on this issue from the national jurisprudence perspective.

During the second day of the seminar Prof. **Bostjan Zalar**, Senior High Court Judge of the Administrative Court of Slovenia and President of the European Chapter of the IARMJ, discussed the role of the courts in the judicial review of immigration detention from international and EU law perspective. Prof. Zalar offered a historical perspective on the issue of immigration detention and covered differences in the CJEU and ECtHR case-law, focusing on the looking at the concept of “choice” in the transit zone on borders and at the airports.

John Stanley, Deputy Chairperson of the International Protection Appeals Tribunal (Ireland), explained the details about the Irish case-law related to the definitions and identification of vulnerable persons. **Alexandra Dubová**, a lawyer from Forum for Human Rights, analysed the legal regulation of vulnerable persons in EU and Czech law and pointed to the problematic question of identification and protection of vulnerable persons in the Czech Republic. A discussion followed regarding the actual obligations of judges to identify vulnerable persons in asylum and related proceedings. **Marie Lukášová** from the Ombudspersons office and the CPT member addressed identification of victims of torture or other inhuman and degrading treatment in the asylum procedures.

Finally, Prof. **Helena Tužinská**, anthropologist from Bratislava University, spoke about communication with migrants: an ethnography of interpretation in the asylum judicial proceedings. She presented her recent research into judicial decisions in immigration matters, and the concept that translation among two actors might not be enough, as concepts and terms might mean different things in different cultural settings. In her discourse, she suggested that judges, or administrative officers, are a social group themselves having a certain reference framework, understanding and a way of thinking, and expect others including asylum seekers and other foreigners to think in the same way. The interpretation needed is not only linguistic, but a broader transmission of concepts or cultural experiences. Credibility, substantiation and impartiality of interpreters was also discussed by Prof. Tužinská, questioning the understanding of a judge, what honesty means, or the ability of police reports to capture the experience of an asylum seeker, for instance.



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