

**NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE
EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE
ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN:**

(Czech Republic)

by

Kosař David

JUDr. et Bc.

PhD candidate at Masaryk University, Brno, Czech Republic

david.kosar@volny.cz

1. NORMS OF TRANSPOSITION

- Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers was transposed by Act No. 57/2005 Coll.¹ that amended Act No. 325/1999 Coll. on Asylum² (hereinafter the “Asylum Act”). Act No. 57/2005 Coll. was published in issue 15/2005 of the Collection of Laws of the Czech Republic (pp. 354-357) on February 4, 2005 and entered into force on the date of its promulgation.³ This mode of transposition was chosen because reception conditions need to have a formal statutory basis, and the Asylum Act already contains provisions stipulating the reception conditions for asylum seekers and management of the reception facilities.

Act No. 57/2005 Coll. was not devoted solely to Directive 2003/9/EC but also to the transposition of Directive 2003/86/EC on the right to family reunification and EC Regulation No. 343/2003, usually referred to as the Dublin II Regulation, and to implementation of the Protocol on asylum for nationals of Member States of the European Union. Since the reception conditions were already quite demanding even prior to the adoption of Directive 2003/9/EC, the directive was transposed by the insertion of several provisions and by refining existing definitions. Although it is to some extent difficult to distil precisely the provisions adopted to transpose solely Directive 2003/9/EC, these include the following articles and paragraphs of Act No. 57/2005 Coll.: Part 1, Art. I, subsections 2, 5, 7, 9, 10, 15, 17-22, 26-29, 31-33, and Part 2, Art. II.

- Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date,

¹ The full title of the transposition norm reads as follows: Act No. 57/2005 Coll. amending Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act), and Amendment to Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended.

² The full title of the Asylum Act reads as follows: Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act).

³ Art. III of Act No. 57/2005 Coll. Interestingly enough, although Art. III of Act No. 57/2005 Coll. stipulates its entry into force on February 1, 2005, the Act itself was published in the Collection of Laws of the Czech Republic only on February 4, 2005. This “anomaly” (i.e. “pre-entry” into force) occurred probably due to the final rush to meet the transposition deadline.

number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the directive and of the transposition norms like regulations, administrative circulars, special instructions,...)

- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;
- Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
- Provide the texts of any translation of the above norms into English, if they are available.

As mentioned above, there has been only one transposition norm. Therefore, I did not set up any order of importance. However, since the entry into force of Act No. 57/2005 Coll., the Asylum Act has been subject to five subsequent amendments, several of which dealt also with reception conditions. Indeed, Act No. 57/2005 Coll. was initially envisaged not only to transpose obligations stemming from EC legislature but also to address specific problems of the Czech asylum procedure, including reception conditions. However, after significant delays in the preparation of the draft bill and in order to meet the transposition deadline, the Asylum Act was subsequently amended in two separate statutes – the above-mentioned Act No. 57/2005 Coll. and Act. No. 350/2005 Coll.⁴ While Act No. 57/2005 Coll. was intended to transpose mandatory provisions of *inter alia* Directive 2003/9/EC and bring the Asylum Act in line with the European asylum *acquis*, Act. No. 350/2005 Coll. dealt in detail *inter alia* with material reception conditions, pocket money and contribution to the costs of reception facilities, medical screening, the rights and duties of asylum seekers, sanctions against asylum seekers, the duration of visas for asylum seekers, and in particular restrictions on access of asylum seekers to the Supreme Administrative Court.⁵

Due to a major revision of the system of the State social support benefits (linked to the subsistence minimum) and State social assistance benefits (linked to the existence minimum), the Amendment to Asylum Act, Act. No. 112/2006 Coll.⁶ introduced a new system for the calculation of several financial allowances for applicants for international protection. Not surprisingly, it is impossible to describe this reform in detail within the confines of a brief report and therefore only significant issues will be dealt with in the responses to the questions below.

⁴ The full title of this norm reads as follows: Act No. 350/2005 Coll. amending Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act), and Amendment to several other Acts. It was published in issue No. 122/2005 the Collection of Laws of the Czech Republic (pp. 6049-6057) on September 13, 2005 and entered into force on October 13, 2005.

⁵ It introduced a new admissibility criterion which is very close to the institutions of “leave to appeal” or “writ a certiorari”. Pursuant to Art. 104a of Act. No. 150/2002 Coll., the Code of Administrative Justice, as amended, “the Supreme Administrative Court shall dismiss a cassational complaint in cases of international protection unless the significance of the complaint extends substantially beyond the personal interests of the complainant”. For the interpretation of this provision see Decision of the Supreme Administrative Court, No 1 Azs 13-2006-39, 26 April 2006, available at www.nssoud.cz.

⁶ The full title of this norm reads as follows: Act No. 112/2006 Coll. amending several other Acts in connection with the adoption of the Act on Subsistence and Existential Minimum and of the Act on Assistance in Situations of Material Hardship. It was published in issue No. 37/2006 of the Collection of Laws of the Czech Republic (pp. 1329-1343) on March 31, 2006 and is supposed to enter into force on January 1, 2007.

The latest significant amendment to the Asylum Act, Act No. 165/2006 Coll.,⁷ was adopted in order to transpose Directive 2004/83/EC, the “Qualification Directive”. Act No. 165/2006 Coll. was published in issue 56/2006 of the Collection of Laws of the Czech Republic (pp. 1994-2009) on April 28, 2006 and is supposed to enter into force on September 1, 2006. In particular, Act No. 165/2006 Coll. introduced, for the first time in the Czech Republic, the subsidiary protection status, opted for a single procedure for requests for international protection (see below), and stipulated the rights and duties of beneficiaries of the subsidiary protection. Finally, since there have been substantial amendments in last two years, it was envisaged in Art. III of Act No. 165/2006 Coll. that the complete current version of the Asylum Act should be published, which is to come soon.

Unless explicitly specified otherwise, in the text below reference will be made to the wording of the “Asylum Act” as of September 1, 2006 (thus including Act No. 165/2006 Coll., which has not yet entered into force). Similarly, unless explicitly specified otherwise, the term “international protection” includes both applications for asylum as well as for subsidiary protection and the abbreviation “Art.” refers to the Asylum Act.

As to norms of lower legal force, the amount of pocket money, the date it is to be paid out, and amount of the contribution to the expense of reception conditions when the asylum seekers have personal resources are specified in Decree No. 376/2005 Coll.⁸ This procedure is envisaged in Art. 42 § 7 of the Asylum Act. Furthermore, the amount of the contribution to municipalities to cover their expenses associated with the existence of the asylum facility in its territory is specified in the Government decision upon the amount of the contribution to be paid to municipalities in a calendar year (Art. 84 of the Asylum Act).⁹

Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

Since the Czech Republic is not a federal state this question is irrelevant. The only body competent to adopt the legal norms on reception conditions for asylum seekers is a Parliament (on few exceptions see Q.4).

Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

⁷ The full title of this norm reads as follows: Act No. 165/2006 Coll., amending Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act), and Amendment to several other Acts.

⁸ The full title of this norm reads as follows: Decree No. 376/2005 Coll., stipulating the amount of compensation for catering and accommodation services provided in asylum centres, the amount of allowances and the dates of their payment.

⁹ To date (for calendar year 2006), the Decision of the Government No. 22 from January 22, 2006 on Principles for providing contribution to the municipalities to cover the costs expended by the municipality in association with existence of the asylum facility in its territory, is applicable.

Since the reception conditions were already quite demanding even prior to the adoption of Directive 2003/9/EC, substantial modifications of the Asylum Act were not required. Directive 2003/9/EC was transposed (1) by the insertion of several new provisions into the Asylum Act, such as the definition of “unaccompanied minors”, the obligation to endeavour to trace the members of the minor’s family or the provision stating that the individual needs of asylum seekers must be taken into account, (2) by refining existing provisions such as the duty to provide information to asylum seekers in writing and in a language she may reasonably be supposed to understand, and (3) by introducing new mandatory deadlines, such as a 15 day deadline for providing information to the asylum seeker. While many of the new provisions, such as the right of an asylum seeker and his family to be accommodated or the right to contact legal advisors were already observed in practice, their explicit inclusion into the Asylum Act no doubt strengthened the position of asylum seekers.

This mode of transposition was chosen because administrative decisions on reception conditions are required to have a formal statutory basis, and most provisions stipulating the reception conditions for asylum seekers and the management of the reception facilities were already laid down in the Asylum Act. Only specific issues such as the amount of pocket money are prescribed by norms of a lower legal force. Therefore, the transposition of Directive 2003/9/EC was first carried out by statute and only thereafter were new administration instructions and guidelines adopted. Finally, there is no specific transposition technique which is worthy of mention.

Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

As mentioned above, the Asylum Act underwent a proper screening process aimed at adapting of the provisions of Directive 2003/9/EC to national circumstances. The Proposal for Amendment of the Asylum Act was made public, all the main actors (including UNHCR, NGOs and the Refugees Facilities Administration) were involved in the legislative process and their comments were taken into consideration (see below).

Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

All texts that were necessary to ensure the effective implementation of the Directive 2003/9/EC were adopted by the transposition deadline.

2. BIBLIOGRAPHY

Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (*please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration*).

In general, the Asylum Act underwent a proper screening process, and there were thorough negotiations with the UNHCR and NGOs before the transposition of Directive 2003/9/EC. The draft bill was accessible to the public and subject to intensive debate. Indeed, when the Ministry of the Interior had completed the draft bill and distributed it to the other ministries and state agencies, it was also sent to the UNHCR and NGOs for comments. Both the draft bill including explanatory memorandum and table of compatibility with EC law and the comments of UNHCR and NGOs are attached to this report.

The compatibility with EC law is ensured on several levels: (1) in the first stage of the drafting process, there are special units within the Ministry of the Interior responsible for transposition of EC Law, both at the level of the Department of Asylum and Migration Policy of the Ministry of Interior (Section for EU and International Law) and at the level of the Ministry of Interior itself (Department of EC law); (2) in the second stage, within the Government, a draft bill is reviewed by the Department of Compatibility of the Office of the Government of the Czech Republic and by the Parliamentary Institute.

Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

There has not been any scholarly book published about Directive 2003/9/EC and there has been only one article which was devoted solely to Act No. 57/2005 Coll.:

- HRABAK J.: Azylové právo po novele. Zákon č. 57/2005 Sb. (Asylum Law following the Amendment in Act No. 57/2005 Coll.), *Právní rádce*, No. 8/2005, Praha, pp. 42-47.

However, several collections of essays, book chapters and articles deal with the European asylum *acquis* or with the Czech asylum procedure in general:

- JANŮ, I., ROZUMEK, M.: Azylové právo ES – Pohled a role nevládních organizací (*EU Asylum Law – Perspective and Role of Non-Governmental Organisations*). Prague: Organisations for the Assistance of Refugees, 2004, available at <http://www.opu.cz> or <http://www.migraceonline.cz/>.
- JÍLEK, D. & coll. (eds.): Společný evropský azylový systém: právní pojem pronásledování (*Common Asylum System: Definition of Persecution*), Collection of Essays from the Workshop organised on 15 June 2005 at the Faculty of Law, Masaryk University, Doplněk, Brno, 2005.
- JÍLEK, D., KLEČKOVÁ R., KOSAŘ, D., TOMISOVÁ, M. (eds.): Společný azylový systém: procedurální směrnice (*Common Asylum System: Procedures Directive*), Collection of Essays from the Workshop organised on 13 June 2006 at the Faculty of Law, Masaryk University, Doplněk, Brno, forthcoming (abstracts in English available).
 - See in particular
 - JURMAN, M.: Praktické problémy zastupování žadatelů o azyl (*Legal Assistance to Asylum Seekers: Practical Problems*)

- DLABÁČKOVÁ, K.: Problematické prvky vnitrostátní legislativy z pohledu procedurální směrnice (*Problematic Elements of Domestic Legislation from the point of view of the Procedures Directive*)
- PIPKOVA, H.: Formování azylové politiky v Evropě – role soudce v azylovém řízení (The Formation of Asylum Policy in Europe – the Role of the Judge in Asylum Proceedings), *Právní zpravodaj*, No. 8/2003, Supplement Legislativa, pp. II-IV.
- PIPKOVA, H.: Aktuální problémy soudního řízení v azylových věcech (Contemporary Problems of Asylum Adjudication), *Právní rádce*, No. 11/2004, pp. 48-55.
- POŘÍZEK, P.: Komplexní analýza azylového systému v ČR včetně navržení legislativních a praktických opatření k jeho zefektivnění (Comprehensive analysis of the asylum system in the CR, including proposals for legislative measures to improve it). Brno 2004, available at <http://www.soze.cz> or <http://www.migraceonline.cz/>.
- UNHCR Prague: *Seminar "Asylum procedure in the Czech Republic*. Selected texts from the Seminar organised on 16 February 2004 at the Ministry of Justice, Prague, 2004 (bilingual text).

The most valuable sources in English are the following materials:

- Synthesis Report for Small Scale Study I: *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States*, European Migration Network, 2006.
- Small Scale Study on Reception Conditions of the European Migration Network: *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States – Czech Republic*
- Information and Cooperation Forum (ICF), Final Report, Frankfurt am Main, Germany, 26 February 2005, pp. 107-132.
- Cross-border Asylum Network (ICF II)
- SZCZEPANIKOVA, A.: Gender Relations in a Refugee Camp: A Case of Chechens Seeking Asylum in the Czech Republic, *Journal of Refugee Studies*, 2005, No. 18, pp. 281-298.
- Report on the State of Human Rights in the Czech Republic in 2005, Chapter 9, pp. 77-86 (English version forthcoming).
- Report on the State of Human Rights in the Czech Republic in 2004, Chapter 9, pp. 62-72.
- Report on the State of Human Rights in the Czech Republic in 2003, Chapter 10, pp. 95-103.
- Report on the State of Human Rights in the Czech Republic in 2002, Chapter 11, pp. 71-75.
- The invaluable source of the materials is the Migration Online Project, which is a specialised website of the Multicultural Center Prague focusing on migration issues in the Central and Eastern Europe since 2004. See the English (<http://www.migrationonline.cz/>) or Czech (<http://www.migraceonline.cz/>) mutation of this website.

Finally, annual reports of the RFA provide information on budget, cooperation with municipalities and other mainly institutional issues.

Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

There has not been any legal challenge made before Czech courts of the reception conditions for asylum seekers. The only decision that explicitly mentions Directive 2003/9/EC was the judgment of the Supreme Administrative Court, No. 5 Azs 56/2004-56 of 19 May 2004.¹⁰ However, in this case the applicant misinterpreted Art. 8 of Directive 2003/9/EC and submitted that he was entitled to asylum for the purpose of family reunification (Art. 13 of the Asylum Act). Furthermore, the applicant relied on the above-mentioned Art. 8 of Directive 2003/9/EC before the transposition deadline expired.

3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS

*The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. **Please do not write more than one or maximum two pages and do not include large historical developments.***

Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

The Ministry of the Interior has been responsible for refugee issues since 1990.¹¹ Správa Uprchlíckých Zařízení (Refugee Facilities Administration, hereinafter the “RFA”) was established on 1 January 1996 as a budgetary organisation of the Ministry of the Interior of the Czech Republic. It came into being as a result of the division of the Refugee Department, which was effected in order to separate the part of the state administration conducting asylum proceedings (Department for Asylum and Migration Policies, hereinafter the “DAMP”) from that providing services to asylum applicants (RFA). The RFA operates the reception and accommodation centres for asylum seekers, integration centres for recognised refugees and facilities for administrative detention of foreign national and provides *inter alia* accommodation, catering, social, health and other services for asylum seekers and persons who are under the temporary protection of the Czech Republic’s government.

The reception conditions for asylum seekers in the Czech Republic are almost exclusively laid down in the Asylum Act. Only certain issues, such as the amount of pocket money are prescribed by norms of a lower legal force. The Czech reception system is considered to be a centralised one. The RFA, which is a specialized agency of the Ministry of the Interior, so far remains responsible for management of all asylum facilities in the country. Although a debate has already begun on the possible involvement of NGOs in the management of certain asylum facilities, no proposal has been submitted so far.

However, there are also several other actors. The most important actor except for the RFA and DAMP is the Aliens’ and Border Police. With regards of other important actors, on involvement of Ombudsman see Q.39, on the so-called OSPODs see Q.31 G, and on involvement of the Office for International Legal Protection of Children see Q.31 I.

¹⁰ All decisions of the Supreme Administrative Court are available on its website: www.nssoud.cz.

¹¹ See Act No. 498/1990 Coll. on Refugees.

- Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and explain what the evolution of reception conditions is following the different stages of the procedure.

Asylum issues in the Czech Republic are regulated by the Asylum Act. Proceedings for the grant and withdrawal of asylum are within the competence of the Ministry of the Interior. After the Ministry of the Interior renders the first instance decision on an asylum application, the asylum seeker may file with the competent regional court an action against the decision of the Ministry. Unless the Asylum Act stipulates otherwise, this action has a suspensive effect. There exists an extraordinary remedy against decisions of the regional court on asylum matters, which is a cassational complaint over which the Supreme Administrative Court has jurisdiction. Both judicial instances review decisions of the Ministry of the Interior both as to points of law and fact, but they are not entitled to grant asylum or subsidiary protection. Hence, the courts can either confirm the decision of the administrative body or quash the decision and remand the case for reconsideration by the Ministry of Interior. As mentioned above (see Q.2), Act. No. 350/2005 Coll. introduced a new admissibility criterion for a cassational complaint and thus restricted the access of asylum seekers to the Supreme Administrative Court.

A procedure on international protection is conditional upon the alien making a declaration within the territory of the Czech Republic apparently manifesting her intention to seek protection (hereinafter the “Declaration”) in the Czech Republic from persecution or serious harm (Art. 3 § 1 of the Asylum Act). The alien is then issued an entry visa which entitles her to remain in the territory for the period of time required to appear at the designated reception centre (Art. 3e). The alien who made the Declaration in hospital, custody or prison is obliged to arrive at a reception centre within 24 hours from the moment of her release (Art. 4a § 1).

There are two phases of reception of asylum seekers. The first phase is carried out in one of the reception centres, i.e. either at Vyšní Lhoty or at the Prague airport (see below). These facilities are closed reception centres. In Vyšní Lhoty, the applicants are not allowed to leave the centre until primary admission procedure are completed, which takes approximately three weeks. However, in the Prague airport centre the asylum seekers have to stay beyond the completion of the admission procedure for the whole duration of the airport proceeding as stipulated by the Asylum Act (see Q.20 A). The admission procedures¹² include identification

¹² It should not be confused with “*admissibility* procedures“. On one hand, it is true that decision on admissibility (i.e. procedural decision) is usually taken during the stay in the reception centres, it is not necessarily so. In other words, whereas *admission* procedures always take place in the reception centre, a decision on *admissibility* may be rendered also after the transfer of the asylum seeker to the accommodation centre.

by the Aliens' and Border Police (taking photographs and fingerprints), initiation of the procedure for international protection by an administrative body (the DAMP), the issuance of a visa by the Police and a Certificate of an Applicant for International Protection by the DAMP, comprehensive medical examinations, and quarantine or other measures related to the protection of public health (Art. 46 § 1). In the reception centre in the transit zone of the airport, the applicants are not allowed to leave the centre even after the admission procedure is concluded (Art. 46 § 2).

In the second phase, after the conclusion of the admission procedures, an asylum applicant is moved to one of the accommodation centres (sometimes also referred to as "residential centres") or can exercise her right to stay in private housing. In contrast to reception centres, asylum applicants staying at accommodation centres may come and go as they please.¹³ The asylum seeker is entitled to housing in the accommodation centre throughout the whole procedure, more precisely during the first instance procedure before the DAMP and proceedings before the regional court. If the asylum seeker submits a cassational complaint to the Supreme Administrative Court against the decision of the regional court, she is issued a toleration visa and her status is governed by the Aliens Act¹⁴ (Art. 78b § 7 of the Asylum Act). Therefore, she is not entitled to housing in the accommodation centres and is obliged to find private accommodation by herself. However, if she proves that her financial situation does not allow her to cover the expenses and that she is not able to secure accommodation, housing for her will be provided by the Ministry of the Interior (Art. 78c). In practice, the applicant is usually provided with cheap accommodation in a hostel designed for that purpose. Those hostels are run by NGOs or private owners. The asylum seeker can be also granted financial support that is equal to the subsistence minimum (see below).

Generally, both filing the action at the regional court and at the Supreme Administrative Court has a suspensive effect, including most "manifestly unfounded" cases (see below), "airport" cases and "detention" cases.¹⁵ As for the exceptions to this rule, the filing of an action at the regional court does not have suspensive effect in the following cases: (1) an action against the decision on discontinuance of the asylum proceedings; (2) an action against the rejection of asylum application (as "manifestly unfounded") on the ground that the applicant arrives from a safe third country or a safe country of origin; (3) an action against the rejection of asylum application (as "manifestly unfounded") on the ground that the applicant holds more than one citizenship and failed to avail herself of the protection of any of the countries of which she is a citizen. However, an asylum case involving an unaccompanied minor cannot be determined to be "manifestly unfounded", nor can the accelerated procedure be used.

The "manifestly unfounded" cases, "airport" cases and "detention" cases are dealt with in an accelerated procedure; thus different conditions and time limits generally apply. The specific features and dissimilarities of these procedures will be addressed separately in response to the relevant questions. These include e.g. restriction on the freedom of movement in the airport reception centre, in Dublin cases and in the detention facilities, shorter time limits for filing actions against the first instance decisions, the fact that the "Certificate of an Applicant for

¹³ Although several restrictions apply; e.g. asylum seekers registered at accommodation centres are allowed to leave the centres for a maximum period of 10 days per calendar month, unless explicitly permitted to prolong this period.

¹⁴ Act No. 326/1999 Coll. on Residence of Aliens on the Territory of the Czech Republic and Amendment to Some Acts (hereinafter the "Aliens Act").

¹⁵ However, there is a shorter time limit for filing the action at the regional court for the above-mentioned special procedures. The action must be filed within 7 days, in contrast to 15 days in "regular" cases (Art. 32 § 2).

International Protection” is not issued to the applicants in detention before their transfer to the accommodation centre etc.

For border procedures, see short description in Q. 32 D.

- B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

The answers on reception conditions given below are valid for the first and second stage of the asylum procedure (i.e. during the first instance procedure before the DAMP and proceedings before the regional court), unless explicitly specified otherwise. The modalities of reception conditions of the asylum seekers who lodged a cassational complaint are mentioned separately. Special procedures such as detention and airport procedures and Dublin cases will be dealt with separately where appropriate.

4. GENERAL RULES ON RECEPTION CONDITIONS

- Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,...). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

Material reception conditions (housing, food, clothes, hygienic items and health service) are primarily provided in kind, but depending on the circumstances there are also several benefits provided in cash. Asylum applicants have the following rights in the asylum facility in which they have their registered address: to be provided with accommodation, food and other services (hygienic items such as toothbrush, toothpaste, toilet paper, soap etc.) at no charge, and to receive pocket money (Art. 42). In general, except for restriction of freedom of movement, material reception conditions (housing, food, hygiene, social and psychological assistance, leisure time activities and pocket money) are delivered under the same conditions both in the "accommodation centres" and "reception centres". Since January 2004, asylum seekers no longer receive financial support in the form of monetary benefits (see below).

Asylum seekers accommodated both in the reception and accommodation centres are entitled to pocket money (sometimes referred to as “spending money”) which amounts to 16 CZK per day and thus approximately to 480 CZK (€17) per month. An asylum seeker accommodated in these centres can perform work in the centre (e.g. cleaning, help in the kitchen, etc.), on a voluntary basis, up to 12 hours per month, in which case her pocket money will be increased up to double the regular amount. Furthermore, in the accommodation centres where no meals are provided, asylum seekers receive financial contribution to the catering which amounts to approximately 2400 CZK per month (this sum is linked to the subsistence minimum and

varies slightly according to the age of the applicant and number of family members).¹⁶ However, an applicant who receives contribution to the catering is not entitled to pocket money. Self-catering facilities are always provided in the centre. If the asylum seeker is *only* registered in the centre, which means that she lives in private accommodation and has only the obligation to report regularly to the DAMP in the centre, she is not entitled to any material or financial support, apart from medical service (see below).

Asylum seekers, who chose to stay outside the accommodation centre, must find private housing by themselves and report for registration at the Aliens' and Border Police. With the exception of medical care, those applicants must cover their living expenses themselves. Furthermore, they can apply for financial contribution up to the subsistence minimum mentioned above if they prove that their financial situation does not allow them to cover their housing expenses. Nevertheless, such financial support may be provided only for a period of 3 months.

Aliens holding a toleration visa, i.e. those who submitted a cassational complaint to the Supreme Administrative Court, are obliged to find their own accommodation and cover their own expenses. If they prove their financial situation does not allow them to cover the expenses and they are not able to secure their accommodation, they can be provided with a cheap accommodation and be granted financial support equal to the subsistence minimum (see also Q.11).

There is no system of vouchers, and no specific contribution to transportation (except in emergencies) or clothing expenses is provided to asylum applicants in the Czech Republic. Furthermore, after January 2004, as a result of changes to the Act on State Social Support,¹⁷ such applicants were excluded from the group of persons entitled to state social support benefits and therefore asylum seekers had no access to the general system of social aid at any stage of the procedure. Since March 2005, the amendment to the Act on State Social Support stipulates that, of the 365 days needed to fulfil an alien's condition of stay in order to be entitled to state social support benefits, only that period will be excluded when the asylum seeker is housed in the accommodation centre. Therefore, if the alien (i.e. asylum seeker) is housed outside such a centre, she is entitled to state social support benefits after the period of 365 days expires.

As to the clothing, it is usually provided by Caritas (NGO) that maintains storerooms of old clothes in most asylum facilities and also provides clothing to the RFA on the individual request basis. In case of deficiency of certain type of clothes (e.g. baby outfit) or of a particular size of shoes (i.e. they are not available at Caritas), these are provided directly by the RFA (on the basis of Art. 42 § 2).

Furthermore, Caritas also maintains so-called "mini-humanitarian depots" at the borders with Austria, Germany, Poland and Slovakia. These mini-depots provide basic material conditions for those, who are intercepted by the Police during their attempt to cross the borders or to asylum seekers returned back on the basis of readmission agreements. This system seems to be working well.

¹⁶ To date (31 May, 2006) adults receive 79 CZK per day, children under 6 years old, 57.50 CZK, children 6-10 years old, 64 CZK, children 10-15 years old, 76 CZK, children over 15 years old, 83 CZK. There are also extra benefits available, e.g. 26 CZK per day for diabetics.

¹⁷ Art. 3 § 1 of Act No. 117/1995 Coll., on State Social Support.

- B. **Can the reception conditions in kind, money or vouchers be considered as sufficient “to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence” as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)?** In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

Reception conditions can be generally considered as sufficient “to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence” as required by Art. 13 (2) of the Directive.

All asylum applicants staying in the reception and accommodation centres are entitled to free board, housing and pocket money. Asylum facilities provide also other services such as social and psychological services, library privileges, leisure time activities (sports, art workrooms, etc.), which was perceived as a positive example in the Report of Information and Cooperation Forum (see Q.8). Leisure time activities are provided both by the RFA and by NGOs (but usually in cooperation of both subjects) and include sport events, art workshops, libraries, IT and language classes, discotheques, visits to cinemas etc. Furthermore, these activities are not restricted only to the accommodation centres but take place also in the reception centres – i.e. in transit zone at the Prague International Airport and in Vyšní Lhoty.

It is up to each asylum seeker to decide individually whether she opts for be housed in the accommodation centre or privately. The number of places available in the centres is sufficient and can be increased in case of emergency (see below Q.20 D and 24 D); there seems to be no problem with availability of housing premises in the centres. Nevertheless, a reception system that encourages living in large accommodation centres also has its drawbacks. The financial support made available to those living in private accommodation is sufficient for very economical and simple living but is available only for 3 months (see subquestion A). Furthermore, not all asylum seekers are able by themselves to find private accommodation legally so as to entitle them to apply for financial support. It is notable that asylum seekers living outside asylum facilities face two constraints during the first year of the asylum proceedings: (1) they do not have access to the labour market,¹⁸ and (2) they are not entitled to the state social support benefits,¹⁹ and therefore they have to rely on their own financial resources. Due to the restricted access to the labour market, their earning possibilities are limited, forcing them either to find unlawful employment or to return to the accommodation centre (where they become completely dependent upon the State).²⁰ What is more, housing an asylum seeker in an accommodation centre is more costly (see Q.40 C) for the State than if she lived outside the centres (in private), even when the State provides financial support therefor.

There are numerous kinds of social benefits for Czech citizens (such as unemployment and housing benefits, child allowances etc.). Until June 30, 2006 the minimum wage will be 7.570

¹⁸ Art. 99 a) of Act No. 435/2004 Coll., on Employment; see Q.28

¹⁹ Art. 3 § 1 of Act No. 117/1995 Coll., on State Social Support.

²⁰ See the Report on the State of Human Rights in the Czech Republic in 2004, § 9.6.5, pp. 67-68; and the 2003 Report, § 10.2.4, pp. 100-101.

CZK (€260) per month, but it will rise to 7.955 CZK (€282) as of July 1, 2006. Since January 1, 2006 the minimum social support benefit for citizens in need (subsistence minimum) has been 4,420 CZK (€157) per month. However, a new law was adopted in March 2006 which is supposed to enter into force on January 1, 2007. This law introduces two benefits – the “subsistence minimum” which amounts to 3,126 CZK (€111) and the “existential minimum” which amounts to 2,020 CZK (€72) per month.²¹ Therefore, in comparison with the main social benefits, the amount of pocket money (€17 per month) is more or less symbolic and limits the asylum seekers in their mobility, which is exacerbated by the fact that accommodation centres are often situated in remote areas. Furthermore, low pocket money is sometimes problematic²² for asylum seekers with special dietary requirements (Muslims, small children, pregnant women, etc.) . While it is true that they can ask for special meals and are subsequently provided with a special diet, it might be difficult to fulfil all the individual preferences²³ and due to low pocket money they cannot purchase their own food. Since the financial contribution to catering, provided in some accommodation centres instead of food, is deemed to be sufficient to purchase quality food (see above), it would be preferable to allow applicants with special dietary demands to opt for this contribution and choose their own food. This fact has been already acknowledged by the RFA and the system of self-catering will be implemented in other asylum facilities.

5. PROCEDURAL ASPECTS

Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)

Art. 2 § 3 of the Asylum Act stipulates that “an ‘application for international protection’ means the application of an alien who can be presumed to be seeking asylum or subsidiary protection in the Czech Republic”. The primacy of the Geneva Convention is clearly stipulated in Art. 14a § 1 which provides that the “subsidiary protection shall be granted to the alien who does not satisfy criteria for granting asylum” but “in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm ... and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country“. Art. 2 (b) of the Directive was therefore correctly transposed.

B. Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4

²¹ However, the new social benefits are not comparable to the former “subsistence minimum”, since they do not cover the housing expenses, which will be covered separately.

²² But reception conditions are still “sufficient” in the terms of Art. 13 (2) of the Directive.

²³ For example, during Ramadan Muslims may eat only in the evening which does not fit to the hours when catering is provided in the centres and although the RFA provides them with special “take-away food”, it would be preferable, if they are allowed to buy their own food. Similarly, pregnant women would prefer to buy their own food including vitamins etc.

which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

Since September 2006, there is only a single procedure; apart from examining the asylum applications under the 1951 Geneva Convention, it allows for granting humanitarian asylum and subsidiary protection within the meaning of the Directive 2004/83/EC. Therefore, the scope of application of reception conditions is extended also to persons seeking subsidiary protection within the meaning of Directive 2004/83/EC.

With regards of the humanitarian asylum, the Ministry of the Interior has discretionary power to grant asylum for humanitarian reasons in a case requiring special consideration (e.g. pregnancy, serious disease) even if a ground for asylum under the Geneva Convention is not established (Art. 14 of the Asylum Act). However, this provision will presumably only be of great importance until September 1, 2006, since the subsidiary protection status²⁴ was not provided for before the adoption of Act No. 165/2006 Coll. (see above Q.2) and in many cases the humanitarian asylum was used to replace this gap.

- C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

Since the Czech Republic does not provide either diplomatic or territorial asylum, this question is of no relevance.

Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?

Yes, reception conditions are available from the moment an alien express his intention to apply for international protection. She can make the Declaration either to the Police (1) at the border crossing, (2) in the reception centre, (3) at the Regional Headquarters of the Aliens' and Border Police Service on the condition that she availed herself voluntarily, or (4) in the aliens detention centre; or to the Ministry of the Interior, if she is hospitalized in a medical facility, held in custody or imprisoned. There is no time limit for making the Declaration, except for applicants in detention centres, who must submit it within the first 7 days, i.e. within 7 days from the moment when she was informed by the Police of her opportunity to apply for international protection and of the consequences of the failure to meet this time limit (Art. 3b § 1).

After submitting the Declaration, an alien is obliged to appear at the reception centre within the validity of an entry visa issued by the Police, except when prevented by detention and airport cases, as well as objective obstacles such as hospitalisation or the execution of a prison sentence. The entry visa can be issued for a maximum period of 30 days (Art 3d § 3). Before proceedings on granting international protection are initiated, the alien is entitled to reception

²⁴ There were only so-called "Obstacles to Leave" (Art. 91 of the Asylum Act applicable before September, 1, 2006) which stipulated only basic rights for their beneficiaries. Obstacles to Leave were abolished by Act No. 165/2006 Coll. and replaced with the subsidiary protection status. However, "Obstacles to Leave" remain in the Aliens Act (Art. 179).

conditions, i.e. for the purpose of provision of health care, accommodation, food and other services she is deemed to have the status of an asylum applicant: (1) for the period of time for which she is given leave to remain in the Czech Republic on the basis of an entry visa for a stay of up to 90 days for the purpose of filing an application for international protection (hereinafter the “Entry Visa”); (2) for a period of 5 days from the date of the Declaration, if she is not issued an Entry Visa; (3) from the date of the Declaration made during hospitalisation, custody or imprisonment until the date on which she is obligated to appear at a reception centre (Art 3c § 1).

Q.15. Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)

Reception conditions end when the alien loses his status as an asylum applicant. An alien enjoys the status as an asylum applicant during the administrative procedure on a request for international protection and during judicial review of the decision of the Ministry of the Interior, provided the action has a suspensive effect (see Q.11 on suspensive effect). However, on specific situation of asylum seekers who lodged a cassational complaint, see Q.11 A and Q.12 A.

Therefore, in most cases reception conditions end upon the refusal of the asylum request in the last instance. However, certain elements thereof are linked to a particular stage of the proceeding. For a general description, and as to the housing, see Q.11 A. During a period between rendering a negative decision and filing an action to the Regional Court, the applicant is entitled to material reception conditions (with the exception of pocket-money and financial contribution to self-catering). If she files the action within the time limit, she is entitled to the same material reception conditions (i.e. including pocket-money and financial contribution to self-catering) as apply during proceedings before the Ministry of Interior. However, if she fails to file by this deadline she is deprived of all material reception conditions.

Q.16 Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?

Yes, there are special rules for successive applications. According to Art.10 § 3 of the Asylum Act²⁵ “an alien who has already applied in the Czech Republic for international protection is authorised to file an application for international protection no sooner than 2 years after the end of the previous proceedings”.²⁶ Consequently, asylum seekers who lodged successive application are not entitled to the material reception conditions from the Ministry of Interior.

The two-year period shall not apply to Dublin cases, where proceedings were suspended and the Czech Republic is competent to assess the alien’s new application for international protection. Furthermore, in all cases, the Ministry of the Interior may allow an exception to 2-year time limit in individual cases (Art. 10 § 4 of the Asylum Act). If an asylum seeker lodges

²⁵ This provision will most likely be subject to change during the ongoing process of transposition of the Procedures Directive.

²⁶ If an alien applies to a court for the review of an administrative decision, the date on which the court decision has become legally effective is deemed to be the beginning of the two-year period.

a request for exception to 2-year time limit, she is accommodated in the reception centre in Vyšní Lhoty, where she waits for the decision of the Ministry of Interior. During this period she is entitled to the same material reception conditions as a regular asylum seeker.

Q.17. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is to large extent a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

A. Are asylum seekers informed, and if yes about what precisely?

Yes, when they lodge their application asylum seekers are given a leaflet with detailed information on reception conditions. The leaflet is prepared by the RFA and includes: information about DAMP, Aliens' and Border Police and free legal counselling provided by NGOs; contact on social service workers and manager of the asylum facility; comprehensive list of organisations providing legal, social and psychological counselling, health care with all necessary contacts, including the above-mentioned NGOs, UNHCR and IOM; emergency phone numbers; access to laundry services and telephone; information about pocket money, catering facilities, sanitary items etc. In all the reception and accommodation centres the asylum seekers have also access to the accommodation rules, basic information about asylum facility and information on various medical tests (HIV/AIDS, tuberculosis, syphilis etc.), basic hygienic information and information about domestic violence. Other information concerning the management of the centre is placed on notice boards of the asylum centre (in the form of pictures/pictograms).²⁷

Furthermore, UNHCR had designed a special information leaflet for asylum seekers at the airport, which contains basic information about the course of the airport asylum procedure, rights and obligations of asylum seekers and list of NGOs providing assistance to asylum seekers in the Czech Republic. The UNHCR information leaflet has been translated to the most frequent languages, including English, Russian, Arabic and French. As to the special leaflet prepared by UNHCR for asylum seekers in the detention centres, see Q.33 I.

B. Is the information provided in writing or, when appropriate, orally?

The information is provided both in writing and orally. As mentioned above, asylum seekers are given a leaflet with detailed information when they lodge their application and they are again orally instructed (by means of an interpreter) on asylum proceedings, including their rights and duties before and during the interview. In addition, every reception and accommodation centre offers 24-hour social services providing relevant information. During the course of asylum procedure, the asylum seekers have access to information concerning their rights and obligations through the Ministry of the Interior and/or NGOs.

C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available

²⁷ E.g. information on how to proceed in case of transfer, how to get hygienic parcels, how to borrow various materials, how to arrange changing of bed-sheets or how to get information on food provision. Several centres have this information available only in printed versions.

Yes, information is provided in a language understood by the asylum seeker. Information leaflets are provided in nearly all languages, except for rare African tribal languages. DAMP always try to find interpreter from particular region, so that the asylum seeker can be provided with oral instructions. An asylum seeker is entitled to use her mother tongue, or with her consent a language in which she is able to communicate, during the entire course of a proceeding on international protection. The Ministry of the Interior thus provides asylum seekers with an interpreter for the entire course of a proceeding (Art. 22 § 1). Furthermore, if the asylum seeker is not satisfied with the assigned interpreter, she is entitled to engage an interpreter of her own choice, albeit at her expenses (Art. 22 § 2).

D. Is the deadline of maximum 15 days respected?

Yes, the duty to provide information within the deadline of 15 days is explicitly laid down in Art. 10 § 7 of the Asylum Act and is respected. Indeed, as mentioned above, the information leaflet is passed to the asylum seeker straight away when she submits the application. According to the NGOs, there have been problems reported as to the asylum seekers at the airport who speak rare language, and particularly due to the special procedure and short time limits for issuing the RSD decisions.

Q.18. Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extent a mandatory provision):

A. **Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?**

There are two leaflets given to the asylum seekers, one prepared by the RFA which includes information on reception conditions (see Q.17 A) and one prepared by the DAMP with information about asylum procedure. The information leaflet of the RFA includes a comprehensive list of organisations providing legal, social and psychological counselling with all necessary contacts. However, it is true that the leaflet of the RFA could in addition of the mere list of organisations provide greater detail of the range of services provided by each NGO. The leaflets provided by UNHCR to asylum seekers placed in detention centres serve as a good example of a short description of services provided by NGOs. Asylum seekers are also instructed about the provision of health care and can obtain a list of doctors providing health care on a contract basis with the Ministry of the Interior. From September 1, 2006 health care is supposed to be provided through the public health insurance system (i.e. that the costs associated with the health care will be covered by the State and the costs incurred by the health care facility will be paid from the public health insurance), and therefore health care will be provided under the same conditions as to Czech citizens. There is always a nurse on call in the centres and general practitioners visit the centres on a regular basis (see below Q.27 C). The list of the pharmacies and organisations providing health care is also available on the website of the RFA.

The RFA is currently also working on translation of information about changes in the system of health insurance concerning asylum-seekers and their access to health care that will become effective as of September 1, 2006. This information will be provided in the following languages: Czech, English, Vietnamese, Chinese, French, Arabic, Mongolian and Russian.

B. Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?

Yes, the information is provided to the asylum seekers in writing and also orally if necessary. As mentioned above, every reception and accommodation centre also offers 24-hour social services providing relevant information.

C. Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.

Yes, this obligation is met. See Q.17 C. Most information is provided at least in Czech, English, Russian, French, Chinese and Arabic. If the asylum seeker does not speak one of the relevant languages, the RFA is obliged to inform her about the content of the information “in an alternative way”.

D. How many organisations are active in that field in your Member State?

It depends on the classification. There are 4 major organizations (OPU, PPU, SOZE, Caritas) that specialise in providing comprehensive legal, social and psychological services for asylum seekers. Furthermore, there are many others that provide services only in certain field(s) or on an *ad hoc* basis including *inter alia* material assistance, leisure time activities, crisis intervention for women etc. Overall, there are approximately 20 NGOs active in this field.²⁸

Q.19. Documentation of asylum seekers (see article 6):

A. What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)

The asylum seeker is issued a “Certificate of an Applicant for International Protection” (hereinafter the “Certificate”) by the Ministry of the Interior (Art. 57 § 1), and she is simultaneously provided with a “visa for the purpose of the procedure on international protection” (Art. 72 § 1). The Certificate serves also as a document proving the identity of its holder. The holder of a Certificate is not obligated to prove the facts entered therein in any other manner, unless a special law stipulates otherwise (Art. 57 § 3).

B. Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?

The Certificate is not issued to an asylum seeker who is in custody, imprisoned, or in the detention centre. The Ministry of the Interior is obliged to issue the Certificate no later than 3 days after the asylum applicant arrives (or is transferred) to an asylum facility (Art. 57 § 2). There is no exception for “procedures to decide on the right of the applicant to enter legally on the territory” in the Asylum Act. These procedures are briefly described in Q.32 D.

²⁸ A comprehensive list of all actors involved in the field is available (even in English) at http://www.migrationonline.cz/contacts_i.shtml.

C. For how long is this document in principle valid and is it necessary to renew it after a certain period?

The Certificate is in principle valid for as long as is the visa issued for the purpose of the procedure on international protection (Art. 57 § 5). The validity of the Certificate may be repeatedly extended depending on whether the visa is renewed. A visa issued for the purpose of the procedure on international protection is in principle issued for a period of up to 90 days and must be renewed regularly (Art. 72 § 2). Asylum seekers staying outside the accommodation centres are obliged to renew their visa at the local Police Department according to their registered address (Art. 72 § 3). If the asylum seeker has not registered her address, she must renew her visa at the local Police Department according to the location of the asylum facility where she was last registered (Art. 72 § 4).

An asylum seeker is obligated to file an application for extension before the current visa expires. The visa for the purpose of the procedure on international protection expires when the decision on international protection becomes final (Art. 72 § 2). However, a different regime applies for applicants who lodged a cassational complaint. These applicants hand the Certificate in to the Ministry of the Interior and they are subsequently issued a toleration visa, either to their valid travel document (i.e. passport) or if they do not possess such document they are provided with a special document by the Police. Their status is then governed by the Aliens Act and not the Asylum Act.

D. What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected?

Yes, this mandatory deadline is respected.

E. Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?

No, the Czech Republic has not implemented this measure. This possibility is not envisaged in the Asylum Act; therefore, an asylum seeker is not allowed to travel to another state, even if serious humanitarian reasons arise. Any attempt to cross the borders of the Czech Republic results in the discontinuance of the procedure, the deprivation of entitlement to material reception conditions, detention and subsequent expulsion of the asylum seeker.

F. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

The Ministry of the Interior runs the following registers: (1) of aliens who have made the Declaration; (2) of the residence of applicants for international protection; (3) of applicants for international protection who have filed a cassational complaint; (4) of aliens born in the Czech Republic to applicants for international protection; (5) of photographs made during admission procedures in the reception centres; (6) of applicants who have applied for the financial contribution, (7) of aliens whose proceedings for the grant of international protection have been dismissed due to the inadmissibility of their application (Art. 71 § 1). Furthermore, the Police runs its own database that includes registers under subheadings (2) and (3) and also

a database of visas issued and fingerprints taken. The databases exist both in print and electronic versions.

Q.20. Residence of asylum seekers²⁹:

A. Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)

Yes, after the admission procedure in the closed reception centre, asylum seekers are in principle free to move about the territory of the Czech Republic. However, the visa issued under the Asylum Act may restrict movement to a part of the territory of the Czech Republic for the following reasons (1) protection of state security, (2) the maintenance of public order, (3) the protection of public health or (4) compliance with international treaties (Art. 85b § 1). When issuing the visa which restricts movement to certain part of the territory, it is necessary to ensure that the consequences of such a restrictive measure are proportional to the reasons for such measure (Art. 85b § 2). The Police are obliged to take into account, in particular, the effect of the restriction on the applicant's private and family life (Art. 85b § 2). Under no circumstances may such territorial restrictions exceed 3 months following the commencement of proceedings for international protection (Art. 85b § 2). However, this provision has so far not been applied in practice; it is therefore difficult to predict to which part of the territory, or within how large an area, an asylum seeker is to be restricted. From the Czech wording of the Asylum Act, it is possible to infer that the restriction should be to a *part* of the territory rather than to a particular place or facility.

Freedom of movement is also restricted in the reception centre during admission procedures (see also Q.20 E). In addition, special rules apply for asylum seekers in the transit zone of the international airport.³⁰ A new reception centre was established in the transit zone of the Prague International Airport in 2005. Asylum seekers may not leave the reception centre in the transit zone even after admission procedures are concluded. However, the Ministry of the Interior is obliged to transfer the asylum seeker to a different reception or accommodation centre designated by it, if (1) it does not issue a decision within 5 days of the date of commencement of the proceedings for the grant of asylum, or (2) the court does not issue a decision within 45 days of the date of filing of an action against the decision of the Ministry of the Interior (Art. 73 § 2). The maximum duration of stay is thus 57 days (5 days for rendering the first instance decision + 7 days for filling an action to the regional court + 45 days during the proceedings before the regional court). After this period at the latest, asylum seekers are brought to the accommodation centre. Until 2004, there were some problems reported, e.g. although the Ministry of the Interior issued a decision within the time-limit of five days (Art. 73 § 2), the applicant waited in the centre for another two weeks until the decision was delivered.³¹ See also Q.32 C

B. About the place of residence (see §2 of article 7): explain to which extent the person is free to choose her residence and if this depends

²⁹ Nota bene: the case of detention is covered by other questions and should be disregarded under this question.

³⁰ To date, the Prague International Airport is the only such reception centre. But see Q.32 C.

³¹ Since under the Asylum Act the Ministry of the Interior is obliged to *issue*, and not *deliver*, the decision within 5 days. The delivery of a decision is often hindered by administrative and technical factors, which the administrative body cannot influence (e.g. lack of interpreters for a given language, etc.). See the Report on the State of Human Rights in the Czech Republic in 2004, § 9.6.2, p. 67.

of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,...).

After the first phase of the reception of asylum seekers (see Q.11 A), an asylum applicant is free to choose to stay in the accommodation centre or in private accommodation. However, if she opts for the accommodation centre, she is not free to choose a particular accommodation centre and is obliged to stay in the centre designated by the Ministry of the Interior (Art. 77 § 1). The only exception is for the purposes of maintaining family unity (see Q.23). There is also a possibility to return back to the accommodation centre from the private housing.

The asylum applicant may seek a change of residence by applying in writing to the Police Department that has jurisdiction *ratione loci* in the intended new place of residence. The application must be accompanied by a written consent of the owner of the housing facility. Within 15 days the Police must then forward the application (accompanied by its opinion) to the Ministry of the Interior (Art. 77 § 2). The Ministry of the Interior will reject the application (1) if there is a concern that the applicant will not be easily reachable for the purpose of the processing her application or (2) if the submitted documents contain any untrue statements. The opinion of social workers is also taken into account.

As to the choice of place of residence, generally there is no modification depending on the stage of the international protection procedure. Until 2005, the RFA internally divided accommodation centres into the first instance and second instance centres. The asylum seekers were transferred into the second instance centre after a negative decision in the first instance. This transfer was justified by processing of the application for asylum. In the first instance procedure a frequent contact between the RFA and the applicant is necessary and the RFA maintained permanent offices only in certain centres. The RFA can also transfer asylum seekers from its own motion, e.g. in order to prevent disputes among the seekers or in order to protect vulnerable groups such as unaccompanied women or minors.³²

There are two major modalities as to the choice of place of residence: (1) visas which restrict movement to certain part of the territory and (2) third instance procedure. As to the visas restricted to certain part of the territory, these might be issued only for 3 months following the commencement of proceedings for international protection (see Q.20 A and Q.21 E). As to the third instance procedure, if the asylum seeker submits to the Supreme Administrative Court a cassational complaint against the decision of the regional court, she is issued a toleration visa and her status is governed by the Aliens Act (Art. 78b § 7 of the Asylum Act). Therefore, she is no longer entitled to housing in the accommodation centres and is obliged to find private accommodation herself. However, if she proves that her financial situation does not allow her to cover the expenses and that she is not able to secure the accommodation, her housing will be secured by the Ministry of the Interior (Art. 78c). In practice, the applicant is usually provided with cheap accommodation in a hostel designated for that purpose. Those hostels are run by NGOs or private owners in cooperation with the RFA (for example by Caritas in Litoměřice and Brozany nad Ohří).

C. About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7):

³² For example, when their husband or parent leaves the territory of the Czech Republic.

explain which are the general rules about the determination of this place (to which extent are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extent the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,...).

During the admission procedure, the asylum seekers are placed into the reception centre either in Vyšní Lhoty or in the transit zone of the Prague International Airport³³ (depending on a place of submitting asylum claim). The applicant cannot influence the decision of the Ministry of the Interior concerning his place of stay in this phase.

After the completion of admission procedure, she is transferred from the reception centre to the accommodation centre or can decide to stay in private. The applicant can choose the accommodation centre only to a very limited extent since it depends on several factors such as capacity of the centres; furthermore, until 2005 some camps were only for asylum seekers in the first or second instance etc. The decisions determining the place are taken individually and the applicants can ask for their transfer but the decision is taken in rather informal procedure and the outcome is solely within the discretion of the Ministry of the Interior.

The applicants are entitled to the material reception conditions only if they opted for housing in an accommodation centre. Applicants staying in private accommodation are only entitled to the financial contribution, and it must be remembered that they can be entitled to this contribution only during the first three months (see Q.11 A). If the asylum seekers opted for housing in private, there is a special procedure which must be followed in order to get approval from the Ministry of the Interior (see subquestion B).

For the situation of applicants who lodged a cassational complaint, see also subquestion B.

D. If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,...)

This question is of no relevance for the Czech Republic. As a general rule, an asylum applicant is free to choose to stay either in the accommodation centre or in a private accommodation (see also Q.12 B). If an accommodation centre runs out of space, its capacity can be further expanded (see Q.24 D). Emergency situations are also foreseen in the quality standards approved by the Minister of the Interior in August 2005 and implemented by the RFA (see Q.39 B). Furthermore, the RFA provide no accommodation facilities other than the accommodation centres (and reception centres).

In sum, under any circumstances applicants are ensured a place to live. Several centres were taken out of service, but they can be quickly renewed, thus the number of the available spots

³³ For a specific situation in case of *temporary exhaustion* of normal housing capacities in the Prague International Airport, see Q.32 C.

can be increased by almost three times within few days. Pursuant to the Asylum Act, the RFA is responsible for providing accommodation at no charge to every applicant for international protection, and it is neither possible to assign them to any other type of facility nor to force them to find private housing (except for the third instance procedure, i.e. before the Supreme Administrative Court, see Q.20 B).

- E. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

Applicants may leave their accommodation centre as they please under the conditions mentioned below. An applicant residing in an accommodation centre (i.e. whose address is registered with the accommodation centre) can leave this centre for a period not exceeding 10 days in a calendar month (Art. 82 § 1). The Ministry of the Interior may also permit an applicant to stay outside the centre beyond the limit of 10 days per month, provided that this absence does not hinder the processing of his application (Art. 82 § 3).

The applicant is obligated to notify the Ministry of the Interior in writing that she is leaving the centre for any period exceeding 24 hours. The applicant must state the address of her temporary residence and the period of stay outside the accommodation centre. In case of an absence from the centre for a period exceeding 3 days, she must notify the Ministry at least 24 hours before her departure (Art. 82 § 2).

If the visa is restricted to a part of the territory, a temporary permission to leave the assigned part of the territory of the Czech Republic is not available. Furthermore, there is no right of administrative appeal in such cases. The applicant can only file a complaint under Art. 175 of Administrative Code to local department of the Aliens' and Border Police, and in case of negative decision also to the Directorate of the Aliens' and Border Police. As to the judicial review, the outcome is unclear since there has not been any challenge of this provision before the courts. However, there is no reason in principle why a negative decision on a temporary permission to leave the assigned part of the territory of the Czech Republic should not fall under judicial review, most likely under Art. 4 § 1 letter c) of the CAJ (for short description of the administrative judicial review, see Q.22 A).

However, the accumulation of two facts – a limited period of these visas (they may not exceed 3 months following the commencement of proceedings for international protection) and the fact that almost no administrative court would be able to decide on a negative decision on a temporary permission within such a short period – renders the judicial review ineffective. On the other hand, the situation is to some extent mitigated by the fact that the visas restricted to a particular part of the territory so far have not been issued.

- Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

The Czech Republic has not implemented this measure; therefore, there are only financial sanctions for the breach of the applicant's obligations (see Q.25 D). Access to health care is ensured on the same level (which means on the same basis as for Czech citizens) during all the stages of the procedure (i.e. including the third instance procedure before the Supreme Administrative Court).

- B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice?**

No, the Czech Republic has not implemented this measure, and there was no such practice prior to the transposition of Directive 2003/9/EC. In practice, these cases might be treated as manifestly unfounded submissions (Art. 16 § 2), a fact which has no direct consequences for access to reception conditions. The only exception is in the case of a detained alien, who must make the Declaration within 7 days of the moment when she was informed by the Police of her opportunity to apply for international protection and of the consequences of her failure to meet this time limit (Art. 3b § 1). Otherwise, her right to apply expires. See also Q.14.

- C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?**

Since the Czech Republic has not implemented Art. 16 (1) and (2) of the Directive, this question is of no relevance. Under all circumstance, judicial review would be available (see Q.22).

- D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?**

Due to the answer to the Q.21 A, it is clear that the statement 14/03 is respected in the Czech Republic.

- E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome?**

Since the Czech Republic has not implemented Art. 16(1) and 16(2) of the Directive, this question is of no relevance.

- Q.22. A. Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative**

appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?

The applicant for international protection can file a complaint to the RFA and then to the Ministry of the Interior (Art. 175 of Administrative Code³⁴), and then (or directly) appeal to the Regional Court, and finally lodge a cassational complaint to the Supreme Administrative Court. Therefore, there is no formal administrative appeal. The only way to challenging all such decisions is by way of judicial review.

On the other hand, there is no restriction on access to administrative judicial review; therefore, the guarantee of an appeal to a judicial body in the last instance is respected. As to the judicial review in general, courts of administrative justice decide *inter alia* not only on complaints against decisions of and administrative authority (Art. 4 § 1 letter a) of the Code of Administrative Justice³⁵), but also on protection against the inaction of an administrative authority (Art. 4 § 1 letter b) of the CAJ) and protection against an unlawful interference of an administrative authority (Art. 4 § 1 letter c) of the CAJ), Therefore, there is no reason in principle why a negative decision relating to the granting of benefits or based on Art. 7 of the Directive should not fall under one of the abovementioned grounds (i.e. those stipulated in the CAJ) of jurisdiction of the administrative courts. The asylum seekers thus can appeal to the Regional Court pursuant to Art. 65 and the following of the CAJ and ultimately lodge a cassational complaint to the Supreme Administrative Court pursuant to Art. 103 of the CAJ. This view is also accepted by the Ministry of the Interior. Nevertheless, there has not been any case where these provisions have been challenged before the Czech courts.

However, as mentioned above (see Q.20 E), temporary permission to leave the assigned part of the territory of the Czech Republic is not available neither under Asylum Act nor under Aliens Act. It is true that this situation is to some extent mitigated by the fact that the visas restricted to a particular part of the territory so far have not been issued and by a limited period of these visas (see also Q.20 A), but for practical consequences see Q.20 E (on appeal to a judicial body in the last instance in these cases and its effectiveness, see *ibid*).

B. Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?

NGOs regularly provide legal assistance in these cases. Furthermore, an applicant's right to obtain legal assistance provided on the basis of a different legal regulation (i.e. on a paid basis) is not affected thereby.

C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There has so far been no legal challenges of negative decisions relating to the grant of benefits under Directive 2003/9/EC. The only case worthy of note is the so-called "electric socket" case. As to the facts, the RFA decided to gradually remove electric sockets from some buildings (because of the alleged abuse of these facilities), including from rooms used for

³⁴ However, there are several limitations on applicability of Administrative Code to the asylum procedure. See Arts. 9 and 92b § 1 of the Asylum Act.

³⁵ Hereinafter only the "CAJ".

housing asylum seekers. This measure attracted the attention of the media, of NGOs as well as of the Public Defender of Rights (hereinafter Ombudsman). The situation was also addressed by the Government Council for Human Rights, which adopted a resolution in the matter.³⁶ The problem was finally solved to the satisfaction of all involved actors by the implementation of the quality standards by the RFA and thus the electric sockets were installed in all rooms in accommodation centres which are used for housing, except for the accommodation centre in Kostelec n. Orlici, which needs reconstruction.³⁷ The solution was also supported by the notion of “dignified standards of living” mentioned in the Directive, which was heavily relied on during the negotiations with the Ministry of the Interior.

- D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

The applicant for international protection can file a complaint under Art. 175 of the Administrative Code (Act. No. 400/2004 Coll.). Pursuant to Art. 175 § 5 of the Administrative Code, these complaints must be handled within 60 days. This complaint may be lodged both orally or/and in writing (Art. 175 § 3 of the Administrative Code). Furthermore, special boxes for anonymous complaints are also available at each asylum facility. The complaint might be addressed to the following actors: (1) to manager of a particular facility; or (2) to the Director of the RFA.

Asylum seeker might address problem also to the Deputy Minister of the Interior, to the Minister of the Interior, NGOs and also to the Ombudsman (see Q.39 A). It is thus closely linked to the system of guidance, control and monitoring of reception conditions.

6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS

- Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

The definition of family for the purposes of shared housing includes the spouse of the applicant, direct relatives (i.e. children, parents, grandchildren, grandparents etc.) or a “close persons” (Art. 44). Persons who declare that they have personal relations with each other are deemed to be “close persons” (Art. 44). Therefore, there is no distinction in treatment between married and unmarried couples. Furthermore, there is no searching inquiry as to the requirement of a “stability of the relationship”. It is notable that the Asylum Act includes unmarried partners within the definition of “family members” for purpose of housing even though the Czech law relating to aliens (Aliens Act) does not treat unmarried couples in a way comparable to married couples (Art. 42 § 1 of the Aliens Act). The Asylum Act thus clearly provides more favourable standard than the Directive itself.

³⁶ Resolution of the Government Council for Human Rights of 25 January 2005. See also the Report on the State of Human Rights in the Czech Republic in 2004, § 9.6.6, p. 70.

³⁷ See the Report on the State of Human Rights in the Czech Republic in 2005, § 9.4.3, p. 81.

The above-mentioned group of applicants for international protection is entitled to share accommodation in the asylum facilities. Shared accommodation is provided only with the applicant's consent and on the condition that the family persons are also seeking international protection (Art. 44). Arts. 8 and 14(2) of the Directive are thus respected.

Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).

Housing takes the form of accommodation centres. There are no private houses, apartments or other premises provided by the Ministry of the Interior. There are twelve asylum facilities in the Czech Republic. The RFA is responsible for the management of all asylum facilities in the country. Seven centres are owned by the state and operated by the RFA, and five are run by other legal entities, mostly municipalities, on a contract basis with the RFA and for a fee.

There are 2 reception centres and 10 accommodation centres (for further details see also Q.36). The average length of stay of applicants in the accommodation centres is approximately 6 months. The reception centre in Vyšní Lhoty is located in the north-western part of the Czech Republic, close to the border with Slovakia and Poland, as the majority of migrants enter the territory of the Czech Republic from these two countries. The second reception centre is located at the international airport in Prague. Ten accommodation centres are evenly spread across the territory of the Czech Republic; they are located in both rural and urban locations.

B. What is the total number of available places for asylum seekers? Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

There are 467 available places in the reception centres and 1,808 places in the accommodation centres. There are no private houses, apartments or other premises provided by the Ministry of the Interior.

C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?

The existing reception capacity has been sufficient in the past and can be extended in emergencies. Furthermore, the number of asylum seekers has decreased since 2004. A few buildings are thus currently closed (e.g. Červený Újezd in 2005) and some are being reconstructed. Nevertheless, the government does not plan to reduce significantly the number of existing facilities. (Due to the decrease, RFA has recently taken out of service only one of the centres.)

D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

Yes, there are special measures foreseen in the quality standards approved by the Minister of the Interior in August 2005 and implemented by the RFA for all the reception and accommodation centres. In urgent cases, the number of places in the centres can be increased to 4,293 beds. In the case of a mass influx of applicants for international protection the quality standards envisage precise steps for the adaptation of the centre in two stages: (1) extended capacity; and (2) crisis capacity.

Q.25. **Accommodation centres (important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question)**

A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

No, there are no different categories of accommodation centres any more. The RFA internally divided accommodation centres into the first instance and second instance centres only until 2005 (see Q.20 B). An asylum seeker is thus entitled to housing in an accommodation centre throughout the whole procedure, more precisely during the first instance procedure before the DAMP and proceedings before the regional court. If an asylum seeker lodges a cassational complaint to the Supreme Administrative Court, she is no longer allowed to stay in the accommodation centre and is obliged to find private accommodation herself (see Q.11 A).

B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

No, there is no time limit upon entitlement to stay in the accommodation centre during the first (the DAMP) and second (the regional court) instance proceedings. However, a different regime applies if the applicant lodges a cassational complaint. (see above and also Q.11 A)

C. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Yes, there are internal rules of conduct applicable in the accommodation centres. The general rights and duties of applicants are also laid down in the Asylum Act. There are no purely private centres, and the RFA is responsible for the management of all asylum facilities in the country. Seven centres are owned by the state and operated by the RFA, and five are run by other legal entities, mostly municipalities, on a contract basis with the RFA and for a fee. The internal rules of conduct are always laid down by the RFA and they are administered centrally by the RFA. Quality Standards approved by the Minister of the Interior and implemented by the RFA are applicable to all asylum facilities in the Czech Republic.

D. **Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21**

which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones?

There are no sanctions in the internal rules of conduct. The sanctions for a breach of the duties of an applicant for international protection are set forth (exclusively) in the Asylum Act.

According to the Asylum Act, the DAMP can impose a fine of up to 2000 CZK upon an applicant for international protection *inter alia* in case she: (1) on purpose intentionally damages the equipment of the centre or her Certificate; (2) does not report the loss of her Certificate; (3) fails to comply with the orders or instructions of the Police or DAMP officials in the asylum facility; (4) refuses to allow an inspection of her person or of her personal belongings; (5) leaves the centre without prior notification to the DAMP; (6) returns to the centre after the expiry of the allowed period (i.e. if she leaves the accommodation centre for more than 10 days in a month without obtaining advance permission); (7) leaves the restricted territory within which she is obliged to stay according to the regional validity of the visa; (8) stays in the asylum facility without authorisation; and (9) conceals her property and financial situation. A similar fine can be imposed also upon an alien for a breach of several duties occurring before the international protection procedure is initiated, i.e. in a period between the Declaration and the commencement of the procedure.

There is always an individual administrative procedure initiated in the case of an offence. The accused offender can defend herself and has the right to appeal to the Minister of the Interior. Decisions shall be objective and impartial. Appeals to the regional court are allowed. However, so far no judgement relating to the sanction regime has been delivered.

E. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)

The Czech Republic has not implemented this measure; therefore, applicants for international protection are not involved in the management of asylum facilities. On limited contribution to the management of the centre, see subquestion F.

F. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?

Yes, there are specific rules. An asylum seeker in an accommodation centre can work in the centre (e.g. cleaning, help in the kitchen, etc.), on a voluntary basis, up to 12 hours per month, in which case her pocket money will be increased up to double the regular amount (see Q.12 A). This work can be considered as a contribution to the management of the centre only to a limited extent, since it is only ancillary work. Similarly, it does not imply access to the labour market.

Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).

Asylum applicants have access to free legal counsel. Lawyers from different NGOs regularly visit accommodation centres and help asylum applicants with their problems. As regards the Asylum Act, an applicant is entitled to request assistance from an organisation or a private individual who is providing legal assistance to refugees (Art. 21 § 1). Furthermore, she is entitled to contact any private individual or organisation providing her with legal assistance (Art. 21 § 3). Finally, she is entitled to be in contact with the UNHCR and other organisations protecting the rights of refugees throughout her entire proceedings (Art. 38).

If such legal advisers or NGO representatives provide legal assistance for free, the Ministry of the Interior may, on the basis of a written agreement, contribute to the payment of the costs related to the provision of such assistance (Art. 21 § 1). The applicant's right to obtain legal assistance provided on the basis of a different legal regulation (i.e. on a paid basis) is not affected thereby (Art. 21 § 2).

B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)

In practice, legal advisers, the UNHCR and NGOs have regular access both to the reception centre in Vyšní Lhoty and the accommodation centres. For reasons of security, every visitor to the centre (except for UNHCR representatives) needs a permit from the RFA. However, legal counsellors have no problem in obtaining this permit. UNHCR representatives do not need such a permit to enter asylum facilities.

There is a slightly different procedure for obtaining permission to visit the reception centre in the transit zone of the Prague International Airport. For an individual visit, it is necessary to undergo a security clearance from the special department of the Ministry of the Interior. For regular visits to the reception centre in the transit zone of the airport, it is necessary to apply to the Czech Airports Authority for a special permit.

C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?

In general, after obtaining permission from the RFA, there is no restriction on access. Right to access to legal advisers, UNHCR and NGOs is expressly guaranteed by Art. 21 § 3.

One NGO reported that access was very rarely limited for the security reasons or in the case of quarantine or a danger of epidemic in the past. It was presumably on the ground of laws of general application. However, according to the UNHCR representative, their access to the asylum facilities was never denied. A different regime applies at the Prague International Airport (see subquestion B).

Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)

Yes, there is a mandatory medical screening during the admission procedure in the reception centre. The medical screening includes:

- for adults: a lung x-ray, a blood test for BWR (syphilis), an inspection of stool for parasites, and a bacteriological inspection of stool;
- for pregnant women: a blood test for BWR, HIV, HBSAG, and blood type, an inspection of stool for parasites, and a bacteriological inspection of stool;
- for children up to 15: an inspection of stool for parasites, a bacteriological inspection of stool, and a MANTOUX test.

HIV tests are not mandatory except for pregnant women, who are always tested for HIV and jaundice. It was reported that HIV tests are also conducted if there are “indications of an infection” present. The HIV test can also be done at the asylum seeker’s request.

Furthermore, the applicant is obligated to permit a medical screening at any stage of the procedure, if it is necessary in the interests of public health (Art. 47 § 2).

B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?

Yes, applicants for international protection always receive emergency care and essential treatment of illness. Indeed, they also have further access to health care (see subquestion C).

C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?

Health care is provided in all accommodation centres. Nurses (employees of the RFA) are on call in the centres and the doctors visit the centres on a regular basis.

Until August 31, 2006, applicants living in private accommodation can seek treatment either in an asylum facility or in a health centres having a contract with the RFA. From September 1, 2006 health care is supposed to be provided on the public health insurance basis (i.e. that the costs associated with health care will be covered by the State and costs incurred by the health care facility will be paid from the public health insurance); therefore, health care will be provided under the same conditions as to Czech citizens (see also Q.18 A).

From October 2005 (the entry into force of Act No. 350/2005 Coll.) until August 2006 (prior to the entry into force of Act No. 165/2006 Coll.), there was a problem as to the payments of health care provided to asylum seekers. This problem was caused by the inconsistent interpretations of Art. 88 § 2 of the Asylum Act and Art. 7 of Act No. 48/1997 Coll., on Public Health Insurance, adopted by the Ministry of the Interior, the Ministry of Health and

the Health Insurance Companies.³⁸ Fortunately, this issue was resolved in Act No. 165/2006 Coll.,³⁹ so that there should have no longer been any problems in practice.

However, after the entry into force of Act No. 165/2006 Coll. as of September 1, 2006, the problems mentioned hereinafter were reported and it seems that in practice the whole process of transition to the public health insurance has been insufficiently facilitated and may indeed lead to watering-down the existing standards. Firstly, the General Health Insurance Company is not able to manage the sudden increase of applications for health insurance cards and instead issues only temporary ones. Secondly, every participant in the public health insurance must be registered with the general practitioner. However, as many accommodation centres are situated in rural areas or close to the small towns, the GPs are not prepared to accept all the asylum seekers and in consequence, the asylum seekers must commute. Thirdly, commuting is costly and in particular as to the amount of pocket money given to the asylum seekers. The RFA has so far reimbursed all the incidental expenses, but the situation in future is unclear. Fourthly, a new problem with supplementary charges arose. Prior to the amendment, the RFA always reimbursed these expenses but after September 1, 2006 these surcharges must be disbursed directly by asylum seekers. For example, it was reported that the asylum seeker who suffers from cancer receives appropriate treatment but does not have enough money for expectoration pills (which were previously provided by the RFA). And finally, although the transition to the public health insurance is acknowledged step further to foster integration of asylum seekers in the Czech society (and to prevent their seclusion), complexity of this process was underestimated. Indeed, the leaflet for asylum seekers with necessary information was drafted only in the Czech language and distributed only a few days before the end of August.

Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)

Applicants for international protection have access to the labour market no sooner than 12 months after submitting the Declaration.⁴⁰ Therefore, they can obtain a work permit no earlier than one year after the Declaration is made.

From 2000 until 2002, there were no restrictions on access to the labour market for asylum seekers. However, as a result of the abuse of this system, the one-year period was introduced.

B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?

No, they are not obliged to obtain a work permit. A work permit may be issued for a maximum period of one year. A work permit shall be delivered within a maximum of 30 days. This time-limit is observed by the Labour Offices. The work permit is usually issued for the

³⁸ For a detailed analysis, see the Report on the State of Human Rights in the Czech Republic in 2005, § 9.4.1, pp. 80-81; or the Position Paper of AEC: Problems with providing and payment for health care to asylum seekers and aliens with toleration visas, available at http://www.migraceonline.cz/clanky_f.shtml?x=1362250 (see bibliography).

³⁹ See Part I, Art. I, subsection 92, of Act No. 165/2006 Coll.

⁴⁰ Art. 99 a) of Act No. 435/2004 Coll., on Employment.

period of the validity of the visa for the purpose of the asylum proceedings, i.e. 90 days. Decision on granting work permit, including its length, always depends on discretion of the Labour Office. In practice there are cases where work permits are issued beyond the length of visa for the purpose of the asylum proceedings.

C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?)

There are no limitations such as a maximum permitted number of working hours or days per week, month or year, and no special limitation in terms of the type of work or of professions which applicants for international protection are authorised to engage in.

An applicant must only find a job and apply for a work permit to the Labour Office. However, the filing of an application for a work permit is subject to an administrative fee of 500 CZK (€18).

D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?

Applicants for international protection (among other specific groups of aliens, such as the holders of a permanent residence permit or members of the family of the member of a diplomatic mission) are entitled to preferential treatment.⁴¹

In general, an alien may be employed in the Czech Republic provided that the employer has obtained a special permit to recruit employees abroad, and provided that the respective aliens have been granted individual work permits. However, an employer does not need a special permit in order to employ an applicant for international protection, which means that the employer is not obliged to report vacant positions to the Labour Office, so that the situation of the labour market is not taken into account (otherwise a position is deemed vacant only if it cannot otherwise be filled given the required qualifications or the temporary shortage in the workforce).

Due to an oversight during the adoption of Act No. 350/2005 Coll., from October 2005 (the entry into force of Act No. 350/2005 Coll.) until August 2006 (before the entry into force of Act No. 165/2006 Coll.), applicants who lodge a cassational complaint (i.e. those with a toleration visa) were deprived of this preferential treatment.

Citizens of EU/EEA countries and Swiss citizens, as well as their family members, are not considered aliens under the Employment Act, and they enjoy the same status under this Act as citizens of the Czech Republic. Therefore, an EU/EEA and Swiss citizens or their family members do not need a work permit in order to be employed in the Czech Republic.

E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case

⁴¹ Art. 97 g) of Act No. 435/2004 Coll., on Employment.

at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)

No special vocational training is organised for asylum applicants. The Czech Republic has not implemented this optional provision and allows only applicants for international protection who have access to the labour market to participate in vocational training funded by their employer. The second indent of Art. 12 of the Directive is thus respected.

Several vocational training courses such as PC or language courses are regularly organised by the Consortium of NGOs assisting refugees.

- F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?

No, these rules were changed before the transposition of the Directive, thus were not affected thereby.

- Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

Yes, the reception conditions are subject to the fact that applicants for international protection do not have sufficient resources. An applicant who keeps at her disposal money in excess of the subsistence minimum (approximately 4,420 CZK, although this sum varies slightly according to the number of family members) is not entitled to pocket money and is also obliged to contribute towards covering his catering and housing expenses. The contribution for housing amounts to 130 CZK (€4.60) and for catering to 112 CZK (€4) per person per day.

An applicant is also obliged (1) to report her financial and material resources (and may be fined for the failure to do so); and (2) to allow the Police to conduct a personal inspection in order to determine her financial and material resources (and the failure to permit this search is also subject to fine).

7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS

- Q.30. A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): **disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.**

The Asylum Act defines the following different categories of persons with special needs: unaccompanied minors, applicants under 18, pregnant women, disabled person, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence and other persons in individual cases. Neither the Asylum Act nor other

legislative acts contain a definition of “other persons in individual cases” and this term is to be decided on *ad hoc* basis. In practice, a decision as to who qualifies as "other persons with special needs" for the purpose of provision of services in the government-run asylum centres is within the discretion of the RFA which is in charge of operating these centres.

Not surprisingly (as mentioned elsewhere in this report), there has not been any challenge before the Czech courts relating to the interpretation of this term. However, courts of administrative justice decide *inter alia* not only on complaints against decisions of and administrative authority (Art. 4 § 1 letter a) of the CAJ, but also on protection against the inaction of an administrative authority (Art. 4 § 1 letter b) of the CAJ and protection against an unlawful interference of an administrative authority (Art. 4 § 1 letter c) of the CAJ), The challenge against negative decision of the RFA would perhaps fall within the third option, i.e. Art. 4 § 1 letter c) of the CAJ.

B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?

Applicants with special needs are placed in the protected zones of the centres. There are also special facilities for disabled persons and unaccompanied minors. Families, women and men are accommodated separately. The nationality and religion of asylum seekers is also taken into consideration. With regard to single women and mothers, attention is focused on their protection because of their vulnerability and exposure to abuse. In order to enable them to stay in an asylum facility in a dignified manner, women are accommodated in protected zones. If unaccompanied minors are under 18 years of age, they are placed in children’s diagnostic institutions (see Q.31 H). They stay in accommodation centres only if an applicant who is their legal guardian accompanies them.

The system described above stems from the Internal Security Strategy project that was launched by the RFA in 2002. Its objective has been to consolidate the social and technical aspects of care for vulnerable groups into a well-functioning system. Each asylum facility has been divided into standard and protected zones. Each zone is run in a different manner. The aim of this concept of protected and standard zones is to provide each applicant with safety, differing care and protection of personal freedom.

A protected zone demands enhanced attention and guarding in order to provide maximum security. Asylum applicants who belong to vulnerable groups are accommodated there. The standard zone, where mainly single men are accommodated, demands a different approach, with respect to their adaptation. Both zones are visibly demarcated, and either a private security service or RFA employees guard the entrance. Monitoring systems surveying grounds and interior spaces are installed in the reception centres and larger accommodation centres.

As to the reception centre in the transit zone of the Prague International Airport, whenever a female asylum seeker stays there, the common corridor is divided by a lockable gate in order to allow women to be accommodated separately from men at night. The children have access to a child care room, where board games, toys, magazines and other means to spend their free-time are available. All asylum seekers have access to the day room and surgery with a regular presence of doctor and nurse, as well as to the outdoor exercise facility.

- C. **How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?**

In general, the special needs of concerned persons are usually identified during the initial interview in the reception centre, and this fact is explicitly written on the Certificate. Immediately after arrival at an asylum facility, asylum applicants are placed in one of the above-mentioned zones, following preliminary screening carried out by social and reception workers. Not surprisingly, it is also possible that the relevant information will only be revealed subsequently during the second interview (on the refugee status determination).

- D. **Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?**

Yes, necessary medical and other assistance is provided to persons with special needs throughout their entire procedure and is considered systematic and continual. The status of these persons is registered within the Ministry of the Interior, and special programmes are designed for them. The RFA provides them with enhanced social advice, health care, psychological assistance, prevention and individual material assistance (especially during pregnancy and motherhood). Furthermore, at each centre expert care and the assistance of doctors, psychologists and psychiatrist for traumatized persons and victims of violence is made available.

Q.31. About minors:

- A. **Till which age are asylum seekers considered to be minor?**

An applicant is considered to be a minor until the age of 18.

- B. **How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?**

Applicants for international protection are granted access to primary (sometimes also referred to as “basic” or “elementary” education), secondary and higher professional education under the same conditions as Czech nationals (Art. 80 § 4). The Ministry of the Interior is also obliged to provide minor applicants free of charge with necessary school materials as per teachers’ requirements (Art. 89a). School attendance is compulsory for all children under 15 years of age in the Czech Republic. The Ministry of Education, Youth and Sports is a provider of education to applicants for international protection. As to pre-school facilities, children’s centres for pre-school children have been established in all asylum facilities and they are equipped as nurseries. In these centres children are taught basic hygienic habits, learn to live and work in a group as regards adapting to the new conditions in the host country and overcome the language barrier. As to secondary education, minors who attend secondary schools are not excluded therefrom for the sole reason that they have reached the age of majority.

After completing primary education, applicants attend various secondary schools and universities free of charge; the sole condition is a sufficient knowledge of the Czech language. However, this was completely true only until December, 31, 2004. With the adoption of the new Schools Act⁴² which came into force on January 1, 2005, a new problem has arisen as to the scope of the access to education system for all third country nationals (including refugees and applicants for international protection). As a result of the new Schools Act, third country nationals are not granted access to pre-school facilities (such as kindergartens etc.), and also to several secondary education facilities such as art schools and conservatories, as well as to other school services (such as meal plans, accommodation, education counselling etc.) under same conditions as the Czech nationals.

The new Schools Act provides for equal access of third country nationals under same conditions as the Czech nationals to primary, secondary and higher secondary education. As concerns access to other forms of educations (such as *inter alia* pre-school, art and language schools, conservatories, that are not included in the abovementioned term “primary, secondary and higher secondary education”), the law distinguishes between the Czech and the EU citizens and their family members on the one side and the third country nationals on other. In practice it means that the third country nationals are not prevented from access to these types of education, but they are provided with a less favourable treatment. For example they have to pay a higher fee than the Czech citizens for the provision of school services (accommodation, catering), contribute to expenses of school facility related to their attendance of kindergarten etc. The amount of a fee depends upon decision of a headmaster of each school and varies from one school to another.⁴³ Taken in conjunction with the amount of pocket money granted to the asylum seekers (€17 *per month*; see Q.12 A), this practice leads to *de facto* exclusion from access to the abovementioned types of secondary education facilities (as to the pre-school facilities, the situation is even more complex; see below).

Nevertheless, it is true that the Czech Republic has an obligation to grant to minor asylum seekers access only under conditions *similar* to those for Czech nationals.⁴⁴ Furthermore, pre-school facilities are available in the asylum centres; therefore, a problem arises only for applicants in private accommodation. On the other hand, there are no grounds for excluding access to secondary education for third country nationals. Indeed, the NGOs reported that, since a good knowledge of the Czech language is a prerequisite, only a few asylum seekers attend secondary school (and therefore they not present a significant burden on the state). In conclusion, this issue is complex and has attracted the broad attention of the media, the public, NGOs and also of the Government Council for Human Rights; thus, it is possible that a solution will be found in the near future.

C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?

⁴² Act. No. 561/2004, on Pre-School, Primary, Secondary, Higher Professional and Other Education (the Schools Act), as amended. The adoption of the new Schools Act was heavily influenced by the widely criticised placement of Roma children into special schools and alleged racial segregation. For details, see also *D.H. and Others v. the Czech Republic*, 7 February 2006, 57325/00 (the judgement is not final since it has been referred to the Grand Chamber).

⁴³ Indeed, it is within the discretion of each headmaster how high the contribution to expenses of the school is and whether he will charge this fee at all.

⁴⁴ See the different wording in Art. 27 of Directive 2004/83/EC which stipulates “full access to the education system under the *same* conditions as nationals”.

Yes, both conditions are fulfilled. After the admission procedures are completed (i.e. after approximately 3 weeks), minors are placed into the Czech school in the region of the respective accommodation centre. As to minors in the detention centres, see Q.33 M.

D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?

In larger accommodation centres, there Czech language classes are organized that last for approximately 3 months. According to a child's skills and results, she is assigned to regular classes with Czech children. The child's previous education is recognized. Unfortunately in most centres no such classes are organized, and children are assigned to schools with Czech children straight away without any facilitation. The same is true for applicants who opted for housing in private accommodation, since they have to find specific courses and pay for them.

There are also special classes in primary schools with extended Czech language courses dedicated solely for applicants for international protection.

E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)

Yes, minors are always accommodated together with their parents or the person responsible for them. The obligation to maintain the family unity in housing the applicants is explicitly laid down in the Asylum Act (see Q.23). Furthermore, unaccompanied minors are accommodated in a special centre, assigned a guardian, and special pedagogical workers are also engaged for them.

F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?

Yes, they do. There are paediatricians, expert psychologists and psychiatrists, and social workers available for minors (see also Q.30 B, C and D).

G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)

In the Czech Republic, in order to protect the rights of minor children seeking international protection in the Czech Republic, guardians are appointed for unaccompanied minors (Art. 89 § 1). The court appoints a guardian without delay by way of a preliminary ruling (Art. 89 § 1). At the beginning of the procedure, unaccompanied minors used to be represented by the "asylum guardian" (Art. 92), who was competent only for the initial phase of the procedure before the appointment of the "residential guardian". In most cases, these guardians were NGO staff members. A second guardian ("residential guardian") was appointed to unaccompanied minors living in the asylum centre for the duration of their residence in the Czech Republic (Art. 2 of the Act on Legal and Social Protection of Children). A

representative of the Organ of Social and Legal Protection of Children (hereinafter only "OSPOD")⁴⁵ usually acts on behalf of an applicant as his residential guardian. Unaccompanied minors in a detention centre were only represented by the asylum guardian. Such a minor was not appointed a residential guardian until she was released from detention and brought to the accommodation centre. However, the amendment to the Aliens Act (Art. 124 § 3 of the Asylum Act) effective as of November 2005, provides for an appointment of the so called "residential guardian" to protect the rights and interests of an unaccompanied minor in the age of 15 to 18 years (minors under 15 cannot be detained) also during her stay in detention facility. See also Q.33 E.

However, the Regional Court in Hradec Kralové held that the asylum seekers have no right to be granted the "asylum guardian"⁴⁶ (because according to a proper interpretation of Art. 92, the "asylum guardian" is available only for the asylum seeker who reached the age of majority but is unable to act in his own capacity) and therefore since 2004 only residential guardians are appointed for unaccompanied minors. Since the "residential guardians" (i.e. mostly representatives of the OSPODs⁴⁷) are not familiar with asylum procedure, it might cause problems in practice and may even render legal guardianship (i.e. legal representation in asylum procedure) ineffective.⁴⁸ However, this problem was raised during the ongoing transposition of the Procedures Directive and the situation might be improved by the subsequent amendment to the Asylum Act.

H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)

Unaccompanied minors are placed in a special diagnostic centre (Centre for Children – Aliens) run by the Ministry of Education, Youth and Sports. There are two such centres (in Prague and in Příbram). Unaccompanied minors are transferred to these centres immediately after the admission procedures in the reception centre or upon release from detention.

I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)

The obligation stemming from Art. 19(3) of the Directive was transposed into Art. 88b of the Asylum Act and Art. 35 § 2 letter j) of the Act on Social and Legal Protection of Children.⁴⁹ The tracing of family members is conducted under the auspices of the Office for International Legal Protection of Children, which is a special agency of the Ministry of Labour and Social Affairs. The Office is the only competent authority in the Czech Republic authorized to secure

⁴⁵ Art. 4 § 1 of Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended.

⁴⁶ Decisions of the Regional Court in Hradec Králové, No. 30 Az 89/2003, 11 February 2004; and No. 30 Az 77/2003, 20 February 2004.

⁴⁷ I.e. in many cases representatives of the municipalities.

⁴⁸ See DLABÁČKOVÁ, K.: *Problematické prvky vnitrostátní legislativy z pohledu procedurální směrnice (Problematic Elements of Domestic Legislation from the point of view of Procedures Directive)*, in: JÍLEK, D., KLEČKOVÁ R., KOSAŘ, D., TOMISOVÁ, M. (eds.): *Společný azylový systém: procedurální směrnice*, Collection of Essays from the Workshop organised on 13 June 2006 at the Faculty of Law, Masaryk University, Doplněk, Brno, 2006, forthcoming.

⁴⁹ Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended.

and provide legal protection to minor children. When tracing family members, Czech state organs are obliged to proceed so as not to endanger the life and freedom of the minor and her family (Art. 88b).

8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS

Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be “as short as possible” (see article 14, §8)?

A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?

No, this is not the case in the Czech Republic.

B. Non availability of reception conditions in certain areas

No, this is not the case in the Czech Republic. The accommodation centres are evenly spread across the territory of the Czech Republic.

C. Temporarily exhaustion of normal housing capacities

No, this is not the case in the Czech Republic. The number of places is sufficient and can be expanded in case of an emergency. This situation has happened only rarely (e.g. mass influx of Chechens) or exceptionally at the reception centre in the transit zone of the Prague International Airport.

However, in response to a high number of new arrivals of asylum seekers at the Prague International Airport during the last months, the Minister of the Interior decided to establish a branch of the airport reception centre in the detention centre in Velké Přílepy situated approximately 40 km from Prague. Since 1 July 2006, this “new” branch has been exceptionally used for accommodation of the asylum seekers who made asylum declaration in the transit zone of the Prague International Airport provided that reception centre in the transit zone of the airport runs out of the space. The asylum seekers transferred to this “new” branch are subjected to the same legal regime as if they were staying at the airport reception centre, i.e. they are not entitled to leave the facility for the whole duration of the “airport” asylum proceedings (see Q.20 A), since it is presumed that they are legally staying in the Prague International Airport. The Ministry of the Interior thus creates a legal fiction of residence of the asylum seeker at the transit zone of the airport, which triggers a specific “airport procedure”.

The transfer policy after 1 July 2006 is problematic not only with regards Arts. 14(8) and 14(4) of the Directive (because these transfers *to the detention centre* are not necessary; however, this provision of the Directive is not mentioned in the questionnaire) but also with regards of Art. 18(1) of the Procedures Directive. Furthermore, this transfer policy is rather *ad hoc* solution and has no legal basis in the Asylum Act. Finally, application of the so-called “airport procedure” rests on very vague grounds since the transferred asylum seekers are clearly on the territory of the Czech Republic and not “confined to the border post” as stipulated in Art. 14(8) last prong of the Directive. Therefore, a transfer in case of temporary exhaustion of housing capacities (Art. 14 (8) third prong) in the transit zone of the airport is

compatible with the Directive but a “standard procedure” and not an “airport procedure” (with prolonged detention) should apply. In other words, the applicants should be transferred to the reception centre in Vyšní Lhoty and not to the detention centre. Since this is a recent phenomenon, it will be necessary to focus on its application and development in future.

D. The asylum seeker is confined to a border post

Each of the countries neighbouring the Czech Republic has been declared a "safe third country" by the Czech authorities. Therefore, if an alien is intercepted at the border attempting to irregularly cross the border into the Czech Republic she is returned to the state from which she attempted to enter the Czech Republic (Slovakia or Poland in most cases). In case she has already crossed the border (illegally), she is returned within 24 hours.

As the Czech Republic is not as yet a member of the Schengen Agreement, any person entering the country is subject to border controls. If an individual does not have a valid identity card, passport and visa (for countries requiring one), she is not allowed to enter the country. If a person “voluntarily” addresses an officer at the border expressing her intention to apply for international protection, she is forwarded to one of the reception centres after the Aliens’ and Border Police have been informed and the procedure is opened. This holds true for refugees entering from a "safe third country" as well.⁵⁰ On successive application, see Q.16. However, in most cases, the Police intercept potential applicants for international protection. As a result, they are either returned to the country from which they entered the Czech Republic or they are brought to a detention facility. Only on rare occasions do they stay longer than 24 hours at the border police station.

An alien travelling illegally from the Czech Republic to Germany or Austria will, pursuant to the effective readmission agreements, most probably be returned by the authorities of these countries automatically and without an examination of the individual case. Upon return to the Czech Republic the individual is detained and may apply for international protection within seven days (see Q.14). Aliens who are already illegally on the Czech territory (and are intercepted by the Police) and express their intention to apply for international protection are detained and may submit the application from the detention facility.

- E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

There are no cases that are not mentioned in the Directive. In the case of the emergency situation, reception conditions in the centres are governed by the quality standards implemented by the RFA, which envisage such a situation (see Q.39 B).

Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2nd indent and 14 §8 which implies that the directive is in principle applicable in case of detention):

- A. In which cases or circumstances and for which reasons (identity verification in particular if the persons have no or false documents, protection of public order or**

⁵⁰ Furthermore, the concept of the "safe third country" is becoming obsolete since the Czech Republic has borders only with the EU Member States.

national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.

Asylum seekers are not held in detention for the sole reason that they are an applicant for asylum. However, applicants for international protection are obliged to tolerate detention under the conditions laid down in the Aliens Act (Art. 85 § 3).

The conditions for detention and the status of aliens in detention are set forth in the Aliens Act. Pursuant to Art. 124 § 1 of the Aliens Act “the Police is entitled to detain an alien [older than 15 years of age] who was delivered a notice of commencement of proceedings concerning administrative removal if there is a risk that the alien could endanger the state's security, seriously interfere with public order or frustrate or exacerbate the execution of a decision on administrative removal”. Asylum seekers are thus detained only if they entered or stayed illegally in the Czech Republic and then applied for asylum at a detention centre (i.e. aliens who were detained before they lodged their application). Asylum seekers who lodged their application elsewhere (i.e. except for detention centres) can not be detained for any reason (except for criminal act).

B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be “confined” in such a place?

The Czech Republic decided not to implement this measure.

C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?

No, there are no such alternatives to detention available in the Czech Republic.

D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.

The only authority competent to order the detention of an alien is the Police of the Czech Republic.

E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?

Asylum seekers who have reached the age of majority can be detained for a maximum period of 180 days (Art. 125 § 1 of the Aliens Act), then they are transferred to an accommodation centre. Minors under 18 can be detained for a maximum period of 90 days (Art. 125 § 2 of the

Aliens Act). There is no limit in terms of the stage of asylum procedure until which an asylum seeker can be detained as long as the detention does not exceed 180 days for adults and 90 days for minors under 18. If an unaccompanied minor is detained, the Police will appoint him a “residential guardian” (Art. 125 § 3 of the Aliens Act). The residential guardian is appointed by a decision of local police department in accordance with the Administrative Code. Each minor must be informed by the Police of such guardian and its role without delay (ibid.). On guardianship, see also Q.31G.

Throughout the whole duration of detention, the Police are obliged to review if the reasons for an asylum-seeker's stay in a detention facility continue to exist. If the reasons expire, the person must be released without any unnecessary delay. Moreover, the asylum seeker has a right to ask at any time a court for judicial review of the legality of her detention as well as reasons justifying continuation of her detention (Art. 125 § 4 of the Aliens Act). As to the “speedy judicial review”, see also Q.33H below.

The average period of detention in 2006 is 140 days.

F. In which places (can we call them “closed centres”?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the “closed centres” at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?

There are two types of “closed centres” in broader sense. Firstly, if an asylum seeker applies for asylum in a detention centre, she is obliged to stay together with other illegal aliens. There are four detention centres for aliens (“Zařízení pro zajištění cizinců”) – Velké Přílepy, Frýdek-Místek, Poštorná a Bělá-Jezová (which temporarily serves at the same time as an accommodation centre; see Q.36).

Secondly, the other example of “closed centres” is the reception centre. An asylum seeker is not allowed to leave these centres before the admission procedure is completed. Asylum seekers are not allowed to leave the reception centre in the transit zone of the Prague International Airport even after the completion of these procedures. However, the DAMP has to release the asylum seeker if it does not issue the decision within 5 days after the application was submitted or the regional court does not decide within 45 days. Another exception applies for Dublin cases. In general, Dublin applicants are not transferred to the accommodation centres, and they are not allowed to leave the reception centre, even after the completion of these procedures.

Except for reception centre in the transit zone of the Prague International Airport there are no special “closed centres” at the border or on the territory. Since January 1, 2006, as result of amendment to the Aliens Act⁵¹ responsibility for operation of detention centres was

⁵¹ Act No. 428/2005 Coll., Amendment to the Aliens Act and several other Acts.

transferred from the Aliens' and Border Police to the RFA – the authority which is also in charge of reception conditions.

G. Does UNHCR and NGOs have access to the places of detention and under which conditions?

Yes, they do have regular access to the detention centres on the same conditions as to the reception and accommodation centres.

H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which *“Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review”* respected (even if it has not yet to be transposed)?

It is not necessary to implement Art. 18 of the Procedures Directive in the Czech Republic since each detainee has a right to make an appeal to the court at any stage of her detention requesting the review of legality of her detention and her release (Art. 200o of the Code of Civil Justice). The courts are obliged to deal with these cases with a priority and thus the asylum seekers have access to speedy judicial review.

I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

Yes, apart from the modalities mentioned below, the Directive is in principle applicable to the detention centres. The Police are obliged to inform the alien immediately after detention in a language in which she is able to communicate about the availability of judicial review of her detention (Art. 126 letter b) of the Aliens Act). Judicial review is governed by Art. 200o of the Code of Civil Procedure.⁵²

Furthermore, UNHCR prepared a special leaflet for asylum seekers in the detention centres, which contains information on the possibility to apply for asylum, on the asylum and expulsion proceedings and on access to NGOs assisting asylum seekers. These leaflets are also available in several languages, including Chinese, Arabic, Persian, Russian, French and English.

As to the access to legal advice, asylum-seekers in detention have the right to contact and communicate without any restriction with organisations and/or private persons providing legal assistance. In practice, all four detention centres established in the CR are regularly visited by the NGO workers who specialize in provision of free-of-charge legal, social and psychological assistance to asylum seekers.

⁵² Act No. 99/1963 Coll., Code of Civil Procedure, as amended.

In terms of the provision of health care, asylum seekers have access to a free health care in the extent of treatment covered from public health insurance, i.e. under the same conditions as to Czech citizens. Each detainee, including an asylum seeker is required to undergo admission-related, regular and final medical examinations and also vaccination and other preventive measures, if it is deemed necessary.

J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be “as short as possible” (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which “*Member States shall ensure that standards of living is met (...) in relation to the situation of persons who are in detention*” respected?).

Apart from restrictions on the freedom of movement, the reception conditions are comparable and are in line with the Directive. There are only few divergences: detainees do not have access to some benefits, including a pocket money and financial contribution, there is a limited availability of free time activities and different courses, and in well-founded cases (aggressive behaviour, violation of the internal rules of the centre) an alien can be placed in the strict regime of detention. Foreigners in detention are also expected to contribute to the costs of reception conditions (food and accommodation) when they have sufficient personal resources as specified in the Decree of the Ministry of the Interior No. 447/2005 Coll.

According to the Ministry of the Interior, measures have also been adopted to prevent self-mutilation and the assault of other detainees.

K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Asylum seekers with special needs who apply for asylum in a detention centres are usually promptly released to an accommodation centre and are given appropriate care as mentioned above in Q.31 E-G.

L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Minor asylum seekers who apply for asylum in a detention centres are detained, together with their parents or relatives. There is a specialised detention centre for families. An unaccompanied illegal alien over the age of 15 can be detained in the specialized detention centre, where she can apply for asylum, after which she is usually released and placed in the specialized residence centre for minors mentioned in Q.31 H.

M. In particular is article 10 regarding access to education of minors respected in those places?

Yes, access to primary education for minors in detention centres is respected. However, the education of children placed in the detention centres improved only recently, since they have been allowed access to primary education only from January 1, 2006, as result of amendment to the Aliens Act⁵³ and transfer of responsibility for operation of detention centres from Aliens' and Border Police to the RFA.

Pursuant to Art. 142 § 1 of the Aliens Act, the authority responsible for the detention centre must ensure access to compulsory (i.e. primary) education to minors. This education may be provided either in the detention centre or outside the detention centre (if it is not available there); in the latter case the authority responsible for the detention centre must allow minors to temporarily leave the detention centre and secure the transport to the regular primary schools (Art. 142 § 2 of the Aliens Act). All the costs of the education are covered by the State or the authority responsible for the detention centre (Art. 142 § 3 of the Aliens Act).

In practice, minors are currently placed only in one detention centre (Bělá-Jezová; see Q.36) and the education is provided in regular primary schools. According to the NGOs, there was another problem reported, since the access to secondary education in the detention centres proved to be difficult in practice.

N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?

As of July 31, 2006, there are 165 asylum seekers in the detention centres which amounts to approximately 6% of all asylum seekers (2, 662) in the first and second instance. If asylum seekers who have lodged a cassational complaint (and thus have a toleration visa) are included (plus 1746), asylum seekers in detention amount to 4% of the total number of asylum seekers. Furthermore, there are 70 (3%) asylum seekers in prison.

As of July 31, 2006, there are also 215 asylum seekers in the reception centres.⁵⁴

9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

The Czech Republic has a centralised system for providing reception conditions. The RFA, which is a special agency of the Ministry of the Interior, is responsible for the management of all asylum facilities in the country.

⁵³ Act No. 428/2005 Coll., Amendment to the Aliens Act and several other Acts.

⁵⁴ All data rely upon figures at http://www.mvcr.cz/statistiky/2006/uprch07/pobyty_07.html.

There are two types of reception facilities: (1) reception centres; and (2) accommodation centres. The reception centres are always operated by the RFA. However, in certain accommodation centres, some services are provided by municipalities or private owners on a contract basis. The detention centres are run jointly by the RFA and the Aliens' and Border Police. More precisely, as of 1 January 2006, the Police does no longer manage detention centres for foreigners. At present, all detention centres are managed by the RFA, while Foreign Police is in charge particularly of security guard and escort activities. The Ministry of Education, Youth and Sports runs two centres for unaccompanied minors. Furthermore, the NGOs run three centres for rejected asylum seekers.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)

All the accommodation centres are public. As mentioned above, in certain accommodation centres there are some services provided by municipalities or private owners. Although the debate on this issue has already started, there are no accommodation centres managed by NGOs in the Czech Republic.

Applicants can also opt for private housing, but they are not offered any private housing by the Ministry of the Interior.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?

The RFA is responsible for the management of all asylum facilities in the country; therefore, there are no private centres. There are 12 asylum facilities for applicants for international protection. Five centres are owned by the state and operated by the RFA (Zastávka u Brna, Bělá – Jezová, Havířov, Kostelec nad Orlicí, Vyšní Lhoty), one is operated by the RFA at the premises of the Czech Airports Authority (Praha – Ruzyně) one is temporarily suspended (Červený Újezd) and five are run by other legal entities, mostly municipalities, on a contract basis with the RFA and for a fee (Seč, Stráž pod Ralskem, Bruntál, Zbýšov and Kašava).

There are 2 reception centres (Vyšní Lhoty, with a capacity of 422 beds, and Praha – Ruzyně, with 60 beds, which has been established for aliens who intend to apply for international protection in the transit area of the Prague international airport) and 10 accommodation centres (Zastávka u Brna, Bělá – Jezová, Červený Újezd, Havířov, Kostelec nad Orlicí, Seč, Stráž pod Ralskem, Bruntál, Zbýšov and Kašava). Since 2005, accommodation centre in Červený Újezd has been temporarily suspended. Furthermore, Ministry of the Interior has recently announced that due to the further decline of number of asylum seekers in the Czech Republic it is going to close down three more accommodation centres (i.e. Kašava, Seč and Bruntál) in September 2006.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

There is no such legislation in force, but the RFA has an internal plan for dispersing the applicants over the territory of the Czech Republic. According to 2005 Annual Report of the RFA (pp. 8-9) both individual characteristics of asylum seekers (such as family ties, health

condition and membership of a vulnerable group) and issues of public interest (ensuring social and ethnic balance in the centres and taking into account free capacity of each centre) are taken into account. As mentioned above, the accommodation centres are spread across the territory of the Czech Republic. Since they are located mostly in rural areas, there is no problem of concentration in some areas like big cities.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?

There is no such centralised body, but major NGOs involved with refugee issues are joined in the Consortium of NGOs Assisting Refugees. This body does not play a consultative role for the State authorities but can be considered as playing a coordination role for the NGOs.

However, all the actors meet together from time to time on an informal basis to consult reception conditions. Furthermore, all the actors are also members of the Committee for the Rights of the Aliens, which operates within the framework of the Government Council for Human Rights. This body has a consultative role, but does not concentrate only on reception conditions of applicants for international protection since its focus is much broader (rights of all groups of aliens in the Czech Republic).

Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

In the first instance, the RFA is in charge of guidance, monitoring and controlling the system of reception conditions and in the second instance, both the RFA and DAMP are controlled and monitored by Ministry of Interior.

Furthermore, since January 1, 2006, the Ombudsman is entitled to conduct systematic visits to all facilities where the freedom of persons is or may be restricted, which includes *inter alia* all the asylum facilities (both accommodation and reception centres, including the reception in the transit zone of the Prague International Airport).

B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,...) to be respected in particular in accommodation centres?

Yes, the Minister of the Interior approved such quality standards for all the asylum facilities (i.e. both the reception and accommodation centres) in August 2005. These standards (currently being implemented by the RFA) no doubt represent good practice. They are comprehensive (16 pages long) and cover all the important aspects of life in the centres such as the locality and capacity of the centre, the number of persons per bedroom on the basis of its size, access to cultural, sports and other free time activities, the number of accessible

toilets, bathrooms, self-catering facilities, showers and washing machines per number of persons, the existence of common rooms with radio, television, newspapers, books, and computers, the accessibility of telephones, the existence of recreational rooms for children etc. (see also Q.14 D).

C. How is this system of guidance, control and monitoring of reception conditions organised?

The system of guidance, control and monitoring of the quality of reception conditions is facilitated by the fact that the provision of reception conditions is centralized and run by one body. At the first stage, the RFA conducts random visits and at the second stage, both the RFA and DAMP are controlled and monitored by Ministry of Interior. The RFA also has a system of “general” and “financial” internal controls, which are conducted twice per year.

Furthermore, the Ombudsman is entitled to control and monitor the reception conditions (see above Q.39 A).

D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?

The annual reports on the activities of RFA and DAMP are available on the Internet. The reports of random visits conducted by the RFA are not made public. According to Act No. 349/1999 Coll. on the Public Defender of Rights, the Ombudsman informs the Chamber of Deputies of the Czech Republic, on a regular quarterly basis, on the activities of his Office. These reports are available to the public. The Ombudsman also publishes specific topic reports and an annual report of his activities.

Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

There were 4,021 asylum seekers in the Czech Republic in 2005 (68% applications lodged in reception centre Vyšní Lhoty, 13% lodged in reception centre at the Prague International Airport, 1% in accommodation centres, and 18% in other facilities such as detention centres, hospitals or prisons) and 1,802 asylum seekers in 2006 (as of 31 July 2006). As of 31 July 2006, there are 2,662 asylum seekers in the first and second instance and 1,746 asylum seekers who lodged a cassational complaint. There are 566 (21%) asylum seekers in private accommodation, 215 (8%) in reception centres, 70 (3%) asylum seekers in prison, 165 (6%) in detention, 32 (1%) in hospitals and 1,614 in accommodation centres (61%).

B. What is the total budget of reception conditions in euro for the last year for which figures are available?

Total budget of the RFA for running asylum centres in 2005 was 334,554,000 CZK (€11,665,195).⁵⁵ This 9.5 % less than in 2004 (370,085,000 CZK)⁵⁶ but expenses per day (of stay in asylum centre) increased by 28 %, i.e. from 444 CZK (€15,5) to 499 CZK (€17.4).

⁵⁵ All the following budget items (including estimations for 2006) can be found at 2005 Annual Report of the RFA.

Total budget of the RFA in 2005 consists of: reception conditions *stricto sensu* (57%; 189,933,623 CZK, €6,622,586); wages (36%; 120,414,000 CZK, €4,198,583); and investment expenses (7%; 24,206,422 CZK, €844,027). Furthermore, the RFA provided financial contribution to the municipalities that consisted of 3,473,000 CZK (€121,096) for expenses related to the running and management of the asylum facilities and 110,000 CZK (€3,836) for expenses related to the education of minor asylum seekers.

Total estimated budget of the RFA in 2006 is 288,057,000 CZK (€) and consists of: reception conditions *stricto sensu* (46%; 131,083,000 CZK, €4,570,589); wages (47%; 136,595,000 CZK, €4,762,780); and investment expenses (7%; 20,379,000 CZK, €710,573).

- C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?

According to the Small Scale Study on Reception Conditions of the European Migration Network (see Q.8), the amount paid for an applicant per residential day is approximately 388 CZK (excepting investments and employee wages), i.e. 11.640 CZK per month (€ 412). According to the information on website of the RFA, it amounts approximately to 350 CZK per day, i.e. 10.050 CZK per month (€ 372). And finally, if we calculate the compulsory financial contribution of the applicants who have sufficient resources, it amounts to 258 CZK per day, i.e. 7.740 CZK per month (€ 274).

- D Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

The Czech Republic is not a federal state, but the State contributes to municipalities to cover the costs expended by them in association with the existence of asylum facility in their territory (see also Q.2).

- E. **Is article 24 § 2 of the directive following which “*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*” respected?**

Yes, this provision is respected.

- Q.41. A. What is the total number of persons working for reception conditions?

As of December, 31, 2005, the RFA had 422 employees.

- B. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**

⁵⁶ This is due to the further decrease of asylum claims in the Czech Republic in 2005.

The RFA organises both entry and continual training.⁵⁷ It also conducts training sessions within the framework of implementing the quality standards. The specific needs of applicants including unaccompanied minors and women are taken into account during such training sessions (see division on protected zones etc.; Q.30 B).

In March 2006, the Czech Parliament adopted Act. No. 108/2006 Coll.,⁵⁸ on Social Services, that stipulates detailed rules on social workers and their qualification (see in particular Arts. 109-110 and 116-117 of this Act), including those who work in asylum and/or detention facilities (see Art. 1 § 2 of this Act), and specifies conditions of their further education and training (see in particular Art. 111 of this Act).

- C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?

Yes, these rules are laid down by the RFA. Act. No. 108/2006 Coll., on Social Services (see Q.41 B) includes rules about the deontology (see in particular Art. 2 § 2 of this Act) and expressly emphasises confidentiality of social workers (see Art. 100 of this Act).

10. IMPACT OF THE DIRECTIVE

Legal impact of the transposition of the directive:

- Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

No, there are not big problems with the translation of the directive in the Czech language. Translation of subsequent directives, and particularly Directive 2004/83/EC and Directive 2005/85/EC, is much worse.

- Q.43. Were there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,...))?

Yes, there were precise rules on reception conditions for asylum seekers in the Asylum Act prior to the transposition of the Directive (see above).

- Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past)?

There was no significant improvement as to their clarity, coherence or coverage. The reception conditions met a high standard even prior to the adoption of Directive 2003/9/EC,

⁵⁷ See 2005 Annual Report of the RFA, pp. 6-7.

⁵⁸ It was published in issue No. 37/2006 of the Collection of Laws of the Czech Republic (pp. 1257-1289) on March 31, 2006 and is supposed to enter into force on January 1, 2007.

and all reception conditions were set forth in one basic act, i.e. the Asylum Act. Therefore the directive was transposed by the insertion of several provisions and by refining existing definitions.

Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

To some extent, the transposition of the Directive brought important changes. In particular, it strengthened and improved the position of unaccompanied minors and introduced the obligation to trace family members.

Political impact of the transposition of the directive:

Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

Transposition of the Directive was not subject to extensive debate since most of the contested issues, such as the restriction of access to the labour market, detention and/or treatment of unaccompanied minors had been already on the table. Indeed, the restriction of access to the Supreme Administrative Court for asylum seekers (Act. No. 350/2005 Coll.; see Q.2) attracted much more attention from the UNHCR, media, NGOs, academics, and judges.

Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).

Most of the new provisions were already observed in practice. On the other hand, the Czech Republic implemented Art. 7(1) of the Directive that permits issuing visas with restricted territorial validity, which is a new phenomenon in the Czech Republic (notwithstanding the fact that they have not been issued so far).

11. ANY OTHER INTERESTING ELEMENT

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?

Strengths:

- The treatment of “unaccompanied minors”
- The division of the area of asylum facilities into standard and protected zones
- The cooperation between the MOI, Aliens’ and Border Police and NGOs in detention centres.
- Services provided to asylum seekers are generally of professional quality (Quality Standards approved by the Minister of the Interior and implemented by the RFA).

Weaknesses:

- The lack of beds and certain aspects of the treatment of asylum seekers in the Prague International Airport (see Q.32 C for details).
- The treatment of victims of torture is not as strong as in case of “unaccompanied minors”.
- Judicial review of detention and expulsion orders is rather slow and ineffective.
- The average period of detention is close to the upper limit and is not always “as short as possible” (see Q.33 E).
- Private accommodation should be supported more, as asylum seekers accommodated in centres are often isolated and consequently lose the ability to look after themselves.
- Inflexible system of providing food in the asylum centres (however, the system of self-catering will be implemented in more asylum facilities in close future).
- There should be Czech language classes provided to asylum seekers to enable them to integrate into the Czech Republic. The Czech language courses have been so far provided mainly by NGOs.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States

- The treatment of unaccompanied minors.
- The Quality Standards approved by the Minister of the Interior in August 2005 and implemented by the RFA.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

- Financial contribution to the municipalities.