



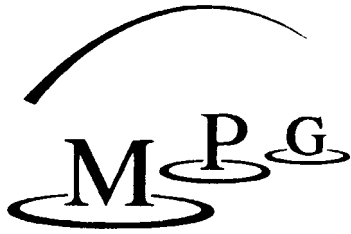
EU and US approaches to the management of immigration

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The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This report is part of a series of 18 country reports prepared in the framework of the project *EU and US approaches to the management of immigration*, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. Countries included in the project are Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK.

Reports on these countries are available from MPG's website individually or jointly, together with EU-US comparative perspectives and European comparative perspectives. See Jan Niessen and Yongmi Schibel, *EU and US approaches to the management of immigration – comparative perspectives*, MPG/Brussels, May 2003.

All papers were presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Brussels/Prague, May 2003

Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest.

In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bi-partisan immigration policy receives strong support from a wide variety of stakeholders.

In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as is demonstrated in recent elections in a number of European countries.

On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes.

In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management.

In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among member states into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration to address economic and demographic imbalances.

The events of September 11 did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US- Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations.

It is against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

The reports on fourteen EU Member States, three candidate countries and one associated state each have four chapters:

- The first chapter reviews the (emerging) debates on migration and pays particular attention to the terms of the debate. It examines whether migration is debated in terms of control, security and restriction, or rather in terms of migration management and the assessment of migration needs. It asks whether the terms of the debate are different for different types of migrants, for instance irregular migrants vs. highly qualified migrants. The chapter analyses whether immigration has been linked with and embedded in larger discussions about social and economic policies for the future. In particular, it looks at the debates around the labour market and demography and considers whether and how immigration has been considered as an option for meeting emerging challenges in these areas.
- The second chapter provides an inventory of stakeholders and an analysis of their activities. It gives a detailed account of who is responsible for which area of migration management in the different government departments. It also covers the activities of the various non-governmental organisations active in this field. The central question is which groups (within government, employers, trade unions, NGOs, academics and other experts) assess national migration needs, which instruments and mechanisms they use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies.
- The third chapter provides an analysis of migration management in the areas covered by three of the most important Directives proposed by the European Commission (on admission for employment, family reunification¹, and long-term residents). Rapporteurs compare the national legal framework with the proposed European measures, and assess the degree of convergence between the two. The chapter addresses each of the substantive points dealt with in the Commission's proposals and sets out the corresponding national provisions, if such provisions exist under the current system. Recent and impending changes of national law are also examined, with a view to assessing whether immigration management rules are moving closer to or further away from the proposed European legislation.
- The fourth chapter offers concluding remarks and evaluations by the rapporteurs. It addresses the Commission proposal for an Open Method of Co-ordination and considers whether such a mechanism would fit well with existing policy-making structures. Where appropriate, the chapter looks more closely at the proposed Guidelines and evaluates the degree to which they are already tackled in national policy. The impact of the European Employment Strategy on immigration management is also assessed. The fourth chapter also gives the rapporteurs an opportunity to make recommendations and to suggest alternative benchmarks for future debates and policy developments.

¹ Reports were drafted before the definition of a common approach to family reunification, which Member States agreed to at the Justice and Home Affairs Council of 27/28 February 2003. Rapporteurs base their comments on the text of draft Directive COM (2002) 225, published on 2 May 2002.

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Chapter 1: The terms of the policy debates

1.1. Introduction

First of all, it must be pointed out that the issue of international migration movements and immigrants' integration processes including relevant policies and practices² are new for the Czech Republic. Despite some migratory experiences in the period of the Czechoslovakian "first republic" (the 1920s and 1930s), the socialist/communist era (between 1948 and 1989) prevented international migration from normally developing in the country. If there was any experience in the last 150 years, it was one of emigration rather than immigration and this formed the country's migratory picture (see e.g. Koralka 1990, Stehovani, 1995). The history of the nation (going back as far as the Habsburg Monarchy) transformed into the "national memory"³, supranational dimensions (linked with a geopolitical orientation), the social-economic situation, public opinion and "migration-specific instruments" determine what type of migration policy is applied and what integration measures are implemented to help immigrants adapt in the Czech Republic (Drbohlav, 1997). These factors shaping migration policy both facilitate and impede migration/integration. They are mutually related and are composed of other important aspects that can have contradictory effects (see in Drbohlav, 1997). It is not surprising that due to given historical patterns the Czech Republic's migration policy tends not to favour immigrants.

Regarding the current Czech migration policy, we can separate a theoretical dimension (especially legislation and conceptual documents) from practice (how a law is implemented in the field). The former aspect has two different faces: First, it is based on some "multicultural features" ("equal rights in all spheres of society, without being expected to give up immigrants' diversity" ... Castles, 1995). Also, the accepted and applied model of foreigners' integration and basic principles of immigrants' integration⁴ in the Czech Republic fall broadly within the given concept. However, some other typical features of the pluralist model such as "state-interventionist approaches to social policy" (Castles, 1995) in relation to immigrants are missing. Moreover, some legislative demands placed on immigrants (e. g. Act No. 326/1999, Coll., as amended, - Act on the Stay of Aliens on the Territory of the Czech Republic) are very difficult for immigrants to meet. Simply waiting for some of the statuses takes very long (generally 8 or 10 years for a permanent residence status, and altogether 15 years for a possibility to apply for citizenship). The latter dimension – the practice - is sometimes burdened with discrimination/exclusion approaches. Although the law reserves some discretionary power for the state, officers and clerks use this power almost exclusively to the disadvantage of immigrants. It may be above all internal procedural rules that dictate such behaviour. To sum up, the current Czech model is a mix of different principles and approaches rather than one that could be clearly and unambiguously distinguished.

What is also true is that the Czech migration policy is a dynamic phenomenon that has been developing over time. After almost one decade of applying rather passive and "ad hoc" approaches (with some exceptions - see e.g. footnote 5), relatively significant changes have been occurring over the past four years. Despite some problems there is a clear convergence of Czech migration policies and practices with those in the EU countries (Drbohlav, 2002). There are documents describing and/or evaluating some aspects of the migration reality

² I consider migration policy an „umbrella term/concept“ covering all sub-issues such as migration practices, integration policy etc.

³ For example, it may be reflected in politicians' and bureaucracies' behaviour, or in the design of judicial documents and decisions.

⁴ They are embodied in a Declaration of Principles that was accepted by the Government Resolution No. 689 of July 7, 1999 under the name of: "Principles concerning the Concept of Foreigners' Integration on the Territory of the Czech Republic and about Arrangements and Realization of this Concept".

(including migration policy and practice issues) in the Czech Republic (Regular, 2002, Report, 2001, Zprava, 2001). However, no one is compact and comprehensive enough. The topic is now subject of the project 205/03/0337 (The Grant Agency of the CR).

1.2. The terms of the policy debates

Migration and integration issues are debated in public only to a very limited extent. Although there have been some discussions about new legislation or about practical measures (in particular among state bodies, the UNHCR and NGOs), the publicizing of these issues towards the “layman and expert” public is rather marginal. If there is such information it is often limited to general proclamations about: 1) harmonizing policies and practices to those in the EU or 2) combating illegal migration movements. There is another channel: journalists and publicists (sometimes objectively, sometimes in a populist way) make known selected issues linked with foreigners and their activities on the territory of the Czech Republic. Naturally, their picture is often “coloured”.

Political parties and their representatives have not so far raised issue of migration. Their attempts in this regard have been very reserved. With the exception of the extremist Republican party⁵, whose programme was and is clearly based on openly xenophobic, racist and anti-immigrant approaches (since 1998 this party has had no representatives in the Parliament), no other parties who has sat or currently sits in the Parliament (both Lower and Upper Houses) started to openly discuss migration issues in and with the public. However, there are several indications that enable us to identify the parties’ positions on migration.

The Czech Social Democratic Party (the party which formed the government after the 2002 Parliamentary election) has brought in the “Pilot Project of the Active Selection of Qualified Foreign Workers” as a clear and systematic (pro-immigrant) attempt to invigorate the migration policy and to refresh the Czech labour market. However, so far this has been the only migration issue which social democrats raised and which has been publicized and, to some extent, commented upon in the media (mainly during the spring and summer of 2002). Surprisingly, the issue then “disappeared” from the agenda. It may have been considered too sensitive before the elections and was also affected by the catastrophic floods which hit the country and which led to a funding shortfall for the programme.

The Civic Democratic Party – along with the social democrats the strongest player on the political scene – has recently expressed its views on the issue in public. The first instance was just a few weeks before the Parliamentary elections in summer 2002. At that time, opinion polls indicated declining public support for the party. It reacted by bringing in populist, anti-immigrant declarations. This was a very controversial step, and the statements made were not based on in-depth analyses.

Second, during the ongoing presidential elections in January 2003 one of the candidates - the founder and now honorary chairman of the Civic Democratic Party Vaclav Klaus - published a review of Kasper’s book in the Lidove noviny newspaper (see Sustainable, 2002; Klaus 2003). He supported the author’s calls to reject multiculturalism and to set up auctions at which states would sell the right to immigrate into a new host country to would-be immigrants. The review provoked some independent experts to express their different ideas (e. g. Lidove, 2003). However, it has so far remained an “individual opinion”, not carried by the party as such. It appears that apart from the listed examples it is very difficult to trace any other public “migration policy activities” coming from political parties.

⁵ The Association for the Republic – Republican Party of the Czech Republic.

When evaluating the development over time, an important shift towards a more multifaceted approach can be identified. As a matter of fact, while during the 1990s only two aspects were pinpointed and, to a limited extent, discussed – harmonizing with the EU (for geopolitical reasons) and combating illegal migration movements (for defense and security reasons) – other issues have appeared on the agenda since the late 1990s. They concern two points in particular: 1) meeting mainly social, economic, and cultural needs of immigrants who have already been in the country and who do deserve to stay there⁶ and 2) designing a program which would bring new immigrants who could contribute to building country's wealth (to complement the Czech domestic labour market which is to severely suffer from very low fertility and ageing process)⁷.

In parallel with this shift, some responsibilities in the field of migration have slowly but clearly been transferred and will further be moved from the Ministry of Interior to the Ministry of Work and Social Affairs⁸ (or possibly also to other state bodies). This shift corresponds to a changing perception of migration, where matters other than security concerns and the corresponding control functions (aimed mostly at illegal transit and illegal short-term and long-term migrants) have started playing a more important role⁹. However, another attempt to decentralise the issues by shifting some of the responsibilities to newly established regional authorities has so

⁶ In fact, a consistent, albeit limited, integration program for specific migrant groups was launched as early as 1991. On December 20, 1991, the government of the Czech Republic formulated principles and directions regarding the integration process of refugees in a document (Governmental Decree No. 536). Another integration scheme/state assistance programme brought into effect in mid-1994 was „Supplementary Instruction“ (Government Decree of November 17, 1993 No. 643 and the Instruction of the Ministry of the Interior of May 27, 1994, U – 1027/94 for district authorities concerning the integration of persons granted refugee status in the Czech Republic) (see more Drbohlav, 1997). The programme successfully continues and develops and its implementation (concentrating on housing, knowledge of the Czech language and requalification) has recently been set out in the Government Resolution of January 22, 2003, No. 86.

⁷ It was done through the Government Resolution No. 975, of September 26, 2001. The Government approved the concept of the new, active approach to migration management, which defined the fundamental conceptual principles of the active selection of qualified foreign workers („The Pilot Project for the Active Selection of Qualified Foreign Workers“ - Government Resolution No. 720 of July 10, 2002). „One of the decisive reasons for having an active approach to migration is the impact of the demographic development and its projection. The impact of demographic ageing on the systems of social security may only be partially resolved by the arrival of new payers with different family patterns. The requirements of the labour market for more qualified specialists will be difficult to satisfy purely through migration. Nevertheless, the arrival of young, qualified specialists from abroad, who will settle and integrate into the society, can at least partially contribute to resolving the envisaged problems. The active control of migration does not represent a new discovery. However it has only been actively applied by a few states. The objective of the concept is to use easily controllable, simple and cheap tools for the transition from a passive reaction to existing migration, to the active management of one of the segments of the economically motivated migration. The present document describes in detail the entire pilot project and determines the fundamental characteristic features of the entire system. When preparing this project, emphasis was placed on its pilot nature, which will be accentuated especially in the first year of the project implementation, when the set-up of the new system will be tested on a small quantity and range of people. The entire system has the potential for further expansion, both in terms of numbers and in terms of the range of persons involved“. The system is to be tested on immigrants from Kazakhstan, Croatia and Bulgaria and mainly younger, highly skilled/qualified workers in preferred professions. Those with some experience from the Czech Republic and those speaking Czech and other languages are to be welcomed above all.

⁸ It is envisaged that from 2004 onwards the „Committee for the Preparation and Realisation of Governmental Policy of the Czech Republic in the Field of Immigrant Integration and Development of Relations between Communities“ is to be governed and organised through the Ministry of Work and Social Affairs.

⁹ In this regard, the recent establishment of the Subcommittee of Migration Issues (December 2002) within the Committee of Defense and Security in the House of Representatives of the Parliament (see more below) “blows against the wind”.

far failed. At this level (without experience and necessary human capital) it will take some time to be ready for new challenges.

International migration is now seen in terms of management, assessment of migration needs (mostly long-term and permanent migration and recognized refugees) and possibly new resources as well (highly skilled and educated immigrants in particular). As has already been indicated, there has been some discussion - mostly through newspapers - about the current and the future deficits of the Czech labour market, in both quantitative and qualitative terms. In particular, expected economic and social problems have been mentioned in connection with demographic developments (extremely low fertility and ageing¹⁰). Inviting selected foreign workers has been talked about as one of the possible remedies. Nevertheless, it has also been pointed out that the immigration as such cannot solve the existing problems.

Some prognoses and projections of the population development in the Czech Republic have recently been carried out, primarily by the Czech Statistical Office, the Ministry of Work and Social Affairs and the Department of Demography and Geodemography at the Charles University in Prague (see e. g. *Analyza 2000, Projekce 2000, Populacni, 2001, Burcin-Kucera, 2002*). However, immigration - as the most problematic part in assessments of the future - is dealt with only marginally. Also, except for the study of the Ministry, almost no other "futurological studies" focus in a more sophisticated way on the impact of demographic developments upon economic and social structures¹¹. Much less do the studies measure how many immigrants are necessary in order to offset losses of the domestic population (see e.g. *Replacement, 2001*). Although recently a number of research projects dealing with migration/integration issues have been carried out (namely under the umbrella of the 'Committee for the Preparation and Realisation of Governmental Policy of the Czech Republic in the Field of Immigrant Integration and Development of Relations between Communities' and financed by the state) governmental and non-governmental organizations still wait for studies which are future-oriented and, at the same time, closely relate migration to demographic and social-economic matters.

As a logical consequence, the basic policy principles of the government in the field of international migration were formulated as late as 2002 (Government Resolution of January 13, 2003, No. 55). Reluctance in this regard springs both from an "inability to be able and unwillingness to be willing" to act earlier, and a pragmatic anticipation of coherent strategies from the EU. As a matter of fact, although much has already been done, the EU is still working hard on this issue (e.g. Urth, 2002). Thus, since 2002, Czech migration policy has been based on six basic principles:

- 1) *With regard to international obligations, which arise from its membership in the EU, the Czech Republic principally pushes for a governing role of the state in the migration process.*
- 2) *The state migration policy is based on the coordinated activities of all state bodies, regional self-governments and support coming from other subjects which deal with migration.*
- 3) *The state migration policy is aimed at eliminating all forms of illegal migration and other illegal activities both through measures in the migration field and measures that are national in character.*

¹⁰ There are some examples indicating what basic parameters might be expected: According to the prognosis of the Department of Demography and Geodemography, the total fertility rate (medium variant) is assessed at 1.55 in 2030 - far below the replacement level (*Populacni, 2001*). Following the study of the Ministry of Work and Social Affairs, there will be a deficit of 422,000 working-age persons in the Czech Republic in 2030. The „potential support ratio“ (15-59/60+) (per 100 working-age persons) is to reach a level of 52 in 2030, compared to 28 in 2000 (*Analyza, 2000*).

¹¹ Several studies nevertheless touch on the relevant issues, if only to a limited extent. For example: Vize, 2001, Hampl, 2001, Bastyr, 2000, and Studie, 2001.

4) The state migration policy does not impose restraints on legal migration and supports immigration that is an asset for the state and society in a long-term perspective.

5) Implementation of the migration policy calls for a wide involvement of non-governmental and other civil society organizations.

6) The Czech Republic cooperates in activities of the world and European communities to contribute to solving migration problems in the wake of humanitarian crises and to eliminating the causes of these events.

Chapter 2: The stakeholders

2.1. State bodies

There are several important governmental and non-governmental bodies that deal with international migration issues in the Czech Republic. First of all, one has to pinpoint the very important role that is played by the Ministry of the Interior. According to the Act No. 2/1969 Coll., about ministries and other central bodies of the state authorities of the Czech Republic, as amended, the Ministry of the Interior is chiefly responsible for international migration and asylum issues in terms of both legislative-conceptual matters and their practical implementation. In carrying out its functions it cooperates with other ministries, state and non-governmental organisations including international ones. The Ministry deals with various issues, such as determining border crossings, contributing to the preparation of relevant international agreements, coordinating implementation of the Schengen Acquis, designing state integration programs for recognised refugees and helping those with humanitarian status, and cooperating on the design and implementation of repatriation programs (see more in Zprava, 2002). Two ministerial departments are especially important: the Department of Asylum and Migration Policy and the Department of Managing Asylum Centres. Over the last decade, the former body has worked particularly well and has, in fact, given new impulses to the migratory issue. The „Committee for the Preparation and Realisation of Governmental Policy of the Czech Republic in the Field of Immigrant Integration and Development of Relations between Communities“ advising the minister of interior was established under the umbrella of this Ministry¹². This Committee is composed of about 40 representatives of relevant bodies, including other relevant ministries, the Office of the Government, the Office of the President and the Czech Statistical Office, as well as non-governmental organisations (NGOs), local/regional/city authorities, academic institutes, trade unions and other associations. The main objective of the Committee is to systematically and conceptually initiate and coordinate activities in the migration and integration fields. It is mandated to contribute to developing migration policy objectives and integration strategies and to help decentralize migration issues towards regions and communes. It also evaluates projects targeting individual ethnic immigrant communities both through studies (to obtain more information about them and their „new lives“) and through information or educational campaigns (brochures, films, courses, and workshops to help immigrants orientate and adapt into the new society). Parts of the Czech public are also targeted in order to inform them about immigrants and immigration.

There is also the Alien and Border Police of the Czech Republic that mainly focuses on security along the state border, on issuing permits and on controlling the arrival, departure and stay of foreigners in the country.

Other ministries are responsible for specific aspects of migration: The Ministry of Foreign Affairs issues documents for the entry and stay of members of diplomatic corps and also deals with visa administration as a whole. In addition, it manages Czech international aid in the migration field (which is one of the priority areas – Koncepce, 2002¹³). The Ministry of Labour and Social Affairs regulates the conditions under which foreigners are allowed to enter the Czech labour market as employees, and handles the relevant bilateral international agreements as well as harmonisation with the EU. Recently, this Ministry launched an important initiative. In view of the demographic parameters (in particular low fertility and the ageing process) and the situation on the Czech labour market, it initiated the “Pilot Project for

¹² See Government Resolution No. 689 of July 1999; other Government Resolutions were accepted in order to fulfil all the requirements springing from the Committee’s objectives, namely that of November 30, 2000, December 19, 2001 and No. 55 of January 13, 2003.

¹³ Preventing migration in South-Eastern Europe and countries of the former Soviet Union is one of the priorities of Czech international aid between 2002 and 2007 (Koncepce, 2002).

the Active Selection of Qualified Foreign Workers¹⁴". In 2000 a new inter-ministerial body for fighting the illegal employment of foreigners in the Czech Republic was established under the umbrella of the Ministry of Labour and Social Affairs¹⁵.

The Ministry of Industry and Trade is responsible for business-related immigrant activities. In issuing trade licences, the Ministry aims to create optimum conditions both for the state and for the immigrants. The Ministry of Education, Youth and Physical Training deals with the access of foreigners to education in the Czech Republic (all types of schools plus some of the training institutions) and seeks to establish suitable conditions for them (by organising various language courses, special programs etc.). The Ministry also organises study trips for international experts who work in the country as lecturers or researchers. The Ministry of Justice deals with foreigners who are undergoing criminal investigation, including those who are expelled because of a conviction. The Ministry also has competence to improve the existing legislation covering the situation of migrants in the criminal justice system.

Other important bodies are the Committee on Foreigners' Rights within the Council of the Government for Human Rights, the newly established Subcommittee on Migration Issues within the Committee for Defence and Security in the House of Representatives of the Parliament (both bodies may contribute to legislative initiatives) and the Ombudsman, who is charged with solving problems related to the human rights of foreigners.

2.2. Civil society

Trade Unions are reserved on the issue of migration while employers tend to give "silent support" to pro-immigrant approaches. The advocacy work of non-governmental organisations focuses on the human rights of foreigners. NGOs also provide numerous services to foreigners and often act as implementing agencies for the state administration. Prime recipients of aid are long-stay legal immigrants and recognised refugees. The policy activities of major organisations are described below, while their service-providing activities are omitted for reasons of space.

- The Centre for Integration (Poradna pro integraci) focuses on the integration of recognised refugees and of foreigners who hold a permanent residence permit. Its main objective is to defend the human rights of these persons and to help them to become equal to Czech citizens. The Centre attempts to influence asylum policies and to improve the climate in society regarding asylum and integration.

- The Organization for Aid to Refugees (Organizace pro pomoc uprchlikum) has a similar client population. It organises social and cultural activities with the aim of improving the relationship between foreigners and the Czech majority population.

- The Centre for Refugees (Poradna pro uprchliky) serves immigrants, asylum seekers and persons who received asylum since 1993. The Centre monitors the position (in terms of human rights) of its clients in the majority society and informs the public as much as possible about the migration issue in order to avoid racism and xenophobia.¹⁶

- The Society of Citizens Assisting Emigrants (Sdruzeni obcanu zabyvajici se emigranty) targets migrants of different legal status. Its headquarters are located in a city of Brno and its

¹⁴ See above; because of enormous floods in the Czech Republic during August 2002 and, consequently, huge financial burden for the whole country, launching of the project was postponed. „The Pilot Project“ will probably start functioning as late as July 2003.

¹⁵ The Government Resolution of October 23, 2000, No. 1044.

¹⁶ From the Centre for Refugees another NGO named 'Centre for Migration Issues' was established in 2002. It has broadly the same executive staff and the same aims.

activities are largely concentrated upon this city and Moravian and Silesian regions. The Society works mainly on integration and the prevention of racism and xenophobia among majority population.

The abovementioned five NGOs have recently established an association - COM (Consortium) - in order to be „more powerful“ when lobbying, negotiating, fund-raising and pushing their objectives on behalf of foreigners' interests. The trigger for the current institutionalised cooperation was a common project under the European Commission umbrella. One of the Consortium's successful activities was lobbying in the Senate and Parliament regarding an amendment of the asylum law. While informally there are good working contacts among members of the NGOs involved, there is also some competitiveness.

The Czech Catholic Charity (Sdruzeni Ceska katolicka charita) - a part of the Roman Catholic Church – also has programmes addressing the needs of immigrants and refugees.

The MIGRACE project carried out by the Open Society Fund in Prague since 2002 involves three main NGO partners. A Man in Emergency (Clovek v tisni) – a society affiliated with the Czech Television – publicises migration issues through the mass media (TV, radio, newspapers, journals, magazines, and cultural and educational programs). The aim is to inform the Czech public about the challenges and opportunities offered by migration, and thus to contribute to combating racism and xenophobia. The Multicultural Centre Prague is responsible for the second part of the project, the launch of the „Migration Information Service“ project (MISE) via a structured web site. This site seeks to enable its readers to systematically orient themselves in research studies/projects, articles, legislative documents, bodies/institutions involved etc. The Centre for Citizenship is the third partner within the MIGRACE project working on a comparative study on relevant legislation (the Czech Republic vis-à-vis selected European countries).

The UNHCR and the IOM¹⁷ are also active in the Czech Republic and cooperate with both governmental and non-governmental organisations.

One has to distinguish several dimensions when describing the migration debate in the Czech Republic. The first dimension is the transfer of European initiatives to the governmental bodies and NGOs (be it through a direct link: the EU/often the EC or the Council of Europe→ state bodies or the EU/often the EC or the Council of Europe or NGO(s) functioning abroad → NGO(s) or via a two-step process: the EU/often the EC or the Council of Europe→ state bodies→NGO(s)). These “channels” works quite well. The given institutions and their departments “accept the information” and try to “apply” it to conditions in the country via new laws, regulations, amendments, recommendations, educational programs, consultations, advices, research projects, funding etc. However, there may still be tensions or disputes over some issues among the players¹⁸. On the other hand, such disharmony is not serious and mainly “internal” in its character – problems are not widely publicized.

¹⁷ Whereas UNHCR representatives already started working in the Czech Republic in the beginning of the 1990s, the agreement with IOM was signed in 1997 and came into force in 1998. The Czech IOM Mission is subordinated to the Mission with Regional Functions for Central and Eastern Europe in Vienna.

¹⁸ Three examples follow: 1) The ministries blame each other that they are not willing to efficiently communicate on migration; 2) There is a tension between some of the NGOs which established the Consortium. The problem is that some have been losing „power“ over time, as their area of activity has diminished, whereas others, who have not suffered, are blamed for unfair practices; 3) it is believed that the UNHCR's practices of cutting off funding for some NGOs while continuing to support others are, to large extent, at the root of this development.

Chapter 3: European legislative proposals

3.1. Admission for economic purposes

The whole philosophy of enabling foreign employees and businessmen to operate in the Czech Republic is similar to that proposed in the Directive. Nevertheless, important differences exist concerning the duration of the given permits and the demands which applicants have to meet.

The proposed Directive lays down the principle of respect for the domestic labour market situation – “a post can only be filled with a third-country worker after a thorough assessment of the domestic labour market situation”. This is in accordance with current practice in the Czech Republic where a foreigner (a would-be employee) can take a vacant job provided no other citizen of the Czech Republic is willing to accept it.

3.1.1. Separate work and residence permits

Whereas according to the proposal a “residence permit – worker” and a “residence permit – self-employed person” are to be issued for a three-year period, with the possibility of renewing them several times, current practice in The Czech Republic is different. A person is obliged to hold a work permit or a trade license at the same time as a visa for over 90 days to be employed or to do business in the country¹⁹. After meeting all the demands put on applicants, the two documents may be issued for a maximum of 1 year.²⁰ After that, they can be renewed (if the purpose is still valid) several times. After 8 or 10 years a foreigner is allowed to ask for a more secure status - a permanent residence permit. This is a longer time frame than the five years suggested by the proposal for a „long-term residence status“.

In the proposed Directive, the procedures and conditions on granting a „residence permit – self-employed person“ are designed very much in parallel to the rules on granting a „residence permit – worker“. In contrast, the demands placed on applicants for a work permit are very

¹⁹ Of course, other purposes can be chosen as well.

²⁰ As is the case with the proposed Directive, some categories of foreigners do not need to apply for visa and permits: those who stay only for a short time (not longer than 7 consecutive days or altogether 30 days a year), recognised refugees, those with permanent residence permit, diplomatic staff, teachers, researchers, students, sportsmen and those who deliver (or accompany) various goods and services.

Special preferential treatment is granted to citizens of EU countries. Two basic laws regulating foreigners' employment and business activities in the territory of the Czech Republic (No. 1/1991 Coll., as amended, On Employment and No. 455/1991 Coll., as amended, Trade Licensing) have already been, are currently or will further be amended soon. They are to ensure almost or entirely the same conditions as those that apply to citizens of the Czech Republic. Exceptions might concern employment in the state sector, professions where perfect knowledge of Czech language is inevitable and performing so-called regulated professions.

A specific regime also springs from signed bilateral agreements which govern some foreigners' activities on the Czech labour market (especially employment and short-term attachments/trainees). In terms of their impact on the Czech labour market, agreements signed with Slovakia (October 29, 1992) and Ukraine (March 21, 1996) must be mentioned. The agreement with Ukraine (No. 67/1999 Coll.) expired on February 4, 2002. However, the employment of Ukrainians was governed by the Act No. 1/1991 Coll., and the agreement itself had, more or less, a declarative role. In practical terms, a procedure as to how Ukrainians get a job in the Czech Republic is now the same as it was before the agreement expired. Since January 1, 1993, a citizen of Slovakia does need to ask either for a „temporary stay permit “ (a visa for over 90 days) nor for a work permit in the Czech Republic (the „presidential agreement“ with „higher legal power“ of October, 29, 1992, No. 227/1993 Coll). He/she is only required to register himself/herself (i.e. neither purpose nor a length of a stay is set). In contrast, such advantages cannot be used reciprocally by citizens of the Czech Republic in Slovakia (see Slovak Act No. 73/1995 Coll.).

different from those required by applicants for a trade licence. The unifying factor is that in both cases (work permits and trade licenses) obtaining the permit and the license is necessarily tied to obtaining a visa for over 90 days for the purpose of employment and doing business.²¹

3.1.2. Work permit applications

Obtaining a work permit involves a complicated procedure. Work permits are issued depending on the current labour market situation²². An employer has to submit a number of documents and specify details of the relevant position when asking for a foreign worker. A work permit is issued for a maximum period of one year with the option of renewal (when asking for the permit, a valid travel document, a document proving qualification/specialisation in the relevant sector and, if necessary, a health certificate are required). A work permit is only valid for the specific job, employer and area it was granted for (if only one of these „parameters“ is changed, re-application is necessary). Foreigners who work in the Czech Republic for foreign firms/companies (if these signed an agreement with their Czech partners) also have to follow this procedure.

Since obtaining a work permit precedes obtaining a visa (see note 19), only persons with a visa for over 90 days on which the purpose of residence is explicitly stated as „employment“ are entitled to work (the exception are asylum seekers after a one year official stay in the country). Persons who meet the demands stipulated in the Act No. 1/1991 Coll., as amended, On Employment, can obtain the work permit. One of the key „parameters“ is an economic means test where a local job centre decides whether an applicant is an asset for a region or not. As a rule an employee/worker submits a work permit application. However, he/she can also delegate a representative (e.g. an employer) who may undertake this responsibility.

3.1.3. Trade licences

In contrast, obtaining a trade license is much easier²³. Leaving aside important details (for example, how to conduct business through a personal representative - see for further information the Act No. 455/1991 Coll., as amended) the following steps are necessary in order for a foreigner to be allowed to do business in the Czech Republic. He/she must fulfil several conditions: to be at least 18 years old, to have full legal capacity, to have no criminal record and he/she must submit a document confirming that he/she owes no tax arrears to the local tax authority. This document must be issued by the pertinent tax authority unless specified otherwise. As the Act stipulates, in some cases specialisation or qualification requirements have to be fulfilled. There is also an obligation to register the business activity in a business registry. However, in contrast with the proposed Directive, there is, for example, no need to submit and defend a detailed business plan in the Czech Republic, and no need to show that the given activity „will have a beneficial effect on employment ... or on the economic development“. There is no need to prove financial sources, no need to prove that an applicant is able to orient him/herself in a given environment (this concerns, in particular, the juridical environment), etc. Once the person holds a license, there are no strict rules as to how to record flows of money and no reliable and detailed statistics of business activities. Moreover, there is no clear differentiation between what is „doing business“ and what is, in fact, working

²¹ As a matter of fact, a foreigner has to have a work permit before submitting an application for a visa (as is stipulated in the law). A trade license can only be issued after the foreigner has obtained a visa for over 90 days for the purpose of doing business. However, before issuing this visa he/she has to officially ask for a trade license at a given trade centre. The authority interrupts the process and declares its decision by mail while, at the same time, asking for proof that a visa has been issued. This „declaration“ is simply a document stating the purpose of stay given on the visa.

²² Job centres are responsible for granting work permits. It is up to them to evaluate an economic need and a beneficial effect tied to the immigrant's arrival and proposed activity.

²³ Trade centres are in charge of issuing trade licenses.

as a classical employee. All in all, the conditions are very liberal and are, in fact, often misused by foreigners²⁴.

Although problems linked with the very liberal regime of issuing trade licenses (regarding both legislation and procedure) have been known for a long time, there appears to be no political will to change the situation. Clearly, this very liberal regime does not at all correspond to the „overcautious regime“ regarding the arrival, stay and employment of foreigners in the territory of the Czech Republic. In this regard, only „mandatory adjustment“ to the EU rules may gradually bring some changes.

3.1.4. Income thresholds and employers' contributions

Neither for work permits nor for trade licenses are income thresholds or employers' contributions asked for explicitly. Nevertheless, some „indirect rules“ exist in this regard – e. g. respecting a minimal wage or adhering to basic demands stipulated in the Act No. 326/1999 Coll., on Residence of Aliens in the Territory of the Czech Republic, as amended (relating, for example, to housing – see below).

3.1.5. Special categories

Czech legislation is not generous regarding the special categories of migrants mentioned in the Directive, namely transfrontier workers, intra-corporate transferees, trainees and, to some extent, also au pairs. In fact, transfrontier workers/commuters, seasonal workers and trainees (who increase their skill and qualification) — fall into the same category as other would-be employees and have to go through the same procedure²⁵, as it is stipulated and further specified in the Act No. 1/1991 Coll., as amended, (article 2b). Some exceptions concern trainees and intra-corporate transferees. Regarding the former, some of them are allowed to come to the Czech Republic through a regime of signed bilateral agreements²⁶. Regarding the latter category, the Czech Republic allows some intra-corporate transferees (key staff members) to operate in the country under the framework of the General Agreement on Trade in Services.

3.1.6. Quotas and ceilings

Using quotas or ceilings to regulate access of third-country nationals to economic activities is not typical of the Czech Republic. Only two exceptions exist. First, the quota system is often used within bilateral agreements. The most important was regulating the number of Ukrainians entering under the bilateral Agreement (Government Resolution No. 67/1999 Coll., see footnote 18). For example, in 2001 the quota covered 30,000 persons. However, since February 2002, the regime has continued without any signed agreement and without set quotas. Second, „The Pilot Project for the Active Selection of Qualified Foreign Workers“ (see above) sets quotas for those who will be accepted during the pilot project. They amount to 600 persons in 2003 and 1,400 in 2004. It is likely that after finishing the pilot project and launching the program as such no quotas will be applied.

²⁴ Ukrainian independent quasi-businessmen are typical examples of individuals who are often provided with trade licenses but whose working situation in fact resembles that of classical employees (these are really „hidden employees“). They are active in the same kind of position („unqualified employees“ in various sectors of the economy) as „normal employees“. Accordingly, there are also established public trading and limited liability companies within which foreign businesspersons now legally operate and function only as employees. It has been shown that this is the most advantageous way to legally penetrate the country and then legally or quasi-legally work or operate there (Drbohlav, forthcoming).

²⁵ The same is valid for au pairs who are not specifically named within the Act.

²⁶ Signed and functioning agreements on exchange of trainees: with Switzerland Government Regulation No. 188/1997 Coll., Hungary 91/2000 Coll., Lithuania 6/2001 and Luxemburg 42/2001.

3.1.7. Undocumented migrants and regularisation

Despite hosting not inconsiderable numbers of quasi-legal and illegal/undocumented immigrants on its territory (see more Drbohlav, forthcoming), regularisation as an official instrument of legalising immigrants is not on the agenda in the Czech Republic. So far this issue has never been openly discussed and publicised.

3.2. Family reunion

Currently, there is no individual law in Czech legislation which specifically defines the conditions under which family members can reunite. This is in contrast to the proposed Directive on the right to family reunification. In the Czech Republic, family reunification is now governed by two separate laws (the Act of November 30th, No. 326/1999 Coll., on Residence of Aliens in the Territory of the Czech Republic, as amended and the Act No. 325/1999 Coll., on Asylum, as amended). Three different „family channels“ come into play here.

The first law clearly defines who has a right to be provided with a permanent residence permit without waiting for 10 years²⁷. The condition of a previous continuous stay in the territory (Section 65) does not apply if the residence permit is applied for by an alien:

A) - who applies for the residence permit for the purpose of family reunion with a Czech national whose registered permanent address is in the territory (of the Czech Republic) provided that the alien is:

- the spouse of the Czech national,
- a lone parent over 70 years of a Czech national where such a national is over 18 years (for the purposes of this Act, a lone person is a divorced, single or widowed person),
- a minor child of a Czech national where the Czech national was awarded custody of the child by a court decision following a divorce,
- an major child of a Czech national where such a national is a lone person over 70 years,
- a person who adopted a child who was a Czech national or a person in whose care a child who is a Czech national was placed or who was appointed the guardian of such a child if the child is to be cared for in the territory, or
- a minor child who was abroad on the date of the adoption by a Czech national,

B) who applies for the permit for humanitarian reasons or for other deserving reasons, in particular, if such an alien is the spouse or minor child of an asylum seeker who is dependent on the alien's care unless he applies for asylum or was a Czech national in the past, and/or

C) whose stay in the territory is in the foreign policy interest of the Czech Republic.

²⁷ Section 67 of this Act says that: „following 10 years of continuous stay in the territory with a visa for over 90 days or a visa for the purpose of temporary protection, a residence permit may be applied for by any alien“.

- D) a foreigner's minor or major child placed in the care of a guardian, where this foreigner stays in the territory with a residence permit for the purpose of reunion (with that child).

There is also Section 66 which declares that: „Following 8 years of continuous stay in the territory²⁸ (of the Czech Republic) with a visa for over 90 days or a visa for the purpose of temporary protection, a residence permit may be applied for by an alien who applies for the permit for the purpose of reunion with an alien who is a holder of a residence permit provided that the applying alien:

- A) has been his spouse for at least 5 years,
- B) is a minor single child placed in the care of a holder of a residence permit or a major child dependent on the care of a holder of a residence permit, and/or
- C) is a lone parent of a holder of a residence permit who is over 70 years of age.

Second, family reunification is also possible on a visa for over 90 days. Within the section 30 of the given Act it is stipulated that: „A visa for over 90 days shall be issued by the police at the request of an alien who intends to remain in the territory (of the Czech Republic) for a purpose which requires him to remain in the territory for over 90 days ... The relevant diplomatic authority shall state the purpose of the stay in the visa. The visa ... shall be valid for 365 days. ... If the purpose to be achieved through the stay in the territory can be achieved within a shorter period of time than the validity period of the visa for over 90 days, the police shall determine the period of stay in the territory as required to achieve this purpose“. Only a very limited number of „purposes“ (out of those which are actually accepted afterwards) to fulfil a mission under this status are explicitly identified within the Act. Family reunion is one of them²⁹.

Third, the latter Act on Asylum (in Section 13 – Asylum for the Purpose of the Reunion of a Family) enables family reunification as well. It is stipulated that:

- A) „In a case requiring special consideration, a family member of a refugee who was granted asylum pursuant to Section 12 or Section 14 will be granted asylum for the purpose of the reunion of a family, even if in the proceedings for the granting of asylum to such family member there is no reason found for granting asylum to him/her pursuant to Section 12.
- B) For the purpose of the reunion of a family under Subsection 1, a family member is deemed to be
 - a. the refugee's spouse,
 - b. the refugee's unmarried child under 18 years of age, or
 - c. a parent of a refugee under 18 years of age.
- C) The granting of asylum to the spouse of a refugee for the purpose of the reunion of a family shall be conditional upon continued marriage before the granting of asylum to the refugee“.

²⁸ This period (as well as that of 10 years mentioned in the previous footnote) shall not include the period of stay in the territory based on a visa for over 90 days issued for the purpose of studies.

²⁹ A preferential approach towards „families“ is embodied in the Act since: „An application for a visa to remain in the territory for over 90 days may be filed in Czech with the police provided that the alien submits the application during his stay in the territory with a visa for over 90 days issued for the purpose of family reunion covering a spouse of a single child under 18 years and provided that the alien applies for a visa for another purpose with the exception of a visa for the purpose of employment and business activity“ (Section 32). Other persons have to apply from abroad.

Czech laws do not include any specific provisions regarding family reunion and related resource requirements, waiting periods, conditions of residence or access to education and employment.

Turning to reality, as in many other countries, “family reunification” in the Czech Republic is one of the most important channels through which immigrants arrive in the country. Regarding “permanent” immigrants, as of December 31, 2000, of 66,891 immigrants who stayed in the country with a permanent residence permit, 87% (58,229) came under the family reunification umbrella (both the reunification with a foreigner and with a Czech citizen). Among “long-term” immigrants who stayed in the country with a visa for over 90 days, of 134,060 immigrants 9.7% (12,982) came to join their family members. All in all, at the very end of 2000, 35% of all legally staying foreigners in the Czech Republic came through the family reunification channel (internal, 2002). The numbers of those who reunify their families after gaining asylum status in the Czech Republic are rather marginal since successful applicants do not number higher than about 100 a year (Zprava, 2002). In sum, it is clear that the Czech Republic has a positive approach towards respecting the need and right of foreigners to reunite with their families³⁰. Furthermore, the principles applied in this respect have been more or less in harmony with those proposed in the Directive. Therefore, the country’s even more significant adjustment to the proposed European standards, which is currently being prepared (see Amended, 2002), is unlikely to pose problems.

3.3. Long-term residence right

3.3.1. The permanent residence permit

According to the proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, long-term residence status will be granted to third-country nationals after five years of legal and continuous residence, subject to certain conditions that have to be met. So far the Czech Republic has applied a different model. It is possible to obtain a „long-term/temporary“ visa for over 90 days to stay on for the explicitly expressed purpose to fulfil one’s mission (mostly to do a business or to be employed). However, in contrast to what is understood in the EU context, this „long-term/temporary“ visa is issued only for a one-year period, although under some conditions it can be renewed again and again. In fact, the permanent residence permit, which a foreigner can normally obtain after 8 and 10 years of continuous stay) corresponds better to the secure residence status which is suggested in the proposed Directive on long-term residents³¹.

To reach the threshold of 8 and 10 years, the applicant can include periods in which he/she stayed on a visa for over 90 days (and soon probably also on a long-term stay permit, see footnote 31). However, so far the period of stay in the territory based on a visa for over 90 days

³⁰ There have only been some problems in terms of procedural matters: For example, when reunifying a family with a person who received asylum in the Czech Republic the Czech Embassies’ or Consular Offices’ authorities in the country from which a family member is to come to Czech Republic are sometimes unwilling to be involved and hinder a person from entering the country. Apparently, the cooperation between the Ministry of the Interior and the Ministry of Foreign Affairs does not function well in this regard.

³¹ A new amendment to the Act of November 30, No. 326/1999 Coll., as amended, which is now being discussed in the parliament, might introduce the category of „long-term stay permit“ which, albeit not explicitly defining a five-year period, is a sort of a compromise between the existing status visa for over 90 days and the permanent residence permit. Hence, gradual harmonisation with the proposed Directive and with the situation in several EU Member States is evident.

issued for the purpose of studies cannot be included³². Under exceptional conditions, it is not necessary to wait for such a long time for this status (e.g. recognised refugees including their family members).

The permit is issued for a period of 10 years with the possibility to renew it repeatedly. After 5 years of holding a permanent residence permit a foreigner is entitled to apply for Czech citizenship³³.

3.3.2. Resource requirements

An important condition for the permanent residence permit is the resource requirement. Apart from other documents³⁴, the applicant must provide the following items „related to his/her resources“: 1) „a document confirming the availability of funds to cover permanent stay in the territory, and 2) a document with a certified signature containing the consent of a person who will provide accommodation to the alien in the territory“. The Act further stipulates: „For the purposes of an application for a residence permit, the following shall be considered a document confirming the availability of funds to cover permanent stay in the territory:

- a. a confirmation of the transfer of financial benefits paid to the alien by the country of his nationality or another country in which such benefits are paid to him provided that the monthly sum thereof is equivalent to 2 times the sum of the Subsistence Minimum for Personal Needs,
- b. an undertaking of the person who the alien applies for the permission to join, with a certified signature, to cover the cost related to the stay of the alien in the territory; this undertaking must be documented by a certificate of an employer confirming the salary or by a bank statement, or
- c. a statement of an account held on the name of the applicant in a bank in the territory or in another country covering at least 70 times the Subsistence Minimum for Personal Needs “.

Thus, compared to the proposed Directive, a much higher amount of money is asked for in the Czech Republic (in practice, foreigners can „easily“ submit money borrowed from one another or from mafia-like structures). The Czech legislation also contains demands regarding foreigners' sickness insurance³⁵.

3.3.3. Expiry and cancellation of the permanent residence permit

³² The new Amendment to the Act of November 30, No. 326/1999 Coll., as amended, which is currently being drafted, harmonises the situation with the proposed Directive by ruling that half the duration of the studies may be taken into account (Navrh, 2003).

³³ See more in the Act No. 194/1999 Coll., as amended.

³⁴ For example, „an extract from the Czech Criminal Register and a similar document of the country of the alien's nationality or the country where the alien has a permanent address as background material for the review of criminal record or a statutory declaration in case such a country does not issue similar documents; the same shall not apply in case of an alien under 15 years of age and an alien who is applying for a certificate of permission to reside in exchange of a decision on a residence permit“.

³⁵ Foreigners holding a permanent residence permit are insured in accordance with the Act No. 48/1997 Coll., About public health insurance, as amended. Nevertheless, foreigners staying under a temporary status umbrella are obliged, when asked by the police (both at a border crossing and in the interior), to prove that they have a health insurance for the whole period of their stay in the country. The same is true when applying for a departure visa and when prolonging a length of stay of visa for over 90 days. There are some exceptions concerning, for example, those insured within special bilateral international agreements.

The following reasons for the expiry and cancellation of the residence permit are given:

„A residence permit shall cease to be valid if:

- 1) the alien becomes nationalized by the Czech Republic,
- 2) the alien has been sentenced to expulsion or a decision on administrative expulsion has been taken, or
- 3) the alien dies“.

„The police shall cancel a residence permit if:

- a. it establishes that the alien entered into marriage solely with the aim of obtaining a residence permit; the same shall not apply if a child was born out of the marriage or was irrevocably adopted,
- b. a marriage terminates on the basis of a valid decision of the court on the divorce of the marriage or on the basis of a valid decision of the court on declaring the marriage invalid within 5 years after the issue of the residence permit and no child was born out of the marriage or was irrevocably adopted,
- c. the alien requests the same, or
- d. it is justified by the fulfilment of an obligation arising from an International Agreement.
- e. an alien fails to apply with the police for an extension of the validity period within the period pursuant the Section 84; this shall not apply if the alien was prevented from filing an application for extension for reasons beyond his control,
- f. an alien repeatedly violates the public order in a serious manner, endangers public health and/or the protection of rights and freedoms of others,
- g. it expires within 5 years after the issue of the residence permit pursuant to Section 65 (1) (b) or (c),
- h. accommodation has not been provided to the alien in the territory,
- i. the certificate of permission to reside of a statutory representative who took care of the alien who is the holder the certificate has ceased to be valid,
- j. the alien failed to meet an obligation under Section 88 (3), or
- k. the alien was sentenced to imprisonment of over 3 years in a valid manner by a Czech court for a wilfully committed crime, provided that the reasons for this decision correspond to the consequences thereof. When considering this correspondence, the Police shall take into account, in particular, the consequences of the decision for the private and family life of the alien“.

To sum up, as is the case in the proposed Directive, a cancellation of the permanent residence permit in the Czech Republic is linked with serious circumstances often triggered by proven fraud or improper behaviour on the foreigner's side, or, in a broad sense of the word, by a loss of his/her „supportive mechanisms“ in a host country.

The expulsion as such occurs when conditions stipulated by the law (No. 326/1999 Coll., on Residence of Aliens, as amended, or a criminal law), are fulfilled. Nevertheless, according to the European Charter on Human Rights a citizen has, in theory, the right to refuse to accept a given decision provided that he/she has strong and close family ties.

3.3.4. Preferential treatment of EU citizens

There is preferential treatment of EU citizens. This is shown in the design of a new „Euro-Amendment“ to the Act No. 326/1999 Coll., on Residence of Aliens in the territory of the Czech Republic. While until recently there have been no specific provisions dealing with members of the EU on migration, the new Amendment No. 217/2002 Coll. Filled this gap³⁶. For example, according to this new legislation, an EU citizen can be provided with a permanent residence permit if he/she applies for it: 1) after 3 years of continuous employment in the Czech Republic, 2) if he/she does business in the Czech Republic or, 3) he/she works for a statutory body of a company. Furthermore, other provisions facilitate gaining the status by making concessions on points 1) 2) and 3)) for pensioners, or persons suffering from an illness or injury, or persons who regularly (at least once a week) commute between the Czech Republic and another EU country (if those persons have previously stayed and worked in the Czech Republic for at least 3 years). The same permit can also easily be issued to family members of the applicant. A cancellation of the permit can take place only if a foreigner (a citizen of the EU) asks for it or he/she threatens the security of the state or seriously breaks the peace. In this regard the law grants fairly wide discretionary powers to the state.

There is a sort of a consensus throughout the whole nation that immigrants coming from the EU and settling in the Czech Republic are assets rather than any kind of burden. This feeling is slightly deteriorated by the perception of a discriminatory approach which is and will further be applied towards Czech citizens in many of the EU countries and on their labour markets even after the accession of the Czech Republic to the EU (see e.g. Free, 2002).

3.3.5. Equal treatment

Holders of a permanent residence permit in the Czech Republic enjoy more or less equal treatment with nationals in a wide range of areas, such as access to the labour market, social benefits, health care, education, recognition of qualifications, etc. There are only some areas where their position is not comparable to that of citizens: 1) army service, 2) participation in a political life, elections (to elect and to stand for a position) and 3) some professions in the state sector. A resolution of the Czech National Council (No. 2/1993 Coll.) defines the rights (and duties) of Czech citizens. For example, a citizen cannot establish a political party and movement. There are other differences following from this differentiation – for instance, when asking for a trade license a Czech does not have to have a representative since he simply speaks Czech.

3.3.6. Mobility of third country nationals

Generally, the migration of long-term resident third country nationals from EU countries to the Czech Republic would be seen positively by the state administration. An indication is the establishment of equal conditions for EU citizens (see above the so-called Euro-Amendments) in all spheres of life in the Czech Republic. A slight anxiety about this migration inflow among the Czech public may follow from „natural xenophobia“ (and the very limited experience of immigration), a lack of objective information about the process and fear that the country could be „sold out“ by more affluent members of the EU.

³⁶ Within this Act, some provisions can already be applied while others will come into play once the Czech Republic has entered the EU.

Chapter 4: Recommendations and open method of coordination

4.1. Open method of coordination

The Commission proposal for an open method of coordination in the immigration field envisages the adoption of guidelines. When harmonising immigration policies throughout the EU countries, these guidelines, containing the main goals, would become the pillars of individual national action plans. The Commission has proposed a first set of these guidelines stressing the following issues: 1) the management of migration flows, namely examining the linkages between different categories of migration flows; 2) carrying out information campaigns in third countries about the legal possibilities for admission; 3) reinforcing the fight against illegal immigration; 4) the admission of economic migrants in cooperation with countries of origin and within the framework of the employment strategy and 5) an integration of migration issues into relations with third countries (in particular the avoidance of brain drain and the promotion of return and circular migration).

Although the guidelines proposed by the Commission do, to some extent, reflect existing policy in the Czech Republic, they are not fully addressed by Czech policy at this point. Firstly, an in-depth understanding of the linkages between different categories of migration flows in the Czech Republic is still missing. There are some indication of such linkages, e.g. where “tourists”, asylum seekers and employed immigrants become illegal immigrants, asylum seekers become transit migrants, self-employed immigrants become quasi-legal (employed) immigrants, etc. However, the situation is more complex than has been captured by existing analyses.

The Czech Republic has been carrying out information campaigns in third countries about the legal possibilities for admission. This is done through state bodies (for example, the Ministry of Work and Social Affairs), NGOs (for example, within international aid programs) and international organizations (e.g. the IOM missions). The Ukraine and other post-Soviet countries are the principal target areas. Continuous efforts are made in the fight against illegal immigration (although not against quasi-legal immigration). However, these efforts concern primarily conceptual and legislative matters³⁷ rather than procedures themselves. For instance, there is clearly inadequate control of whether employment/self-employment is carried out in accordance with the law.

The admission of economic migrants in cooperation with countries of origin has already been put into practice (see, for example, the abovementioned international agreements). It is envisaged that this cooperation will be further strengthened within the proposed pilot program (the “Pilot Project for the Active Selection of Qualified Foreign Workers“ – see footnote 6) and, thus, also within framework of the designed employment strategy. The repatriation of immigrants has been supported by the state. Repatriation programmes among asylum seekers (before a decision has been taken) are supported and implemented in close cooperation with the IOM³⁸. So far the Czech Republic has preferred economic immigrants whose stay and operation in the country are based on annually renewable permits. However, a new tendency is emerging in parallel with existing regimes. The state now seeks to attract

³⁷ See, for example, Amendment No. 2/2002 (which came into force on February 1, 2002) to the Act on Asylum or the Amendment to the Act No. 1/1991 Coll., On Employment which is being drafted now.

³⁸ On the other hand, a programme of repatriation of Czech nationals, which was in operation during the 1990s, was stopped in June 2001 (Government Resolution of February 17, 2001, No. 120).

skilled and qualified would-be immigrants who will be guaranteed a more secure and permanent status easier and sooner than usual³⁹.

The last guideline stresses developing settlement programmes with an emphasis on language training and information about the host country culture and society. In this sphere the Czech Republic has a valuable (if short) experience and its activity in this field is fully comparable to many EU countries. On the whole, the Czech Republic would quickly be ready to join an open method of co-ordination in the area of immigration.

Two goals that may usefully be added to the proposed open method guidelines are both related to "monitoring" migration: First, to support harmonising migration statistics among European countries in terms of definitions, data collection, data processing, and a breakdown of data along with tabulation and publication. Second, to collaborate on carrying out sophisticated in-depth research on the advantages and disadvantages of immigration flows, especially on their impact upon economic, social, demographic and geographical structures.

Conclusion

The Czech Republic has very quickly become an immigration and transit country⁴⁰. Its migratory features are in many respects similar to the characteristic of western developed democracies (in terms of the numbers of migrants, patterns of migration and its relationship to other social and social-economic phenomena and migration policies and practices – Drbohlav, 2002). However, unlike in the western developed world, migration policies and practices are in an immature stage in the Czech Republic. After a „sleeping period“ the state became more active on migration issues in the late 1990⁴¹. Since then, approaches to migration policy have become more systematic, comprehensive and coherent. Czech legislation on migration almost fully corresponds to that proposed in the EU Directives. In terms of „reality in the field“, at least two pioneering programmes - the state integration program and the Pilot Project (although the latter has not been launched yet) - show the ability of government to handle the issue of migration.

On the other hand, the Czech migration regime still suffers from some important weaknesses. There are four main issues: first, the stated basic principles of migration policy are too general and do not say much about a „strategic vision“. Second, public debate on migration is very limited. Third, the state is struggling with the decentralisation of responsibilities and duties regarding immigrants and immigration. Fourth, the following 'migration paradoxes' have emerged: 1) although the law would sometimes allow more „favourable approaches“ towards foreigners, these are not implemented. The reason is that officers and clerks use the state's discretionary power almost exclusively in the most disadvantageous way for immigrants. Internal procedural rules set by individual ministries or state bodies may also play a role here. 2) The state has an almost „overcautious“ approach towards all migratory categories with the exception of the extraordinarily liberal regime on trade licenses.

³⁹ They would obtain a permanent residence permit after two and half years instead of the usual waiting period of 8 or 10 years (see The Pilot Project - Government Resolution No. 720 of July 10, 2002).

⁴⁰ The current number of foreign immigrants in the Czech Republic is estimated to be between 400,000 and 500,000 - including documented and undocumented, permanent and temporary immigrants (excluding, however, tourists, asylum seekers and transit migrants). In addition, the number of transit migrants might well reach levels between 100,000 and 140,000 (see more Drbohlav, forthcoming).

⁴¹ Importantly, at that time also the twin new Acts, No. 326/1999, Coll. - Act on the Stay of Aliens on the Territory of the Czech Republic and Act No. 325/1999 Coll., on Asylum entered into force in January 2000.

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