

# From the Right of Asylum to Migration Management: The Legal–Political Construction of ‘a Refugee’ in the Post-Communist Czech Republic

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## *Abstract*

International law defines refugees and their rights and the legal obligations of states that receive them. However, the actual formulation and implementation of asylum law are based on the politically and historically contingent constructions of the status of ‘refugee’ that are determined largely by nation states. This article analyses the legal–political construction of ‘refugee’ in the post-communist Czech Republic during and after its accession to the European Union. It examines the role of the state and the non-governmental sector and explains the gradual shift that took place towards treating asylum as a matter of migration management rather than a fundamental human right.

THIS ARTICLE EXAMINES THE POLITICS OF ASYLUM in the Czech Republic between 1990 and 2009 through an analysis of the changing legal–political construction of the status of ‘refugee’. It locates asylum legislation and policy implementation in the broader context of international law and other areas of national legislation regulating the position of foreigners in the country. The institution of asylum in the Czech Republic is discussed in a dynamic framework shaped not only by the political interests of various institutional actors, but also by the strategic actions of people who are, or strive to be, labelled as asylum seekers and refugees. More specifically, asylum has a potential to be used instrumentally by politicians, policy makers and migrants. Apart from examining the role of the state, the changing position of non-governmental organisations (NGOs) assisting migrants and asylum seekers is also discussed.<sup>1</sup> The article addresses the questions of how the changing conception of

<sup>1</sup>The analysis is based on fieldwork carried out between 2005 and 2007. It involved 29 semi-structured interviews with representatives of state administration responsible for asylum seekers and refugees under the Ministry of Interior of the Czech Republic: 11 respondents from *Odbor azylové a migrační politiky* (Department of Asylum and Migration Policy) and 18 respondents from *Správa uprchlických zařízení* (Refugee Facilities Administration). Furthermore, 13 representatives of five major local non-governmental organisations working with migrants and refugees were interviewed—*Berkat* (Berkat), *Centrum pro integraci cizinců* (Centre for Integration of Foreigners), *Poradna pro*

'refugee' shaped the development of Czech asylum legislation between 1990 and 2009, how some of the dramatic swings in asylum and immigration legislation and political discourse about refugees in the late 1990s can be explained, and what such swings imply for the future of the system of reception of refugees.

After a brief overview of the pre-1989 approach to refugees in Czechoslovakia, the article maps the evolution of the construction of 'refugee' in the 1990s. Next, the focus is on changes in asylum and immigration legislation in 1999 and their long-term effects on the asylum policy-making in the country. Migrants' reactions to these legislative changes are then examined together with the increasingly ambivalent position of NGOs in the asylum system. The article concludes with an assessment of the latest changes in the construction of 'refugee' following the accession of the Czech Republic to the EU in 2004, its joining the Schengen area in 2007 and the recent introduction of a resettlement programme for selected groups of refugees.

*Asylum as a political instrument on both sides of the Iron Curtain*

Asylum is a highly political issue. Despite being defined as the individual right of every person in the Universal Declaration of Human Rights,<sup>2</sup> many argue that actual asylum practice is more aptly described as reflecting state interests (Schuster 2002, 2003; Zolberg *et al.* 1986).

The economic and political functionality of asylum for the nation state was demonstrated during the Cold War when refugee policy often served foreign policy (Pupavac 2006; Zolberg *et al.* 1986). Many citizens of communist countries were not directly targeted or persecuted but fled in order to improve their economic conditions, and this could have excluded them from international protection under the 1951 (Geneva) Convention relating to the Status of Refugees if their cases had been considered on an individual basis.<sup>3</sup> However, Western governments chose to relax this restriction because the economic conditions prevalent in the Soviet Bloc were thought to be politically generated (Xenos 1996, p. 236). Emigration by refugees was seen as a way to weaken communist states in an ideological sense by allowing people to 'vote with their feet', as well as in a more material sense because it was thought the outflow

*uprchlíky* (Counselling Centre for Refugees), *Organizace pro pomoc uprchlíkům* (Organisation for Aid to Refugees) and *Sdružení občanů zabývajících se emigranty* (Society of Citizens Assisting Migrants)—together with two representatives of the Czech office of the United Nations High Commissioner for Refugees. In-depth interviews were conducted with 45 recognised refugees and asylum seekers from Armenia (13 respondents), Russian Federation/Chechnya (17 respondents) and Belarus (15 respondents). Refugees' ages ranged from 18 to 73; the group comprised of 26 women and 19 men representing all education levels and they resided in 10 different cities and towns of the Czech Republic at the time of the interview.

<sup>2</sup>Article 14 states that: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution'. The document is available at: <http://www.un.org/en/documents/udhr/>, last accessed 3 December 2010.

<sup>3</sup>On the other hand, it needs to be acknowledged that in Czechoslovakia and elsewhere it was illegal to leave the country without special permission, thus emigrants became possible targets of persecution by the very fact of their having emigrated. For the history of emigration from Czechoslovakia see Rychlík (2007).

of certain socio-economic groups would undermine the countries' economies (Zolberg *et al.* 1986, p. 155).

Countries on the other side of the Iron Curtain, such as Czechoslovakia, also used asylum as a political tool, though with incomparable results in terms of numbers of accepted refugees. Communist Czechoslovakia was not a signatory of the 1951 Geneva Convention but the concept of asylum was part of the Czechoslovak legal system. Refugees could be accepted on the basis of Constitutional Law (No. 100/1960, Art. 33), which stated that: 'The Czechoslovak Socialist Republic grants asylum to foreign citizens who are persecuted for defending the interests of the workers, for participating in liberation movements, for scientific or artistic activities or other actions in defence of peace'.<sup>4</sup> In practice acceptance of refugees was likely to be driven by *ad hoc* decisions, the preferences of the Communist Party leadership and instructions from Moscow. So far, only a few sources exist on refugees who were accepted in this period.<sup>5</sup> The definition above of 'a refugee' made the political dimension of asylum even more explicit. Thus, on both sides of the Cold War's bipolar geopolitics, people claiming refugee status were seen as a political means to demonstrate superiority and the wrongs of the enemy.

#### *Asylum as a ticket into the world of 'civilised' nations*

After the regime change in 1989, Central and Eastern European countries, eager to disassociate themselves from the communist past, sought to provide asylum in line with the international standards of Western liberal democracies. The first groups of post-1989 asylum seekers arrived in Czechoslovakia in the middle of 1990. They were mostly from Romania, Bulgaria and the Soviet Union (DAMP 2010), making use of relaxed border controls. Their reception was characterised by a legal and institutional void. By the time MPs gathered in a joint session of the Chamber of the People and the Chamber of the Nations, on the eve of the first anniversary of the so-called 'Velvet Revolution' in November 1990, to ratify the first Refugee Act (No. 498/1990), there were already almost 800 people in new rapidly established refugee camps (Czechoslovak Federal Assembly 1990).<sup>6</sup> Passing the Refugee Act was a first step towards establishing the foundation for the country's new asylum policy since it

<sup>4</sup>Czechoslovak Constitution of 1960, No. 100, Article 33, available (in Czech) at: [http://www.psp.cz/docs/texts/constitution\\_1960.html](http://www.psp.cz/docs/texts/constitution_1960.html), last accessed 3 December 2010.

<sup>5</sup>Greeks are the only large group of refugees settled in Czechoslovakia that are well documented in the literature (Botu & Konečný 2005; Otčenášek 2001). Between 1948 and 1950, Czechoslovakia responded to the civil war in Greece and accepted almost 14,000 Greek refugees whose evacuation to Central Europe was organised by Greek communist insurgents and coordinated from Moscow. The Greek refugees were resettled in borderland villages and towns 'emptied' by the post-war expulsion of Germans and were quickly incorporated into expanding local industries (Otčenášek 2001). Other groups of refugees came from Italy, Yugoslavia, Spain, the United States and France (Olšáková 2007) and also from Middle Eastern countries such as Iran (Zidek 2008). Most of them were members of local communist parties.

<sup>6</sup>It was symbolic that they were mostly placed in the former barracks that became free after the withdrawal of the Soviet Army, which was present in the country from the suppression of the Prague Spring in 1968 until 1991.

constituted a necessary precondition for the ratification of the 1951 Geneva Convention and its 1967 Protocol relating to the Status of Refugees.

There was a strong sense of obligation to create a legal and institutional framework for the reception of refugees within the newly established political elite, many of whom had actively engaged in dissident activities against the communist regime. There was a certain euphoria about receiving refugees. The majority of MPs saw the Refugee Act as a step into the club of free and 'civilised' countries and also as a way to symbolically 'pay back the debt' for those Czechoslovak citizens who were accepted as refugees in the West (Czechoslovak Federal Assembly 1990).<sup>7</sup>

Although some worries were raised about 'being swamped by two million people waiting to come' to Czechoslovakia (Czechoslovak Federal Assembly 1990), this fear was balanced by what proved to be the more realistic expectation that, due to its economic situation, the country was more likely to be a transit point than a destination. After the plenary, the law was almost unanimously ratified and the first Refugee Act came into force in January 1991. It laid out basic measures for the reception of refugees and, beyond the scope of the 1951 Geneva Convention,<sup>8</sup> it also allowed for granting refugee status based on human rights and humanitarian considerations. Thus, 'a refugee' was initially understood in a wider sense as someone in need of both protection and assistance.

When contrasted with the numbers granted refugee status after the mid-1990s, the period between 1991 and 1993 clearly demonstrated a more welcoming attitude on the part of the emerging Czechoslovak refugee system. People granted asylum in this three-year period represented 37% ( $N = 1,307$ ) of the total for the period up to the end of 2009 ( $N = 3,268$ ) (DAMP 2010) (see also Figure 1). Among the main recipients were people from Romania, the former Soviet Union and Vietnam (DAMP 2010).<sup>9</sup> A lawyer who was employed as one of the first asylum adjudicators in 1990 described the atmosphere of the first two years as follows: 'we had to look for all the information ourselves, that was a problem, but also partly the reason why the recognition rate was so high at that time. When there was a hint of doubt about their story, we decided in [the] claimants' favour'.<sup>10</sup> Such an attitude is in stark contrast to today's approach to asylum seekers in Europe, the starting point of which is fundamental mistrust (Monnier 1995; Rousseau *et al.* 2002; Shuman & Bohmer 2004).

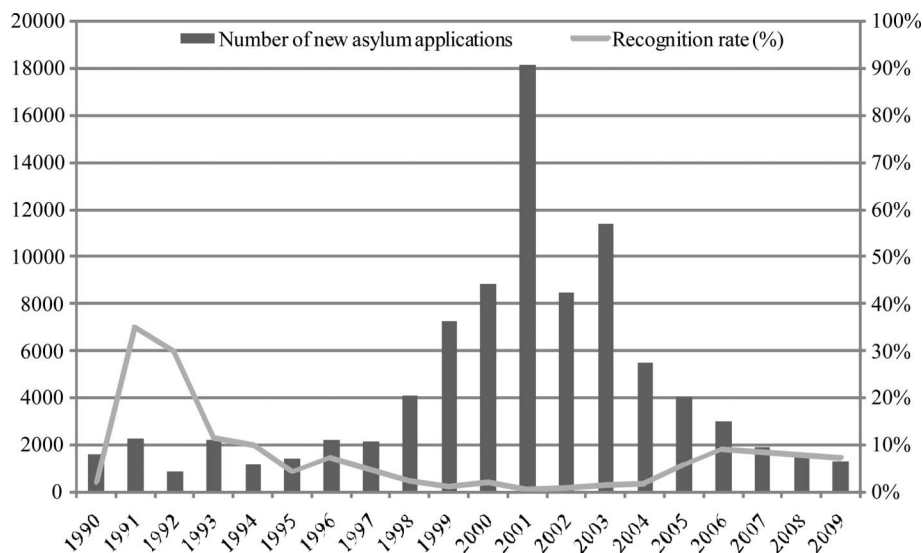
Thus the early 1990s—a period when Western European countries were already tightening up their asylum systems—could be characterised as a relatively generous period towards people claiming refugee status in Czechoslovakia. It was driven by a political and moral stance towards refugees who could be used as a demonstration of democratic standards and of the progress made by the post-communist state and it

<sup>7</sup>It is estimated that during the two biggest waves of emigration from Czechoslovakia (1948–1953 and 1968–1972) more than 170,000 people left the country (Vaculík 2002, pp. 28–34, cited in Baršová & Barša 2005, p. 211).

<sup>8</sup>These include race, religion, nationality, membership of a particular social group and political opinion.

<sup>9</sup>Moreover, a group of almost 5,000 refugees from the former Yugoslavia, mostly from Bosnia & Herzegovina, were granted temporary protection in 1992 and 1993 and aroused a wave of political and public support (Parliament of the Czech Republic 1996).

<sup>10</sup>Author's interview with Marcela Skalková, 11 January 2007, Prague.



*Note:* due to the lack of available data about the asylum procedure, the recognition rates for the period between 1990 and 1997 represent a proportion of asylums granted from the number of new asylum applications made. From 1998 onwards recognition rates are calculated as a proportion of asylums granted from all decisions made by DAMP in both instances.

*Source:* based on data from the Department of Asylum and Migration Policy (DAMP); compiled from statistics available at: <http://aplikace.mvcr.cz/archiv2008/statistiky/azyl.html> and <http://www.mvcr.cz/clanek/mezinarodni-ochrana-983545.aspx>, accessed 10 April 2010.

FIGURE 1. ASYLUM SEEKERS AND RECOGNITION RATES IN THE CZECH REPUBLIC, 1990–2009

thus played an important role in the process of building a new post-communist national identity.

However, a change in direction came soon after the dissolution of Czechoslovakia. After 1994, the asylum law allowed for quicker identification of those seen as not eligible for refugee status through the notion of ‘manifestly unfounded applications’, a criterion adopted from the legislation of EU member states. On the other hand, a number of improvements to the situation of recognised refugees were introduced into the asylum legislation. For example, it enabled the reunification of recognised refugees with their families in the Czech Republic and granted them access to the system of public health and social insurance.

At the same time, the Czech Republic came under pressure to conclude an agreement with Germany on the readmission of refugees who had travelled through the Czech Republic to reach Germany, as the German government was eager to turn back foreigners coming from the Czech Republic.<sup>11</sup> This readmission agreement

<sup>11</sup>Germany declared all states with which it shared borders to be ‘safe third countries’ and ‘safe countries of origin’ in an attempt to redistribute its asylum seekers elsewhere, mostly to Poland and the Czech Republic. This strategy was accompanied by an investment in training and equipment for Polish and Czech frontier guards operating along Germany’s borders (Schuster 2003, p. 262). Further financial support for strengthening border control came from the PHARE programme financed by the European Commission.

came into force in 1995. Thus the argument for receiving refugees as a symbolic reciprocation of previous assistance granted to Czechoslovak refugees by the Western countries was now replaced by a requirement to be a better neighbour, capable of policing its borders and integrating into European structures of migration control. Since the early 1990s, Central and Eastern European states have been unilaterally incorporated into policies that some have labelled ironically as 'passing the buck' (Lavenex 1998, p. 134). The Czech Republic thus came to be seen as part of a new 'buffer zone' holding back migrants unwanted in Western Europe (Wallace & Palyanistsya 1995, p. 89).

One of the arguments used to explain this change of direction was that the state authorities realised that many of the migrants who were granted asylum consequently used their refugee passports to leave the Czech Republic and head towards Western Europe. The argument that Czechoslovak and later Czech refugee status was not good enough for refugees was later repeatedly used as evidence that their claims were not genuine but motivated by economic reasons, a logic which has shaped Czech refugee policies thereafter.

*From labour migrants to asylum seekers: production of the asylum–migration nexus*

In 2000, a new Asylum Act (No. 325/1999) took effect.<sup>12</sup> It was driven by the need to deal with numerous deficiencies of the 1990 Refugee Act and pressure to harmonise national asylum legislation with the EU. This took place in the context of the ongoing supra-nationalisation of migration and asylum policy at the level of the EU inaugurated by the Amsterdam Treaty in 1997 and the Tampere European Council in 1999. The EU's role as a supranational bloc jointly working to control the mobility of migrants and asylum seekers within and beyond their territorial borders was strengthened by these processes (Leitner 1997, p. 124).

Among other changes, the new Asylum Act introduced the notions of 'safe country of origin' and 'safe third country'. These measures were initially designed by the EU member states to relieve their domestic asylum procedures by limiting access and applying the system of unique responsibility for processing asylum claims. In practice, they widened the group of applicants whose asylum claims could be rejected as 'manifestly unfounded' and processed in a shortened procedure with strict time limits for appeals.

Although the parliamentary debate about the new law referred to increasing misuse of the asylum system by foreigners who 'only seek an easy way to legalise their stay in the country',<sup>13</sup> a greater emphasis was also placed on formal justice in the proceedings. The new Asylum Act brought about some significant improvements in the rights of asylum seekers. For example, they were no longer required to stay in refugee camps for the whole time of the asylum procedure and could claim financial benefits when living in private accommodation. Moreover, the amendment of the Employment Act that

<sup>12</sup>Asylum Act No. 325/1999 Coll., available (in Czech) at: <http://www.sagit.cz/pages/sbirkatxt.asp?zdroj=sb99325&cd=76&typ=r>, last accessed 13 December 2010.

<sup>13</sup>The transcript of the debate in the Lower House of the Parliament is available (in Czech) at: <http://www.psp.cz/eknih/1998ps/stenprot/013schuz/s013411.htm#r1>, last accessed 14 September 2008.

coincided with the adoption of the Asylum Act allowed asylum seekers to work legally from the day they applied for asylum without any administrative obstacles.

The widening of asylum seekers' rights can be explained by the determination of the Social-Democratic government of the time to integrate into the structures of the EU, not only in terms of increased migration control, but also by improving the general conditions of the asylum procedure and bringing it in line with European standards.<sup>14</sup> The following statement from the governmental proclamation of 1998 indicated the need to move towards a more open and multicultural society that respected its humanitarian obligations:

Our future integration in the European Union will help Czech society to overcome some of the negative attitudes towards people who speak, look and live differently—maladies of every isolated community. This Government will do the maximum to make Czech society open to Europe and the world in the widest possible manner and transform it into a multicultural society. We will finish work on the new legislation concerning refugees and harmonise it with international norms. (Government of the Czech Republic 1998, p. 7)

If taken seriously however, this proclamation stands in striking contrast to the highly restrictive character of the new Alien Act (No. 326/1999),<sup>15</sup> which was proposed by the same government on the very same day as the Asylum Act. The Alien Act introduced a number of new measures in an attempt to increase control over the rising numbers of foreigners.<sup>16</sup> The justification presented to MPs was based on a one-sided portrayal of immigration as an uncontrolled security threat. One particular argument from the discussion in parliament about the law is worth quoting as a counterpart to the calls for more openness and multiculturalism:

<sup>14</sup>The then Minister of Labour and Social Affairs, Vladimír Špidla, who has been identified by some NGO informants as supporting the provision of the right to work, became the EU Commissioner for Employment, Social Affairs and Equal Opportunities in 2004 (interview with a lawyer from *Poradna pro uprchlíky* (Counselling Centre for Refugees), 16 January 2007, Prague).

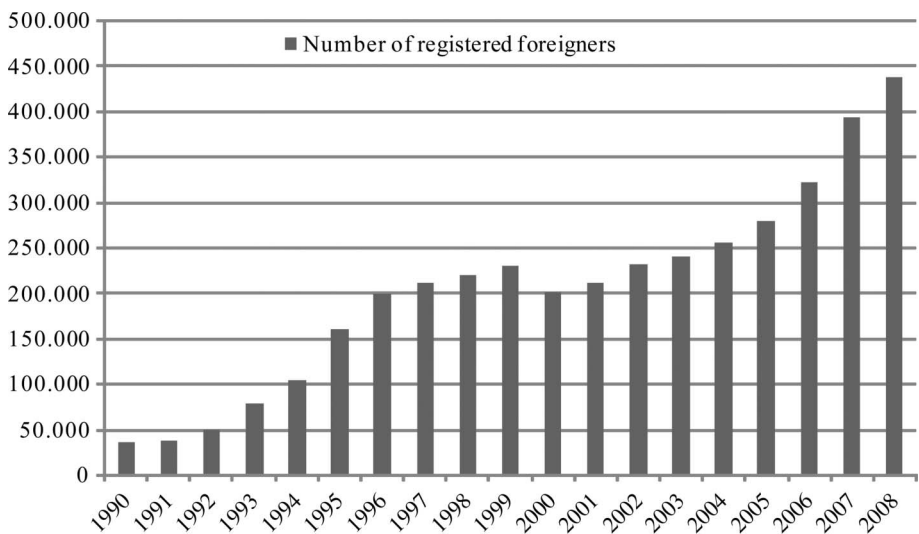
<sup>15</sup>Alien Act No. 326/1999 Coll., available (in Czech) at: <http://www.sagit.cz/pages/sbirkatxt.asp?zdroj=sb99326&cd=76&typ=r>, last accessed 13 December 2010.

<sup>16</sup>There were three main measures: first, the previous practice of switching from a temporary/tourist status into a long-term stay on Czech territory was abolished. From this point on migrants who came as tourists but found themselves a job and wanted to stay for longer had to apply for a long-term visa at a Czech consulate outside the country. Given the visa requirements of neighbouring countries and the fact that some foreigners no longer had valid passports, this proved impossible and led to their illegalised status. Importantly, this change also impacted on rejected asylum seekers who could no longer legalise their status through employment related residence without having to leave the country. Second, the financial costs of prolonging a residence permit increased significantly. Migrants had to demonstrate that they had large sums of money at their disposal and a proof of payment of health insurance. Unable to borrow these sums of money, many people found it impossible to sustain their legal residence. It also led to increased corruption and illicit practices that were generated by demands for short-term loans. Third, the Alien Act was published on 23 December 1999 and came into force on 1 January 2000, thus giving one week over the Christmas holiday period to both immigrants and relevant institutions to adapt to a vast array of changes. This led to profound confusion on both sides and consequently many foreigners missed various administrative deadlines and lost their legal residence (interview with a lawyer from *Poradna pro uprchlíky* (Counselling Centre for Refugees), 16 January 2007, Prague).

The Czech Republic, despite the increase in the number of foreigners, has not registered increased xenophobic attitudes among its population towards this group of citizens [i.e. foreigners]. However, based on the experiences of other states it can be concluded that a society is willing to absorb only a certain amount of a foreign element represented by immigrants. Once exceeded, it usually leads to a resistance on the part of society and calls for more regulation of the inflow of foreigners. (Parliament of the Czech Republic 1999)

As Figure 2 indicates, between 1993 and 1999 the number of registered foreign residents in the Czech Republic almost tripled from 77,000 to 228,000 (MI 2009). However, they still represented less than 2% of the population in 1999, which is much smaller than in more traditional countries of immigration whose supposedly negative experiences with absorption of immigrants were referred to in the above quote.<sup>17</sup>

The progressive changes in the Asylum Act outlined above could be presented by policy makers and politicians as an indicator of Czech society's movement towards greater openness and Europeanisation. However, these changes concerned a relatively small group of people (7,218 new applications were launched in 1999) and stood in contrast to the more restrictive character of the new Alien Act, which had changed the



Source: based on the data from the Czech Statistical Office; compiled from statistics available at: [http://www.czso.cz/csu/cizinci.nsf/kapitola/ciz\\_pocet\\_cizincu](http://www.czso.cz/csu/cizinci.nsf/kapitola/ciz_pocet_cizincu), accessed 10 April 2010.

FIGURE 2. FOREIGNERS WITH PERMANENT OR LONG-TERM RESIDENCE STATUS IN THE CZECH REPUBLIC, 1990–2008

<sup>17</sup>The restrictive and highly bureaucratised character of the new Alien Act was criticised by many NGOs (Burdová Hradečná 2005; Hronková *et al.* 2002), legal experts (Čížinský 2007; Uhl 2005) and in the 2000 Report on the State of Human Rights in the Czech Republic (Government Council for Human Rights 2001).



conditions of several tens of thousands of foreign residents; and put them into legal insecurity or deprived them of their legal status altogether.<sup>18</sup>

The effect of the law was immediate. In 2000 the number of residing immigrants fell by 12% (27,911 registered foreigners). It was the first decline since the beginning of the 1990s and the only one up until 2009 (MI 2009). An NGO lawyer described the situation of chaos which ensued in the early 2000s:

The new Alien Act created totally new conditions for the renewal of their [migrants'] long-term residence. They were often desperate; some were on the edge of breakdown. Imagine, some of them had been living here for seven or eight years. When they had come to the Alien Police to ask about these changes, the officers were not able to give them any advice because they themselves didn't know what was going on; there were too many changes. Moreover, migrants had to provide a number of new certificates from the authorities who had nevertheless no clue that they should provide them. Before these messages were communicated, their legal status usually had expired; they either slipped into illegality or claimed asylum.<sup>19</sup>

Following the introduction of the Alien Act a further measure in 2000 brought another major change that affected the lives of both present and future immigrants when visa-free entry was abolished for citizens of the Russian Federation, Ukraine, Belarus and Moldova. This change was mostly due to the pressure to unify Czech and EU visa policy in advance of Czech accession to the EU. However, there was concern that requiring visas would disrupt vital socio-economic and political ties with eastern neighbours and, in contrast to the policy adopted by the Czech Republic and Slovakia, Hungary and Poland only started requiring visas from Russians and Ukrainians shortly before accession in 2003 (Grabbe 2006, p. 168).

Many immigrants who had been made newly illegal did not apply for visas but moved into the asylum system. They were seeking asylum not so much from persecution in their home countries as from the immediate consequences of the harsh new immigration law that required expulsion and detention for those without visas. In order to obtain the status of a 'legal resident', migrants were prompted to pass as people of a certain category (Epps *et al.* 2005). Labour migrants' strategy of utilising the asylum procedure as a legalising mechanism illustrates how migrants' strategies adjust to changes in the content of legal categories. Such strategies can have long-lasting effects. The notion of 'refugee' has been redefined by migrants' actions and it had a significant influence on how asylum was to be perceived in the coming years.

As shown in Figure 1 above, the years 2000 and 2001 saw an unprecedented increase in the numbers of asylum seekers by more than 100%. This increase was particularly remarkable with regard to migrants from Ukraine, who had constituted one of the major groups of labour migrants coming to the Czech Republic since the mid-1990s. Whereas 94 Ukrainian nationals applied for asylum in 1999, 1,145 applied in 2000 and

<sup>18</sup>On the other hand, it should be noted that despite its overall restrictive character this law also enabled, for the first time, foreigners who did not have family relations to Czech citizens to obtain permanent residence in the country and thus also a future access to Czech citizenship (Baršová & Barša 2005, p. 224).

<sup>19</sup>Interview with a lawyer from *Poradna pro uprchlíky* (Counselling Centre for Refugees), 16 January 2007, Prague.

4,416 applied in 2001.<sup>20</sup> This was despite the fact that there was no major social or political change in Ukraine that could bring about such a significant increase in the number of people seeking protection.

Thus, claiming asylum has become an established strategy of labour migrants seeking a means to extend their stay in the country.<sup>21</sup> With the exception of 2003, which was marked by a large influx of asylum seekers from Chechnya, Ukrainian nationals remained on the top of the list until the end of 2009 (DAMP 2010). This represents an anomaly in comparison to other Visegrád countries where Ukrainians have never been a significant group of asylum seekers (UNHCR 2006, 2008a, 2008b).

The use of the asylum system by illegalised migrants or those in an insecure social or economic situation has been discussed widely in the Czech context. Topinka (2006, p. 80) explains the role of asylum as the only way out of the 'illegality trap':

There are not many opportunities to get back from the sphere of illegality. The fall [into illegality] is usually a definite one. One of the very few channels of mobility is to apply for asylum. Labour migrants make use of it usually when they are tired of the constant changing of exhausting jobs or when they get into some kind of danger.

Furthermore, the experience of being illegalised is gendered and particularly harsh for pregnant women or people in need of regular medical care. Thus, the health insurance provided within the asylum procedure may be an important incentive for an asylum application. As Jelínková (2008, p. 42) notes:

The current health system does not offer any feasible options for pregnant women without a residence permit, not even when they are able to pay market prices for the services. This situation compels pregnant women without legal residence to apply for asylum and thus secure approximately a year of legal residence with access to health care.

It can be argued that the Alien Act not only failed to fulfil the promise of increased control over immigration but the process of illegalisation of a large group of foreigners had exactly the opposite effect. Besides, it significantly widened the scope for corruption and increased the alienation of foreigners from the legal system that regulated their conditions of stay in the country (Uhl 2005). It was relatively easy to come, live and work in the country and the Alien Act of 1992 did not aim to curb, but rather to monitor, immigration flows (Baršová & Barša 2005, pp. 221–22). As a result, many potentially eligible candidates for asylum did not consider it necessary to apply for formal refugee status (Lavenex 2002; Wallace & Palyanistsya 1995). After the legislative changes of the Alien and Asylum Acts of 2000, the opposite trend started to dominate, that asylum was claimed by people ineligible for international protection.

This strategy has already been described by Drbohlav and Janská (2009, p. 145), who suggest that migrants simply misuse the system. However, this is not enough to enable us to understand the timing, the extent and the reasons for migrants' utilisation of the asylum procedure as a way of legalising their stay in the country. For that,

<sup>20</sup>After Ukrainians the most numerous were nationals of Moldova and Romania; the three groups topped the ranks of asylum seekers in 2001 and represented 48% of all applications that year (DAMP 2010).

<sup>21</sup>See also Drbohlav and Janská (2009).

asylum legislation has to be assessed as embedded in other institutions and legal frameworks. The fact that people who should, under normal circumstances, take the immigration route end up applying for asylum is the result of an interplay of factors. There was a tension between the restrictive regulation of migrants' residence and a strong demand for their cheap, unregulated labour that characterised the Czech labour market until the economic downturn of 2008. On the other hand, an inefficient and lengthy asylum procedure offered a temporary legal shelter.<sup>22</sup>

The notion of an asylum–migration nexus reflects international migrants' multiple motivations and the growing difficulty of distinguishing between forced and economic migration (Castles & Van Hear 2005). The nexus is manifested in 'mixed flows' of migrants and refugees who increasingly move alongside each other, often making use of the same irregular routes and people smugglers. These flows are seen to require new policy responses in destination countries (Castles *et al.* 2003), mostly aiming at curbing irregular movements of people. The analysis of the Czech case expands the understanding of this concept by showing that the nexus can itself be produced by migration and the asylum policies of destination countries. These policies made asylum the only available access point for those migrants who were filling local labour market demands.

#### *Asylum as a tool of migration management*

In response to the dramatic increase in the number of asylum seekers described above, restrictive changes to the Asylum Act followed in 2001. Many previously granted rights were swiftly taken away. For example, the financial subsidy for those in accommodation outside the refugee camps was reduced to three months only, which forced many asylum seekers to move from private accommodation back to the socially excluded refugee camps (Hronková *et al.* 2002). Also, the right to seek legal employment was revoked for the first year of the asylum procedure, and the opportunities for confinement of asylum seekers were widened by making it possible to carry out the asylum procedure in detention centres.

Although the amendments to the Act had many inconsistencies and were harshly criticised by a coalition of NGOs (Hronková *et al.* 2002), they were passed by parliament without any problems. The amendments had an immediate effect. Already in 2002, the number of new asylum applications decreased by 10,000 and within a year it returned to the 2000 level (DAMP 2010).<sup>23</sup> The decrease in numbers demonstrated to policy makers that they were now endowed with a newly realised power to curb the numbers of asylum seekers through *ad hoc* legislative changes. When speaking to the representatives of *Odbor azylové a migrační politiky* (Department of Asylum and Migration Policy, DAMP), I was repeatedly told the same story: both the 2001 increase in asylum applications and the subsequent fall were proof that the majority of asylum seekers simply abused the system and they withdrew as soon as the conditions

<sup>22</sup>It was estimated that in 2002 the median length of the asylum procedure was approximately two-and-a-half years (DAMP 2003).

<sup>23</sup>The most significant falls were recorded among nationals of Romania, Ukraine and Moldova, but significantly fewer asylum seekers from Armenia, India and Afghanistan applied in 2002.

for asylum seekers were made more 'uncomfortable'.<sup>24</sup> Thus the construction of asylum seekers as abusers of the system was reinforced. Although some of the restrictions were mitigated by later changes, the legislation of the early 2000s led towards further delegitimation of the institution of asylum.

At a rhetorical level, the policy makers acknowledged that mechanisms of the asylum system aimed at deterring immigrants should not be to the exclusion of people in need of protection. They seemed to have a clear idea of the needs and motives of these so-called genuine refugees. Repeatedly, DAMP officials described them as people who had lived through such horrors that they actually do not mind being unable to work for a long period of time or being confined in refugee camps as long as they and their families were safe from life-threatening conditions.<sup>25</sup> Yet again, the imperative of a grateful and humble refugee lurks behind these assumptions. When asked about possible negative impacts of the introduction of the year's ban on employment on these 'genuine refugees' the representative of the DAMP Asylum legislation section replied:

If someone comes to work here, then that person should seek an appropriate legal format, that is the work permit and the respective residence status, and should not go through the asylum procedure . . . If a person seeks protection from persecution then he or she seeks primarily this protection. It is also likely that such a person will be very stressed, if we are talking about a typical refugee who seeks protection.<sup>26</sup>

Refugees were thus conceived as suffering yet rational beings with a clearly structured hierarchy of needs that matched the existing legal categories of the Czech asylum system. If their actions did not conform to the existing legal and institutional framework they could be viewed as potential abusers undeserving of the state's protection.

#### *Undermining the asylum system from within: the position of NGOs*

The new legal framework of the Asylum and Alien legislation significantly affected the work of all NGOs assisting asylum seekers and other groups of migrants. In 2000, many NGOs became overwhelmed, first by desperate immigrants who were unable to prolong their legal residence permits due to the rapidly changing legal conditions, and second by migrants turned asylum seekers who needed assistance with appeals against the rejection of their asylum claims. Many NGO informants described this period as an extremely stressful and disenchanting time. They were well aware that some of the people who were seeking their assistance did not really have stories that would qualify them for asylum but they nevertheless felt obliged to assist them.<sup>27</sup>

<sup>24</sup>Interviews with representatives of *Odbor azylové a migrační politiky* (Department of Asylum and Migration Policy), 19 April 2006, 25 April 2006 and 10 May 2006, Prague.

<sup>25</sup>Interview with Milena Valešková, 10 May 2006, Prague; interview with Lucie Stárková, 24 April 2006, Prague.

<sup>26</sup>Interview with Milena Valešková, 10 May 2006, Prague.

<sup>27</sup>Interview with a lawyer from *Poradna pro uprchlíky* (Counselling Centre for Refugees), 16 January 2007, Prague; interview with a social worker from *Berkat* (Berkat), 27 April 2006, Prague.

Also, as a result of the pressures on them the NGO personnel were left with little time and energy to pursue more 'hopeful' asylum cases, to look for extra information on their countries of origin and carefully prepare their cases. As Figure 1 above indicates, the year 2001 saw the lowest proportion of asylums granted from all decisions made by DAMP in the history of the Czech asylum system: it dropped to 0.4% (representing the granting of asylum to 83 people). Thus, there was also little hope of positive outcomes even of the cases receiving support from NGOs. A social worker from *Berkat*, for example, recounted being on the edge of exhaustion because there was so much work and so little prospect for any tangible success.<sup>28</sup> Even though the NGOs saw themselves as representing contrasting values to the bureaucratic practices of the state institutions, in the context of increasing numbers and similarity of asylum cases, low rates of success and the lack of resources, the work of NGO workers had become more routine and less fulfilling.

Moreover, the broad understanding adopted by the NGOs of who their refugee clientele were, usually defined as people who were in trouble in their country of origin and who were therefore unable to return home, came under attack from DAMP:

DAMP was pushing all NGOs to cooperate and to engage in some sort of a pre-selection of asylum seekers. We were basically encouraged to exclude those who did not have asylum-relevant claims and thus leave them with no access to free counselling. In a way, they wanted us to decide who deserved help and who didn't. Some threats were voiced in connection with the financial support the NGOs were receiving from the state.<sup>29</sup>

In other words, DAMP attempted to use the NGOs for its own purposes and turn them into its own extended arm that would exclude some groups of asylum seekers from legal assistance and thus make them easier to reject. As NGOs have been more dependent on state funding since the early 2000s, some were weakened in their ability to provide effective and independent help to asylum seekers (Szczepanikova 2010).

#### *Towards the common European asylum system*

While the promise of EU accession pushed Central and Eastern European countries to adopt asylum legislative measures in line with international law and to gradually improve their reception conditions (Grabbe 2006), a less progressive side of harmonisation has included the adoption of lower standards on some issues than these countries adopted before. As noted above, in the case of the Czech Republic, a number of restrictive measures limiting access to asylum were adopted. Lavenex (2001, p. 868) has summarised the character of EU–Central and Eastern European cooperation in asylum policy-making as follows: 'The aim ... has not been to establish a common European asylum system, but to reduce immigration pressure and to compensate for the perceived losses of internal security in the wake of the full freedom of movement inside the Union'. Others have criticised the contradictions

<sup>28</sup>Interview with a social worker from *Berkat* (Berkat), 27 April 2006, Prague.

<sup>29</sup>Interview with a lawyer from *Poradna pro uprchlíky* (Counselling Centre for Refugees), 16 January 2007, Prague.

between Central and Eastern European countries' commitments stemming from the Geneva Convention and the human rights legislation of the Council of Europe on the one hand, and the actual outcomes of adopting the *acquis communautaire* on the other (Levy 1999).

After accession, EU regulations and directives became the main driving force for changes in Czech asylum legislation. Two further amendments of the Asylum Act in 2006 and 2007<sup>30</sup> were significant in making further changes in the definition of 'refugee'. The first amendment brought a major change by introducing the category of 'subsidiary protection' required by an EU Directive of 2004.<sup>31</sup> This lesser form of international protection could be granted alongside more stable and secure refugee status. Zetter (2007) argues that through this proliferation of less secure statuses governments tried to institutionalise the fragmentation of the refugee label. He claims that this has produced another impetus for asylum seekers 'to transform or subvert the labels imposed on them because of the constraints and burdens which these labels may produce' (p. 183). This is further confirmation of the cases discussed in this article, showing how labels such as 'asylum seeker' or 'refugee' can indeed be dramatically transformed over time both by policy makers and politicians and by the migrant people themselves.

The second amendment gained much attention and aroused significant discontent among the NGOs, the United Nations High Commissioner for Refugees (UNHCR) and some sections of the general public, but nevertheless, only a few minor adjustments were made in response to their criticisms. As a result, as of December 2007, asylum seekers in the Czech Republic can be deprived of freedom of movement for up to four months. Moreover, the conditions for the reception of asylum seekers at Prague International Airport have been tightened. The entry of people who declare their wish to apply for asylum in the transit zone of any international airport in the Czech Republic can be rejected and they can be regarded as never having entered Czech territory.<sup>32</sup> This makes them easily deportable and strips them of the right to claim asylum altogether. Such a measure is not unique to the Czech context. Various forms of retention spaces have been built into an increasing number of international airports all over the EU.

<sup>30</sup>Amendment No. 165/2006 Coll. of the Asylum Act, available (in Czech) at: <http://www.sagit.cz/pages/sbirkatxt.asp?zdroj=sb06165&cd=76&typ=r>, last accessed 15 December 2010; Amendment No. 379/2007 Coll. of the Asylum and the Alien Acts, available (in Czech) at: <http://www.sagit.cz/pages/sbirkatxt.asp?cd=76&typ=r&zdroj=sb07379>, last accessed 15 December 2010.

<sup>31</sup>Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (*Official Journal L 304*, 30/09/2004 p. 0012–0023, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML>, last accessed 15 December 2010).

<sup>32</sup>Given that the Czech Republic is surrounded only by other EU countries, landing by plane becomes an increasingly important means to apply for asylum. If asylum seekers enter the country by land, they risk being transferred back to the country they crossed which can be found responsible for their asylum claim based on the Dublin II Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003). This established the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national.

As these developments signify, further integration of the Czech asylum system into that of the EU has brought about a drastically reduced notion of what being a 'refugee' stands for. Although the existence of subsidiary protection can potentially increase the number of people receiving some form of protection, it also turns the category of asylum, with its relative legal security, into an even more exclusive commodity that can only be reached by a small minority. Furthermore, the opportunity to claim asylum has been reduced because it has become significantly more difficult for potential asylum seekers to actually gain access to Czech territory. It is therefore no wonder that since 2004 the number of new asylum applications has been steadily decreasing, culminating at 1,258 in 2009 (DAMP 2010).

This decrease in numbers of applications has served as evidence in support of an argument in favour of the Czech Republic's stronger engagement in refugee resettlement (DAMP 2009). The idea of resettlement is to accept refugees who were granted asylum by the UNHCR but reside in countries which are not seen as capable of providing a durable protection to them.<sup>33</sup> It marks a programmatic shift towards the acceptance of preselected refugee groups in a wider context of conditions that make it ever more difficult for the majority of refugees to claim asylum in a destination country of their choice.

The Czech Republic started a pilot resettlement programme in 2005 with a small group of Uzbek refugees from Kyrgyzstan. They were followed by three families of refugees from Cuba in 2007 whose resettlement was directly requested by the United States' administration. In 2008, a general conception of resettlement was formulated by the government and 23 Burmese refugees from Malaysia were designated as the next group to be resettled in the Czech Republic (DAMP 2009).

The Resettlement Conception clearly indicates that the programme is designed in accordance with the logic of migration management, controllable by the state for the alleged benefit of all involved parties. Even though this programme has been promoted by the EU and hailed by the UNHCR, which has long tried to convince the Czech government to participate, there are few guarantees that it will represent a more sustained effort, rather than a gesture that helps the Czech Republic to 'strengthen its reputation as the country that subscribes to solving global refugee problems, not only on the national but also at the international scale' (DAMP 2008, p. 4). As contrast to other countries that resettle refugees, there is no quota set by the Czech Republic. The whole programme, including its timing and the number of resettled refugees, is decided *ad hoc* by the Minister of Interior of the Czech Republic. The conception openly states that the foreign policy priorities of the Czech Republic will be among the key criteria for selecting the refugees. Such criteria also include refugees' 'integration potential' which is defined as their 'preconditions and willingness to integrate into Czech society' (DAMP 2008, p. 6). This represents another shift in the construction of 'a refugee'. Similar to the time of the Cold War, the logic of migration management favours refugees whose profiles fit the country's political interests but who can also

<sup>33</sup>Resettlement has long been promoted by the UNHCR as one of the 'durable solutions' to refugee situations (UNHCR 2004, p. 1). Since 2003 it has gained prominence also at the level of the EU. Also, the new member states were asked to join in and start organising their own resettlement programmes.

demonstrate the readiness to fit into the Czech society. Moreover, the resettlement programme facilitates differentiation between (obviously genuine) resettled refugees and (obviously bogus and potentially criminalised) refugees seeking to enter the EU without the required documents. Such differentiation delegitimises asylum seekers who come spontaneously rather than as part of any government programme. This group still represents the vast majority of refugees entering the EU.

### *Conclusions*

In the 20 years since the collapse of the communist regime, the legal–political construction of ‘a refugee’ in the Czech Republic has shifted from an element in defining the country’s political identity and affiliation with the world of ‘civilised’ nations into an instrument of migration management and control. This process has been facilitated by the country’s integration into the EU, but has not been entirely determined by it. As I have shown, it has also had a number of more indigenous features that have revealed asylum’s potential to be instrumentalised by different actors of the asylum system. The article has aimed to demonstrate that the changes in the asylum system and the legal–political construction of ‘a refugee’ cannot be understood in isolation from the context of both the supranational and national policy developments regarding foreigners in a wider sense.

The Czech Republic’s engagement in the resettlement programme indicates the most recent example of a dangerous convergence between the logic of migration management and humanitarian principles of asylum. Refugees whose neediness is pre-approved by international humanitarian agencies, and among whom those seen as fittest for integration can be selected by the representatives of the Czech state, are the preferred group, as opposed to those who come spontaneously in a manner that is hard for the authorities to control. Moreover, the resettlement programme also makes sure that only refugees from countries whose designation as human rights abusers is in line with the political interests of the receiving country will be granted international protection. Such a narrow understanding of ‘a refugee’ is far removed from asylum as a fundamental human right.

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