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Trends in the Development of Immigration and Integration Policies in the EU and the CR

The fact that the Czech Republic, while still in Czechoslovakia, was a country of emigration rather than immigration, is very well known. Therefore this period is not so relevant for our main subject. However, it is important to mention two things:

firstly that before the Second World War during the First Republic (1918-1938), the society which was functioning in that period was a shining example of a truly multicultural society consisting of numerous nations and communities speaking their native languages. In the same period the Czech lands were flourishing not only culturally, benefiting from a variety of nations, but also economically. Although I do not intend to overestimate the benefit of multicultural environment of the First Republic, I cannot overlook the fact that this was one of the key elements for overall prosperity. This period was brutally destroyed by the German policy before and especially during the Second World War, with consequences stretching directly into another totalitarian regime, namely that of communism. Although the relation between communism as ideology stressing international dimension of workers' solidarity, and nationalism as ideology, which communist regimes often implemented, is rather complicated, we may say that the Czech lands became rather homogenous nationally due to the forced exodus of the German population preceded by mass extermination of Jewish population. At the same time the communist regime in Czechoslovakia was under the brutal control of the Soviet regime and therefore issues of multiculturalism were not on the agenda apart from brotherhood of socialist countries abused by ruling communist elites.

Secondly, during the totalitarian Communist Party regime, there was a constant outflow of people forced to escape. Although some dissidents were forced to leave, others risked their lives to do so. If successful, their national citizenship was revoked, their property confiscated, their families under scrutiny and family contacts forbidden. Such people became asylum-seekers in capitalist countries. As I mentioned, asylum as institution was introduced as a measure to combat consequences of the Second World War, which turned population into refugees within Europe, later became an instrument of the cold war battle for supremacy only now to become an instrument of solving the poverty and violence problems for asylum-seekers (due to the above mentioned restrictions of labor migration).

Nowadays, the asylum policy cannot be understood out of the context of the labor policy. In the period of communism though, Czech and other Warsaw Pact asylum-seekers were relatively smoothly recognized as refugees because this was seen as a form of "voting by feet" phenomenon proving supremacy of capitalism over communism. Regardless of this ideological context, the fact remains that some Czechs had first-hand experience of how complicated and vulnerable the position of refugees could be and how complicated and sometimes absurd the procedure of proving the cause of refuge might be.

Nevertheless, these two facts, namely that Czechs were involved in a flourishing multicultural society, which was destroyed externally and that they until recently were in the position of asylum-seekers, seems to have been covered by oblivion when it comes to Czech policy towards immigrants, asylum-seekers and refugees. After the Velvet Revolution in 1989, the Czech Republic underwent transformation from a transit into increasingly target country for immigrants and asylum-seekers together with steady transformation into an EU country in the period when the individual EU countries started implementing highly restrictive approach toward the issues of asylum and migration, which led some NGOs and political analysts to call this process the formation of fortress Europe.¹ Strengthening of democracy together with economic growth and benefits coming from EU membership opened the process of transformation from a transit into a target country of migration.

However, all branches of migration, namely labor, asylum and irregular migration need to be treated specifically for some of their features in the post-communist countries generally and in the Czech Republic more specifically differ considerably when compared to old EU-countries, which among other things, have a much longer record of immigration. The most striking differences related to asylum policy is that shortly after the Velvet Revolution (but excluding the initial period of the early nineties) a very strict policy of asylum recognition was introduced resulting in one of the lowest percentages of recognition of the refugee status.

If we want to draw a conclusion that the only reason for such outcome lies in the hostility of the Czech policy towards asylum-seekers, this would be a wrong conclusion. This is just one aspect of the outcome – the other one is that the countries of origin, from which most asylum-seekers come are the countries whose citizens would be highly unlikely to gain asylum in other countries, in which percentage of successful asylum-seekers is higher. The following tables show that composition of asylum applicants in the CR consist of countries that are usually not taken as countries with gross violation of human rights (although it is necessary to apply case-by-case approach to asylum proceedings) and that origin of asylum seekers by region is dominated by the European countries. We even find Slovakia very high on the scale and Ukraine dominating the table:

Table 1: Region of origin of asylum applicants in the Czech Republic 1990 – July 2007

Region of origin	Number of asylum applicants
Europe	47 585
Asia	33 031
Africa	3 735

Source: Author based data by the Czech Statistical Office at:

[http://www.czso.cz/csu/cizinci.nsf/t/6B005C8E32/\\$File/c03s11t.pdf](http://www.czso.cz/csu/cizinci.nsf/t/6B005C8E32/$File/c03s11t.pdf) (retrieved 6 October 2007)

¹ The term was originally used as a part of Nazi strategy in defense against Allied Forces invasion, also called the Atlantic Wall. Obviously, the context and the meaning changed and are now attached to EU measures to stop migration, which have been so far unsuccessful.

Table 2: Asylum applicants by countries of in the Czech Republic 1990 – July 2007

Country of origin	Number of asylum applicants
Ukraine	13 038
Russia	9 388
Romania	6 021
Afghanistan	5 868
Bulgaria	5 398
Vietnam	4 648
Moldova	4 553
India	4 142
Slovakia	3 923
Armenia	3 320
China	2 896
Georgia	2 829
Iraq	2 149
Belarus	2 024
Total	67 507
Others	17 857

Source: Author based on table by the Czech Statistical Office at:

[http://www.czso.cz/csu/cizinci.nsf/t/6B005C8E32/\\$File/c03s11t.pdf](http://www.czso.cz/csu/cizinci.nsf/t/6B005C8E32/$File/c03s11t.pdf) (retrieved 6 October 2007)

Table 3. Top nine countries of origin of asylum applicants in EU-27 and the CR in 2006

EU- 27	CR
Iraq	Ukraine
Russia	Egypt
Serbia and Montenegro	Kazakhstan
Afghanistan	Belarus

Turkey	Russia
Iran	Vietnam
Pakistan	China
Bangladesh	Nigeria
Somalia	Mongolia

Source: Author based on data by the Czech Statistical Office and EUROSTAT (see footnote for more detailed sources)²

I will address this issue further, when it comes to policy analysis. The most striking difference between post-communist countries and old EU countries, however, lies in the priorities in the field of minority treatment. While the old EU countries push to the top of agenda issues of asylum, immigration and integration, the problem troubling the post-communist countries is represented by treatment of national minorities (e.g. Roma in the CR) or relation to neighboring countries, even in such nationally homogenous countries such as Poland. On the other hand there is a striking similarity in structure and range of problems when applied to a different minority with quite a different status. The similarities lie in seeing members of national minorities and immigrant communities as either not being able to integrate or not investing enough effort to do so; another similarity is that both groups are seen as a burden to social benefits system, although this discussion is meaningful only in the case of asylum-seekers and refugees not in the case of immigrants, who contribute through tax system to the state budgets to a degree comparable to the one expected from the citizens. Furthermore, both minority groups are seen as problematic in the context of education, employability and both groups attract a lot of attention and sources within civil society organizations and are seen as vulnerable and marginalized groups.

In case of immigrant groups (here taken together as asylum-seekers, refugees, irregular migrants and immigrants i.e. persons with some type of legal residence in a given country) though what is often quoted as an obstacle for integration is a cultural shock coming from a sudden and sometimes very deep change of societal setting, which is difficult to adjust to. Another cited obstacle is that for above mentioned reason they often cannot acculturate because they do not have or do not want to have necessary survival and orientation skills in the host society. This is of course very disputable when applied to the second or third generation migrants but is also used as argument for their integration because they are seen as consciously rejecting values of the host society. Most political instruments therefore are used to tackle this issue. But can they be used in case of national minorities?

It can hardly be said that Roma, as the sensitive minority in the Czech Republic, are unable to understand how things work in the Czech society, that they undergo a cultural shock and need adjustment to the Czech society – especially considering the fact that the majority of them were born as citizens into a Czech speaking environment and they can be expected to function well within the

² The Czech Statistical Office data at: [http://www.czso.cz/csu/cizinci.nsf/t/6B005C8E32/\\$File/c03s11t.pdf](http://www.czso.cz/csu/cizinci.nsf/t/6B005C8E32/$File/c03s11t.pdf) (retrieved 6 October 2007) and EUROSTAT data at: http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-07-110/EN/KS-SF-07-110-EN.PDF (retrieved 6 October 2007), p. 5.

given societal setting, because it is theirs, too. So, various integration tests³, which became very popular in recent years in the old EU countries as well as integration courses would be seen as insulting and unnecessary from the point of view of Roma minority and the same goes for the Hungarian minority in Slovakia. We should bear in mind this priority settings, when analyzing immigration and integration policies, which are either relevant in a different way in Central Europe or sometimes have different meanings and goals than those set by the European Union.

For the subject of immigration and integration policies, which can be set as to how EU and individual Member States relate to the so called third country nationals (TCN) which also involves the question of whether and to what degree such policies are multicultural (in terms of taking into account and implementing recognition, equal treatment and fair redistribution), it is relevant to understand that European countries developed as nation-states throughout their recent history. The question of congruence of territory and nation(s) triggered more than one war in Europe, including the recent wars in the Balkans. In this context it is possible to regard European Union as a project of overcoming national states formation for the purpose of the creation of a broader **institutionalized** field for cooperation among the Member States.

Indeed, EU was created to ensure free flow of goods, services, capital and people. For this purpose it was necessary to create an institutionalized frame in which this free flow was possible and that also meant increase and transmission of competencies from national to supranational level of the EU. This process is regarded by Europeans as sometimes too slow or too fast but it is a process, which is proceeding steadily, with setbacks (as in the case of Constitution) and a lot of disputes, but still going remarkably well, considering its time span and depth of the nation-state concept in European history and politics.

Classical or Westphalian concept of state sovereignty coupled with the idea of the nation-state has been challenged not only from the perspective of the EU but also from other international factors and processes. National legislations are increasingly being changed under the influence of international obligation coming from memberships in various international organizations, such as the International Monetary Fund, World Trade Agreement, etc. The processes, which cannot be left exclusively to the national states are in particular: fiscal responsibility (involving economic field and obligations for the trade became global); security (necessary cooperation among states to tackle the international character of current security threats); and last and most controversial human rights agenda. The latest process is not as obvious as the previous two, nevertheless for better or for worse, international or other power interventions into domestic affairs (if decided they clash with human rights) have become much more likely than before. The United Nations or NATO increasingly interfere with solving the human rights crisis and sometimes end up complicating them even more.

On the other hand, as I mentioned when writing about toleration regimes, it is possible to regard the European Union as “a second degree nation state”, with all structural features of nation states but

³ Integration test were originally introduced by the Netherlands only to become popular in the UK, France, Germany and some other countries. Experiments on two occasions with ERASMUS students within my course Introduction in Multiculturalism showed that although the respondents were majority members (parents Dutch and German, students born in the Netherlands and Germany), they were unable to pass the test. The Dutch integration test furthermore implies that homosexual rights and female nudity are among the core values in the Netherlands. The excerpts of the UK test, which can be found at: http://www.uktestonline.co.uk/sample_test.php (retrieved 5 October 2007) seem to be more appropriate in what they try to find out by testing.

with members from individual countries. In such case obviously the “nation” would be the Europeans (i.e. citizens of respective Member States) and the non-nationals would be third country nationals.⁴ For the nation states, it was typical that they categorized people into majority and minority members, where majority basically defined regimes of toleration for minorities. Therefore, on the one hand we still see even within the EU individual states behaving and acting as nation states (e.g. in case of attitude towards the war in Iraq) and at the same time we notice the national strategy of the EU towards third country nationals.

In case of immigration, integration and citizenship policy, there is a strong tendency (apart from some aspects of asylum policy) on the part of Member States to insist on keeping agenda of these policies within competencies of individual states as much as possible. This leads to very slow harmonization and sometimes even to absence of harmonization of policy in this field. Nevertheless, some institutional framework has been created as well as multi-annual programs and fundamental documents and statements. I will now turn to analysis of the development of discourse and institutional frame within which EU immigration and integration policies were developed.

Neither Treaty establishing the European Coal and Steel Community (1951) nor subsequent Treaty establishing the European Atomic Energy Community (1957) or the Treaty establishing the European Economic Community (1957) tackle issues of external migration (as opposed to internal migration and integration of Member States into European Union itself). When finally some of its aspects started being incorporated into EU agenda, there were already some initiatives developed such as the creation of the TREVI platform. It is worth noticing that from the very beginning the issue of external migration was closely related to the discourse of security and irregular migration attracted primary attention of policy makers. No wonder then that initiatives related to immigration were always relegated to the domain of justice and home affairs and cooperation of Member States in criminal and other matters.

The TREVI group and later the TREVI platform were founded on the initiative of the Netherlands in 1975 in Rome. It was an informal and intergovernmental European platform, which had no formal links to the European Community. However, in 1984 the platform was re-structured and from that period national ministers of immigration, justice and home affairs of the member states started meeting once in every six months to discuss specific issues such as customs, cooperation and free movement of people. At the same time this was the group which was supposed to deal with the issues of terrorism and internal security. In 1985 the platform agenda was expanded to illegal immigration and organized crime.

The TREVI platform is especially important because within its working group for immigration it negotiated conditions for convention to later become famous under the name the Dublin Convention.⁵ Based on the TREVI platform report the document was created and signed by twelve countries on 15 July 1990⁶. Although we find the origin of the Dublin Convention in this year it came into force seven years later. The Convention may be the most important document regulating

⁴ It might be of some interest to note the linguistic difference between EU **citizens** and third-country **nationals**. I am using Member States written in capital letters in order to follow EU official spelling.

⁵ Full name of the Convention is: Convention Determining the State Responsible for Examining Application for Asylum Lodged in one of the Member States of the European Community.

⁶ The countries were: Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, The Netherlands, Portugal and Great Britain.

common European asylum policy and since its introduction it became the target of criticism of many civil society organizations throughout the EU mainly for its inconsiderate procedures related to detention of asylum seekers waiting to be transferred to another EU country according to the Convention. The original intention of the Convention was to harmonize EU asylum policy and reduce the phenomenon of what became known under the name “asylum tourism”, where often desperate asylum seekers filed applications in one EU country after another in order to succeed in the country with a “softer” asylum regime. In such countries (e.g. Germany in the early nineties) the number of asylum seekers was on increase and the period which they had to spend in reception centers prolonged because of the time necessary to assess huge number of applications. The key provision of the Convention is that it states which country is responsible to take asylum seekers into asylum procedure. This responsibility is defined in the following order of priority:

- The first country obliged to take an asylum applicant into the procedure is the one in which the applicant has a close relative who is already a recognized refugee.⁷
- If no such family relation exists, then the country obliged to take an applicant into procedure is the one whose visa or residence permit s/he holds
- If an applicant entered the country illegally, the country responsible for asylum is the country of entry.

In 2003 the Dublin Convention was transformed into the EU Directive.

Further step in the development of migration policy can be indirectly understood as a consequence of the Schengen Agreement, which on the one hand opened space for implementation of one of the core principles of the EU (freedom of movement of people) but on the other, it enforced restrictive and much more expanded control of the external borders. Since the Schengen started to function in 1995, the external borders changed many times depending on how individual countries joined the Schengen or the EU. One aspect of these joint efforts to control and restrict migration was the introduction of common visa policy for the third country nationals. Also all international airports and sea or river ports were obliged to provide separate space for Schengen and non-Schengen passengers. One of the more liberal consequences of the Schengen regime was that obtaining visa in one country enables persons to travel around other Schengen states. The system of control of data was also created and now expanded because of the latest Schengen expansion.

We will find the migration policy (including all its aspects related to asylum, refugee, labor, family reunion of formation and irregular migration) spread in competencies of the so-called second and third pillar of the EU agendas, which means that the policy is still predominantly in competencies of intergovernmental decisions. The aspects of this, which opens space for the unified approach governed by the relevant directives, are strikingly more related to asylum than to immigration. It seems that at the EU level countries see as priority to govern and regulate asylum migration rather than focus on labor or family unification migration.

In the latter case, this source of migration became crucial for some countries such as France. That is why we increasingly see efforts to restrict possibilities of family unification and formation by putting limits on the age of the future spouse from a non-EU country (e.g. Denmark); by requirements of

⁷ Close relatives are: children under 18 and parents of asylum applicants.

education level or economic sustainability of the future spouse (e.g. France) or by extending the period in which the spouse is not entitled to the rights in the EU country (e.g. the Czech Republic).

One of the most important topics related to immigration policy, which increasingly affects agenda of civil society organizations (often against their basic orientation and values) is the readmission and repatriation policy. This opened a whole new range of issues: bilateral agreements with countries of origin, standards and stimulations for voluntary return and standard for involuntary return of asylum seekers and irregular migrants. Two topics turned out to be particularly sensitive: one being locating reception centers for asylum seekers outside the EU territory;⁸ the other represented the consequences of readmission policy for the countries of origin of returnees. For example in case of Accession Agreement negotiations with Serbia this was set as a priority of the EU negotiators. In this case the receiving country (if we now leave aside the controversy of returning Kosovo Albanians to Serbia prior to the time of the Kosovo independence) there are no financial means, competent staff or facilities for accommodation and integration of such people.

Labor migration is regulated in the area of high-skilled workers recruitment using the green cards system. But compared to financial and institutional means invested in restricting and stopping migration and repatriation of irregular migrants or those to whom asylum was denied, recruitment within labor migration is still a tiny fraction of migration policy as such. In the Czech Republic, the Ministry of Labor and Social Affairs launched a pilot project of recruitment of workers from selected foreign countries. The main idea was to fill in the gaps on the labor market and enable migrants and their families within such program to obtain residence in a shorter period than usual. It turned out that the program worked more as substitute for the imperfect policy related to residence of foreigners in the CR because most people who applied under this program were foreigners already living in the CR but failing to meet rather strict regulations of the Act on Residence of Aliens. It just shows how migration must be tackled from many angles and that migration policy must be multilayered because phenomena of various types of migration cannot be treated separately.

The European Council in Tampere in 1999 represented a further step in unifying approach this time towards integration. The basic idea of the policy is to ensure just treatment of the third country nationals by recognizing their rights along the same lines as rights used by the EU citizens. The rights should be given already within the long-term residence regime and should include right to education, employment, entrepreneurship and health care. This all based on respect of principle of non-discrimination. The right of citizenship should be accessible under similar conditions throughout the EU. Currently, countries combine principles of *ius sanguinis* (citizenship based on blood relationship to a person who is already a citizen of a given country) and *ius soli* (citizenship based on place of birth). As I already mentioned one of the sensitive issues is family reunion of formation, because in some countries, such as France, this has become the main source of migration.

⁸ Possibly in North Africa or in Albania – this was originally British proposal and it sparked a very intense debate over a range of issues such as: keeping human rights standards, influence on the mentioned countries, corruption and essential abolishment of institute of asylum. Nevertheless, this issue found its way into the Hague Program, where it was recommended to assess what would be the benefits and detriments of such a policy.

Integration policy was again stressed at the EU Summit in Thessaloniki in 2003 where goals were expanded to include cultural and social life and further education especially in the field of language education. The Summit negotiations resulted in request to the European Commission to annually report on migration and integration in the EU. For this purpose European Integration Fund was established within the program Solidarity and Migration Flows Management in the period from 2007-2015.⁹ The Commission also adopted “Common Basic Principles for Integration of Migrants”, which accepts migration as permanent phenomenon in Europe and promotes its positive side. The Principles stressed the necessity for migrants to adopt democratic values and gain knowledge of local history and culture. Like in some other documents political participation was explicitly mentioned as channel for integration. Although this idea is rather often mentioned in relation to integration, it is important to stress that countries are reluctant to use it unless political participation concerns citizens with migrant background. In case of residents, some countries such as Czech Republic or Austria have barriers in their Constitutions for the inclusion of residents into the political process of voting.

Although the issues of immigration and integration are spread throughout EU agenda from the Maastricht (1993) to Amsterdam Treaty (1999) the most significant change lies in shifting the agenda of immigration and integration from the third pillar (when the agenda was included into the Cooperation in the realm of justice) to the first pillar which ensured that EU could adopt legally binding documents in this field. In the Amsterdam Treaty we find this agenda in the Title IV under the title “Visa, asylum and migration policy and other policies concerning free movement of persons”.¹⁰ Further in the Treaty we find requirement to establish common regulations concerning freedom of movement of third-country nationals within the Member States.

On 1 September 2005 the European Commission adopted Communication of the Commission to the Council, the European Parliament, The European Economic and Social Committee and the Committee of the Regions under the name: A Common Agenda for Integration of Third-Country Nationals in the European Union.¹¹ The Communication states that the integration of the third-country national living and working in the EU has gained increasing importance on the European agenda in recent years. Following the request of the Justice and Home Affairs (JHA) Council in 2002 to establish National Contact Points on integration, the European Council in June 2003 confirmed that mandate and invited the Commission to present Annual Reports on Migration and Integration. In November 2004, the first edition of a Handbook on Integration for Policymakers and Practitioners was published. The Hague Program is also explicitly mentioned in the Communication and also that the JHA Council of 19 November 2004 adopted Common Basic Principle for integration of the third-country nationals. The Commission also published a Green Paper on the EU approach to managing economic migration, underlining that admission measures must be accompanied by strong integration policies.

⁹ Financial means for the Fund were stated at 1.771 billion EUR.

¹⁰ Title IV of the Amsterdam Treaty encompasses free movement of persons; checks at external borders; asylum, immigration and protection for the rights of nationals of non-member countries and judicial cooperation in criminal matters. (Amsterdam Treaty, available at: <http://europa.eu/scadplus/leg/en/lvb/a11000.htm#a11003> (retrieved 9 December 2007))

¹¹ Available at: http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0389en01.pdf (retrieved 9 December 2007)