

To:

*Immigration and Asylum Unit – "Green Paper on Asylum"*

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## **Green Paper on the future Common European Asylum System**

### **Constructive suggestions**

#### **Introduction**

Considering the content of the Green Paper on the future Common European Asylum System and the appeal to contribute to the topics that were proposed we would like to give you our feedback to the Chapter 2 dealing with problems of access of asylum seekers to the labour market and their integration. We suggest approximation of national legislations in order to make ultimate period for access to labour market shorter. The one year period applied in the Czech Republic seems to be too long. It disables those asylum seekers who are later granted an international protection integration to the society, and at the same time creates problems to those, who are not granted protection, as they learn to become dependent on the system of social benefits or on services of refugee camps or possibly dependent on criminal structures. The opposite approach, access to labour market immediately after filing an application, may lead to increased numbers of applications for an international protection.

We would like to share the experience of our Think Thank working group within the project of the Consortium of Non Governmental Organizations working with Refugees in the Czech Republic called *Why Should They Stay Apart – Comprehensive Strengthening of the Work Potential of Asylum Applicants*, supported by the Initiative of the Equal Community.

#### **Situation in the Czech Republic**

There are significant differences in opinion regarding access to the labour market for asylum seekers. For example, asylum seekers (applicants for international protection) in the Czech Republic only have access to the domestic labour market after a year of asylum proceedings and only on the basis of an issued work permit. Furthermore, they are disadvantaged by the language barrier and they are at a risk of social exclusion, which subsequently causes problems in respect of either granted international protection or return to the country of origin.

On the one hand there are strong arguments against granting this group access to the labour market in the debate in the Czech Republic, which primarily stem from concerns regarding the exploitation of the asylum process, efforts not to arouse overstated expectations among

these asylum seekers and to de facto not to contribute to their integration at a time when a decision regarding their application is pending and so on. On the other hand, there are as well as relevant arguments to the contrary, including those regarding the economic advantages for a host country in the form of, for example, taxes and national employment policy contributions and other factors concerning the elimination of the illegal employment of asylum seekers.

There are considerable disagreements in the opinions concerning the access of applicants for international protection to the labour market. Neither too liberal nor too restrictive setting of conditions in their employment is ideal. However, the question should not be whether to enable access to the labour market for these foreign applicants **but when it should be done. Here, one can assume that the existing unsuitable statutory conditions should be changed.**

#### Czech Republic – the sociological analysis of the situation of asylum seekers on the labour market

Within the project of the Consortium of Non Governmental Organizations working with Refugees in the Czech Republic called *Why Should They Stay Apart – Comprehensive Strengthening of the Work Potential of Asylum Applicants*, supported by the Initiative of the Equal 2006 with the aim to map the experience of applicants for protection (and also foreigners with so called toleration status) in the Czech Republic of legal and illegal employment and to identify the main barriers for their integration into the labour market. The research target group comprised of clients of three non-governmental organizations, namely Counselling centre for refugees (PPU), Organization for Aid to Refugees (OPU) and Association of Citizens Assisting to Migrants (SOZE) The research only included people only who had been in the asylum procedure for at least one year (when the Czech legal system enables them legal employment). The questionnaire was constructed so as to cover the most important aspects of employment of asylum applicants and their access to the labour market. At the same time, it inquired into some socio-demographic characteristics of asylum applicants, which could play a role in their access to the labour market. The research results cannot be considered representative for the whole population of asylum applicants; on the other hand, in a view of the fact that this is the only research sui generis of this group of foreigners in relation to legal and illegal employment in the Czech Republic, it can be considered important and valuable. The presented findings at least indicate certain trends in employment, which can occur in this population.

Out of the persons participated in the research, **67 % ever worked in our country** (36 % only at the time of the research) either legally or illegally. As for the specification of jobs where the questioned applicants worked or worked previously, the research showed clearly that they concentrated **in the area of manual works**, in particular civil engineering, other blue-collar works and services, cleaning works, and hotel industry. I would like to emphasize that **5% only were engaged in non-manual works**.

**Apparently, the jobs they perform do not correspond with the capacities and skills** of these foreign workers, as only one third of the respondents consider their work to be in

accordance with their skills and qualifications. Most of the respondents currently working have secondary school education or university diploma but work beyond their lines or under the levels of their skills and qualifications. One can then consider surprising that **78 % of them expressed their predominant satisfaction with their employment and even with their wages** (although the satisfaction is lower here – 65%). This seeming discrepancy can be explained in a way that the question is not about their satisfaction with the particular work but they rather agree upon their gratefulness for any work and any wages at all.

As expected, more than two thirds of them, namely **69%, work without any written work contract**. One can assume that not all of them work even under an oral agreement to perform a job but that a predominant part of them - and we would dare to say that most of them – are those who **work illegally**.

This of course presents other problems resulting from illegal employment – the applicants stated most frequently that their employers failed to meet the orally agreed conditions, especially concerning wages and working hours. But, for instance, as many as 31% respondents stated that they encountered discrimination on their workplaces. The particular examples (in addition to the already mentioned failures to meet the agreed contractual conditions by employers) include verbal insults and assaults, employer's discriminating behaviour, and different working conditions in comparison with those of native workers.

**The overwhelming majority of applicants starts looking for jobs (89 %) and work (77%) immediately after entering the asylum procedure, i.e. even before the legal system enables them legal employment**, which causes the assumption that they worked or work illegally. Illegal work then clearly occurred in one fifth of the respondents who found work immediately after filing their applications (i.e. despite they were forbidden to work during the first year). **The important fact is that they remain in the illegal work sphere even after the lapse of this one-year limiting period.** The experience of illegal work, therefore, obviously does not only relate to the period when the respondents may not work in the Czech Republic legally but also to the period when the law permits them to do so; in other words, **despite the possibility to work legally, a majority of respondents finally ends up in the sphere of grey economy.** This finding is likely to be connected with the frequently mentioned fact that employers do not know the conditions of employing these persons and foreign citizens themselves already have experience of illegal work and it is easier for them to find one.

**More than 80% of those who ever worked in the Czech Republic have experience of illegal work.** They are mostly short time jobs – some of the respondents stated that they went through as many as 30 different positions during their stay in the country. **Only 17% of them claimed that they worked legally only.**

Among the greatest barriers for finding employment respondents (either those currently looking for a job or those having one or not looking for any for various reasons) state their legal positions and the ignorance of the law by the Czech employers.

**Research conclusions indicate that particularly the external conditions of the labour market and the system regulating the employment of the applicants for international**

**protection /indulgence force them out into the sphere of grey economy and make the possibility for them to find legal employment harder, at least as perceived by the respondents.** It is due to these barriers that these persons are willing in most cases to accept even a less valued job at a lower level than their qualifications would allow, even in the sphere of the illegal labour market. And if they find links to illegal employment at the beginning, they make it the rule to stay there.

### Conclusion

The results of the analysis give an overview of the situation in the Czech Republic – a country, which introduced one year restriction period and at the same time has relatively small number of asylum seekers and relatively short procedure.

The current setting of the rules in the Czech Republic of asylum applicants' access to the labour market favours the illegal employment of this specific group of persons with all the negative consequences resulting there from (i.e. zero contributions to the tax system, advancement of the so-called client system, and discrimination of applicants in labour relations, as well as the burdening of the state budget with the costly asylum system). The research also shows, that the restriction does not help to prevent irregular labour and the “once on the black market – forever on the black market” connection can be clearly seen. We can say that the research shows some trends and it may be interesting to take the findings of the research into account when thinking of building a common system.

Although the Czech Republic and in the same time the whole EU could profit from employing foreign citizens of this category, their potential remains unused in practice, even if they often offer high proficiency and skills. Their possible access to the labour market for the time limit of the asylum (international protection) proceedings might help the economics to cover the short term positions on the labour market.

Therefore, we would on the basis of the research mapping the situation of asylum seekers on the labour market recommend to shorten the period to three to six months during which these foreign citizens shall not have access to the EU labour market. .

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*Note:*

## **Green Paper on the future Common European Asylum System**

### **2. LEGISLATIVE INSTRUMENTS**

#### **2.1. Processing of asylum applications**

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#### **2.2. Reception conditions for asylum seekers**

*Ensuring a high level of harmonisation with regard to reception conditions of asylum seekers is crucial if secondary movements are to be avoided. However, according to the information already available on the implementation in practice of Council Directive 2003/9/EC (the "Reception Conditions Directive"), the wide margin of discretion left to Member States by several key provisions of this Directive results in negating the desired harmonisation effect.*

*For instance, there exist wide divergences with regard to the access of asylum seekers to the labour market: different Member States impose a variety of conditions that have to be fulfilled (e.g. obtaining a work permit), some Member States allow such access immediately while others restrict it for a year. This situation begs the question whether the conditions and the timeframe for access to the labour market should be more precisely regulated.*

...

*8. Should national rules on access to the labour market be further approximated? If yes, in which aspects?*

#### **2.4.2. Integration**

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*Entitlements to work (and limits thereon) are important in this respect as employment is accepted as a major element which facilitates integration. In this context, ways need to be found to raise the awareness of the labour market actors on the value and potential contribution that beneficiaries of international protection can bring to their organisations and companies. Particular attention should also be devoted to the identification of their working experience, skills and potential and to the recognition of their qualifications, since beneficiaries of international protection are often unable to provide the documentary evidence, such as diplomas and other relevant certificates, from their countries of origin that Member States' legislation may normally require as a precondition to lawful employment in certain fields. The acquisition of necessary inter-cultural skills and competences should also be promoted, not only regarding the beneficiaries of international protection, but also regarding the professionals working with them. Diversity management should also be supported. With a view to taking a comprehensive approach, it might also be necessary to consider providing asylum seekers access to specific selected integration measures and facilities, inter alia to facilitate a speedy integration of those individuals ultimately granted international protection.*

*19. What further legal measures could be taken to further enhance the integration of asylum seekers and beneficiaries of international protection, including their integration into the labour market?*

**COUNCIL DIRECTIVE 2003/9/EC**

**of 27 January 2003**

**laying down minimum standards for the reception of asylum seekers**

*Article 11*

**Employment**

1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.
2. If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant; Member States shall decide the conditions for granting access to the labour market for the applicant.
3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.
4. For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.