# To the Special Rapporteur on the human rights of migrants: Impact of COVID on the human rights of migrants

## Submission of the Public Defender of Rights of the Czech Republic

The Public Defender of Rights of the Czech Republic (further referred to as “Defender” or “Ombudsman”) presents his submission concerning the Special Rapporteur’s call for inputs for the report on the impact of COVID-19 on the human rights of migrants which is to be presented at the 76th session of the General Assembly.

The Defender does not have information to answer all questions of the Special Rapporteur. Therefore, this submission elaborates only on questions 1, 3, 5, and 6.

## Question 1: Information on the healthcare responses taken by the Government to counter the pandemic providing migrants and their families’ access to adequate health care on the same basis as nationals.

Those migrants who have Czech public health insurance have equal access as nationals to both vaccination and testing. However, those that do not have Czech public health insurance (i.e., migrants outside EEA and Switzerland who do not have permanent residence in Czechia or are not currently employed and some EU citizens) currently do not have access to vaccination at all. Ministry of Health is currently working on the issue to enable those people to get vaccinated (they would have to pay for the vaccine themselves, but the price will be capped). Migrants without public health insurance have access to Covid testing but they have to pay for the tests themselves.

Recognition of vaccination certificates from abroad remains an issue. Certificates of vaccination from other EU countries will be recognized soon thanks to EU Green Certificate. On the other hand, certificates of vaccination from third countries will not as a rule be recognized, there are only a few exceptions and the recognition of certificates from other countries is currently not even planned.

This is highly problematic because many migrants got vaccinated in their home country (e.g., because the vaccination has been available sooner in their home country or even because they have no access to vaccination in Czechia) and now there is no option for the migrants to have the vaccination recognized. As a result, these migrants must undergo frequent testing at the workplace, at school, or to be able to access various services (regular testing is compulsory in Czechia for people who work at the workplace, study or wish to attend sports facilities, restaurants, accommodation services, beauty services, etc.), or have to go to quarantine after returning from their home country, etc.

As regards the access to health care during the Covid pandemic, migrants with Czech public health insurance have an equal position as nationals which means that expenses of their health care are covered. Migrants without public health insurance must be insured by private health insurance companies. However, private health insurance usually covers expenses of health care up to a certain amount, which means that people whose health care exceeds the limit have to pay for the care themselves. Since intensive hospital treatment of Covid is costly, it may be quite frequent that private health insurance will not cover the costs of the whole treatment.

## Question 3: Immigration detention during the COVID-19 pandemic.

Regarding immigration detention, three systematic visits were carried out in 2020 altogether. The first visit was conducted in May 2020. Ombudsman conducted a systematic visit to the newly established quarantine facility, reception center in Bělá-Jezová. This facility serves as a quarantine facility for persons seeking international protection and detained migrants. Ombudsman did not found ill-treatment when the report was issued. However, he pointed out several critical measures that could lead to ill-treatment if those measures persisted.

The Ombudsman denounced the fact, that the Aliens´ Police authority staff was present inside the facility, including in the places for seekers for international protection and families with children. He pointed out the lack of meaningful human contact, deficiencies in access to information, and inadequate safety safeguards for single women. Last but not least, the security system installed in the facility was not functioning in an efficient manner.

Due to the severity of the Ombudsman´s findings, a follow-up visit was carried out in November 2020. During the follow-up visit, persisting deficiencies were revealed despite the promise given during the proceedings relating to the initial visit. An official protocol was issued during the follow-up visit and Refugee Facilities Administration and Health Care Facility were asked to reply and implement the offered measures. The respective authorities remedied some of the deficiencies accordingly thus the ill-treatment was not found.

Still, Aliens´ Police Authority staff is present inside the facility including in the places for seekers for international protection and families with children. Ombudsman still insists that the measures securing the safety safeguards for single women and families with children are taken. He requires the amendment to the relevant documents that regulate the placing procedure. Ombudsman strongly opposes the fact that police officers are routinely provided with batons while in contact with minors and seekers for international protection. He requires that the detained migrants were compensated for the ban on visits and the lack of contact with the outside world. He points out the lack of access to fresh air and the lack of privacy. Currently, there is still ongoing communication regarding the Ombudsman´s findings and recommendations, and the proceedings are not finished.

The second immigration facility, that was subject to a systematic visit, was a Reception facility in Zastávka u Brna. Neither ill-treatment nor other serious deficiencies were found.

From the start of the epidemic of COVID-19 in the Czech Republic, the Defender also conducted remote monitoring of the places of detention. This consisted mostly of communicating with stakeholders about several topics such as access to legal aid, ensuring contact with the outside world, and other basic fundamental rights of the persons deprived of their liberty. This type of monitoring continued even after the systematic visits were conducted, because of the dynamic changes of the epidemiologic situation. This allowed the Defender to stay up to date with the conditions of the foreigners deprived of their liberty and to promptly contact the authorities if needed.

## Question 5: Information on any emergency measures or declarations or any special legislation activating extraordinary powers based on the COVID-19 pandemic taken by the Government at the national or local level.

On 12 March 2020, the Government of the Czech Republic declared a state of emergency. From 14 March 2020 the Government banned via government resolutions issued according to Art. 6 of the Crisis Act (Act No. 240/2000 Coll., on Crisis Management and amendments of certain Acts) entry of foreign nationals to the territory of the Czech Republic and stated exceptions from this ban.

On 12 March 2020, the Government issued a government resolution (No. 71/2020 Coll.), which banned the entry of all foreign nationals arriving from states which were considered highly risky at the time. This did not apply to foreign nationals with a temporary residence permit for more than 90 days, a permanent residence permit in the Czech Republic, and foreign nationals, whose entry was in the interest of the Czech Republic. Embassies of the Czech Republic discontinued receiving applications for visa, temporary and permanent residence permits except for those foreign nationals, whose entry was in the interest of the Czech Republic. Proceedings of short-stay visa applications, where no decision had been reached at the time, were terminated unless the applicant’s presence in the territory was in the interest of the Czech Republic. All proceedings on applications for a residence permit for more than 90 days submitted to embassies before the declaration of the state of emergency have been suspended unless the applicant’s presence in the territory was in the interest of the Czech Republic. The Government authorized the Ministry of Interior to determine by a notice published on their website or in another suitable manner when the entry of foreign nationals to the territory was in the interest of the Czech Republic.

On 13 March 2020, the Government broadened the ban on entry via governmental resolution No. 76/2020 Coll. to all foreign nationals regardless of where they were arriving from, while the Ministry of the Interior was still authorized by the Government to publish on their websites circumstances when the entry of foreign nationals to the territory was in the interest of the Czech Republic. Consequently, five more government resolutions were adopted before the end of the state of emergency. All these resolutions included a list of exceptions from the ban on entry of foreign nationals to the territory that was gradually broadening and the restrictive measures regarding cross-border movement were gradually loosening.

The state of emergency declared on 12 March 2020 ended on 17 May 2020. Following the end of the state of emergency, the Ministry of Health has been regulating cross-border movement by its protective measures, which are issued under Art. 80(1)(h) of the Act No. 258/2000 Coll., on Public Health Protection and amendments to certain related acts, as amended.

Consequently, the state of emergency was declared on 30 September 2020 (effective from 5 October 2020) and it terminated on 14 February 2021. However, the same day the state of emergency was declared again from 15 February 2021 and it terminated on 26 February 2021. On the same day, the state of emergency was declared again from 27 February, which terminated on 11 April 2021.

Throughout the state of emergency from 5 October 2020 and after its termination, the protective measures of the Ministry of Health continued to regulate cross-border movement.

On 18 March 2021, the Czech Government issued government resolution No. 134/2021 Coll., which limited freedom of movement within the territory of the Czech Republic. The resolution furthermore prohibited the residence of foreign nationals in the Czech Republic, if, after the effective date of this government resolution, they arrived for reasons other than those stated as exceptions from the freedom of movement, or if they arrived contrary to the protective measures of the Ministry of Health. This government resolution was in effect until the termination of the state of emergency, i.e. until 11 April 2021.

Following the termination of the state of emergency, the protective measures of the Ministry of Health regulate entry to the territory. These protective measures are regularly updated.

## Question 6: Information on any relevant legislation or policy adopted during the pandemic in relation to the regularization of migrants.

On 12 March 2020, the Czech Government issued governmental resolution No. 71/2020 Coll., which stated that foreign nationals who were in the territory legally temporarily or permanently in compliance with the rules applicable for a stay of foreign nationals were entitled to remain in the territory for the period of the state of emergency. The state of emergency terminated on 17 May 2020.

The Ministry of Interior announced on their website a 60-day transition period, within which third-country nationals, whose residence permit or visa (including an exit order) expired during the state of emergency and were not staying in the Czech Republic with a valid permit, would not face any repercussions. These third-country nationals were entitled to receive an exit stamp confirming the tolerated stay in the Czech Republic to ensure that foreign nationals leaving through other Schengen countries would not face any issues there. Foreign nationals staying in the Czech Republic whose residence permit or visa expired during the state of emergency were obliged to leave the territory within these 60 days. However, if they presented evidence that returning to their country of origin was objectively impossible (for example if there were no flight connections), the Foreign Police issued a new exit order for the estimated required time to leave the Czech Republic.

These measures have been temporary and in place only during and following the first period of the state of emergency (12 March – 17 May 2020). No similar measures were adopted during and following the state of emergency from 5 October 2020 to 11 April 2021.