

**INTER-SESSIONAL WORKSHOP ON DEVELOPING CAPACITY TO MANAGE
MIGRATION**

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**SESSION III: DEVELOPING CAPACITY TO MANAGE MIGRATION THROUGH
LEGAL FRAMEWORKS AND ADMINISTRATIVE INFRASTRUCTURES**

**STRATEGIES FOR DEVELOPING LEGISLATIVE CAPACITY TO MANAGE
MIGRATION**

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Dear Ladies and Gentlemen,

Last year the Czech Republic together with seven other Central-European countries, Malta and Cyprus joined the European Union. This step was preceded by a several-year financially as well a time-demanding preparation period. The preparation concerned legislation, as well as operational and institutional issues. The transition of Central European countries from non-democratic political systems that included strong limitation of freedom of movement to democratic systems based on European values is a unique one when we consider its success and swiftness. I am of the opinion that the experience gained during this process, the applied strategies and methods can be used as a very successful model for development of migration and asylum systems also in other countries. Not necessarily only in the European ones, which at present aim or in the future will aim at membership in the European Union, but also in other countries that deal with questions of strengthening the capacity of their national migration management framework.

For this reason I truly welcomed the opportunity to concentrate on this topic during this seminar. At present we attach great importance to the question of transfer of experience of the Czech Republic which it gained during the accession process to the European Union and we try to support it to the most: For example, a number of projects are implemented together with countries of Wider Europe from the Commonwealth of Independent States or Western Balkans. The aim of these projects is to transfer this experience across the borders of the enlarged European Union.

I have been asked by the organizers to concentrate in my introduction especially on the strategies and procedures chosen by the Czech Republic when acceding to the European Union in the field of legislation. Nevertheless, an important aspect were changes in the operational capacity, partly also in the institutional one. I would like to deal with these questions in the discussion that will follow the introductory contributions.

To start with I find it necessary to underline that we talk about two interlinked processes of changes in the system of migration management in the Czech Republic that support each other. The first one was commenced immediately after the fall of the Iron Curtain in 1989. In general, its aim was to establish a migration system of the country in such a way, that it would enable effective involvement of the country among democratic countries in such areas as economic cooperation, tourism, cross-border cooperation and so on. This meant to open

the country to new opportunities resulting from the new geopolitical situation. At the same time, the Czech Republic immediately accepted responsibility for burden sharing in refugee matters and as soon as in 1990 it introduced its own asylum procedure.

In the situation, when this process was being started, the idea of accession of the country to the European Union was very remote. There was strong political will to build up an immigration system of the country on the basis of experience of West European countries while, at the same time, respecting our tradition of law and our geographical position within Europe. And, of course, while taking into account some migration trends that had existed during the period of the Communist rule. These were for example internal migration from Slovakia to the Czech Republic or migration from some developing countries with an ideology close to the Communist Government, such as Viet-Nam, Mongolia or Angola.

In the middle of 1990s this process was affected by the decision of the country to join the European Union. This decision, among others, led to the requirement to make Czech migration law compatible with the law of the European Union in this area that were being drafted. Completely new concepts resulting from the necessity to evaluate the progress of the Czech Republic on its way to the European Union entered into that process of gradual changes. The annual evaluation reports from Brussels administration represented the peak of a system consisting of regular negotiations on both political and expert levels, screenings of legislation and evaluation of the practice. The annual reports kept giving as a clear answer to the question how successful the country was in taking over European migration acquis. Looking back from the current point of view we can say that the accession process to the European Union was fully complementary with the changes that had been carried out until then. Moreover, it acted as a catalyst for the speed of reforms.

What I am trying to say is that in the long-term perspective migration has been attached strong political importance and all throughout the transition period the Government supported the creation of a new immigration system and the commencement of accession period to the European Union only underlined this support.

Thus, the process of changes can be shown in the development of the immigration framework. Immigration legislation was developed in three phases reflecting the situation of the country and the connected priorities of the immigration policy. To make my point clear I would like to show these phases in the preparation of three consequent immigration acts:

The immigration act adopted immediately after 1989 enabled management of migration flows in a new social situation. The second immigration act was adopted in 1999 after several years of legislative preparatory work and it introduced some changes that harmonized Czech immigration law with a substantial part of EU legislation. The third act on immigration, the drafting of which has just been formally initiated, aims at creation of more suitable circumstances for legislative regulations fully in line with European law in the following situation: The Czech Republic is to greater and greater extent becoming a destination country of migrants. This can be also seen in the OECD statistical report according to which it was the Czech Republic where the highest increase in number of foreigners among all OECD countries occurred. Besides, due to high economic growth and the growth of gross domestic product and also due to massive foreign as well as national investment, some sectors of the labour market face lack of labour force that could be available in the Czech Republic or in another EU Member State.

The aim of the immigration act will be in case of interest of the country to facilitate entry of foreigners from countries outside the EU.

Identical development to the development of the immigration act occurred in the asylum field. After the first act that introduced the concept of asylum to Czech system of law a process started that brought the following results:

Firstly, it harmonized the act with international standards included in the Convention Relating to the Status of Refugees. Secondly, in 1999 a new Asylum Act was adopted that was almost fully compatible with European requirements. Thirdly, the formal process of adoption of a new act was just started now. This new act will unify the asylum procedure and the procedure on subsidiary forms of protection in a single procedure.

Both before the accession to the European Union as well as after it, some changes were carried out that resulted from newly adopted legal regulations within the implementation of the Tampere Programme of 1999.

The main challenges faced by the Czech Republic in the above mentioned processes can be summarised in the following thematic fields.

Political dialogue

In the long term great attention has been paid to an intensive political dialogue on a national asylum policy with other relevant bodies. A clear aim of the Ministry of the Interior has been to look for broad consensus on the policy in the field of immigration and asylum. By this means, the Ministry involves other bodies, which have an influence on it, directly or indirectly into the process of establishing national immigration and asylum policy. These are especially the following bodies: Office of the Prime Minister and its individual specialized standing committees dealing with various aspects of protection of human rights, including right of foreigners and asylum seekers. Besides, we involve both chambers of the Parliament. An example of such a dialogue is the fact that an overall migration report covering all aspects of the asylum policy and practice of the country as well as other issues has been with success annually presented to the Parliament. Other dialogue partners include the Office of the Ombudsman and nongovernmental as well as international organizations dealing with asylum seekers.

This broad dialogue substantially contributed to the fact that general accepted consensus on the form of the immigration and asylum system of the country has been found among relevant bodies. Moreover, this consensus is generally accepted by the public.

Contrary to the situation in many other countries, asylum policy does not represent a cleavage on the Czech political scene at the moment. A proof of this is also the fact that this topic has never become an issue of the political discussion within an election campaign. This whole issue is predominantly perceived as a technical rather than a political one, which substantially facilitates the search for new innovative legislative solutions as well as adoption of new legislation in the Parliament.

Strategies of legislative work

Drafting of new legislation within the preparation of our membership in the European Union was always preceded by evaluation of three strategic areas. First, we had to take into account requirements included in European legislation. In this regard, great attention was paid to training of Czech experts responsible for drafting legislative proposals. Besides, experience of old Member States with implementation of such legislation was made use of. European legislation in many cases gives space to very broad interpretation and many solution possibilities. Therefore, it was necessary to intensively communicate with a number of old EU Member States and to study the procedures they had chosen. As a side effect, this made, in its result, communication after our EU accession much easier. Finally, specific needs arising from concrete Czech practise also had to be paid attention to. The drafting of new legislative proposals was closely connected with the need of the practice. It was not blind taking over and copying of European legislation – European legislation was always connected with our concrete needs. Therefore, in many cases, procedure and models were proposed in line with European legislation that fully reflected also the specific national situation in the field of migration or asylum.

Confidence building

Broadening of our international cooperation, especially with our neighbours in joint fight against illegal migration became a very important field. The reason was the fact that bilateral agreements, such as readmission agreements, agreements on local border traffic or general agreements on police cooperation were to greater and greater extent becoming a part of the legislative framework. The starting point for cooperation based on these agreements was overcoming mutual mistrust and strengthening of confidence building. Its results are for example joint Czech – German patrols protecting the state border or joint approach to border protection.

Conclusion

To conclude I would like to shortly mention the question of financial requirements of the whole process. Was the process of changes of the migration and asylum system financially demanding? The answer is certainly yes. However, it was certainly cheaper than a choice of another strategy based on other than state-managed model of migration. Our most importance experience, as I have repeatedly pointed out, is based on the fact that it is much cheaper to create an effective immigration system than to deal with financially demanding negative results of its non-existence later.