Migration Law in the Czech Republic

DAVID KOSAŘ HANA LUPAČOVÁ



Migration Law in the Czech Republic

David Kosař Hana Lupačová

This book was originally published as a monograph in the International Encyclopaedia of Laws/Migration Law.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Volume Editors: Dirk Vanheule



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands

Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704 United States of America

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park

Email: customer.service@aspenpublishers.com

Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom

Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4060-9

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Authors



David Kosař is Legal Assistant at the Supreme Administrative Court of the Czech Republic (since 2009 on leave to pursue J.S.D. at the New York University School of Law). He earned his MA in Law and Ph.D. in Public International Law at Masaryk University (Brno) and LL.M. in Human Rights Law from the Central European University (Budapest). He is a member of American Society of International Law, European Society of International Law, International Association of Refugee Law Judges, a founding member of Czech Society of European and Comparative Law and since 2008 he has also been the Czech representative in the Odysseus Network for Legal Studies on Asylum and Immigration in Europe.

He is the main author of the Commentary to the Czech Asylum Act (KOSAŘ, D., MOLEK, P., HONUSKOVÁ, V., JURMAN, M., LUPAČOVÁ, H.: Zákon o azylu: komentář. Praha: WOLTERS KLUWER CZ, 2010) and published numerous articles and book chapters in the Czech Republic as well with foreign publishers.



Hana Lupačová, Legal Assistant to a Judge of the Supreme Administrative Court of the Czech Republic. She earned her MA in Law at Masaryk University (Brno) in 2006. In 2005–2007 she worked for the leading Czech NGO representing the interests of refugees and other vulnerable categories of aliens (Society of Citizens Assisting Emigrants, SOZE) where she became the Head of the Legal Department. In 2008 she joined the Supreme Administrative Court of the Czech Republic. She is also an associate member of *International Association of Refugee Law Judges* and a member of the Country of Origin Information Trainer Pool (ACCORD, Österreichisches Rotes Kreuz). In 2008–2009 she was the

national rapporteur for the UNHCR project on 'Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice'. Since 2009 she has been a Ph.D. candidate at Bratislava Law Faculty. She co-authored the Commentary to the Czech Asylum Act (KOSAŘ, D., MOLEK, P., HONUSKOVÁ, V., JURMAN, M., LUPAČOVÁ, H.:Zákon o azylu: komentář. Praha: WOLTERS KLUWER CZ, 2010) and published several articles and book chapters on various aspects of asylum and migration law.

The Authors	3
List of Abbreviations	13
List of National Legislation	15
Selected European Legislation	21
Preface	33
General Introduction	35
§1. IMMIGRATION HISTORY AND STATISTICAL INFORMATION	35
§2. OVERVIEW OF NATIONAL LEGAL INSTRUMENTS I. Historical Overview II. Current Applicable Legislation III. Administrative and Judicial Authorities	47 47 50 53
§3. OVERVIEW OF THE APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS	57
Selected Bibliography	63
Part I. Border Control and Entrance	69
Chapter 1. Organization of Border Control	69
Chapter 2. Right to Enter the Country	78
§1. CONDITIONS FOR THE RIGHT TO ENTER	78
§2. Administrative Procedures and Documents	80

Chapter 3. Refusal of Entry	83
Part II. Right of Residence: General Provisions	87
Chapter 1. Short Stay	90
§1. STAY UPON SHORT-TERM VISA	90
§2. Stay without Visa	91
§3. STAY UPON EXIT VISA	91
Chapter 2. Long-Term Visa	92
§1. CONDITIONS FOR LONG-TERM VISA	92
§2. Administrative Procedures and Documents	92
§3. LEGAL POSITION	94
§4. Position of Family Members	95
Chapter 3. Long-Term Residence Permit	96
§1. CONDITIONS FOR LONG-TERM RESIDENCE PERMIT	96
§2. Administrative Procedures and Documents	98
§3. LEGAL POSITION	99
§4. Position of Family Members	100
Chapter 4. Permanent Residence	103
§1. CONDITIONS FOR PERMANENT RESIDENCE PERMIT	103
§2. Administrative Procedures and Documents	106
§3. LEGAL POSITION	108
§4. Position of Family Members	109
Part III. Right of Residence for Specific Categories of Persons	111

Chapter 1. Nationals with Preferential Treatment	111
§1. EU NATIONALS, FAMILY MEMBERS OF EU NATIONALS AND FAMILY MEMBERS OF CITIZENS OF THE CZECH REPUBLIC I. Short Stay II. Temporary Residence A. Conditions for Temporary Residence B. Administrative Procedures and Documents C. Legal Position D. Position of Family Members III. Permanent Residence A. Conditions for Permanent Residence B. Administrative Procedures and Documents C. Legal Position D. Position of Family Members	111 112 112 113 114 114 115 115 116 116
§2. OTHER NATIONALS WITH PREFERENTIAL TREATMENT	118
Chapter 2. Students	121
Chapter 3. Researchers	125
Chapter 4. Labour and Economic Migration	128
§1. Labour Employment	128
§2. SEASONAL WORKERS AND TEMPORARY WORKERS	128
§3. INDEPENDENT ECONOMIC ACTIVITIES	128
Chapter 5. Humanitarian Reasons	129
§1. Humanitarian Grounds	129
§2. UNACCOMPANIED MINOR CHILDREN	130
Chapter 6. Asylum	132
§1. CONDITIONS I. Refugee Status II. Subsidiary Protection Status III. Temporary Protection Status IV. Other Forms of Asylum A. Constitutional Right to Asylum B. Asylum for Humanitarian Reasons	132 134 135 137 138 138

C. Prohibition of Expulsion	140
§2. PROCEDURES I. Asylum Procedure II. Review of the Decision Rejecting the Application for Asylum III. Unaccompanied Minor Asylum Claimants	141 141 144 146
§3. Legal Position	147
§4. Position of Family Members	149
Part IV. Loss of the Right of Residence	151
Chapter 1. Conditions under Which the Right of Residence Might Be Lost	151
 §1. Third-Country Nationals Grounds for Annulment of Residence Permits in General Specific Reasons for Annulment of Residence Permits in More Detail Conviction of the Foreigner of a Crime Conditions for Granting Visa/Residence Permit Are No Longe Fulfilled Not Fulfilling the Purpose for Which Visa was Issued Failure to Apply for a Visa for a New-born Child Expulsion Decision or Deportation Penalty Imposed by Another EU State The Foreigner being a Threat to the Security of the Czech Republic, Its Public Order; or Suffering from Serious Illness, Thus Threatening Public Health Reasons for Termination of Validity of Residence Permits Ex lege 	151 152 158 158 159 161 162 163
§2. EU NATIONALS, EU FAMILY MEMBERS, FAMILY MEMBERS OF CZECH NATIONALS I. EU Nationals II. EU Family Members and Family Members of Czech Nationals III. Termination of Residence Permits of EU Nationals and Family Members of EU or Czech Nationals	165 166 167
Chapter 2. Legal and Administrative Procedures	168
§1. Annulment of Short-Term Visas	168
§2. Annulment of Other Types of Residence Permits	169

§3. Judicial Review	170
Part V. Sanctions	173
Chapter 1. Sanctions	173
§1. ADMINISTRATIVE SANCTIONS I. Notions II. Sanctions against Attempt to Illegally Enter the Territory A. Refusal of Entry to the Territory for TCNs B. Refusal of Entry to the Territory for EU Nationals and Far Members of EU or Czech Nationals C. Consequences of Entry-Refusal D. Other Sanctions III. Sanctions against Illegal Stay or Residence	173 173 176 176 176 177 177
 §2. PENAL SANCTIONS Penal Sanctions for Attempt to Illegally Enter the Territory Penal Sanctions Related to Illegal Crossing of Borders Imposed on Foreigners Penal Sanctions Related to Illegal Crossing of Borders Imposed on other Persons Penal Sanctions for Illegal Stay and Residence Frustration of Decision on Expulsion by Prolonged Illegal Sanction of Criminal Deportation Assisting to Reside in the Czech Republic for Unjustified Financial or other Gain 	179 179 179 180 180 181 182 186
§3. DETENTION I. Detention of Irregular Migrants Pursuant to the ALA A. Legal Grounds for the Detention Order B. Detention for the Purpose of Administrative Expulsion C. Detention for the Purpose of Departure from the Territory D. Detention for the Purpose of Readmission or Transfer E. Detention of EU Nationals, Their Family Members and Famer Members of Czech Nationals F. Detention of Minors and Families II. Detention of Irregular Migrants Pursuant to ASA III. Procedures	186 187 187 188 190 amily 191 193 194
§4. EXPULSION AND REMOVAL I. In the Case of Illegal Entry II. In the Case of Illegal Stay or Residence A. Notions B. Expulsion for Foreigners Staying on a Short-Term Basis	195 195 195 195

	 C. Expulsion of EU Nationals and Their Family Members Staying in the Country Temporarily D. Expulsion of Those Staying in the Country upon Long-Term Permit for the Purpose of Family Reunification, Studies or Research, and Residents of a Member State of the EU E. Conditions under Which Expulsion May Not Be Imposed on Foreigners Staying in the Country on a Short-Term Basis F. Expulsion of Foreigners with Permanent Stay G. Expulsion of EU Nationals, Their Family Members and Family Members of Czech Nationals with a Permanent Residence Permit Impediments to Expulsion Stay of Execution of the Expulsion Measure 	199 200 201 201 202 202
Chapte	er 2. Sanctions against Persons Helping Illegal Immigrants or Residents	204
§1. Hu	man Smuggling	204
§2. Hu	man Trafficking	206
Part V	I. Legal Remedies and Procedural Safeguards	209
Chapte	er 1. Legal Remedies in Case of Refusal of Right to Enter, Stay or Reside	209
§1. Gei	NERAL NOTIONS	209
	GAL REMEDIES IN CASE OF REFUSAL OF THE RIGHT TO ENTER E TERRITORY	215
	GAL REMEDIES IN CASE OF ADMINISTRATIVE DECISIONS ON THE SHT TO RESIDE	217
I.	GAL REMEDIES AGAINST EXPULSION MEASURES Duty to Leave the Territory (§50a) Administrative Expulsion (§119)	220 220 221
I. II. IV.	OCEDURAL SAFEGUARDS Information Duties Legal Aid Language Access to Filing an Application for a Visa or Permit at Embassy Others	224 224 227 228 229

Chapter 2. Legal Remedies in Case of Detention	232
Part VII. Access to the Labour Market	235
Chapter 1. Overview of Applicable Legislation	235
Chapter 2. Conditions for Entitlement to Work in the Country As an Employed Person	238
§1. General Conditions	238
§2. ADMINISTRATIVE RULES AND PROCEDURES I. Stay for Less than Three Months II. Stay for More than Three Months	240 241 241
§3. CONDITIONS FOR SPECIAL CATEGORIES OF WORKERS I. Workers Who Need Work Permit but Are Not Subjected to Labour Market Test II. Foreigners Who Do Not Need Work Permits III. Highly skilled Workers IV. Green Cards V. Blue Cards	246 246 247 248 250 252
Chapter 3. Sanctions against Illegal Participation in the Labour Market	255
§1. SANCTIONS AGAINST EMPLOYERS	256
§2. SANCTIONS AGAINST WORKERS	260
Chapter 4. Legal Remedies and Procedural Safeguards	263
Part VIII. Access to Self-employed Activities	269
Chapter 1. Overview of Applicable Legislation	269
Chapter 2. Conditions for Entitlement to Work in the Country As a Self-employed	272
§1. General Conditions	272
82 ADMINISTRATIVE RILLES AND PROCEDURES	274

Chapter 3.	Sanctions against Illegal Exercise of Self-employment	277
Chapter 4.	Legal Remedies and Procedural Safeguards	280
Index		281

Migration Law in the Czech Republic

David Kosař Hana Lupačová

This book was originally published as a monograph in the International Encyclopaedia of Laws/Migration Law.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Volume Editors: Dirk Vanheule



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704 United States of America Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4060-9

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Authors



David Kosař is Legal Assistant at the Supreme Administrative Court of the Czech Republic (since 2009 on leave to pursue J.S.D. at the New York University School of Law). He earned his MA in Law and Ph.D. in Public International Law at Masaryk University (Brno) and LL.M. in Human Rights Law from the Central European University (Budapest). He is a member of American Society of International Law, European Society of International Law, International Association of Refugee Law Judges, a founding member of Czech Society of European and Comparative Law and since 2008 he has also been the Czech representative in the Odysseus Network for Legal Studies on Asylum and Immigration in Europe.

He is the main author of the Commentary to the Czech Asylum Act (KOSAŘ, D., MOLEK, P., HONUSKOVÁ, V., JURMAN, M., LUPAČOVÁ, H.: Zákon o azylu: komentář. Praha: WOLTERS KLUWER CZ, 2010) and published numerous articles and book chapters in the Czech Republic as well with foreign publishers.



Hana Lupačová, Legal Assistant to a Judge of the Supreme Administrative Court of the Czech Republic. She earned her MA in Law at Masaryk University (Brno) in 2006. In 2005–2007 she worked for the leading Czech NGO representing the interests of refugees and other vulnerable categories of aliens (Society of Citizens Assisting Emigrants, SOZE) where she became the Head of the Legal Department. In 2008 she joined the Supreme Administrative Court of the Czech Republic. She is also an associate member of *International Association of Refugee Law Judges* and a member of the Country of Origin Information Trainer Pool (ACCORD, Österreichisches Rotes Kreuz). In 2008–2009 she was the

national rapporteur for the UNHCR project on 'Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice'. Since 2009 she has been a Ph.D. candidate at Bratislava Law Faculty. She co-authored the Commentary to the Czech Asylum Act (KOSAŘ, D., MOLEK, P., HONUSKOVÁ, V., JURMAN, M., LUPAČOVÁ, H.:Zákon o azylu: komentář. Praha: WOLTERS KLUWER CZ, 2010) and published several articles and book chapters on various aspects of asylum and migration law.

The Authors

The Authors	g.
List of Abbreviations	13
List of National Legislation	15
Selected European Legislation	21
Preface	33
General Introduction	35
§1. IMMIGRATION HISTORY AND STATISTICAL INFORMATION	35
§2. OVERVIEW OF NATIONAL LEGAL INSTRUMENTS I. Historical Overview II. Current Applicable Legislation III. Administrative and Judicial Authorities	47 47 50 53
§3. OVERVIEW OF THE APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS	57
Selected Bibliography	63
Part I. Border Control and Entrance	69
Chapter 1. Organization of Border Control	69
Chapter 2. Right to Enter the Country	78
§1. CONDITIONS FOR THE RIGHT TO ENTER	78
§2. Administrative Procedures and Documents	80