

**QUESTIONNAIRE FOR THE NATIONAL REPORT ON THE IMPLEMENTATION
OF THE DIRECTIVE:**

TEMPORARY PROTECTION OF 20 JULY 2001

**IN
THE CZECH REPUBLIC**

By
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As of November 12, 2007

The person in the team of thematic coordination in charge of this directive that you can contact if you have a question or need help when completing this questionnaire is:

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FIRST PART

1. NORMS OF TRANSPOSITION AND JURISPRUDENCE

- Q.1.A.** Identify the central norm(s) of transposition and indicate its legal nature
- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is called a pre-existing norm in the table of correspondence).
 - Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)
 - About legal nature in the table below: *legislative* refers to a norm adopted in principle by the Parliament; *regulation* refers to a norm complementing the law and adopted in principle by the executive power; *circular or instructions* refer to practical rules about implementation of laws and regulations and adopted in principle by the administrative authorities

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 221/2003 Coll. on Temporary Protection of Aliens
DATE: June 26, 2003
NUMBER: Act No. 221/2003 Coll.
DATE OF ENTRY INTO FORCE: January 1, 2004 (with exception of several provisions that entered into force upon the date when the Czech Republic joined the EU, i.e. May 1, 2004)
PROVISIONS CONCERNED : Act No. 221/2003 Coll. was devoted solely to the transposition of the Temporary Protection Directive (for example if the norm also pursues other objectives than the transposition of the directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 79/2003 of the Collection of Laws of the Czech Republic (pp. 4087-4103) promulgated on June 31, 2003
LEGAL NATURE (please tick the correct box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Q.1.B.

Please list the others norms of transposition according to their hierarchical position in your legal system (first laws, to be followed by regulations; and circulars or instructions):

- This question includes even norms adopted before the adoption of the directive but ensuring its transposition (what is termed a pre-existing norm in the table of correspondence).
- Quote the norm of transposition and not only the norm modified by it (the same is true in case of existence of a code of aliens law)

When answering this question, please use one or more of the tables below (one norm per table). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

There was no legal norm stipulating general conditions for providing temporary protection to the third country nationals prior to Act No. 221/2003 Coll. on Temporary Protection of Aliens. In case, when a mass influx of aliens occurred, it was dealt with either on entirely ad hoc fashion (in case of persons fleeing from the former Yugoslavia) or by a specific Government Regulation¹ (in case of persons fleeing from the Chechen war).

¹ Regulation No. 290/2001 Coll., on providing temporary protection to the nationals of the Russian Federation.

Table 1

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 165/2006 Coll., amending Act No. 325/1999 Coll. on Asylum and Amendment to Act No. 283/1991 Coll., on the Police of the Czech Republic, as amended (the Asylum Act), and Amendment to several other Acts
DATE: March 16, 2006
NUMBER: Act No. 165/2006 Coll.
DATE OF ENTRY INTO FORCE: September 1, 2006 (with two minor exceptions that are not relevant for the purpose of this report)
PROVISIONS CONCERNED (for example if the norm is not devoted only to the transposition of the concerned directive): Part IV.
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 56/2006 of the Collection of Laws of the Czech Republic (pp. 1994-2009) promulgated on April 28, 2006
LEGAL NATURE (indicate a cross in the correct box):
<input checked="" type="checkbox"/> LEGISLATIVE:
<input type="checkbox"/> REGULATION:
<input type="checkbox"/> CIRCULAR or INSTRUCTIONS:

Table 2

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act. No. 561/2004, on Pre-School, Primary, Secondary, Higher Professional and Other Education (the Schools Act), as amended
DATE: September 24, 2004
NUMBER: Act No. 561/2004 Coll.
DATE OF ENTRY INTO FORCE: January 1, 2005
PROVISIONS CONCERNED: esp. Art. 20 § 1 (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 190/2004 of the Collection of Laws of the Czech Republic (pp. 10262-10324) promulgated on November 10, 2004
LEGAL NATURE (indicate a cross in the right box):
<input checked="" type="checkbox"/> LEGISLATIVE
<input type="checkbox"/> REGULATION
<input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 3

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 112/2006 Coll., amending several acts due to the adoption of Act on Subsistence Minimum and Act on Assistance in Situations of Material Hardship
DATE: March 14, 2006
NUMBER: Act No. 112/2006 Coll.
DATE OF ENTRY INTO FORCE: April 1, 2006
PROVISIONS CONCERNED: Art. XXXV (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 37/2006 of the Collection of Laws of the Czech Republic (pp. 1329 -1343) promulgated on March 31, 2006
LEGAL NATURE (indicate a cross in the right box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 4

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 435/2004 Coll., on Employment, as amended
DATE: May 13, 2004
NUMBER: Act No. 435/2004 Coll.
DATE OF ENTRY INTO FORCE: October 1, 2004
PROVISIONS CONCERNED: Arts. 3, Art. 5 letter b) subsection 3., Art. 24, Art. 33 § 2, Arts. 85 – 101 (esp. Art. 98), Art. 109 (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 143/2004 of the Collection of Laws of the Czech Republic (pp. 8270-8316) promulgated on July 23, 2004
LEGAL NATURE (indicate a cross in the right box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 5

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 455/1991 Coll., Trade License Act
DATE: October 2, 1991
NUMBER: Act No. 455/1991 Coll.
DATE OF ENTRY INTO FORCE: January 1, 1992
PROVISIONS CONCERNED: esp. Art. 5 § 5 (for example if the norm is not devoted only to the transposition of the concerned directive)

<p>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 87/1991 of the Collection of Laws of the Czech Republic (pp. 2122 - 2159) promulgated on November 15, 1991.</p>
<p align="center">LEGAL NATURE (indicate a cross in the right box):</p> <p><input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS</p>

Table 6

<p>This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted</p>
<p>TITLE: Act No. 262/2006 Coll., Labour Code, as amended</p>
<p>DATE: April 21, 2006</p>
<p>NUMBER: Act No. 262/2006 Coll.</p>
<p>DATE OF ENTRY INTO FORCE: January 1, 2007</p>
<p>PROVISIONS CONCERNED: (for example if the norm is not devoted only to the transposition of the concerned directive)</p>
<p>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 84/2006 of the Collection of Laws of the Czech Republic (pp. 3146 - 3241) promulgated on June 6, 2006</p>
<p align="center">LEGAL NATURE (indicate a cross in the right box):</p> <p><input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS</p>

Table 7

<p>This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted</p>
<p>TITLE: Act No. 54/1956 Coll., on Health Insurance of Employees, as amended²</p>
<p>DATE: November 30, 1956</p>
<p>NUMBER: Act No. 54/1956 Coll.</p>
<p>DATE OF ENTRY INTO FORCE: January 1, 1957</p>
<p>PROVISIONS CONCERNED: Art. 2 (for example if the norm is not devoted only to the transposition of the concerned directive)</p>
<p>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 29/1956 of the Collection of Laws of the Czech Republic (pp. 123 - 137) promulgated on December 17, 1956</p>
<p align="center">LEGAL NATURE (indicate a cross in the right box):</p> <p><input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS</p>

² This Act will be repealed by Act No. 187/2006 Coll., on Health Insurance (as of January 1, 2008).

Table 8

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 187/2006 Coll., on Health Insurance of Employees
DATE: March 14, 2006
NUMBER: Act No. 187/2006 Coll.
DATE OF ENTRY INTO FORCE: January 1, 2008
PROVISIONS CONCERNED: Arts. 1, 2, 5, 6 (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 64/2006 of the Collection of Laws of the Czech Republic (pp. 2330 - 2393) promulgated on May 12, 2006
LEGAL NATURE (indicate a cross in the right box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 9

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 48/1997 Coll. on General Health Insurance, as amended
DATE: March 3, 1997
NUMBER: Act No. 48/1997 Coll.
DATE OF ENTRY INTO FORCE: April 1, 1997
PROVISIONS CONCERNED: esp. Art. 7 § 1 letter o) (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 16/1997 of the Collection of Laws of the Czech Republic (pp. 1185-1264) promulgated on March 28, 1997
LEGAL NATURE (indicate a cross in the right box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 10

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 94/1963 Coll., on Family
DATE: December 4, 1963
NUMBER: Act No. 94/1963 Coll.
DATE OF ENTRY INTO FORCE: April 1, 1964
PROVISIONS CONCERNED: esp. Arts. 26 § 4, 27 § 4, 45 § 1, 62 § 1, 78-84 (for example if the norm is not devoted only to the transposition of the concerned directive)

<p>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 53/1963 of the Collection of Laws of the Czech Republic (pp. 339-349) promulgated on December 13, 1963.</p>
<p align="center">LEGAL NATURE (indicate a cross in the right box):</p> <p><input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS</p>

Table 11

<p>This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted</p>
<p>TITLE: Act No. 359/1999 Coll. on Social and Legal Protection of Children, as amended</p>
<p>DATE: December 9, 1999</p>
<p>NUMBER: Act No. 359/1999</p>
<p>DATE OF ENTRY INTO FORCE: April 1, 2000</p>
<p>PROVISIONS CONCERNED: esp. Art. 2 § 2 letter e), 5, 17 letter a), Art. 35 § 2 letter j), and Arts. 48-50 (for example if the norm is not devoted only to the transposition of the concerned directive)</p>
<p>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 111/1999 of the Collection of Laws of the Czech Republic (pp. 7662 - 7681) promulgated on December 30, 1999.</p>
<p align="center">LEGAL NATURE (indicate a cross in the right box):</p> <p><input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS</p>

Table 12

<p>This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted</p>
<p>TITLE: Constitutional Act No. 1/1993, the Constitution of the Czech Republic, as amended</p>
<p>DATE: December 16, 1992</p>
<p>NUMBER: Act No. 1/1993 Coll.</p>
<p>DATE OF ENTRY INTO FORCE: January 1, 1993</p>
<p>PROVISIONS CONCERNED: esp. Arts. 10, 10a (for example if the norm is not devoted only to the transposition of the concerned directive)</p>
<p>REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 1/1993 of the Collection of Laws of the Czech Republic (pp. 1-16) promulgated on December 28, 1992</p>
<p align="center">LEGAL NATURE (indicate a cross in the right box):</p> <p><input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS</p>

Table 13

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Constitutional Act No. 2/1993 Coll., Charter of Fundamental Rights and Basic Freedoms
DATE: December 16, 1992
NUMBER: Act No. 2/1993 Coll.
DATE OF ENTRY INTO FORCE: December 28, 1992
PROVISIONS CONCERNED: esp. Art. 10 (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 1/1993 of the Collection of Laws of the Czech Republic (pp. 17 - 23) promulgated on December 28, 1992.
LEGAL NATURE (indicate a cross in the right box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Table 14

This table is about: <input checked="" type="checkbox"/> a text already adopted <input type="checkbox"/> a text which is still a project to be adopted
TITLE: Act No. 326/1999 Coll., Aliens Act, as amended
DATE: November 30, 1999
NUMBER: Act No. 326/1999 Coll.
DATE OF ENTRY INTO FORCE: January 1, 2000
PROVISIONS CONCERNED: esp. Arts. 2, 42a, 42b, 62, 67-70, 113, 119, 119a, 120a, 124a, 125, 176, 176a, 179 (for example if the norm is not devoted only to the transposition of the concerned directive)
REFERENCES OF PUBLICATION IN THE OFFICIAL JOURNAL: Issue No. 106/1999 of the Collection of Laws of the Czech Republic (pp. 7406-7447) promulgated on December 23, 1999
LEGAL NATURE (indicate a cross in the right box): <input checked="" type="checkbox"/> LEGISLATIVE <input type="checkbox"/> REGULATION <input type="checkbox"/> CIRCULAR OR INSTRUCTIONS

Q.2.

This question needs to be answered only for FEDERAL OR SIMILAR MEMBER STATES LIKE AUSTRIA, BELGIUM, GERMANY, ITALY, SPAIN

Q.2.A.

Explain which level of government is competent to adopt the norms of transposition.

Please include your answer in the tables below

LEGISLATIVE RULES
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

REGULATIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

CIRCULAR OR INSTRUCTIONS
COMPETENCES OF THE FEDERAL/CENTRAL LEVEL:
COMPETENCES OF THE COMPONENTS:
EXPLANATIONS IF NECESSARY:

Since the Czech Republic is not a federal state, this question is irrelevant.

Q.2.B. Where appropriate, please explain if the federal structure and the distribution of competences between the different levels creates any problem or difficulty regarding the transposition and/or the implementation of the directive.

Q.3. Explain which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases.

Table 1

COMPETENCE CONCERNED:	Temporary Protection Procedure (i.e. all the aspects except from those that are vested in the Police of the Czech Republic; see below)
CENTRAL MINISTRY OF:	Ministry of the Interior
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Department for Asylum and Migration Policies (Odbor azylové a migrační politiky), hereinafter the “DAMP”
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 2

COMPETENCE CONCERNED:	The initial admission procedures (identification, taking photographs and fingerprints, conducting a personal inspection); transfer of the applicant from the border to the humanitarian facility; the issuance a Certificate of an Applicant for Temporary Protection and renewal of its validity; monitoring the place of residence of the applicants; running the register of the applicants and their fingerprints; issuance of the so-called "tolerance visas" in case of pending proceedings before the administrative courts after a negative decision of the DAMP
CENTRAL MINISTRY OF:	Ministry of the Interior
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	
OTHER LEVEL OF ADMINISTRATION:	Police of the Czech Republic (Regional Directorates of Aliens' and Border Police)
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 3

COMPETENCE CONCERNED:	Access to employment
CENTRAL MINISTRY OF:	Ministry of Labour and Social Affairs
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Local Labour Offices
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 4

COMPETENCE CONCERNED:	Access to employment and self-employed activity
CENTRAL MINISTRY OF:	Ministry of Industry and Trade
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Local Trades Licensing Offices
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 5

COMPETENCE CONCERNED:	Education and vocational training
CENTRAL MINISTRY OF:	Ministry of Education, Youth and Sports
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Local schools
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 6

COMPETENCE CONCERNED:	Social security, social assistance and social protection
CENTRAL MINISTRY OF:	Ministry of Labour and Social Affairs
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Local Social Service Offices
OTHER LEVEL OF ADMINISTRATION:	

IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	
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Table 7

COMPETENCE CONCERNED:	Health Insurance
CENTRAL MINISTRY OF:	Ministry of Health
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	
OTHER LEVEL OF ADMINISTRATION:	Health Insurance Companies
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	Health Insurance Companies are special quasi-state bodies with independent legal status that maintain health insurance records of its clients and provide payments to the medical facilities

Table 8

COMPETENCE CONCERNED:	Tax benefits
CENTRAL MINISTRY OF:	Ministry of Finance
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	Local Financial Offices
OTHER LEVEL OF ADMINISTRATION:	
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Table 9

COMPETENCE CONCERNED:	Recognition of professional diplomas, certificates and other qualifications
CENTRAL MINISTRY OF:	Ministry of Industry and Trade, Ministry of Education, Youth and Sports
DIRECTION OR SERVICE WITHIN THE ABOVE MINISTRY:	
OTHER LEVEL OF ADMINISTRATION:	For regulated professions: Czech Bar Association, Energy Regulatory Office, Ministry of Health, Ministry of Agriculture, The Chamber of Tax Advisers, Chamber of Patent Agents, Czech Chamber of Chartered Engineers and Technicians and others
IF NECESSARY, COMMENT ABOUT THE NATURE OF THE AUTHORITY (for instance if it is independent of the competent minister)	

Q.4.A. Has the central regulation foreseen by the central norm of transposition already been adopted?

YES NO

Since there was no regulation(s) foreseen in the main norm of transposition (see Q. 1B), this question is irrelevant for the Czech Republic.

Q.4.B. If the central norm(s) of transposition foresee(s) the adoption of one or several regulations, indicate if they have all been adopted:

YES NO

If NO, please indicate the missing text(s) in the table below. Where necessary, please add further explanations (specify in particular if the missing texts are at least under preparation or foreseen in the very near future):

When answering this question, please use one or more of the tables below (one table per missing text). If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

MISSING TEXTS
<i>INDICATE HERE THE MISSING TEXTS</i>

SECOND PART

It is necessary to stress at the outset that no practice has evolved in the application of Act No. 221/2003 Coll. on Temporary Protection of Aliens (TPA), and therefore the term “transposition” means strictly only *legal* transposition.

Duration and implementation of temporary protection

Q.5. According to article 5(1) in the Directive the existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council. According to article 5(3) the Council Decision shall have the effect of introducing temporary protection for the displaced persons to which it refers, in all the Member States, in accordance with the provisions in the Directive.

Do the national norms of transposition in your Member State mandate the Council to decide about the existence of a mass influx of displaced person, with the effect of introducing temporary protection for the displaced persons to which it refers in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation (if the answer is “no”, how is a Council decision transposed ad hoc into national law?)

Art. 1 § 4 of Act No. 221/2003 Coll. on Temporary Protection of Aliens (hereinafter only "TPA") stipulates that: "This Act is applicable when the temporary protection of aliens is pronounced by the decision of the Council of the EU." (footnote omitted)³

Q.6. According to article 6 in the Directive, temporary protection shall come to an end when the maximum duration has been reached or at any time by Council Decision on a proposal from the Commission. *See article 6 (1-2).*

Do the national norms of transposition mandate the Council to decide when temporary protection in your Member State shall come to an end?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is ‘no’, how is a Council decision

³ Footnote explicitly refers to the TPD.

transposed ad hoc into national law?)

Art. 11 letter f) TPA explicitly stipulates that temporary protection comes to an end by the decision of the Council. Similarly, temporary protection comes to an end when the maximum duration of the Council decision has been reached (Art. 11 letter b) TPA).

As a result, the proceeding on granting temporary protection are terminated (Art. 12 letters d) and f) TPA).

Q.7. According to article 7, a Member States may extend temporary protection, as provided for in the Directive, to additional categories of displaced persons over and above those to whom a Council decision applies, where they are displaced for the same reasons and from the same country or region of origin. *See optional provision in article 7 (1-2).*

Do the national norms of transposition allow your Member State to extend temporary protection to additional categories of displaced persons?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is "yes", if any, what are the criteria for extending protection to additional categories of displaced persons)?

However, the Czech Republic decided not to extend temporary protection to additional categories of displaced persons as envisaged in Art. 7 TPD.

Obligations of the Member States towards persons enjoying temporary protection

Q.8. Questions regarding obligations of the Member States towards persons enjoying temporary protection. *See article 8(1-3):*

Q.8.A. Does your Member State provide persons enjoying temporary protection with a residence permit? See mandatory provision in article 8(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is 'no', what are the practical Consequences for the individual?)

Upon crossing the Czech borders, the applicant for temporary protection is issued a residence permit to her travel document (Art. 2 § 1 letter a) TPA) or the so-called "border permit" (*hraniční průvodka*) in case she is not in possession of any travel document (Art. 2 § 1 letter c) TPA).

After transferral to the humanitarian centre, two stage procedure as to the residence permit follows. First, the applicant is issued a certificate of the applicant for temporary protection (Art. 34 § 1 TPA); and secondly, if the applicant is granted temporary protection she is issued a certificate of a beneficiary of temporary protection (Art. 35 § 1 TPA).

And finally, if the Ministry of the Interior issues a negative decision on temporary protection, the applicant can appeal to the Regional Court and subsequently lodge a cassational complaint. For a period of these appeal procedures, a toleration visa is issued (Art. 58a TPA).

The whole process can be summarized to the following diagram:

border permit => certificate of the applicant => a) certificate of the beneficiary
b) toleration visa

Q.8.B. Answer this question if the answer on Q.8.A is 'yes': **Is the residence permit valid for the entire period of temporary protection?** *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is 'no', what are the practical Consequences for the individual?)

Yes, both as to the 'applicants' (Art. 22 TPA) and as to the beneficiaries of temporary protection (Art. 35 § 1 TPA).

As i pointed in the previous question, the TPA distinguishes between an applicant for temporary protection and a beneficiary of temporary protection (Art. 5 TPA) and thus introduces two-stage procedure as to the residence permit.

The certificate of the applicant for temporary protection (Art. 34 § 1 TPA) is issued initially for a period of 90 days and may be repeatedly prolonged (if the proceedings on the granting of temporary protection are not finished within these 90 days), always for 30 days (Art. 34 § 2 TPA). Art. 22 TPA further stipulates that the applicant for temporary protection is allowed to stay in the territory of the Czech Republic during the entire course of the proceedings on the granting of temporary protection.

The certificate of a beneficiary of temporary protection (Art. 35 § 1 TPA) permits residence for the entire duration of the protection and may be prolonged (e.g. if the Council prolongs the maximum duration of temporary protection).

Q.8.C. **Will documents or other equivalent evidence for the residence permit be issued?** *See mandatory provision in article 8(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Yes, two specific certificates are issued: (1) certificate of the applicant for temporary protection (Art. 34 § 1 TPA); and (2) certificate of a beneficiary of temporary protection status (Art. 35 § 1 TPA).

On the so-called "border permit" and "toleration visa", see Q.8.A.

Q.8.D. Will your Member State provide persons enjoying temporary protection with a document, in a language likely to be understood by them, in which the provisions relating to temporary protection, and which are relevant to them, is clearly set out? See mandatory provision in article 9.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Both the Police at the border (Art. 2 § 1 letter b) TPA) and the Ministry of the Interior (Art. 58 § 1 TPA) provides the applicants for temporary protection and persons enjoying temporary protection with information on his rights and obligations related to the procedure on temporary protection and temporary protection status in her mother tongue or in a language likely to be understood.

However, no *document* with the abovementioned information has been explicitly envisaged in the TPA and thus the answer to this question is "No". The Ministry of the Interior itself admits that the information is supposed to be provided in writing but the words "in writing" disappeared from the TPA.

Q.8.E. Will the personal data of the persons enjoying temporary protection (name, nationality, date and place of birth, marital status, and family relationship) be registered? See mandatory provision in article 10.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Pursuant to 49 § 1 TPA, the Ministry of the Interior runs register of applicants for temporary protection and persons enjoying temporary protection. The scope of the data collected by the Ministry is stipulated in Art. 49 § 3 TPA and includes all the data in the application for temporary protection (enumerated in Annex I to the TPA). The scope of the data collected thus goes beyond the data enumerated in Annex II point (a) TPD and in fact covers also data under points (b)-(f) of Annex II. However, since Annex II is a non-exhaustive list of documents or data, Art. 10 TPD was correctly transposed.

In addition to the register maintained by the Ministry of the Interior, the Police runs the register of aliens (i.e. applicants) who were allowed to enter the territory of the Czech Republic (50 § 1 TPA).

Q.8.F. Will your Member State provide facilities for obtaining the necessary visas, including transit visas, to persons which will be admitted to the territory for the purposes of temporary protection? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

But this question is rather irrelevant for the Czech Republic since neither applicants for temporary protection nor persons enjoying temporary protection are required to obtain special visa.

More specifically, upon crossing the Czech borders, the applicant for temporary protection is issued a residence permit to her travel document (Art. 2 § 1 letter a) TPA) or the so-called "border permit" (hraniční průvodka) in case she is not in possession of any travel document (Art. 2 § 1 letter c) TPA), and no visa is required.

Q.8.G. According to the national law of your Member State: Will the visas referred to in Q.8.F, be free of charge? See mandatory provision in article 8(3).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (if the answer is "no", please indicate the amount charged and indicate amounts charged for other types of visas)

Due to the fact that the visas are not required for the applicants or beneficiaries of temporary protection, this question is irrelevant for the Czech Republic.

A residence permit to her travel document pursuant to Art. 2 § 1 letter a) TPA or the so-called "border permit" (Art. 2 § 1 letter c) TPA) are free of charge.

Q.9. According to national law of transposition, is your Member State responsible to take back a person enjoying temporary protection on its territory if that person seeks to enter onto or remains on the territory of another Member State without authorisation during the period of temporary protection? See mandatory provision in article 11.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

My answer is rather "YES" although Art. 11 TPD has not been explicitly transposed in the Czech Republic and thus the TPA is silent on this issue.

However, taking back a person enjoying temporary protection if she sought to enter onto or remains on the territory of another Member States without authorisation during the period of temporary protection is regulated by readmission agreements.

Q.10. **Has your Member State concluded bilateral agreements with other Member States regulating the responsibility for persons enjoying temporary protection under the Directive? See optional provision in article 11, final sentence.**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is "yes", please specify with which country)

Q.11. Questions regarding work and other activities during temporary protection: *See mandatory provision in article 12.*

Q.11.A. **Are the persons enjoying temporary protection allowed to engage in:**

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Employed activities? **Yes** **No**

Self-employed activities? **Yes** **No**

Educational opportunities for adults? **Yes** **No**

Vocational training? **Yes** **No**

Practical workplace experience? **Yes** **No**

Explanation:

Pursuant to Art. 32 § 1 TPA, persons enjoying temporary protection are for purpose of employment and self-employment considered to be third country nationals ("aliens" in the wording of the Aliens Act) with a permanent residence permit. Pursuant to Art. 98 letter a) of Act No. 435/2004 Coll., on Employment, aliens with a permanent residence permit do not need work permit and therefore they are under the national regime. Aliens with a permanent

residence permit may also engage in self-employed activities (Art. 5 § 5 of Act No. 455/1991 Coll., Trade License Act)

As to the vocational training and practical workplace experience, since persons enjoying temporary protection are for purpose of employment and self-employment considered to be aliens with a permanent residence permit, they fulfil the condition of residency for non-EU third country nationals in Art. 5 letter b) subsection 3. of Act No. 435/2004 Coll., on Employment and thus can be enlisted to the register of “employment candidates” (uchazeč o zaměstnání) under Art. 24 of Act No. 435/2004 Coll., on Employment. And since persons enjoying temporary protection are enlisted to the register of “employment candidates”, they have access to the Individual Action Plans under Art. 33 § 2 of Act No. 435/2004 Coll., on Employment and requalification courses under Art. 109 of Act No. 435/2004 Coll., on Employment. These requalification courses are provided to “employment candidates” (i.e. including refugees) for free (Art. 40 of Act No. 435/2004 Coll., on Employment).

As to the content of these measures, the Individual Action Plan is a tailored plan for each “employment candidate” that is supposed to improve her chances on the labour market. To this end, Labour Office develops an individual timetable consisting of particular measures how to achieve this aim. This feature has proved to be very helpful for refugees (there has not been any experience with persons enjoying temporary protection so far), especially due to their special needs related to integration that require special and individual approach.

Requalification courses vary one from another but they generally consist of vocational training and practical workplace experience, often finished by certificates that allow the “employment candidate” to be employed in qualified work.

Refugees are also provided with extensive employment related education opportunities under Art. 105 of Act No. 435/2004 Coll., on Employment.

Q.11.B. According to optional provision in article 12, Member States may, for reasons of labour market policies, give priority to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third-country nationals who receive unemployment benefit.

Do the national norms of transposition in your Member State give priority, or allow giving priority, to:

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

EU citizens? Yes No

Citizens of the European Economic Area? Yes No

Legally resident third-country nationals who receive unemployment benefits? Yes No

Explanation:

The Czech Republic has not transposed this optional provision

Question to be answered only if persons enjoying temporary protection are allowed to work:

Q.11.C. According to article 12, final sentence, the general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply if persons enjoying temporary protection are allowed to work.

If persons enjoying temporary protection are allowed to work: Will your country's general laws be applicable regarding:

Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Remuneration? **Yes** **No**

Access to social security systems relating to employed or self-employed activities and other conditions of employment? **Yes** **No**

Explanation:

Art. 32 § 1 TPA stipulates that the persons enjoying temporary protection are for purpose of employment and self-employment considered to be third country nationals ("aliens" in the wording of the Aliens Act) with a permanent residence permit. Therefore, the general laws of the Czech Republic are fully applicable.

As to remuneration and other conditions of employment, general laws (and in particular Act No. 262/2006 Coll., Labour Code, as amended) are applicable.

Similarly, as to access to social security systems relating to employed or self-employed activities, general laws are applicable, and in particular Act No. 54/1956 Coll., on Health Insurance of Employees, as amended (until January 1, 2008); Act No. 187/2006 Coll., on Health Insurance of Employees (from January 1, 2008); Act No. 586/1992 Coll., on Income Taxes, as amended; Act No. 589/1992 Coll., on Social Security Insurance and Contribution to the State Employment Policy, as amended.

Q.12. Questions regarding the Member States obligation towards the temporary protected regarding accommodation, subsidies, medical care etc. *See article 13(1-4).*

Q.12.A. Is your Member State obliged under national law to provide the persons enjoying temporary protection with suitable accommodation or means in order to obtain housing? *See mandatory provision in article 13(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation :

Art. 40 § 2 TPA provides that both the applicants for temporary protection and persons enjoying temporary protection are to be provided accommodation in the humanitarian centres (on the condition that they are not able to secure their accommodation otherwise). The Ministry of the Interior may use its asylum facilities for the purpose of providing housing.

The housing in the humanitarian centres is free of charge (Art. 42 § 1 letter a) TPA).

Q.12.B. Will your Member State, according to national law, be obliged to provide the persons enjoying temporary protection with economic assistance such as social welfare and means of subsistence? See mandatory provision in article 13(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Art. 42 § 1 TPA stipulates that the alien accommodated in the humanitarian centre (i.e. both applicants for temporary protection and persons enjoying temporary protection) are to be provided accommodation, board and other available services (all free of charge), and also a pocket money. The scope of the services provided is virtually the same as in case of asylum seekers (i.e. applicants for international protection after transposition of the Qualification Directive).

Furthermore, in the humanitarian centres where no meals are provided, the applicants for temporary protection and persons enjoying temporary protection receive financial contribution (Art. 43 TPA) to the catering which amounts to approximately 2400 CZK per month (this sum is linked to the subsistence minimum and varies slightly according to the age of the applicant and number of family members). This provision again mirrors the relevant provision of the Asylum Act.⁴

Art. 44 TPA further stipulates other privileges of applicants for temporary protection and persons enjoying temporary protection such as the right to be provided with basic sanitary material, board three times a day for adults and five times a day for children under 15, and a bed and night table for personal belongings (all free of charge) and also the right to receive parcels and money, right to receive visits, right to receive and send letters.

And finally, pursuant to Art. 31 § 1 TPA applicants for temporary protection and persons enjoying temporary protection can apply for financial contribution up to the subsistence minimum mentioned above if they prove that their financial situation does not allow them to secure sufficient standard of living.

⁴ For a comparison, as of May 31, 2006, adults (asylum seekers) received 79 CZK per day, children under 6 years old, 57.50 CZK, children 6-10 years old, 64 CZK, children 10-15 years old, 76 CZK, children over 15 years old, 83 CZK. There are also extra benefits available, e.g. 26 CZK per day for diabetics.

Q.12.C. Do the persons enjoying temporary protection have access to emergency medical care and essential treatment of illness? See mandatory provision in article 13 (2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is “yes”, please provide details whether persons enjoying temporary protection have access to *general medical care* or if it is restricted to *emergency care and essential treatment of illness?*)

Both applicants for temporary protection (Art. 28 § 1 TPA) and persons enjoying temporary protection (Art. 32 § 2 TPA) have access to medical care under the same conditions as the Czech citizens (i.e. to the extent of medical care covered by public health insurance)..

Both applicants and beneficiaries are provided provided medical care free of charge. Applicants for temporary protection are provided medical care free of charge directly under Art. 28 § 1 TPA. Persons enjoying temporary protection have the same status as aliens with a permanent residence permit (Art. 32 § 2 TPA) and are provided medical care free of charge pursuant to Art. 32 § 2 TPA in conjunction with Art. 7 § 1 letter o) of Act No. 48/1997 Coll. on General Health Insurance

Q.12.D. Will your Member State, according to national law, be obligated to provide for necessary medical or other assistance to persons enjoying temporary protection who have special needs such as unaccompanied minors, persons who have undergone torture, rape or other serious forms of psychological, physical or sexual violence? See mandatory provision in article 13(4).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If the answer is “yes”, please provide details about the assistance given to different groups of persons with special needs, for example psychological help for persons who have undergone torture).

The Czech Republic has not explicitly transposed this provision. Furthermore, there is no definition of persons with special needs in the TPA (in contrast to e.g. Art 81 § 2 of the Asylum Act).

On the one hand, a lack of explicit transposition is to a large extent rectified by the fact that the Czech Republic does provide not only "necessary" medical assistance but in fact a full medical assistance on the same level as to the Czech nationals. On the other hand, a reference to regime of general medical care might be problematic since it is by no means clear that such

a reference is sufficient to generate a positive obligation to create suitable care resources for the groups named in the present article under domestic law.

Q.13. Questions regarding access to education. *See article 14 (1-2):*

Q.13.A. Do persons who are under 18 years of age and enjoying temporary protection have access to the education system under the same conditions as nationals of your Member State? *See mandatory provision in article 14(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Art. 33 TPA stipulates that persons enjoying temporary protection have access to primary, secondary, higher secondary and university education under same conditions as the Czech nationals. However, the access to the education is not under the same conditions as for the Czech nationals when it comes to the access to the pre-school facilities and several other services. See below abstract copied from the 2006 Report on the Reception Conditions Directive.

I stressed the problem mentioned below already in connection with the 2006 Report on the Reception Conditions Directive and since this problem concerns all third-country nationals, I will stress only the main points. With the adoption of the new Schools Act which came into force on January 1, 2005, a new problem has arisen as to the scope of the access to education system for all third country nationals (including persons enjoying temporary protection status). As a result of the new Schools Act, third country nationals are not granted access to pre-school facilities (such as kindergartens etc.), and also to several secondary education facilities such as art schools and conservatories, as well as to other school services (such as meal plans, accommodation, education counselling etc.) under same conditions as the Czech nationals (Art. 20 § 1 of the Schools Act).

The new Schools Act thus provides for equal access of third country nationals under same conditions as the Czech nationals only to primary, secondary and higher secondary education. As concerns access to other forms of educations (such as inter alia pre-school, art and language schools, conservatories, that are not included in the abovementioned term “primary, secondary and higher secondary education”), the law distinguishes between the Czech and the EU citizens and their family members on the one hand and the third country nationals on the other. In practice it means that the third country nationals are not prevented from access to these types of education, but they are provided with a less favourable treatment. For example they have to pay a higher fee than the Czech citizens for the provision of school services (accommodation, catering), contribute to expenses of school facility related to their attendance of kindergarten etc. The amount of a fee depends upon decision of a headmaster of each school and varies from one school to another.

Q.13.B. If the answer on Q.13.A is ‘yes’: **Is access to education confined to the state education system or does it cover all kinds of educational institutions?**

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

The access to education is not confined to the state education system but the private education operates on the fee-paying basis.

Q.13.C. Do adults enjoying temporary protection have access to the general education system? *See optional provision in article 14(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

All persons enjoying temporary protection including adults enjoy access to primary, secondary, higher secondary and university education under same conditions as the Czech nationals (Art. 33 TPA). No specific limitation is stipulated for adults.

Q.14. Questions regarding right to family reunification. *See article 15:*

Q.14.A. Do the national norms of transposition in your Member State allow separated family members, which enjoy temporary protection in different Member States, to reunite? *See mandatory provision in article 15(2).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Yes, Art. 53 § 1 TPA explicitly provides that the Ministry of the Interior will reunite separated family members, who enjoy temporary protection in different Member States.

Q.14.B. Do the national norms of transposition in your Member State allow family members who are not yet in a Member State to reunite with a person enjoying temporary protection in your Member State? *See mandatory provision in article 15(3).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Yes, pursuant to Art. 51 § 1 TPA, family members of the person enjoying temporary protection status will be granted residence permit for the purpose of temporary protection upon their request.

**Q.14.C. For the application of the rules regarding family reunification:
Whom does your Member State consider a “family member”? See article
15(1)(a)(b).**

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

- The spouse of the person enjoying temporary protection.**
- The unmarried partner in a stable relationship to the person enjoying temporary protection.**
- The minor unmarried children of the person enjoying temporary protection or of his/her spouse, without distinction as to whether they were born in or out of wedlock or adopted.**
- Other close relatives who lived as part of the family unit with the person enjoying temporary protection at the time of the events leading to the mass influx, and who were wholly or mainly dependent on him/her at the time.**

Explanation:

Definition of the term "family members" is stipulated in Art. 51 § 2 TPA and includes the following groups: (1) a spouse if the marriage existed at the time of the events leading to the mass influx; (2) an unmarried child under 18 years of age; (3) a parent of a person enjoying temporary protection who is under 18 years of age; (4) an unmarried partner if the relationship existed at the time of the events leading to the mass influx and if the harm caused to one of the partners would be considered by the other partner as his/her own.

As to the unmarried couples, it is important to stress that this group is included within the definition of "family members" (Art. 51 § 2 TPA letter d)) even though that the Czech legislation does not treat unmarried couples in a way comparable to married couples under the Aliens Act (the only exception is treatment of unmarried couples of the EU citizens, see Art. 15a § 4 of the Aliens Act), and this provision goes beyond what is required by Art. 15 (1)(a) TPD. Similarly, allowing family reunification of a parent of a minor under 18 (Art. 51 § 2 TPA letter c)) goes also beyond what is required by Art. 15 (1)(a) TPD

As to the "other close relatives" (apart from the groups mentioned above), the Ministry of the Interior has a discretionary power to grant a residence permit for a purpose of family reunification also to "other close relative" who is not covered by Art. 51 § 2 (Art. 52 TPA).

Q.14.D. What means of proof is needed in your Member State to verify family membership, is for example documentary evidence needed?

Yes, documentary evidence is needed. It is true that Art. 53 § 5 of Act No. 500/2004 Coll., the Administrative Code, stipulates that declaration under oath is allowed to substitute documentary evidence only if explicitly stipulated by special law. However, the TPA does not contain such a provision and thus persons enjoying temporary protection status cannot substitute documentary evidence with declaration under oath.

Q.14.E. Explain which measures have been taken in your Member State to ensure that ‘the best interest of the child’ is accounted for when applying the provisions on family reunification in the national norms of transposition? See mandatory provision in article 15(4).

Art. 15 (4) TPD has not been explicitly transposed in the Czech Republic. However, best interest of the child is stipulated in general laws equally applicable to the refugees and beneficiaries of subsidiary protection (i.e. Arts. 26 § 4, 27 § 4, 45 § 1, 62 § 1 of Act No. 94/1963 Coll., on Family; and Art. 2 § 2 letter e) and Art. 5 of Act No. 359/1999 Coll. on Social and Legal Protection of Children). Furthermore, the Constitutional Court found several provisions (including Art. 3) of the UN Convention on the Rights of the Child self-executed and thus directly applicable before the Czech courts (Decisions of the Constitutional Court of the Czech Republic No. II.US 568/06 and No. I.US 48/04). Furthermore, pursuant to Art. 10 of the Constitution, the international treaties prevail over national laws.

Q.14.F. According to article 15(5), Member States shall decide in which Member State the reunification shall take place. Please indicate which authority possesses the competency to take such decisions?

Name and function of the Authority: Ministry of the Interior

Q.14.G. If there is a formal procedure foreseen for such decisions, please describe it briefly:

Pursuant to Art. 53 § 2 TPA, first the Ministry of the Interior will contact the relevant authority in other Member State and will jointly decide in which Member State the family (with due respect to the wishes of the family being reunited) will be reunited; and second the Ministry of the Interior will issue a certificate for a transfer of the part of the family subject to reunification.

Q.14.H. Are reunited family members in your Member State granted residence permits under temporary protection?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Yes, Art. 51 § 1 TPA stipulates that family members of the person enjoying temporary protection status will be granted residence permit for the purpose of temporary protection upon their request.

Q.14.I. Are documents or other equivalent evidence issued for persons who comes to your Member State and receives temporary protection under the provisions regarding family reunification?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

Yes, the persons granted temporary protection under the provisions regarding family reunification are granted the same documents⁵ as their sponsor (Art. 51 § 1 TPA in conjunction with Art. 35 § 1 TPA). Put differently, there is no distinct regime for persons granted temporary protection under the provisions regarding family reunification in the TPA.

Q.14.J. Does the national norms of transposition in your Member State comply with the provision in article 15(8) stating that a Member State shall at the request of another Member State, provide information on a person receiving temporary protection which is needed to process a matter of family reunification? See mandatory provision in article 15(8).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation:

Yes, Art. 53 § 3 TPA provides that the Czech Republic shall at the request of another Member State, provide information on a person receiving temporary protection which is needed to process a matter of family reunification.

Q.15. Questions regarding unaccompanied minors: *See article 16:*

Q.15.A. Explain how the representation of unaccompanied minors enjoying temporary protection in your Member State is arranged according to national law. See mandatory provision in article 16(1).

This provision has not been explicitly transposed in the Czech Republic.

The TPA only stipulates in Art. 56 that alien under 18 who is able to exercise his will and act independently is considered to have a legal capacity. Therefore, unaccompanied minors enjoying temporary protection are appointed a guardian under general social and family legislation, i.e. under Act No. 94/1963 Coll., on Family.

Unaccompanied minors are appointed guardian pursuant to Act No. 94/1963 Coll., on Family. Different types of guardianships are stipulated in Arts. 78-84 of this Act. A representative of the Organ of Social and Legal Protection of Children (hereinafter only "OSPOD") usually acts on behalf of an applicant as her guardian (Arts. 79 § 3 and 83 § 2 of Act No. 94/1963 Coll., on Family, in conjunction with Art. 17 letter a) of Act No. 359/1999 Coll. on Social and Legal Protection of Children)..

Q.15.B. Does your Member State provide for unaccompanied minors to be placed with: See mandatory provision in article 16(2).

⁵ See also Q.8.

(Please indicate by ticking the correct box/boxes and **EXPLAIN YOUR ANSWER**)

- Adult relatives ?**
- A foster-family ?**
- In reception centres with special provisions for minors, or in other accommodation suitable for minors ?**
- With the person who looked after the child when fleeing ?**

Explanation:

This provision has not been explicitly transposed in the Czech Republic but is ensured in practice.

Q.15.C. Do the national norms of transposition in your Member State meet the requirement that the views of the child shall be taken into account when arranging placement for the minor? See mandatory provision in article 16(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- Yes** **No**

Explanation:

This provision has not been explicitly transposed in the Czech Republic. Requirement stipulated in Art. 16(2) TPD is only loosely ensured by Art. 45 § 1 of Act No. 94/1963 Coll., on Family, that provides that "if it is in the interest of the child, he or she will be placed in the custody of a person different from his or her parent on the condition that this person guarantees due upbringing [of a child] and if the child consents with this placement."

Access to the asylum procedure in the context of temporary protection

Q.16. Questions regarding access to the asylum procedure. *See article 3 and 17-19:*

According to mandatory provision in article 3(1) temporary protection shall not prejudice recognition of refugee status under the Geneva Convention.

Q.16.A. Does temporary protection in any way prejudice recognition of refugee status under the Geneva Convention in your Member State?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

- Yes** **No**

Explanation:

Granting temporary protection does not prejudice recognition of refugee status under the Geneva Convention in the Czech Republic.

If an applicant for temporary protection (Art. 57 § 1 TPA) or a person enjoying temporary protection (Art. 57 § 2 TPA) files an application for international protection (that includes both refugee and subsidiary protection status), his status is partially governed by the Asylum Act (and not the TPA) and certain material reception conditions are provided under slightly different regime.⁶

Q.16.B. Does your Member State allow persons enjoying temporary protection to apply for asylum at any time during the period of temporary protection? See mandatory provision in article 17(1).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

There are no restrictions stipulated in the TPA on the time period when a person enjoying temporary protection may lodge an application for international protection.

Q.16.C. Does your Member State allow persons enjoying temporary protection to stay in the Member State during the examination of their asylum claim, even though the period of temporary protection has ended? See mandatory provision in article 17(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Since the status of persons enjoying temporary protection who lodged an application for international protection is governed by the Asylum Act, these person are allowed to stay even though the period of temporary protection has ended.

Q.16.D. What criteria are provided by the norms of transposition in your Member State to determine the responsibility amongst Member States for examining an asylum application submitted by a person enjoying temporary protection in another Member State? See mandatory provision in article 18.

This provision has not been explicitly transposed into the TPA since the Asylum Act applies (see Q.16.C). Furthermore, the Dublin II Regulation is directly applicable and thus does not require explicit transposition.

Q.16.E. Has your Member State decided that temporary protection may not be enjoyed concurrently with the status of asylum seeker while applications are under consideration? See optional provision in article 19.

⁶ For further details, see Q.16.E.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: If the answer is “yes”, please provide details concerning differences between the reception conditions for asylum seekers and persons enjoying temporary protection in your Member State which might lead to withdrawal or reduction of rights for a temporary protected who lodges an application for asylum.

Yes, but only partially, i.e. as to certain material reception conditions. More precisely, if a person enjoying temporary protection files an application for international protection (that includes both refugee and subsidiary protection status), his status is partially governed by the Asylum Act (and not the TPA) and certain material reception conditions are provided under slightly different regime (Art. 57 § 2 TPA).

These differences include right to apply for financial contribution up to the subsistence minimum (Art. 31 § 1 TPA, see also Q.12.B), right to access to the health care (Art. 32 § 2 TPA), and right to material reception conditions provided in Arts. 42-44 TPA. However, all these rights apart from right to apply for financial contribution up to the subsistence minimum are stipulated in the Asylum Act. However, it is true that in the case of health care, the Asylum Act stipulates a slightly different regime based upon public health insurance scheme whereas the TPA mirrors the different scheme applied in the Asylum Act until 2006 which is based upon services provided directly by the Ministry of the Interior. For a more detailed analysis of a complex change of the scheme of access to the health care for the applicants for international protection, see Q.27.C of the 2006 Report on the Reception Conditions Directive).

If a refugee or subsidiary protection status is granted to a person enjoying temporary protection, his temporary protection status is terminated (Art. 11 letter c) TPA).

Q.16.F. If refugee status or, where applicable, other kind of protection is not granted to a person who is eligible for or already enjoys temporary protection is that person allowed to enjoy or continue to enjoy temporary protection in your Member State? See mandatory provision in article 19(2).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

Although there is no explicit provision stipulating this obligation in the TPA, it is implicitly ensured. More precisely, if refugee status or subsidiary protection status is not granted to a person who is eligible for or already enjoys temporary protection, she is allowed to enjoy or continue to enjoy temporary protection in the Czech Republic since her temporary protection status was not terminated by filing an application for international protection. The only change in the status is the "reaccrual" of the rights mentioned in Q.16.E that were suspended by filing an application for international protection.

Return and measures after temporary protection has ended

Q.17. Questions regarding the voluntary return of persons enjoying temporary protection:

Q.17.A. According to mandatory provision in article 21(1) the Member States *shall* ensure that the provisions governing voluntary return of persons enjoying temporary protection facilitate their return with respect for human dignity. How is that reflected in the national norms of transposition in your Member State?

This provision has not been transposed in the Czech Republic.

Q.17.B. Please explain how your Member State ensures that a decision of persons enjoying temporary protection, or whose temporary protection has ended, to return voluntarily is taken in full knowledge of the facts. *See mandatory provision in article 21(1).*

This provision has not been transposed in the Czech Republic.

Q.17.C. Is it possible for the temporary protected in your Member State to make exploratory visits to the home country? *See optional provision in article 21(1).*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

The Czech Republic decided to not transpose this optional provision.

Q.17.D. Please explain if and how your Member State has transposed article 21(2) stating that Member States shall, for such time as the temporary protection has not ended and on the basis of the circumstances prevailing in the country of origin, give favourable consideration to requests for return to the host Member State from persons who have enjoyed temporary protection and exercised their right to a voluntary return?

This provision has not been transposed in the Czech Republic.

Q.17.E. Is it possible, under the national norms of transposition in your Member State, for persons enjoying temporary protection to continue receive their benefits as temporary protected after the period of temporary protection has ended, if they benefit from a voluntary return programme? *See optional provision in article 21.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes

No

Explanation: (If the answer is “yes”, for how long is that possible).

The TPA is silent on this issue. The Czech Republic thus decided to not transpose this optional provision.

Q.18. Questions concerning enforced return of persons who have enjoyed temporary protection. *See articles 22:*

Q.18.A. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(1), obliging Member States to ensure that the enforced return of persons whose temporary protection has ended and who are not eligible for admission shall be conducted with due respect for human dignity.

This provision has not been explicitly transposed in the Czech Republic but it is ensured by Art. 10 § 1 of Constitutional Act No. 2/1993 Coll., Charter of Fundamental Rights and Basic Freedoms that protect human dignity of every person on the territory of the Czech Republic including aliens.

Please note also that in contrast to persons who benefit from a voluntary return programme, expulsion of persons whose temporary protection has ended or who are not eligible for admission is regulated by the Aliens Act (§ 47 TPA) and not the TPA.

Q.18.B. Explain if and how the laws of your Member State comply with the mandatory provision in article 22(2) obliging Member States to consider any compelling humanitarian reasons which may make return impossible or unreasonable in specific cases.

This provision has not been explicitly transposed in the Czech Republic but is ensured by international human rights treaties which pursuant to Art. 10 of the Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic, prevail over ordinary laws. Therefore, e.g. Art. 3 ECHR prevents expulsion in violation of the ECtHR case law.

The expulsion itself is regulated by Arts. 120a and 179 of Act No. 326/1999 Coll. on Residence of Aliens on the Territory of the Czech Republic and Amendment to Some Acts (Aliens Act). Both provisions of the Aliens Act contain protection from refoulement.

Q.18.C. In the national law of your Member State, are there any other grounds (except for the one referred to in Q.18.B) for allowing persons who have enjoyed temporary protection to stay in your Member State?

No, there are no additional grounds.

Q.19. Questions concerning forcible return of persons who have enjoyed temporary protection. *See article 23:*

Q.19.A. Does the national law and practice of your Member State comply with the mandatory provision in article 23, providing that persons who have

enjoyed temporary protection and who cannot, in view of their state of health reasonably be expected to travel, are not expelled as long as that situation continues? The provision exemplifies with persons who would suffer serious negative effects if their treatment was interrupted.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

This provision has not been explicitly transposed in the Czech Republic. Again, compliance with this provision is supposed to be ensured by international human rights treaties and by Arts. 120 § 3, 120a and 179 of the Aliens Act.

Q.19.B. Does your Member State allow families whose children attend school in a Member State, to benefit from residence conditions allowing the children concerned to complete the current school period before return? See optional provision in article 23.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

The Czech Republic decided to not transpose this optional provision.

Solidarity

Q.20. Please describe how your Member State ensures that persons eligible for temporary protection defined in a Council Decision under article 5 and who have not arrived in the Community have expressed their will to be received on their territory? See mandatory provision in article 25(2).

This provision has not been explicitly transposed in the Czech Republic.

The Ministry of the Interior contends that the Art. 25(2) TPD has been fully transposed to Art. 2 § 1 TPA which reads as follows: "If during a border control an alien indicates *her intention* to ask in the Czech Republic for temporary protection, the Police shall..." (footnote omitted, emphasis added by author). I respectfully disagree with this position since it is at best only incomplete transposition (requirement to cooperate with competent international organisations is missing; it covers only those applicants who already arrived to the borders of the Czech Republic - which is not the only possible [nor even the most plausible] interpretation of the phrase "who have not yet arrived in the Community").

Q.21. Questions concerning the transferral between Member States of persons enjoying temporary protection. See article 26:

Q.21.A. According to mandatory provision in article 26(1) the Member States shall cooperate with each other with regard to transferral of the residence of persons enjoying temporary protection from one Member State to another, subject to the *consent* of the persons concerned to such transferral.

Does the national law of your Member State comply with article 26(1) regarding the *consent* of the person who are about to be transferred?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

This provision has not been transposed in the Czech Republic.

Q.21.B. Do the national norms of transposition in your Member State comply with article 26(2) stating that a Member State shall communicate requests for transfers to the other Member States and notify the Commission and UNHCR?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

This provision has not been explicitly transposed in the Czech Republic.

Arts. 20-21 TPA transpose only Art. 3(3) of the TPD, i.e. that the Ministry of the Interior shall inform UNHCR about the number of applications for temporary protection (Art. 20 TPA) and that it will allow the UNHCR representatives to contact the applicants and to be present during their interviews and oral hearings.

Q.21.C. According to the national norms of transposition, is your Member State obliged to, at the request of another Member State, provide information as set out in Annex II of the Directive, on a person enjoying temporary protection, which is needed to process a matter of transferral? (See mandatory provision in article 26(3)).

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Since Arts. 25-26 TPD have not been transposed in the Czech Republic, the only obligation to provide information to another Member State is in case of family reunification (Art. 53 § 3 TPA; see also supra Q.14.J).

Q.21.D. According to the national law in your Member State, will the residence permit of a person who is transferred, from your Member State to another Member State, expire? See mandatory provision in article 26(4)

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

Even though Art. 26 TPD has not been generally transposed in the Czech Republic (and transferral procedure apart from family reunification is de facto non-existent), Art. 10 § 1 letter a) TPA stipulates that:

"Temporary protection residence permit shall be withdrawn if

a) a beneficiary of the temporary protection status is granted temporary protection status by another state or when she is issued permanent or similar residence permit by another state..."

Therefore, the residence permit of a person who is transferred from the Czech Republic to another Member State expires and thus this part of Art. 26 (4) has been correctly transposed.

Q.21.E. When a person, who has been enjoying temporary protection in your Member State is transferred to another Member State, will the obligations relating to temporary protection in your Member State come to an end upon the transferral? See mandatory provision in article 26(4)

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

This part of Art. 26 § 4 TPD has not been explicitly transposed in the Czech Republic.

The Ministry of the Interior contends that this mandatory requirement is *implicitly* covered by Art. 10 § 1 letter a) TPA, but this interpretation does not have support in the text of this provision.

Q.21.F. If a person, who previously has enjoyed temporary protection in another Member State, is transferred to your Member State, will your Member State grant temporary protection to that person? See mandatory provision in article 26(4), last sentence.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

This part of Art. 26 § 4 TPD has not been explicitly transposed in the Czech Republic.

Q.21.G. Will the ‘model pass’ set out in annex I of the Directive be used in a foreseen transferral procedure?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation:

On the one hand, the 'model pass' envisaged by Annex 4 to the TPA differs only slightly from the one in Annex I of the Directive (photo is at the top of the page, slightly different order of the required information). On the other hand, as I stressed earlier, the Czech Republic failed to transpose Art. 26 of the Directive and as a consequence of thereof the 'model pass' applies *solely* to transferrals for reasons of family reunification (Art. 53 § 2 letter b)).

Q.22. What authority in your Member State is appointed as national contact point according to the mandatory provision in article 27?

The name and function of the authority is: A contact person of the Ministry of the Interior

This provision has not been explicitly transposed since the Ministry of the Interior contends that it is not necessary to transpose this provision. However, the Czech Republic notified the name of responsible person of the Ministry of the Interior to the European Commission in the notification tables (according to information from the Ministry of the Interior). But author of this report was not provided with name of this person even after explicit request.

As to the second sentence of Art. 27 (1) TPD, pursuant to information from the Ministry of the Interior no measures to establish direct cooperation or an exchange of information between the competent authorities have been taken so far.

Q.23. Questions regarding exclusion from temporary protection:

Q.23.A. Are there any criteria for exclusion from temporary protection in your Member State? See optional provision in article 28.

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes **No**

Explanation: (If yes, specify the criteria).

Art. 9 § 1 TPA stipulates that an applicant is excluded from temporary protection if there are serious reasons for considering that (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he or she has been guilty of acts contrary to the

purposes and principles of the United Nations; or (c) represents a danger for security of the state.

Art. 9 § 2 TPA stipulates that an applicant *may* be excluded from temporary protection when (a) having been convicted by a final judgment of a particularly serious crime, he or she is a danger to the community of the state; or (b) he or she submitted untrue data and/or concealed any facts important for assessment of his or her claim.

Art. 9 § 3 TPA further stipulates that he or she has committed a serious non-political crime outside the Member State of reception prior to his or her admission to the state as a person enjoying temporary protection.

And finally, pursuant to Art. 9 § 4 TPA, temporary protection cannot be granted if the Czech Republic exceeds number of granted temporary protection status stipulated by the decision of the EU Council. However, Art. 9 § 4 TPA does not apply to family reunification.

Q.23.B. If the answer to A. is “yes”, please indicate whether they in any way exceed the exhaustive list of criteria in article 28(1)(a) and (b).

Yes No

Explanation:

Two exclusion grounds exceed the exhaustive list of criteria in article 28(1)(a) and (b) TPD. Firstly, Art. 9 § 2 letter b) TPA (submission of untrue data and/or concealment of any facts important for assessment of the claim) and Art. 9 § 4 TPA (number of applications exceeding the number stipulated by the decision of the Council).

As to Art. 9 § 2 letter b) TPA, the Ministry of the Interior contends this exclusion ground will solely search whether the applicant for temporary protection comes from a particular country and belongs to the specific groups of persons to whom the temporary protection applies (and thus it will be allegedly triggered only when there are doubts about the applicant's "true" country of origin). However, the wording of this provision is much broader.

As to Art. 9 § 4 TPA, the Ministry of the Interior contends that this exclusion ground stems directly from Art. 5 in conjunction with Art. 25 § 1 TPD.

Q.23.C. Do the national norms of transposition in your Member State meet the terms in article 28(2) stating that the grounds for exclusion shall be based solely on the personal conduct of the person concerned?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

This provision has not been explicitly transposed in the Czech Republic.

The Ministry of the Interior contends that article 28(2) TPD is covered by the general principles of administrative law stipulated in Act No. 500/2004, the Administrative Code, but I respectfully disagree.

Q.23.D. Do the national norms of transposition in your Member State meet the terms of article 28(2) stating that exclusion decisions or measures shall be based on the principle of proportionality?

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation:

This provision has not been explicitly transposed in the Czech Republic.

The Ministry of the Interior contends that article 28(2) TPD is covered by the general principles of administrative law stipulated in Act No. 500/2004, the Administrative Code, but I respectfully disagree.

Q.24. Questions concerning the right to legal challenge:

Q.24.A. Do the laws of your Member State allow a person to mount a legal challenge if he/she has been: *See mandatory provision in article 29.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

excluded from the benefit of temporary protection Yes No

denied family reunification Yes No

Explanation:

As the exclusion from the benefit of temporary protection, Art. 17 § 1 TPA stipulates the right of appeal within 15 days to the Regional Court. The "normal" administrative judicial review applies and the applicants can thus also subsequently lodge a cassational complaint to the Supreme Administrative Court.

As to the denial of family reunification, the right of appeal explicitly is not stipulated in the TPA (in contrast to the exclusion from the benefit of temporary protection). However, the Supreme Administrative Court interprets its jurisdiction broadly. Therefore, in fact there is no restriction on the access to administrative judicial review.

As to the judicial review in general, courts of administrative justice decide inter alia not only on complaints against decisions of and administrative authority (Art. 4 § 1 letter a) of the Code of Administrative Justice⁷), but also on protection against the inaction of an

⁷ Act. No. 150/2002 Coll., the Code of Administrative Justice, as amended (hereinafter only the "CAJ").

administrative authority (Art. 4 § 1 letter b) of the CAJ) and protection against an unlawful interference of an administrative authority (Art. 4 § 1 letter c) of the CAJ), Therefore, there is no reason in principle why a negative decision relating to the granting of benefits or based on Art. 7 of the Directive should not fall under one of the abovementioned grounds (i.e. those stipulated in the CAJ) of jurisdiction of the administrative courts. The asylum seekers thus can appeal to the Regional Court pursuant to Art. 65 and the following of the CAJ and ultimately lodge a cassational complaint to the Supreme Administrative Court pursuant to Art. 103 of the CAJ. This view is also accepted by the Ministry of the Interior. Nevertheless, there has not been any case where these provisions have been challenged before the Czech courts.

Q.24.B. If the answer on any of the questions in Q.24.A is “yes”, please describe the applicable legal procedures for challenging the decision, in your Member State.

See Q.24.A.

Q.25. Questions regarding penalties applicable to infringements of the national provisions.

Q.25.A. Are there penalties applicable to infringements of the national provisions in your Member State? *See mandatory provision in article 30.*

(Please indicate by ticking the correct box and **EXPLAIN YOUR ANSWER**)

Yes No

Explanation: (If yes, specify the penalties).

This provision has not been transposed in the Czech Republic.

The Ministry of the Interior contends that Art. 30 stipulates obligation to impose penalties upon the applicants for temporary protection and not upon the state authorities.

Q.25.B. Explain if the penalties, according to your opinion, comply with the Directive concerning them being effective, proportionate and dissuasive?
See mandatory provision in article 30.

Since Art. 30 TPD has not been transposed in the Czech Republic, this question is irrelevant.

Final questions

Q.26. Can you refer us to any study, report or research by any source on the practice of granting temporary protection in the event of a mass influx in your Member State?

Pavla Burdová-Hradečná, Běla Hejná: Subsidiární formy ochrany. In: Markéta Hronková, Pavla Burdová-Hradečná (eds.): KOMPARATIVNÍ STUDIE PROGRAMU MIGRACE, Poradna pro občanství/OSF Praha, Praha, 2003, pp. 48-50.

Q.27. Has there been a political or public debate on the implementation of the Directive? If so, please summarize the main issues of the debate

No, there has not been almost any debate on the implementation of the TPD.

Q.28. Are there any problems of legislation or practice in your Member State which relate to temporary protection and have not been covered in preceding questions?

No, all the problems have been covered in preceding questions.

THIRD PART

IMPACT OF THE DIRECTIVE ON NATIONAL LAW

Q.29 Question regarding the evolution of national law: **Did the transposition of the Directive make the rules related to the protection of third country nationals in cases of a mass influx become, from the point of view of the third-country national concerned, more favourable or less favourable. Please make also a comparison with the standard of the directive in the last column of the table below**

OBJECTIVE <i>To enhance the protection of displaced persons in cases of a mass influx</i>	EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
<p>Before transposition of the TPD, there was no general law on temporary protection. In case of mass influx of third-country nationals, the situation was solved either by ad hoc solution (conflict in former Yugoslavia) and later on by the Government Regulation No. 290/2001 Coll. (conflict in Chechnya).</p>	<p>Since the TPD replaced the non-existent legal standards of temporary protection and thus laid down more favourable standards than previous national rules.</p> <p>There has been no national norms which were adopted before the deadline for transposition or even before the adoption of the TPD in the Czech Republic apart from ad hoc Government Regulation mentioned in the left column.</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input type="checkbox"/> <i>Status quo</i></p> <p><input checked="" type="checkbox"/> <i>More favourable than previous national rules</i></p> <p><input checked="" type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

Q. 30. **From your point of view, did the transposition of the directive imply other interesting changes for the third country national concerned regarding other elements than the ones mentioned in the previous question? Please make also a comparison with the standard of the directive in the last column of the table below**

When answering this question, please use one or more of the tables below. If the 3 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

It is important to stress that before transposition of the TPD, there was no general law on temporary protection. In case of mass influx of third-country nationals was solved either by ad hoc solution (conflict in former Yugoslavia) and later on by the Government Regulation No. 290/2001 Coll. (conflict in Chechnya).

As a result, the evaluation regarding the national law is the same for all objectives since the TPD replaced the non-existent legal standards of temporary protection and thus laid down more favourable standards than previous national rules.

Table 1

OBJECTIVE (to be indicated by the national rapporteur)		EVALUATION REGARDING THE EVOLUTION OF NATIONAL LAW	EVALUATION IN COMPARISON WITH THE STANDARD OF THE DIRECTIVE
Explain the situation before transposition	<p>Explain the situation after transposition</p> <p>(To evaluate the impact of the directive, please consider also national norms which were adopted before the deadline for transposition or even before the adoption of the directive, in cases of Member States having amended their national legislation in advance in accordance with the directive. Please indicate the precise date of adoption of the change)</p>	<p><input type="checkbox"/> <i>Less favourable than previous national rules</i></p> <p><input type="checkbox"/> <i>Status quo</i></p> <p><input type="checkbox"/> <i>More favourable than previous national rules</i></p>	<p><input type="checkbox"/> <i>Less favourable than the Directive</i></p> <p><input type="checkbox"/> <i>In line with the directive</i></p> <p><input type="checkbox"/> <i>More favourable than the directive</i></p>

Q.31. A. Question regarding the method of transposition: **Did your Member State copy the provisions of the directive into national legislation without any redrafting or adaptation to national circumstances.**

YES NO

Q.31.B. **If yes, did this method of transposition create any problems (for example difficulties of implementation, risk that a provision remain unapplied).**

YES NO

Q.31.C. **If yes, give some of examples:**

Q.31.D. **If only some provisions of the directive have been copied and if this may create any problem, please quote them and explain the problem.**

None of the provisions of the TPD have been simply copied.

Q.32. **Quote interesting decisions of jurisprudence related to the directive, its transposition or implementation** (this question concerns in principle decisions after the national norms of transposition entered into force, but decisions prior to that may be quoted if relevant). Quote in particular decisions of supreme Courts; limit yourself to the appeal Courts and ignore the first resort if there are too many decisions at this level, unless there is a certain jurisprudence made of a group of decisions.

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

DECISION OF SUPREME COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION OF APPEAL COURTS	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>
DECISION(S) IN FIRST RESORT	<u>DATE:</u>	<u>REFERENCE OF PUBLICATIONS:</u>	<u>SUMMARY OF CONTENT:</u>

ANY SUPPLEMENTARY COMMENT ABOUT THE TREND OF THE JURISPRUDENCE:

Q.33. Are there any **problems with the translation of the text of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated.**

There are no problems with the translation of the directive.

There are some problems with the translation of the directive.

Explanation: (If there are such problems, please specify the most problematic provisions in the Directive when it comes to translation).

Explain the difficulties that this could create:

ANY OTHER INTERESTING ELEMENT

Q.34. **Following your personal point of view, mention from the point of view of third country nationals and/or from the Member State any interesting or innovative practice in your Member State**

When answering this question, please use one or more of the tables below. If the 5 tables below are not enough please duplicate the table (see technical information at the beginning of the questionnaire).

Table 1

OBJECTIVE OF THE PRACTICE	EXPLANATION

Q.35. **Please add here any other interesting element in your Member State which you did not have the opportunity to mention in your previous answers.**

Appeal against the negative decision of the Ministry of the Interior on financial contribution pursuant to Art. 31 § 1 TPA is explicitly excluded (Art. 31 § 3 TPA). Similar provision in the Asylum Act was repealed by the amendment to the Asylum Act transposing the Reception Condition Directive.