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**Comparison of Asylum procedures in the Czech Republic
and Austria**

Master's Thesis

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I declare that I have prepared this work by myself based on the mentioned sources and literature.

In Olomouc, 05. 02. 2023

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List of Abbreviations

Art.	Article
BFA	Federal Office for Immigration and Asylum
BMI	Federal Ministry of the Interior
CEAS	The Common European Asylum System
COI	Country of Origin Information
et al.	Et alia/and others
ECJ	European Court of Justice
EEC	European Economic Community
EU	European Union
EUR	Euro
Ibid.	Ibidem (in the same place)
i.e.	Id est/that is
NATO	North Atlantic Treaty Organization
NGOs	Non-governmental organization
ÖIF	Austrian Integration Fund
p.	Page
pp.	Pages
UNHCR	The Office of the United Nations High Commissioner for Refugees
TFEU	Treaty on the Functioning of the European Union
UK	The United Kingdom

INTRODUCTION

The institution of asylum as a refuge for a persecuted person has evolved over several centuries and is still a hotly debated topic in our society today, as the number of asylum applications in Europe continues to grow. Since time immemorial, people have been forced to leave their homes due to the threat of danger of various kinds and thus seek protection in countries where human rights are respected.

Refugeeism, migration and asylum are also important issues at international level, and it is essential to emphasise that, thanks to the sovereignty and sovereignty of individual states, they have the power to determine independently whether to grant asylum. It is only at the beginning of the 20th century, when the area of refugees becomes more global, that there is a certain limitation on the freedom of states. This brings to the fore international obligations that must be respected and, in a way, prioritised over the interests of individual states.

The present thesis focuses on the issue of asylum procedures and the institution of asylum itself, i.e. international protection in the Czech Republic and Austria. Between the compared countries we can find common aspects in the form of population or the same history of a single state formation in the past. Whether their asylum system and the view on the issue of migration are similar will be part of the research of the thesis.

The main method of data collection will be the analysis of documents, which are the asylum laws of the selected countries together with the European legislation. Therefore, the aim of the thesis is a comparative analysis of asylum law documents in the Czech Republic and Austria, where criteria indicating the situation in the field of European law will be measured on the basis of historical analysis and comparison of the development of the selected countries. The core of the thesis is the elaboration of a comparative analysis of the asylum law of the selected countries. This comparative study will be a qualitative research.

The comparative analysis compares the determined indicators between different entities. A comparative case study, is used as one of the main qualitative methods in political science and international relations research, examines two or more different cases, at least two, and then conducts a comparative analysis of them.¹

¹ DRULÁK, P. *Jak zkoumat politiku: kvalitativní metodologie v politologii a mezinárodních vztazích*. Praha: Portál, 2008, p.62.

The comparison of the asylum policy of the Czech Republic and Austria raises many questions: what are the differences in the concept of the basic concepts of asylum law in the compared countries, how do Austrian and Czech institutions proceed in the asylum procedure, for example in the case of refusal of an application for international protection.

The author of the thesis believes that the Czech and Austrian norms will be very similar, especially because both countries are part of the Schengen area and member states of the European Union and therefore their legislation must be in line with Community law.

The thesis is divided into a theoretical and a comparative part. The aim of the thesis is mainly to compare the asylum procedure in the Czech Republic, to point out the different regulations together with an insight into asylum policy issues and to suggest possible directions for further scientific research.

Each chapter provides a brief introduction and conclusion, in which we can find an overview and summary of the essential facts relevant to the topic and focus of the thesis. The theoretical part of the thesis in each chapter provides the theoretical basis for the empirical part.

In the theoretical part of the thesis I will focus on the historical development of the asylum institution itself, together with the definition of the basic subjects of asylum law from which the thesis will subsequently develop.

In the second chapter, the author of the thesis will then present the sources of international and EU asylum law, together with Czech and Austrian legislation. In the practical part of the thesis, the different concepts of asylum law will be compared according to national legislations and their differences and similarities, including differences in approaches and conditions for asylum seekers, from which the compared countries could learn from each other.

The author then concludes the thesis by summarizing whether the initial hypothesis has been confirmed and in what ways it has been refuted. The final section will also compare the number of asylum applications in the two countries and other relevant indicators.

The field of asylum and refugeeism itself can be considered relatively new in the Czech environment. Therefore, the first theoretical works dealing with asylum law started to appear slowly in the Czech Republic only in the second half of the 1990s. Subsequently, since 2000, the number of publications has slowly increased. This was mainly due to the interest of the younger generation of lawyers in this legal discipline. Asylum law has been the subject of a number of books, articles and theses. The topic of asylum law is systematically and in detail

treated in the publication *The Theory of Asylum and Refugee Practice* by Pavel Šturma, Věra Housková and colleagues. These authors from the Faculty of Law of Charles University have been dealing with the topic of asylum in the Czech Republic for a long time. In this book we can find a description of important documents related to the asylum issue, regulation of international law protection of refugees, asylum and the right to it in the Czech Republic and the European Union, including the status of foreigners in the Czech Republic.

Another important author dealing with asylum issues is Karel Klíma with his work *Asylum Law in the European Context*. This work provides a detailed analysis of the historical context of asylum and the impact of EU membership on the asylum policies of the Member States.

1 THE DEVELOPMENT OF ASYLUM LAW AND RELATED CONCEPTS

In this chapter, attention will be paid to the historical development of asylum law itself and related concepts that will appear frequently in this thesis. Thus, the chapter will first offer a brief historical perspective on the development of the field, followed by an introduction to the subject and a definition of the main concepts. International protection law provides, for example, terms such as asylum seeker, applicant for international protection, beneficiary of subsidiary protection or refugee. The following subchapters, which aim to provide an introduction to asylum law, will provide more detail.

1.1 Brief history and development of the asylum issue

The development of the law of asylum began as early as the ancient period, when the first states began to form. At first we speak only of religious asylum. Persons taking refuge in sacred places in ancient Greece in the form of temples, invoking God, were protected from secular violence in society. A person who thus escaped to a sacred place was placed in the hands of the deity, which both public and private authorities were obliged to respect. The guarantee was provided to the prosecuted persons by the priests and believers of the place, and not least by the public power, which recognized the sacredness of the territory.²

Even in the Middle Ages, emphasis was placed on the sacredness of the place. Interestingly, persons who committed a crime and subsequently took refuge in a church were guaranteed to avoid punishment. Initially, this was for crimes of any nature, but even this became regulated over time.³ A significant change in the right of asylum from the ancient world was that it was not only under the auspices of the Church, but now also under the auspices of the monarch when it came to state asylum.⁴ In general, therefore, it is from the institution of ecclesiastical refuge that the law of state asylum was born. It was in the Middle Ages that asylum ceased to be a national matter and began to transcend the borders of medieval states. In the Middle Ages, for example, the nobility had the right to flee their country and ask a ruler in another country for protection.

² BALGA, J. *Azylové právo*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2012, p. 9.

³ MOLEK, P. *Právní pojem pronásledování v souvislostech evropského azylového práva*. Praha: C. H. Beck, 2010, pp. 3-4.

⁴ BALGA, J. *Azylové právo*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2012, pp. 15-17.

In the 15th – 16th centuries, religious asylum was hardly applied anymore. The division of asylum into diplomatic and territorial asylum was typical of the modern period. Diplomatic asylum acting against politically persecuted persons was tolerated until the 19th century.⁵ The loss of the function of diplomatic asylum dates back to the 18th century, when, with the decline of absolutism, envoys ceased to represent the sovereign in areas such as the granting of pardons to delinquents. The granting of territorial asylum to fugitives from justice from other states was subject to the power of the states. These were persons fleeing for political or religious reasons. In the 18th century, the principle of extraditing criminals once the other state requested it began to be applied. States thus concluded international treaties on so-called extradition, which were codified over time. The 19th century was thus not a very favourable period for Europe in the area of asylum.⁶

From a historical perspective, asylum can thus be described as originally a religious obligation to help people in need, with early ideas of asylum being associated with proximity to a church or holy place. It was only when the notion of state sovereignty began to be asserted in society that the power to grant asylum shifted from religious institutions to states. It was not until the early 20th century that asylum began to be defined as a human right in legislative documents. Changes were then precipitated by the Second World War.⁷ After the Second World War, when 40 million refugees were displaced across Europe, international agreements were concluded in an attempt to regulate this phenomenon. The 1951 Convention Relating to the Status of Refugees, among others, provided basic protection for millions of refugees.⁸

The Common European Asylum System (CEAS) was established within the European Union between 1999 and 2005 with the aim of harmonising the asylum policies of the EU Member States in the context of international protection procedures. It first included basic standards dealing with the asylum procedure itself. Since 2005, these standards have been raised.⁹

„The policy documents of the Common Asylum System are based in particular on the Tampere European Council Resolution (1999), the so-called Hague Programme of 2004

⁵ MOLEK, P. *Právní pojem pronásledování v souvislostech evropského azylového práva*. Praha: C. H. Beck, 2010, pp. 2-3.

⁶ BALGA, J. *Azylové právo*. Plzeň: Vydavatelství a nakladatelství Aleš Čeněk, 2012, pp. 23-24.

⁷ Asylum Insight. *History of Asylum*. [online]. 2016 [viewed 10 September 2022]. Available from: <https://www.asyluminsight.com/history-of-asylum>

⁸ PHILO, G. and E. BRIANT and P. DONALD. *Bad news for refugees*. London: PlutoPress, 2013, p. 13.

⁹ KLÍMA, K. et al. *Azylové právo v Evropském kontextu*. Praha: Metropolitan University Prague Press, 2017, pp. 9-11.

and its successor, the Stockholm Programme (2014), and the European Commission Communication "An open and secure Europe - the road to implementation".¹⁰

1.2 Main concepts in the field of asylum

The basic terms that will be explained in this subsection are asylum, asylum seeker, asylum procedure, but also refugee or applicant for international protection. We see these terms as crucial for further empirical comparison of Czech and Austrian asylum legislation.

➤ Asylum and asylum seeker

The asylum procedure in the Czech Republic is regulated mainly by the Asylum Act. However, the concept of asylum itself is not directly defined therein. Asylum, together with subsidiary protection, is one of the options of international protection granted to foreigners on the territory of the Czech Republic. Asylum is defined by the Ministry of the Interior as a protective status granted to third-country nationals. It may also be granted to a stateless person. Asylum is granted to named persons in cases where there is a risk of persecution. The specific grounds for persecution are determined by legislation.¹¹

Asylum is described in foreign literature as a difficult to define and often misunderstood term. In simple terms, however, asylum can be defined as a protection measure for a person who has a country of origin but is currently seeking refuge in another country.¹² Asylum is therefore not precisely defined not only in Czech legislation, but also in international law. In the Common European Asylum System, asylum is understood in a broader sense, as protection offered by a state on its territory or elsewhere to an individual who has lost protection in his or her country of origin.¹³

As regards the differences between the concepts of asylum and refugee, these are that in the field of asylum it is up to the will of the State whether it decides to grant this protection

¹⁰ Ibid., p. 10.

¹¹ Ministry of the Interior of the Czech Republic. *Glossary of terms*. [online]. 2022 [viewed 10. September 2022]. Available from: <https://www.mvcr.cz/migrace/clanek/slovnicek-pojmu.aspx>

¹² O'NIONS, H. *Asylum - a right denied: a critical analysis of European asylum policy*. Burlington, VT: Ashgate, 2014, p. 1.

¹³ BATTJES, H. *EUROPEAN ASYLUM LAW AND INTERNATIONAL LAW*. Boston: MARTINUS NIJHOFF PUBLISHERS, 2006, pp. 5-7.

on its territory. A person becomes a refugee and may be recognised by the State over time, and is then made an asylum seeker by the will of the State.¹⁴

A foreigner who has received protection in the form of asylum becomes an asylum seeker who receives permanent residence. In the Czech Republic, an asylum seeker is entitled to the same status as a citizen of the country, for example in the areas of health care, business or employment. However, there are exceptions in the active or passive right to vote or in the armed forces. The State helps the asylum seeker to integrate more easily, whereby the individual can take advantage of the State's integration programme. This enables asylum seekers to learn the Czech language free of charge and to take advantage of the assistance offered regarding housing. Asylum will be terminated if the asylum seeker obtains citizenship of the Czech Republic, or asylum may be withdrawn if the asylum seeker avails himself of the protection of his own state again, or if the asylum seeker has given false information or concealed material facts before being granted the asylum.¹⁵

➤ **Applicant for international protection**

EU law, specifically the Qualification Directive, provides that international protection includes two other variants of protection. The first protection provides for refugee status and the second option consists of subsidiary protection status. The Universal Declaration of Human Rights, which does not contain a definition of asylum, does not provide a direct definition of international protection.¹⁶

In the analytical part of this thesis, I will deal in more detail with the institute of international protection under Czech and Austrian legislation.

¹⁴ MOLEK, P. *Právní pojem pronásledování v souvislostech evropského azylového práva*. Prague: C. H. Beck, 2010, p. 4.

¹⁵ ŠTURMA, P. et al. *Teorie a praxe azylu a uprchlictví*. 2nd ed. Praha: Univerzita Karlova v Praze, 2012, p. 104.

¹⁶ ADÁMKOVÁ, K. *Konflikt zákona o azylu a Úmluvy o právním postavení uprchlíků*. *Zborník príspevkov z medzinárodnej vedeckej konferencie*. University of Trnava, 2021, pp. 12-13.

➤ **Foreigners granted subsidiary protection and foreigners under the Temporary Protection Act**

If the foreigner is not granted asylum because the grounds for granting it have not been met, he or she may be granted so-called subsidiary protection, the duration of which is specified in the decision.¹⁷

Therefore, even if the foreigner has not fulfilled the conditions for asylum, he/she will be granted subsidiary protection if the following has been established in the proceedings. The foreigner would face a real risk of serious harm if returned to the State of which he or she is a national and, at the same time, cannot avail himself or herself of the assistance of his or her home State or the State of last residence in the case of stateless foreigners. In that case, the applicant is granted subsidiary protection. Serious harm means, in particular, torture, degrading punishment or the death penalty.¹⁸

The Foreigner under Temporary Protection Act is another institution standing next to international protection. It is granted in exceptional cases where there is a need to respond more quickly to incoming groups from third countries who have been displaced and it is not possible for them to return to that country. They may have fled a country beset by armed conflict or have been victims of human rights abuses. This protection falls under the competence of the Council of the European Union, which declares it and then applies to foreigners from that particular country who are in danger. When granted, they are treated as foreigners with permanent residence.¹⁹

➤ **Refugee**

In the field of international law, the concept of refugee was not encountered until after World War I, when legal measures were granted only to specific national groups, such as Germans or Jews after the rise of Adolf Hitler, Russians in 1917, or Armenians. They were considered to lack the protection of their country of origin and for this reason needed to be granted international protection. The first official document dealing with the status of refugees was an arrangement concerning the granting of identity cards to Russian refugees. They were thus issued with a card that resembled a travel document, namely a Nansen passport, valid for

¹⁷ ŠÁMALOVÁ, K. and P. VOJTÍŠEK. *Sociální správa: organizace a řízení sociálních systémů*. Praha: Grada publishing, 2021, p. 355.

¹⁸ *Ibid.*, p. 356.

¹⁹ *Ibid.*, pp. 356-357.

one year as a minimal period of time. Later, this protection was extended to Assyrian Turkish refugees. In the 1930s it was then necessary to address the protection of persons fleeing Nazism.²⁰

The concept and status of refugee was not defined in any legislation until the Second World War. In 1951, at the Geneva Conference, the current definition was created, which was the basis for the legal status of refugees first issued in 1954. The UN Convention and the definition of refugee is still used today. A refugee is therefore a person who is outside his or her country and has a well-founded fear of persecution on account of race, religion or nationality, because of his or her political opinion or because of his or her membership of a particular social class. The literature refers to the following possible groups of refugees: de facto refugees, asylum seekers, recognised refugees (asylum seekers) and internally displaced persons. A de facto refugee is a refugee from a natural disaster or war zone who is expected to return to his or her home country at a later date. In such a case, his or her reasons for leaving the homeland are obvious. An asylum seeker is a person who has made a formal application for asylum, in which he or she must have given reasons. A recognised refugee (asylum seeker) is a person who has proved that his fear of persecution was well-founded and has been granted asylum. An internally displaced person is a person who is a refugee, but within the territory of his or her own country.²¹

Within the EU, migration policy and emigration policy began to converge in the 1970s, when the EEC countries concluded international treaties with each other. In the framework of the Action Programme of 1974, better conditions for workers and free movement within the EU were to be regulated. But when in the 1970s about $\frac{3}{4}$ of these migrant workers were from third countries, it was necessary to create new, fundamental documents. First the TREVI group was created, then the Dublin Convention, Schengen and last but not least the Maastricht and Amsterdam treaties.²² However, these documents will be discussed in the next chapter.

²⁰ KLÍMA, K. et al. *Azylové právo v Evropském kontextu*. Praha: Metropolitan University Prague Press, 2017, pp. 25-30.

²¹ MATOUŠEK, O. et al. *Social work in practice: specifics of different target groups and work with them*. Prague: Portál, 2010, pp. 331-332.

²² KLÍMA, K. et al. *Sociální práce v praxi: specifika různých cílových skupin a práce s nimi*. Praha: Metropolitan University Prague Press, 2017, p. 31.

➤ **Asylum procedure**

Asylum proceedings differ from other court proceedings mostly due to the lack of evidence, which complicates the arguments of both asylum seekers and officials. In most cases, applicants do not have any documents at their disposal; the only evidence is often photographs or letters. Officials thus use various methods to obtain 'facts' that can acquire the status of (counter) evidence.

Workers who depend on information and knowledge not available within the organisation usually consult two key sources of information: the Home Office's Country of Origin Information (COI) Unit and expert opinions (medical, linguistic and other).²³

A declaration of intention to apply for international protection is a condition for entering the international protection procedure. In any event, the State must both accept and examine the application, as failure to do so could violate the prohibition on refoulement under Article 33 of the Geneva Convention.²⁴

➤ **Authorities responsible for assessing the application**

Individual Member States shall, within the framework of their national legislation, choose the authority which is responsible for the substantive and local handling of applications, according to the structure of the public administration and the judiciary. The conditions are further determined by the Procedural Directive. The Procedural Directive does not require that decisions be entrusted to bodies independent of the government. In the case of both government-dependent and government-independent bodies, the Member State is obliged to ensure that the assessment of applications is objective and impartial. The Procedural Directive itself provides that the basis for the decision should be an information that is accurate and, in particular, up-to-date and multi-source.²⁵

²³ DAHLVIK, J. Asylum as construction work: theorizing administrative practices *Migration Studies*, Volume 5, Issue 3, November 2017, pp. 370-383.

²⁴ ČIŽINSKÝ, P. *Cizinecké právo*. Praha: Linde, 2012, pp. 177-178.

²⁵ JURNÍKOVÁ, J. and A. KRÁLOVÁ. Komu svěřit posuzování a přezkum žádostí o mezinárodní ochranu? *Časopis pro právní vědu a praxi*. [online]. 2022 [viewed 13 September 2022]. Available from: <https://journals.muni.cz/cpvp/article/view/5429/4525>

1.3 Conclusion

The main aim of this chapter was to give a brief history of asylum issues and to define the most important concepts of asylum law. One of the problems is the not very clear formulation of the terms, for example in the case of persecution or serious harm. It is not possible to fully unify the interpretation of the concepts in question and to define their specific content in all EU Member States and States that have signed the Geneva Convention. As far as the terminology of asylum law is concerned, it is likely to expand in the future, as asylum law is still evolving. For example, the adaptation of the status of 'climate refugee' has been frequently discussed recently.

It is necessary to mention that the above cannot be arranged hierarchically, as there is a rare connection and interpenetration between them.

2 SOURCES OF ASYLUM LAW

This chapter will deal with the international, EU and, last but not least, national asylum policies of the Czech Republic and Austria.

In the first subsection I will introduce the issue of international asylum law, where the Universal Declaration of Human Rights and the Protocol Relating to the Status of Refugees are central.

This subchapter will be followed by the regulation of asylum law within the European Union, as both the Czech Republic and Austria are members of the European Union and their national law must be in line with EU law.

And in the last subchapter I will compare the national legislation of the Czech Republic and Austria.

2.1 Sources of International Asylum Law

The right to seek and enjoy asylum is enshrined in various international laws. Article 14(1) of the Universal Declaration of Human Rights is fundamental. (UDHR) of 1948 states that "everyone has the right to seek and enjoy in the country where he is, refuge and asylum from persecution in other countries."²⁶

Since the UDHR was adopted in the form of a non-binding declaration, its Article 14 creates neither an individual right to asylum nor a right to protection from the State's obligation to grant it. However, given the uniqueness of this provision at the universal level, it can be considered binding international law.

The preamble to the 1951 Convention relating to the Status of Refugees states that the Convention was adopted "with a view to securing for refugees the fullest possible enjoyment of these fundamental rights and freedoms". The 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees provide a benchmark for any national or regional regulation relating to asylum and refugee law. States that have ratified or acceded to the Convention have agreed that the term "refugee" should apply to any person who is considered a refugee under previous international agreements or who meets

²⁶ NOLL, G. *Negotiating asylum: The EU acquis, extraterritorial protection and the common market of deflection*. The Hague: Martinus Nijhoff Publishers, 2000, p. 358.

the conditions for refugee status under the UNHCR Statute. Originally, its application was limited to refugees who acquired that status "as a result of events occurring before 1 January 1951". States could also limit their obligations to refugees who fled "events occurring in Europe" before that date. These restrictions were explicitly removed by the 1967 Protocol. The Convention identifies five relevant grounds of persecution and defines four key characteristics of refugees under the Convention that are still applied today in determining refugee status.²⁷

However, it is important to mention one essential element of the Convention, which is the principle of non-refoulement. Article 33 (1) of the 1951 Convention relating to the Status of Refugees prohibits the return of a refugee to a territory where his or her life or freedom would be threatened. The only exception is if a crime has been committed or the host state is threatened. However, in practice, observations show that asylum seekers are rejected. National procedures therefore require measures to ensure that respect for the principle of non-refoulement remains the guiding principle and ultimate aim of any refugee protection regime.²⁸

2.2 Sources of EU law before 1993

Asylum entered the sphere of activity of the European Community because of the desire to create free movement of persons within the Community. Before 1993, the Treaty on the European Economic Community did not mention asylum and immigration. The aim was to create an internal market and move control to the Community's external borders, and to do this it was necessary to deal with the harmonisation of visas, immigration policy and asylum law itself. The Schengen Agreement, the Schengen Implementing Agreement and a number of related measures form the so-called Schengen acquis. The Schengen Implementing Agreement mainly concerned border controls and visas, but also contained a number of provisions on asylum, which were eventually recast by the Dublin Convention.²⁹

Because some countries were not part of the Schengen Agreements, the Dublin Convention was adopted in 1990 between all the Member States of the European Community,

²⁷ DAHLVIK, J. *Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria*. Vienna: IMISCOE Research Series, 2018, p. 30.

²⁸ KLÍMA, K. et al. *Azylové právo v Evropském kontextu*. Praha: Metropolitan University Prague Press, 2017, pp. 28-29.

²⁹ BATTJES, H. *EUROPEAN ASYLUM LAW AND INTERNATIONAL LAW*. Boston: MARTINUS NIJHOFF PUBLISHERS, 2006, pp. 26-27.

containing binding provisions concerning asylum seekers and, for example, designating the State responsible for asylum assessment. It was only with the Maastricht Treaty that asylum policy became part of the law of the European Union, where it has a place in the third pillar, and later, thanks to the Amsterdam Treaty, it became part of the first pillar.³⁰

Union law, or the law of the European Union, has as its primary source the Treaty on European Union, which, together with the Treaty on the European Community, is one of the most important founding documents of the organisation, both of which were signed in Maastrich. The Treaty on European Union was drawn up to prepare all the arrangements for the creation of a European Monetary Union and the subsequent introduction of a single currency, and to define the new elements of political union, namely European citizenship, a common foreign policy and a policy on home affairs. As the name of the Treaty on European Union suggests, the Treaty established the European Union itself, increased the powers of the European Parliament and, last but not least, new forms of cooperation between Member States, for example in defence, justice and home affairs.³¹ The Treaty on European Union was to rest on three pillars.

„The first pillar was to be created by the construction of the Economic and Monetary Union, in particular the establishment of the European Central Bank and the introduction of the euro (EUR). The second pillar was to be the Common Foreign and Security Policy, based on the Western European Union, which has recently become active as the European pillar of NATO. The third pillar was to be created by deepening cooperation in the field of law and internal policy.“³²

Asylum policy is specifically addressed in the area of primary sources of law: The Treaty on the Functioning of the European Union, the Charter of Fundamental Rights of the European Union and, among other treaties, the Lisbon Treaty.³³

One level lower in the hierarchy is secondary law, the application of which can only take place if it is compatible with the above-mentioned rules and agreements. The secondary

³⁰ KLÍMA, K. et al. *Azylové právo v Evropském kontextu*. Praha: Metropolitan University Prague Press, 2017, pp. 88-90.

³¹ EU Treaties. *europa.eu* [online] [viewed 23 June 2020]. Available from: https://europa.eu/european-union/law/treaties_cs

³² PELTRÁM, A. *Evropská integrace a Česká republika*. Praha: Grada Publishing a.s. 2009, p. 29.

³³ Asylum policy. *euroskp.cz* [online] [viewed 25 June 2020]. Available from: <https://www.euroskop.cz/9256/sekce/azylova-politika/>

law of the European Union is represented by Council acts, namely Decisions, Joint Actions, Common Positions and Framework Decisions.³⁴

In June 2013, the European Parliament adopted measures on asylum procedures with a view to reforming the Common European Asylum System. Among the most relevant EU regulations and directives, the Asylum Procedures Directive (2005/85/EC, Directive 2013/32/EU) established safeguards for the approach to determining refugee status in the European context. Thus, EU countries must ensure that claims are assessed individually, objectively and impartially, and also ensure applicants the right to remain in the country during the processing period. The Reception Conditions Directive (2003/9/EC, 2013/33/EU) obliges States to ensure that applicants enjoy a decent standard of living in all Member States while their asylum claims are being examined. Another important directive was the Qualification Directive (2004/83/EC, 2011/95/EU). This addressed the lack of uniformity in the approach of individual Member States to determining refugee status. Despite the adoption of this Directive, there are still significant differences in recognition rates between Member States. The Directive incorporates the definition of refugee from the 1951 Convention and the 1967 Protocol and provides for subsidiary protection.

The Dublin Regulation (343/2003, 604/2013) replaced the former Dublin Convention and established criteria and mechanisms for determining which Member State is responsible for examining an asylum application lodged in a Member State. This Regulation introduced some additions and changes to the hierarchy of the jurisdiction criteria in the Convention, together with an acceleration of the procedure for the transfer of asylum seekers between Member States.

The Eurodac Regulation (2725/2000, 603/2013) introduced a system for comparing the fingerprints of asylum seekers. It aims to facilitate the application of the Dublin II Regulation and requires that fingerprints be taken for all asylum seekers over the age of 14. Last but not least, it is necessary to mention the Return Directive (2008/115/EC), which established common standards and procedures for returning third-country nationals who are 'illegally staying' in the territory of a Member State (Article 2(1)).³⁵

³⁴ GRINC, J. *Právo pro politology*. Praha: Grada Publishing a.s., 2010, p. 125.

³⁵ DAHLVIK, J. *Inside Asylum Bureaucracy: Organizing Refugee Status Determination in Austria*. Vienna: IMISCOE Research Series, 2018, pp. 31-34.

2.3 Sources of EU law after 1993

I would first mention the Treaty on the Functioning of the European Union, which goes into great detail on policies relating to border controls, asylum and immigration.

Article 4(2)(J) implements the area of freedom, justice and security as a shared competence of the EU and the Member States. Also important is Article 78, which created a legal framework for the implementation of European asylum law and allocated specific legal institutions to the areas of asylum, subsidiary protection and temporary protection.³⁶

The Treaty is regularly revised and the current consolidated text of 1 March 2020 mentions the objectives of EU asylum policy.

One of the main objectives is to ensure that persons, irrespective of their nationality, are not checked when crossing internal borders, while at the same time ensuring the control of persons and effective surveillance of external border crossings. The gradual introduction of an integrated management system for external borders should help to achieve this.

These objectives are to be achieved through the adoption of measures by the European Parliament and the Council on a common policy on visas and other short-term residence permits, as well as on checks on persons crossing external borders. Establishing the conditions under which third-country nationals enjoy freedom of movement in the Union for a short period of time. It is necessary to introduce the measures necessary for the gradual introduction

of an integrated management system for external borders and not to carry out checks on persons, irrespective of their nationality, when crossing internal borders.³⁷

The treaty then goes on to define the exact content of specific steps relating to the Common European Asylum System, in this case, for example, a uniform asylum status for third-country nationals valid throughout the Union; a common regime for temporary protection of displaced persons in the event of a mass influx; criteria and mechanisms for determining the Member State responsible for examining an asylum or subsidiary protection application; or standards on the conditions for the reception of asylum seekers or subsidiary protection applicants. Last but not least, the Treaty on the Functioning of the European Union

³⁶ BALGA, J. *Azylové právo*, Plzeň: Aleš Čeněk Publishing House, 2012, pp. 82-84.

³⁷ Access to European Union law: the Treaty on the Functioning of the EU. *eur-lex.europa.eu* [online] [viewed 4 July 2020]. Available from: <https://eurlex.europa.eu/legalcontent/CS/TXT/HTML/?uri=CELEX:12016E/TXT&from=EN#d1e3213-1-1>

also deals with the issue of illegal immigration and residence, expulsion and return of persons with such status and the fight against trafficking in human beings, especially women and children.³⁸

As the Treaty on the Functioning of the European Union applies to all Member States, the Czech Republic and Austria are also bound by its provisions.

The specific processes and rules of asylum policy in these two Member States, as well as the differences between them, are discussed in detail in the section of this thesis entitled *The Asylum Institute in the Czech Republic in Comparison with the Situation in Austria*.

The issue of asylum law was partly regulated in the subsequent Treaty of Amsterdam, which moved the whole area of asylum, immigration and migration from the intergovernmental third pillar of the Union to the first pillar, the Treaty on European Community. This resulted in the increased influence of the European Parliament and the European Commission. Amsterdam has also incorporated the Schengen Agreements into the European Union, particularly under the first pillar.³⁹

Under the Treaty of Amsterdam, concluded in 1997, the Member States of the European Union transferred competence for asylum matters to the European Community. The Treaty of Amsterdam stipulated that the Council should adopt measures on asylum, including "minimum standards for the reception of asylum seekers in the Member States", within five years of the entry into force of the Treaty of Amsterdam. In 2003, the Council adopted a Directive on minimum standards for the reception of asylum seekers (Directive 2003/9).⁴⁰

Since the Treaty of Amsterdam, we can talk about a common European migration and asylum policy. Moreover, the Reform Treaty explicitly stated a commitment to a common asylum, immigration and external borders policy, while subordinating it to standard institutional procedures.⁴¹

Another important European treaty dealing with the asylum policy of its Member States is the Charter of Fundamental Rights of the European Union, which was formally adopted by the European Parliament in 2007, but only became legally binding with the Lisbon

³⁸ Ibid.

³⁹ BLOCH, A. and K. LEVY. *Refugees, Citizenship and Social Policy in Europe. Great Britain*. Macmillan Press. 1999, pp. 37-38.

⁴⁰ SLINGENBERG, L. *The Reception of Asylum Seekers under International Law*. Oxford: Hart Publishing Ltd. 2014, pp. 3-5.

⁴¹ GEDDES, A. *Immigration and European integration*. New York. Manchester University Press. 2008, pp. 138-140.

Treaty on 1 December 2009. As its name suggests, this legal act establishes political, social and economic rights for citizens of the European Union and does not deal with asylum policy in the same detail as the previous treaty, but rather regulates rights in the context of the asylum procedure. „*The provisions of this Charter are addressed, in compliance with the principle of subsidiarity, to the institutions, bodies, offices and agencies of the Union, and to the Member States, solely in so far as they apply Union law. They shall therefore respect the rights, observe the principles and promote their application in accordance with their respective competences, while keeping within the limits of the powers conferred on the Union by the Treaties. This Charter does not extend the scope of Union law beyond the competences of the Union, nor does it create any new competence or task for the Union, nor does it modify any competence or task laid down in the Treaties.*”⁴²

In Article 18 of Title II (FREEDOMS), it specifically affirms the guarantee of the right to asylum „*in compliance with the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Protocol relating to the Status of Refugees of 31 January 1967 and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union.*” Indirectly related to this are other rights mentioned in other articles of the Charter, such as the right to the integrity of the human person, the prohibition of slavery and forced labour, the right to liberty and security, and protection in the event of eviction, expulsion or extradition.⁴³

Since the original text of the Charter of Fundamental Rights and Freedoms of the European Union was not sufficient for most Member States, some of them have imposed certain reservations in the so-called Declarations on the Treaty. The Czech Republic, for example, stated that the provisions of the Charter apply only to the EU institutions and do not directly bind individual countries. Another issue was also the fact that there are significant differences between European cultures and their concepts of fundamental rights or freedoms.⁴⁴

The Treaty of Lisbon, which entered into force on 1 December 2009, brought a significant change in the area of asylum policy, definitively communitarising the area of asylum and the existing pillar division.

⁴² Access to European Union law: the Charter of Fundamental Rights of the European Union. *eur-lex.europa.eu* [online] [viewed 4 July 2020]. Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/HTML/?uri=CELEX:12016P/TXT&from=EN#d1e752-391-1>

⁴³ Ibid.

⁴⁴ PELTRÁM, A. *European Integration and the Czech Republic, Prague*. Grada Publishing a.s. 2009, p. 53.

The Treaty of Lisbon also removed the limitations on the ECJ's powers previously set out in Article 68 of the EC Treaty. Article 267 TFEU (replacing Article 234 TFEU) now fully applies to asylum and therefore also allows lower courts to refer questions of interpretation or validity to the ECJ. In effect, the Court of Justice has thus accelerated in a way the 'communitarisation' of the asylum referral system and anticipates its effects on all references for preliminary rulings made before the entry into force of the Lisbon Treaty.⁴⁵

The Lisbon Treaty was the result of intense efforts to compromise by the 27 EU Member States that also became signatories. Important changes have been made to the decision-making process, replacing unanimity with the ordinary legislative procedure, i.e. qualified majority voting. The Treaty of Lisbon was signed on behalf of the President of the Czech Republic by the then Prime Minister Mirek Topolánek and on behalf of the President of the Republic of Austria by the Federal Chancellor Dr Alfred Gusenbauer.

The Lisbon Treaty deals with this issue primarily in Article 67, but with regard to asylum policy, the Treaty states in Article 2 that „*The Union shall provide its citizens with an area of freedom, security and justice without internal frontiers, in which the free movement of persons is guaranteed, in conjunction with appropriate measures relating to the protection of external borders, asylum, immigration and the prevention and combating of crime.*”⁴⁶ In Article 6, the agreement also reaffirms the rights contained in the Charter of Fundamental Rights of the European Union, as well as in the entire Chapter 2 entitled Policies on border controls, asylum and immigration, already described above in the context of the Treaty on the Functioning of the European Union.

With the signing of the Lisbon Treaty, the European Community has concluded the so-called first phase of the process of establishing the Common European Asylum System, i.e. the establishment of rules and determination mechanisms, and has begun to prepare for the gradual transition to the so-called second phase, i.e. the establishment of the Common Asylum System.⁴⁷

A common asylum system should include:

- uniform asylum status

⁴⁵ CHERUBINI, F. *Asylum Law in the European Union*. New York: Routledge 2015, pp. 159-163.

⁴⁶ Access to European Union law: the Lisbon Treaty. *eur-lex.europa.eu* [online] [viewed 5 July 2020]. Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/HTML/?uri=CELEX:12007L/TXT&qid=1594068520371&from=CS>

⁴⁷ Chamber of Deputies Parliament of the Czech Republic. *Treaty of Lisbon*. [online] [viewed 5 July 2020]. Available from: <https://psp.cz/sqw/text/orig2.sqw>

- uniform status of subsidiary protection
- common temporary protection regime
- common procedure for granting and withdrawing asylum status or subsidiary protection
- criteria and mechanisms for determining the Member State responsible for examining the application
- standards relating to the conditions of admission of applicants
- partnerships and cooperation with third countries ⁴⁸

Finally, I would like to mention the Dublin system, which is a certain mechanism that operates between the Member States of the European Union, including Switzerland, Iceland and Norway. Among them, one state is designated to act and decide on the application of a foreigner for international protection. The main reason for this system was situations where proceedings were taking place simultaneously in several states or, conversely, no state was deemed competent to consider the asylum application. One of the main principles of the Dublin system is that the State which the alien first entered will be authorised to examine the application.⁴⁹

The Dublin Convention was signed in 1990 and entered into force in 1997. It was inspired by the impact of migration after 1989 and was largely based on the Geneva Convention and the New York Protocol.⁵⁰

2.4 Czech and Austrian asylum regulations

Czech and Austrian law in the area of asylum has some differences, but there are also similarities with regard to European legislation.

Czech Asylum Act No.325/1999 Coll., fully respects the Geneva Convention and other international obligations. The Act defines basic concepts, possibilities of applying for international protection, forms and types of protection or conditions for the termination

⁴⁸Asylum policy. *euroskop.cz* [online] [viewed 25 June 2020]. Available from: <https://www.euroskop.cz/9256/sekce/azylova-politika/>

⁴⁹ ŠÁMALOVÁ, K. and P. VOJTÍŠEK. *Sociální správa: organizace a řízení sociálních systémů*. Praha: Grada publishing . 2021, p. 357.

⁵⁰ KLÍMA, K. et al. *Azylové právo v Evropském kontextu*. Praha: Metropolitan University Prague Press. 2017, p. 37.

of protection.⁵¹ Other legal regulations on asylum in the Czech Republic are Act No. 326/1999 Coll., on the Residence of Foreigners in the Czech Republic and Act No. 221/2003 Coll., on Temporary Protection of Foreigners.

The Czech Republic is currently reflecting European documents, but originally the asylum issue was purely the responsibility of individual Member States. An important unifying document was the 1990 Convention Implementing the Schengen Agreement, which, among other things, spoke of the gradual abolition of controls at certain common borders. The document already deals with the notion of the asylum seeker or the asylum procedure directly, as well as the obligations arising for the individual Member States.⁵² The subsequent Council Regulation 343/2003 sought to establish a set-up that could determine in the shortest possible time which EU Member State was competent to examine an asylum application. The Regulation defines the criteria for determining the Member State responsible and further defines the procedures for examining asylum applications. The document also sets out certain principles, such as the principle of family unity and others.⁵³

The Czech Republic has amended the aforementioned Asylum Act on the basis of European legislation, and Austria has also amended its own documents and legislation. If, as in the case of the Czech Republic, we focus on the 21st century, then the legislation of the new asylum law, which entered into force in 2005, has caused a great deal of debate. The law stipulated, among other things, that an asylum application must be processed within a short period of time, within 72 hours, and at the same time the regulation was described as one of the strictest asylum laws. The law was highly followed, as at that time Austria was the largest country receiving the most asylum seekers in the EU (after the UK, Germany and France).⁵⁴ The Austrian Asylum Act, called *Asylgesets 2005*, deals with the granting and withdrawal of asylum status and speaks at the outset of its continuity with the Geneva Convention, but also with the Convention for the Protection of Human Rights and Fundamental Freedoms and others. The law defines that an asylum seeker is a foreigner between the time of filing an application for international protection and the final decision or termination

⁵¹ Act No. 325/1999 Coll., on Asylum

⁵² Euroscope. *Conventions*. [online]. 2022 [viewed 12 September 2022]. Available from: <https://euroskop.cz/evropska-unie/dokumenty-eu/umluvy/>

⁵³ EUR-Lex. *Dublin II Regulation* [online]. 2011 [viewed 12 September 2022]. Available from: <https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=LEGISSUM:I33153>

⁵⁴ Migration Policy Institute. *Austria Adopts More Restrictive Asylum Law*. [online]. 2003 [viewed 13 September 2022]. Available from: <https://www.migrationpolicy.org/article/austria-adopts-more-restrictive-asylum-law>

of the proceedings. The law uses the terms (translated): asylum seeker, subsidiary protection, foreigner, third-country national.⁵⁵

2.5 Conclusion

This chapter discusses a closer comparison of asylum regulations at the international and EU level, including the Czech and Austrian regulations.

As far as EU law is concerned, from a practical point of view, regulations are considered to be the most important EU legal norms, mainly because they are directly effective, as they are directly enforceable by the authorities and directly create rights and obligations for individuals. Of lesser practical importance are directives, which must be implemented in the national laws of individual EU Member States, in which case rights and obligations are created from national law. Directives serve as a source for amending Czech laws or assist in their interpretation.

In the Czech Republic, asylum began to develop around the 1990s only. The legislation was mainly based on the 1951 Convention Relating to the Status of Refugees and was also inspired by the legal systems of other countries that already had experience with asylum issues. The first law on refugees was the Refugee Act, but it was not very elaborate and required some amendments. Asylum and refugee policy was better unified by Act No. 325/1999 Coll., on Asylum. It eliminated the imperfections of the Refugee Act and harmonised the area in general according to the standards of EU Member States. The Asylum Act has been amended several times to date.

As far as Austria is concerned, particularly in 1991, major changes were made to the legislation concerning asylum seekers and refugees due to illegal groups of workers, mainly from Poland and Romania. Prior to that year there was no official immigration procedure. Further legislative changes were made in 1997 when the Asylum Act was adopted, replacing the previous Asylum Act of 7 January 1992. In addition, the Aliens Act merged the former Residence Act of 31 July 1992 and the Aliens Act of 29 December 1992 into one. The current Migration Act is based on a major reform of the entire migration law that took place in 2005. On 1 January 2010, a law amending the Aliens Act 2009 was adopted, which is the most extensive amendment to the Austrian Aliens Act since 2005.

⁵⁵ Oesterreich.gv.at. *Asylum Procedure*. [online]. 2022 [viewed 13 September 2022]. Available from: https://www.oesterreich.gv.at/en/themen/leben_in_oesterreich/asyll/Seite.3210002.html#legal

In conclusion, it can be summarised that previously the asylum issue and its legal regulation were the competence of individual EU Member States. It was only in the middle of the 20th century that asylum and asylum procedures within Europe were defined and regulated for the first time in European regulations. In the 21st century, other Member States, including Austria and the Czech Republic, have built on the European regulations. The following chapter will analyse selected asylum law documents.

3 COMPARATIVE ANALYSIS OF CZECH AND AUSTRIAN ASYLUM LAW

Both the Czech Republic and Austria are member states of the European Union, for which asylum policy is one of the priority, but also controversial, areas of action. The aim of European asylum policy is primarily to harmonise asylum procedures in the individual member states. A uniform asylum policy would mean that the same rules and rights would apply to third-country nationals, as well as a common asylum system. „Uniform minimum criteria for granting asylum and a single asylum procedure are intended to ensure increased protection while ensuring that national asylum systems are not abused. Asylum policy is regulated in the Lisbon Treaty by Articles 67 and 78 of the Treaty on the Functioning of the European Union and Article 18 of the Charter of Fundamental Rights of the European Union.”⁵⁶

This chapter will compare the definitions of terms related to asylum legislation and the process of applying for international protection in the Czech Republic and Austria. The main differences will be summarised at the end of this chapter.

3.1 Asylum and asylum seeker in Czech and Austrian legislation

Apart from the Asylum Act itself, one of the fundamental documents in the field of asylum law in the Czech Republic is the Charter of Fundamental Rights and Freedoms⁵⁷. A provision in the Constitutional Act in Title 6, Article 43 states that the Czech Republic „grants asylum to foreigners persecuted for exercising political rights and freedoms. Asylum may be denied to those who have acted in violation of fundamental human rights and freedoms.”⁵⁸

The definition of the concept of asylum and the grounds for granting asylum are contained in Act No.325/1999 Coll. (hereinafter also the "Asylum Act"), in particular in Sections 12-14 of the Asylum Act. Asylum has no time limit, it is granted for an **indefinite**

⁵⁶ Azylová politika. *euroskop.cz* [online]. 2018 [viewed 5 March 2020]. Available from: <https://www.euroskop.cz/9256/sekce/azylova-politika/>

⁵⁷ Usnesení č.2/1993 Sb. Usnesení předsednictva národní rady o vyhlášení LISTINY ZÁKLADNÍCH PRÁV A SVOBOD jako součástí ústavního pořádku České republiky.

⁵⁸ Hlava 6 Čl.43 Ústavní zákon č. 2/1993 Sb.

period. Asylum and subsidiary protection are forms of international protection granted by the Czech Republic. Austrian legislation also deals with and defines the concept of asylum in the same way as Czech legislation. One of the fundamental pieces of legislation, as is the case in the Czech Republic, contains the legal regulation of the concepts of asylum and asylum seeker, namely the Asylum Act 2005 (Asylgesetz 2005 - AsylG 2005)⁵⁹. The concepts are also mentioned in the Foreign Police Act 2005 (Fremdenpolizeigesetz 2005 - FPG 2005), in the Procedural Act (Bundesamt für Fremdenwesen und Asyl - Verfahrensgesetz) and in the Federal - Constitutional Act (Bundes - Verfassungsgesetz).⁶⁰ Thus, protection in the form of asylum in Austria is defined in particular by the Austrian Asylum Act and is granted to persons from another State who are fleeing persecution or serious danger. This protection includes, as in the Czech Republic, an **unlimited** right of residence, access to the labour market, equal treatment and, last but not least, equality in social rights with nationals.⁶¹ It can therefore be argued that the definitions of asylum are the same in Austrian and Czech legislation. In both cases, asylum is granted to people who are persecuted or fear persecution because of their race, religion, nationality, membership of a particular social group or political opinion. The 1951 Geneva Refugee Convention forms the international legal basis for the right to asylum in Austria.

Another form of international protection is subsidiary protection. In the Czech Republic, subsidiary protection is always granted for a certain period of time (usually a year or two) with the possibility of its extension, which is a fundamental difference from asylum, which is granted for an indefinite period of time. While asylum requires an individual threat, or risk of threat, to the applicant, complementary protection does not necessarily require a threat directed at the applicant. *„Subsidiary protection shall be granted to an alien who does not meet the grounds for asylum if it is established in the international protection procedure that there are reasonable grounds for fear that the alien would be returned to the State of which he or she is a national if, if he is a stateless person, to the State of his last habitual residence, he would be in real danger of serious harm and that he is unable or unwilling, because of such danger, to avail himself of the protection of the State of his nationality or of his last habitual*

⁵⁹ Asylgesetz 2005

⁶⁰ Oesterreich.gv.at. Allgemeines zum Asyl. [online]. 2022 [viewed 13 November 2022]. Available from: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/asyl/Seite.3210001.html

⁶¹ Caritas Österreich. *Zum Thema Flucht und Asyl*. [online]. 2022 [viewed 01 December 2022]. Available from: <https://www.caritas.at/hilfe-angebote/angebote/flucht-integration/faqs-zum-thema-flucht-und-asyl>

residence."⁶² In Austrian law, a person with subsidiary protection is defined as an alien who „has lodged an application for international protection in Austria if it has been refused in connection with the granting of asylum status or who has been deprived of asylum status if the refusal, return or expulsion of the alien to his or her country of origin would constitute a real risk or would constitute a serious threat to civilian life or health as a result of indiscriminate violence in the context of an international or internal conflict."⁶³ Here, the author of the thesis perceives a similarity in the definition of subsidiary protection in Austria, as it is in the Czech legislation, the Czech Asylum Act. In both states, if persons are not granted asylum, they have the possibility of being granted subsidiary protection, which protects them from danger in their home state.

We can therefore observe that it is essential to distinguish between the statuses of asylum seeker and beneficiary of subsidiary protection. With regard to the first concept, in the Czech Republic, „according to Article 2(2) of Act No. 325/1999 Coll. on asylum, „An asylum seeker is a foreigner who has been granted asylum under this Act for the duration of the validity of the decision to grant asylum."⁶⁴ Asylum is granted to an alien if it is established in the international protection procedure that the person concerned is persecuted for exercising political rights and freedoms or has a well-founded fear of persecution on grounds of religion, race, sex nationality, political opinion or membership of a political group.⁶⁵ Essentially the same is stated in the Federal Asylgesetz of 2005, which states that a foreigner who has applied for international protection in Austria is granted the status of a person entitled to asylum. According to Section 3(4) of the Asylgesetz, „An alien who is granted asylum status shall be entitled to a permanent right of residence as an asylum-seeker. The residence permit shall be valid for three years and shall be renewable for an unlimited period of time unless the conditions for initiating proceedings for the withdrawal of asylum status are fulfilled. The right of residence shall remain valid until the status of asylum seeker is definitively withdrawn. The residence permit shall cease at the moment when the status of asylum seeker is withdrawn."⁶⁶ On this definition, it is essential to note that since the amendment of this law (effective from 1 June 2016), people whose asylum application has been approved are initially limited to a right of residence for three years, which is different from the Czech

⁶² §14a odst. 1 Zákona č. 325/1999 Sb. o azylu v aktuálním znění

⁶³ Article 8 (1) Asylgesetz 2005

⁶⁴ §2 odst. 2 Zákona č. 325/1999 Sb. o azylu v aktuálním znění

⁶⁵ §12 bod a) b) Zákona č. 325/1999 Sb. o azylu v aktuálním znění

⁶⁶ §3 (4) Asylgesetz 2005

Republic where this condition does not exist. If the requirements for initiating the deprivation procedure are not met, the law grants an unlimited right of residence. However, if there is a significant, permanent change, in particular a change in the political situation in the asylum-seeker's country of origin, or if there is another ground for deprivation (e.g., a final conviction for a serious crime), then deprivation proceedings must be initiated immediately and it must be determined that the asylum-seeker's status will be denied with notice.⁶⁷ Persons eligible for asylum are legally recognised as refugees and have full access to the labour market and the possibility to apply for a passport under the Geneva Convention. A foreigner is considered an asylum seeker throughout the asylum procedure, from the submission of the application to the final decision.

This is how an asylum seeker is defined in the Austrian legislation. In contrast, in the Czech Republic, an asylum seeker is issued with a residence permit for asylum seekers with a validity period of 10 years, which can be extended. The asylum seeker may later apply for Czech citizenship. The period in Austria is therefore considerably shorter.⁶⁸ *„If the asylum was not granted, but the subsidiary protection, the difference is mainly in the duration, and after the expiry of the subsidiary protection it is necessary to apply for renewal.”* The Czech Asylum Act defines a person enjoying subsidiary protection as follows: *„A person enjoying subsidiary protection is a foreigner who has been granted subsidiary protection for the duration of the validity of the decision to grant or extend subsidiary protection. A person enjoying subsidiary protection shall also be understood as an alien who, during the period of validity of the decision granting or extending subsidiary protection, has submitted an application for extension of subsidiary protection, pending the entry into force of the Ministry's decision on that application.”*⁶⁹ Supplementary protection in the Czech Republic is granted for a period of at least one year until the reasons provided for by law arise.⁷⁰ A foreigner who receives subsidiary protection is authorised to reside in the Czech Republic for a minimum period of one year and this protection can be repeatedly extended for a minimum of two years. This is a status that is valid for a fixed period of time. The difference with asylum seekers is that foreigners granted subsidiary protection are not entitled to housing, but can take advantage

⁶⁷ Oesterreich.gv.at. Allgemeines zum Asyl. [online]. 2022 [viewed 13 November 2022]. Available from: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/asyl/Seite.3210001.html

⁶⁸ opu.cz). Můj život v České republice. [online]. 2016 [viewed 13 November 2022]. Available from: https://www.opu.cz/wp-content/uploads/2016/03/MUJ-ZIVOT-V-CR_2016.pdf

⁶⁹ §2 odst. 3 Zákona č. 325/1999 Sb. o azylu v aktuálním znění

⁷⁰ §53a zákona o azylu

of Czech language courses.⁷¹ The institution of subsidiary protection is regulated almost identically in both countries, so foreigners are granted protection even if they do not meet the requirements for asylum but cannot be returned to their country of origin. As in the Czech Republic, persons in Austria have full access to the labour market and the possibility to apply for a foreign passport if they cannot obtain a passport from their own country of origin. The status of a beneficiary of subsidiary protection can be extended (possibly several times) if the requirements for this are met after the expiry of the time limit. Complementary protection is also granted in Austria **for one year** when it is first granted and **for two years** when it is renewed. Under certain circumstances, the status can be revoked in both countries (e.g. on grounds of a criminal offence). Similar to the situation in the Czech Republic, persons entitled to asylum and subsidiary protection are obliged to present themselves at the Austrian Integration Fund (ÖIF) integration centre for the respective federal state immediately after being granted this status. The ÖIF then conducts orientation interviews, defines integration requirements and informs the foreigner about integration offers. This should motivate persons eligible for asylum or subsidiary protection to integrate as quickly as possible. On the other hand, foreigners should also be aware of the consequences of a lack of integration efforts at an early stage.⁷² Language courses and courses on basic knowledge of the democratic structure of the Republic of Austria and the basic principles that can be derived from it are relevant, as are possible results of the courses.

If an applicant obtains the status of an asylum seeker or a beneficiary of subsidiary protection in the Czech Republic, he or she has the right, but not the obligation, to join the State Integration Programme. This is therefore different from the obligation of persons entitled to asylum and subsidiary protection in Austria, who are obliged to attend the integration centre of the Austrian Integration Fund. In any case, participation in the programme in the Czech Republic is necessary to apply for it and is therefore voluntary. The State Integration Programme serves to improve integration into Czech society, in particular through language courses, which are free of charge, and also provides assistance with accommodation arrangements.⁷³

⁷¹ ŠTURMA, P. et al. *Teorie a praxe azylu a uprchlictví*. Praha: Karlova Univerzita v Praze, 2012, p. 104.

⁷² Bundesministerium Inneres. Asyl. [online]. 2022 [viewed 13 November 2022]. Available from: <https://www.bmi.gv.at/301/Allgemeines/Begriffsbestimmungen/start.aspx>

⁷³ Právní prostor. Na cestě za mezinárodní ochranou: *Stručný průvodce řízením o udělení azylu či doplňkové ochrany - Část II.* [online]. 2022 [viewed 15 November 2022]. Available from: <https://www.pravniprostor.cz/clanky/ostatni-pravo/na-cestě-za-mezinarodni-ochranou-strucny-pruvodce-rizenim-o-udeleni-azylu-ci-doplňkove-ochrany-cast-ii>

3.2 Definition of the term applicant for international protection in Czech and Austrian legislation

The issue of granting international protection is regulated by a number of international treaties and legislation in the Czech Republic as well as in Austria. For the Czech Republic, the basic legal regulation at the national level is the so-called *Asylum Act*.⁷⁴ In Austria, unlike the Czech Republic, the development of asylum law began much earlier, due to the political situation in the neighbouring countries, with the Asylum Act of 1968, which has undergone considerable reform since then.⁷⁵ In its present form, this is the basic national legislation in the case of Austria, the so-called *Asylgesetz 2005*.⁷⁷

Administrative proceedings for granting international protection in the Czech Republic are carried out by the Ministry of the Interior of the Czech Republic as a first instance authority. An action against the decision of the Ministry of the Interior may be brought before the competent regional court. An appeal against the decision of a regional court on an action against a decision of the Ministry of the Interior in the matter of international protection may be lodged with the Supreme Administrative Court in Brno.⁷⁸ In Austria, according to the AsylG 2005 §3a, international protection is granted *ex officio*. „A foreigner is to be granted the status of a person entitled to asylum or subsidiary protection *ex officio* and without further proceedings if the Republic of Austria has committed itself to this under international law.”⁷⁹ During the admission procedure before the Federal Office, an alien who has applied for international protection and who does not have a right of residence may reside only in the district administrative office where he is permitted to do so. In addition, his residence is permitted throughout Austria if it is necessary to fulfil legal obligations, or if it is necessary to comply with summonses from courts, public prosecutors and administrative authorities, or necessary to obtain medical care and treatment. After the completion of the admission

⁷⁴ Zákona č. 325/1999 Sb. o azylu v aktuálním znění

⁷⁵ FASSMANN, H. and I. STACHER. *Österreichischer Migrations- und Integrationsbericht*. Drava Verlag Klagenfurt/Celovec, 2003, p. 284.

⁷⁶ The earlier provisions of the asylum system were not sufficient, mainly due to the political situation in Poland, Hungary and the former Czechoslovakia. At this time (1968) Austria began to face waves of refugees.

⁷⁷ Asylum Act in Austria - Asylgesetz 2005 also AsylG 2005

⁷⁸ Ministerstvo vnitra ČR. *Mezinárodní ochrana*. [online]. 2022 [viewed 15 November 2022]. Available from: <https://www.mvcr.cz/migrace/clanek/nase-hlavni-temata-mezinarodni-ochrana-mezinarodni-ochrana.aspx>

⁷⁹ §3a of the Asylgesetz 2005

procedure before the Federal Office, the alien's residence is permitted throughout the territory if he or she has de facto protection from deportation.⁸⁰

According to the Czech Asylum Act, an applicant for international protection is a foreigner who has applied to the Czech Republic for international protection or a foreigner who has applied for asylum or international protection in another Member State of the European Union, if the Czech Republic is competent to consider the application. The foreigner becomes such an applicant from the moment of submitting the application for international protection for the duration of the administrative procedure for granting international protection and also for the duration of the court proceedings against the decision of the Ministry of the Interior, if such action has suspensive effect.⁸¹ The applicant is issued with a card of an applicant for international protection, who uses this card to prove his/her identity and the lawfulness of his/her stay in the territory of the Czech Republic.⁸² According to the author of the thesis, the definition of the term "applicant" is very similar in the case of Austria, the asylum seeker is identically a foreigner in both cases.⁸³ Similarly to the Czech legislation, the Austrian legislation speaks of an applicant for international protection as a foreigner who has filed an application for international protection in Austria and can benefit from protection from deportation until an enforceable decision is issued or until the proceedings become irrelevant or after the proceedings are discontinued, in which case they are no longer allowed to continue or rejected.⁸⁴ His residence on federal territory is authorised. The right of residence based on other federal laws remains unaffected. Section 16(4) BFA-VG applies.⁸⁵

As far as the application itself is concerned, the Czech legislation is almost identical to the Austrian legislation when it comes to applying for international protection. An asylum seeker in the Czech Republic is entitled to submit an application for international protection in two ways. The first and most common way is to submit an application for international protection to the police at the border crossing point or at a reception centre, at the Foreigners Police Department of the Regional Police Directorate⁸⁶, or at a detention centre for foreigners.

⁸⁰ Oesterreich.gv.at. Allgemeines zum Asyl. [online]. 2022 [viewed 15 November 2022]. Available from: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/asyl/Seite.3210001.html

⁸¹ BAŠTECKÁ, B. et al. *Psychosociální krizová spolupráce*. Grada Publishing a.s., 2013, p. 228.

⁸² ŠÁMALOVÁ, K. and P. VOJTÍŠEK. *Sociální správa: organizace a řízení sociálních systémů*. Grada Publishing a.s., 2021, p. 356.

⁸³ A foreigner is one who does not possess the nationality of a given state. Considering the topic of the thesis, it is therefore a person who does not possess the citizenship of the Czech Republic and Austria in the second case.

⁸⁴ §2 Asylgesetz 2005, para. 14.

⁸⁵ §16 (4) BFA-Verfahrensgesetz

⁸⁶ The condition is that the applicant for international protection has come voluntarily.

An applicant in Austria can also submit an application for international protection to any police authority, as is the case in the Czech Republic.⁸⁷ Another possible way of applying for international protection in the Czech Republic is to submit an application to the Ministry. In this case, the applicant is a person who is hospitalized with an inpatient care provider, is undergoing protective custody, protective treatment, detention or imprisonment, or is placed in an educational institution for the execution of institutional education or protective education or in an institution for children in need of immediate assistance.⁸⁸ The applicant for international protection is obliged to appear at the written request of the Ministry of the Czech Republic delivered at least 2 working days in advance to provide information on the application for international protection.⁸⁹

3.3 Defining the term foreigner in Czech and Austrian legislation

Broadly speaking, we could define the term *foreigner* as a natural person who is not a citizen of the country in which he or she is located. In the opinion of the author of this thesis, it is possible to divide foreigners into at least three categories. The first category, and the most important for this thesis, is the category of the asylum seeker, or the foreigner who has already been granted asylum in the Czech Republic or Austria. The second category is the foreigner under temporary protection. The third category is foreigners from the European Union, the EEA, Switzerland and foreigners from third countries.⁹⁰

The definition of a foreigner in the Czech Republic is contained in Section 1(1) of the Act on the Residence of Foreigners and reads as follows „*A foreigner is a natural person who is not a citizen of the Czech Republic, including a citizen of the European Union.*”⁹¹ The definition of the term foreigner in Austrian legislation does not differ in any way from the Czech legislation. According to the author of this thesis, the definition is exactly the same. Thus, it refers to a person who does not possess Austrian citizenship and enters the territory of Austria. In Austrian legislation, this term can be found in the Foreign Police Act of 2005,

⁸⁷ §42 Abs. BFA-VG.

⁸⁸ Ust. §3a Zákona č. 325/1999 Sb. o azylu v aktuálním znění

⁸⁹ Ust. §10 Zákona č. 325/1999 Sb. o azylu v aktuálním znění

⁹⁰ A citizen of the EU, EEA or Switzerland has completely different, more favourable conditions for entering and staying on our territory than a citizen from a third country. In the case of third-country nationals, the condition for entry into the Czech Republic and Austria may be the presentation of a visa.

⁹¹ §1 odst. 1 Zákon č. 326/1999 Sb. o pobytu cizinců na území České republiky a o změně některých zákonů v aktuálním znění.

which refers to a foreigner as a person who does not have Austrian citizenship and enters federal territory.⁹²

As for the composition of foreigners, this varies considerably across the countries compared. The largest groups of foreigners in Austria are Germans, Romanians and Serbs. At the beginning of 2022, there were approximately 217,000 German citizens living in Austria. Thus, Germans were the largest group of foreigners, followed by Romanians with approximately 138,000 and Serbs with approximately 122,000. In total, there were about 1.6 million foreigners in Austria.⁹³ Whereas in the Czech Republic, these were people from Ukraine, Slovakia, Poland or Vietnam. At the moment, due to the Ukrainian crisis, Ukrainian citizens are the most numerous and their number reached, at the end of 2022, 636,262 persons. In total, there were over 1.1 million foreigners in the Czech Republic at the end of the year.⁹⁴ The Czech Republic, as a country with an official language, Czech, which is not easy to learn, abounds with such high numbers, especially from countries where Slavic languages are spoken.

The provisions applicable to a citizen of the European Union shall also apply to a citizen of a State bound by an international treaty negotiated with the European Union which gives him or her a right to free movement equivalent to that of citizens of the European Union, or to a citizen of a State bound by the Agreement on the European Economic Area. The Charter of Fundamental Rights and Freedoms grants foreign nationals the same rights as other citizens of the Czech Republic and Austria. These are mainly in the areas of civil and public law, but not in residence or voting rights.⁹⁵ Employment law is regulated by the Employment Act. The right of permanent residence is important, but can be revoked for statutory reasons, such as the commission of a crime.⁹⁶

⁹² §2 (4) Fremdenpolizeigesetz 2005

⁹³ Statista.com [online]. 2022 [viewed 19 November 2022]. Available from: <https://www.de.statista.com/statistik/daten/studie/293019/umfrage/auslaender-in-oesterreich-nach-staatsangehoerigkeit/>

⁹⁴ CSZO [online]. 2022 [viewed 18 December 2022]. Available from: https://www.czso.cz/documents/11292/27320905/c01R02_202212.pdf/964f22b0-7903-4521-91ec-9cb4182f6173?version=1.0

⁹⁵ Usnesení č.2/1993 Sb. Usnesení předsednictva národní rady o vyhlášení LISTINY ZÁKLADNÍCH PRÁV A SVOBOD jako součástí ústavního pořádku České republiky.

⁹⁶ Poslanecká sněmovna Parlamentu ČR. *Listina základních práv a svobod*. [online]. 2022 [viewed. 18 November 2022]. Available from: <https://www.psp.cz/docs/laws/listina.html>

3.4 Definition of the term refugee in Czech and Austrian legislation

The main piece of legislation governing the status of refugees in the Czech Republic is Act No.325/1999 on asylum. The Act entered into force on 1 January 2000 and replaced the previous Act No. 498/1990 Coll., on Refugees, as amended. The previous legislation drew on the principles of the Geneva Convention, but was nevertheless inconsistent with the Convention in some respects. The main inconsistency was represented in particular by a different definition of a refugee, in the failure to distinguish between the grounds for refusal of an application for refugee status and the grounds for withdrawal of that status, or in the possibility of discontinuing proceedings in the event of repeated breaches of the obligations laid down in the Refugee Act. The new Asylum Act seeks to reconcile the requirements of the Czech asylum practice with the increasing influx of refugees and the requirements of the European Union and the international obligations of the Czech Republic.⁹⁷

Czech legislation does not use the term refugee. A refugee is a person who bears the defining characteristics of a refugee within the meaning of the Geneva Convention. Thus, it is a person „who is *outside his or her homeland and has a well-founded fear of being persecuted for reasons of race, nationality, religion or membership of a particular social group or political opinion, is unable to accept or, owing to the aforementioned fears, refuses the protection of his or her homeland*".⁹⁸ A person who has been granted refugee status is referred to as an asylum seeker in the Czech Republic. The definition of refugee in Austrian legislation is very similar to the Czech definition. Like Czech legislation, Austrian legislation does not contain an explicit definition of the term "refugee". Instead, Article 2(1)(14) of the Asylum Act defines an 'asylum seeker' as a foreigner who seeks asylum in Austria from the time of lodging an application for international protection until the proceedings are finally terminated, discontinued or deemed to be unfounded.

According to Section 3(1) of the Asylum Act, such a person is granted asylum status if it can be reasonably assumed that he or she would be in danger of being persecuted in the country of origin within the meaning of Article 1(A)(2) of the Geneva Refugee Convention.

⁹⁷ JELÍNKOVÁ, R. *Právní postavení uprchlíků v České republice*. [online]. 2022 [viewed. 16 November 2022]. Available from: https://aa.ecn.cz/img_upload/213998dd557a6ecf241d80d7748bd811/postaveni_uprchliku.pdf

⁹⁸ Article 1A(2) of the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees.

It follows from Article 3(5) of the Asylum Act that a decision granting asylum status ex officio or on the basis of an application for international protection shall be issued together with a declaration that the alien is accordingly granted refugee status.

It can therefore be concluded that the definition of "refugee granted asylum" corresponds to the definition of "refugee".⁹⁹

Article 1 of the Convention relating to the Status of Refugees defines the term refugee but refers only to previous Conventions within the meaning of the Geneva Convention. „A refugee for the purposes of the Convention is anyone who has been considered a refugee under the Conventions of 12 May 1926 and 30 June 1928, the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization.”¹⁰⁰ The personal status of a refugee is determined by the law of his country of residence.

In both cases, whether it is Czech legislation or Austrian legislation, the person concerned must prove that their fear of persecution is justified in order to be granted refugee status.

3.5 Comparison of the application process

In the Czech Republic, the institution of asylum as a religious-legal institution has as its primary objective the protection of foreigners from persecution by state or non-state actors for various reasons or from ongoing war conflict (subsidiary protection). As Antonín Lojek notes, „the institution of asylum in the history of the Czech lands is very significant for the understanding of today's asylum issue. The institution of asylum is not a new legal institution. The earliest asylum was probably exclusively religious in character, and relied on the fact that by God's will certain places (and the persons administering them - priests) were fully exempt from secular power.”¹⁰¹ In the period that followed, both the understanding of asylum and its granting, exercise and protection of refugees changed. „In an objective sense,

⁹⁹ International Organization for Migration. *The organization of asylum and migration policies in Austria*. IOM, Vienna [online]. December 2015 [viewed 20 December 2022]. Available from: https://www.emn.at/wp-content/uploads/2017/01/organisation-study_AT-EMN-NCP_2016.pdf

¹⁰⁰ Ch. 1 Article 1 Convention über die Rechtsstellung der Flüchtlinge

¹⁰¹ LOJEK, A. *České azylové právo 16. až 18. století: kořeny pozdější úpravy nebo možná inspirace pro současnost?* Praha: Univerzita Karlova, Právnická fakulta, 2011, pp. 5-7.

then, asylum law means the sum total of all legal norms that regulate the main features of the granting of protection." ¹⁰²

3.5.1 International protection proceedings

The procedure for granting international protection in the Czech Republic is a special type of administrative procedure with subsidiary application of the Administrative Procedure Code.¹⁰³ The Administrative Procedure Code defines two ways of initiating administrative proceedings - initiation ex officio, which is not applicable in the case of international protection proceedings, and initiation of proceedings on the basis of an application.¹⁰⁴ The legal regulation of proceedings of foreigners in the matter of international protection in the Czech Republic is found in the Asylum Act. In Austria, the same is true, the legal regulation of foreigners in international protection proceedings is found in the AsylG 2005 Asylum Act and regulates the process of applying for international protection and the course of the proceedings.

The laws describe the processes of applying for international protection, the procedure, including possible remedies, and conclude with the rights and obligations of applicants, asylum seekers and beneficiaries of subsidiary protection.

In both cases, the foreigner should first submit an application for international protection upon arrival in the Czech Republic or Austria. Pursuant to Article 3(1) of the Czech Asylum Act, an application is an expression of the foreigner's will which makes it clear that he or she seeks protection in the Czech Republic from persecution or imminent serious harm.¹⁰⁵ During this process, he or she is provisionally protected in both countries from deportation to his or her own country.

In the Czech Republic, the administrative procedure for granting international protection is supervised by the Ministry. Also in Austria, asylum matters are handled by the Ministry of the Interior, together with some immigration law matters. Several deadlines must be met in the procedure. In the Czech Republic, the Ministry has the right to decide to detain an applicant for up to 120 days, which applies in particular to cases where the applicant's identity is unknown, the applicant poses a threat to public order or security, or is hindering international protection proceedings or transfer to the responsible Member State

¹⁰² Ibid.

¹⁰³ Zákon č 500/2004 Sb., správní řád ve znění pozdějších předpisů.

¹⁰⁴ §44, §46 a §47 zákona č. 500/2004 Sb., správní řád.

¹⁰⁵ Ust. §3 odst. 1 Zákona č. 325/1999 Sb. o azylu v aktuálním znění.

in accordance with the Dublin Regulation. The actual decision in the international protection case is issued by the Ministry six months after the date of the provision of detailed information on the request for a decision in the case. If this deadline cannot be met, the Ministry may extend it for reasons defined in the law. It shall inform the applicant in writing without delay of the extension of the time limit. In Austria, according to the General Administrative Procedures Act, a decision must also be taken within six months of the application for international protection. Within 20 calendar days, the Ministry must decide whether the application will be rejected as inadmissible on the grounds of the responsibility of another Member State under the Dublin Regulation, the existence of a safe third country, etc. As of 2018, the 20-day period may be extended. If no procedural order is issued to the applicant during this period, his/her application is admitted to the ordinary procedure. An amendment to Article 22 of the Austrian Asylum Act, which entered into force on 1 June 2016, allowed for an extension of the duration of the asylum procedure at first instance up to 15 months. However, as of 1 June 2018, this extension can no longer be used. If the time limit is exceeded, the applicant can request that the case be referred to the Federal Administrative Court for a decision. If the latter also fails to decide in time, a request for a time limit to be set may be made to the High Administrative Court.¹⁰⁶

Asylum is granted in both comparator countries equally if the following conditions are met: if it is established that the applicant has a well-founded fear of persecution on account of his or her sex, race, opinion or religion, or is persecuted in his or her country of nationality (or, in the case of a stateless person, in the country of last habitual residence) by a state authority or persons personifying that authority for the exercise of political freedoms and rights. It is true that „*everyone is entitled to protection from refoulement*“.¹⁰⁷ Asylum may also be granted on humanitarian grounds (not on the basis of an application, but on the basis of a ministerial instruction), where the proceedings do not establish a ground for international protection, but on the other hand it would be inhumane not to grant asylum. Another reason for granting asylum is family reunification - asylum is granted to a family member of the person granted asylum (in other cases, the application for international protection is dealt with through Act

¹⁰⁶Regular procedure Austria [online]. 2020 [viewed 16 November 2022]. Available from: <https://www.asylumineurope.org/reports/country/austria/asylum-procedure/procedures/regular-procedure>

¹⁰⁷ EU. Practical Guide: *Přístup k azylovému řízení*. Luxembourg: Publications Office of the European Union. euaa.europa.eu [online]. 2016 [viewed 20 December 2022]. Available from: https://euaa.europa.eu/sites/default/files/publications/Practical_Tools-_Access_To_Procedures-Practical-Guide-CS.pdf

No. 326/1999 Coll, on the residence of foreigners in the territory of the Czech Republic¹⁰⁸), even if no grounds for granting asylum have been established for such an applicant (this may be the partner or spouse of the person, the minor child of the person or the parents of the minor, or an adult caring for an unaccompanied minor).¹⁰⁹

3.5.2 Filing an application for international protection

Asylum is a constitutionally protected right and the examination must be carried out in accordance with legal requirements. Foreigners seeking protection in Austria can apply for asylum to any police authority or specific police officer, as the Asylum Act states „*An application for international protection shall be made if a foreigner in Austria seeks protection from persecution from a public security service or security authority.*”¹¹⁰ Whereas in the Czech Republic, an application can be filed not only with a police authority, but also in exceptional cases and under specified conditions with the Ministry of the Interior of the Czech Republic. In both Austria and the Czech Republic, fingerprints are usually taken after the interview or interrogation of the asylum seeker, which are then sent to the EURODAC system, which is stipulated in the Dublin Agreement.¹¹¹ The next step is to carry out a background check on previous asylum applications (within the European Union and also in Iceland, Liechtenstein, Norway and Switzerland), to carry out a personal search, to seize any evidence and to carry out an initial enquiry.¹¹²

As regards the procedure prior to the initiation of international protection proceedings, before submitting an application, a person should therefore consider whether he or she is in need of international protection, is persecuted in his or her country of origin or fears being persecuted in his or her country of origin for belonging to a particular race, religion, ethnic or social group or for holding a particular political opinion and is therefore unable to return to his or her country. In these circumstances, the person may be granted asylum. If a person is unable or unwilling to return to his or her country of origin because of a serious risk of harm

¹⁰⁸ Zákon č. 326/1999 Sb., o pobytu cizinců na území České republiky a o změně některých zákonů, ze dne 23.12.1999.

¹⁰⁹ KOŠIČIAROVÁ, S. *Azyl a právo na azyl*. Praha: Leges, 2021, p. 261.

¹¹⁰ §17 (1) Asylgesetz 2005

¹¹¹ KLOUBERT, T. *Erwachsenenbildung und Migration: Internationale Kontexte und historische Bezüge*. Springer-Verlag, 2019, p. 203.

¹¹² Oesterreich.gv.at. Asylverfahren. [online]. 2022 [viewed 16 November 2022]. Available from: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/asyl/Seite.3210002.html

(for example, torture, the death penalty, inhuman or degrading treatment or a threat to his or her life or health as a result of an international or domestic armed conflict), he or she may be granted subsidiary protection. Asylum and subsidiary protection are collectively referred to as 'international protection' in the two comparator countries.¹¹³

On the other hand, poor economic conditions or unemployment in the country of origin are not grounds for granting international protection. Ideally, a person should express his or her intention to seek international protection (i.e. submit an application) to the police immediately at the border upon entering the Czech Republic or Austria, contact the local authorities and tell them that he or she is a refugee and wants to apply for international protection or asylum in that country because he or she is afraid to return to his or her country of origin, is in danger of his or her life or has been persecuted in his or her country.¹¹⁴¹¹⁵

If the person arrives in the territory of the countries concerned by air, he/she applies directly at the airport checkpoint. The police officers who check the person's identity documents are trained to deal with asylum applications and direct the person to the reception centre at the airport itself. If the person is already on the territory of the Czech Republic, he or she can register at the Foreigners Police Service at the reception centre in Zastávka u Brna or at one of the regional Foreigners Police Offices. In Austria, asylum seekers can in certain cases be detained at the airport after submitting their asylum application and refugees must stay in the reception centre for up to seven days and may not leave it. This is seen as a special obligation to cooperate. The refugee is fingerprinted and a medical examination is carried out. With the help of an interpreter, the persons concerned are questioned for the first time by the public security authorities (first interrogation). In the Czech Republic, the application can also be lodged in a detention centre, no later than seven days after being detained by the foreign police. A person may also apply for asylum from a detention centre, a hospital, a facility for children of foreigners, or other designated places. Once the person has completed the initial steps of the asylum procedure (identification, medical examination, etc.), he or she is transferred to the reception centre for asylum seekers. Reception centres are closed facilities and the time spent there is therefore limited by law - the statutory maximum is 120 days, with an average stay of 14 days. Asylum seekers have two options - they can live privately or be transferred

¹¹³ KOŠIČIAROVÁ, S. *Azyl a právo na azyl*. Praha: Leges, 2021, p. 39.

¹¹⁴ Zákon č. 325/1999 Sb., o azylu a o změně zákona č. 283/1991 Sb., o Policii České republiky, ve znění pozdějších předpisů, (zákon o azylu), ze dne 23.12.1999.

¹¹⁵ Asylgesetz 2005

to open reception centres. These facilities are intended for asylum seekers who do not have sufficient means to support themselves until they receive a decision granting international protection.

In both countries, the controller is then entitled to be in contact with the UNHCR during the asylum procedure, or to ask for assistance from non-governmental organisations regarding his/her rights. Contacts to NGOs are obtained from the Ministry immediately after the asylum application is submitted.¹¹⁶

Both countries are subject to the Dublin Agreements, or the current version of Dublin III, which determines which European country is responsible for examining the applicant's application. This means that if the applicant is under the age of 18 and a member of his/her family is legally resident in a Dublin III member country, that country is responsible for processing the application. Otherwise, the application is assessed either in Austria or in the Czech Republic, depending on the country where the application was lodged. If the applicant is an adult and his/her spouse or minor children are residing in a Dublin III Member State as beneficiaries of international protection or as asylum seekers, the country of residence takes responsibility for processing the application. If the applicant entered the territory of another Dublin III State before entering the Czech Republic or Austria without authorisation, that State is responsible for examining the application. This responsibility ends twelve months after the unauthorised entry. It also applies that if another Dublin III Member State is responsible for examining the application, the applicant will be transferred to that State no later than six months after the date on which that State received the application for examination.¹¹⁷

3.5.3 Time limits and formalities of the decision

All applications for international protection in the Czech Republic are assessed and decided by the Ministry of the Interior of the Czech Republic. The statutory deadline for issuing a decision is six months (the deadline may be extended, for example, due

¹¹⁶ *Průběh správního řízení o udělení mezinárodní ochrany* [online]. 2020 [viewed 15 July 2020]. Available from: <https://www.mvcr.cz/migrace/clanek/podrobnejsi-informace-o-prubehu-spravniho-rizeni-o-udeleni-mezinarodni-ochrany.aspx>

¹¹⁷ Can my application for asylum be examined in another European country? *unhcr.org* [online]. [viewed 16 December 2022]. Available from: <https://help.unhcr.org/austria/asylum-in-austria/can-my-application-for-asylum-be-examined-in-another-european-country/>

to the complexity of a particular case or non-cooperation with the decision-maker). At the end of the process, the person may be granted asylum or subsidiary protection, or the application may be rejected.¹¹⁸ In both the Czech Republic and Austria, once an asylum application has been made, protection from deportation is usually granted. This means that they are allowed to stay in the federal territory of Austria or the Czech Republic until their application is decided. As in the Czech Republic, people who contact a police authority or a police officer in Austria with an asylum application are first questioned by them. On the basis of this initial enquiry, the staff of the Federal Office for Immigration and Asylum (BFA)¹¹⁹ make a preliminary decision. Depending on the decision, asylum seekers are either transferred to an initial reception center or have the opportunity to travel free of charge to a specific federal care facility. An asylum application is considered filed with a prospective decision. This initiates the reception procedure in Austria. *„At all stages of the procedure, the Federal Office and the Federal Administrative Court shall endeavour, of their own motion, to ensure that information relevant to the decision is provided or that incomplete information about the circumstances claimed to justify the application is completed, the evidence for this information is clarified or the evidence offered is supplemented, and all information that appears necessary to justify the application is given. Where necessary, evidence shall also be provided ex officio.”*¹²⁰ In assessing the credibility of the asylum seeker's submissions, the authorities shall take into account the participation in the proceedings.

As an asylum seeker, a person has the right and obligation to remain in the Czech Republic until his or her asylum application is decided. The person receives a residence permit for asylum seekers, which is renewed every two months. As an asylum seeker, he/she is allowed to use the public health system and start working six months after he/she has applied for international protection. He or she can stay in accommodation centres, use the social services provided there and receive social benefits for asylum seekers. As regards obligations, in the Czech Republic, primary school is compulsory for children aged between six and 15. If a person has children of that age, he or she must start school. During the asylum procedure, the person has the right to free legal assistance (an official of the Ministry of the Interior is

¹¹⁸ EU. Practical Guide: *Přístup k azylovému řízení*. Luxembourg: Publications Office of the European Union. euaa.europa.eu [online]. 2016 [viewed 20 December 2022]. Available from: https://euaa.europa.eu/sites/default/files/publications/Practical_Tools-_Access_To_Procedures-Practical-Guide-CS.pdf

¹¹⁹ Bundesamt für Fremdenwesen und Asyl

¹²⁰ §18 (1) Asylgesetz 2005

obliged to inform the person of his/her right to request free legal assistance from a lawyer or other person involved in providing legal assistance to refugees or refugee protection). During the asylum procedure, she is also entitled to an interpreter in her mother tongue or another language in which she is able to communicate.

The Office of the United Nations High Commissioner for Refugees (UNHCR) can be contacted at any time during the asylum procedure. The UNHCR in the Czech Republic does not assess or decide on asylum applications, but monitors the quality of the asylum process. A UNHCR representative may be present during the asylum interview and consult the file. If the applicant receives a negative decision from the Ministry of the Interior, he/she has the right to appeal. An indication of the time limit within which he/she can challenge the negative decision before an administrative court is given in the text of the decision. In this case, he may also apply for legal aid. In addition to issuing a decision, the procedure may also end with its termination, for example in the event of the death of the applicant, withdrawal of the application, acquisition of Czech citizenship, failure to provide the required data, entry or attempted entry into the territory of another State without serious reasons, unknown place of residence, etc. The procedure is also terminated in the case of an inadmissible application for which another Member State (or another country that has granted international protection to the applicant) is responsible for the assessment, which was submitted by an EU citizen, or the application is submitted by a person coming from a country that the Czech Republic considers to be a (European) safe third country.¹²¹

The approval process in Austria is no different from that of the Czech Republic; first, the identity of the applicant is established, an initial interview and questioning about the reasons for the flight are carried out, and it is clarified whether Austria is responsible for conducting the asylum procedure. If Austria is not responsible for the assessment of the application, the application will already be rejected in the approval process. The asylum and alien procedure is carried out in the first instance by the Federal Office for Immigration and Asylum (BFA), a body directly subordinate to the Federal Ministry of the Interior (BMI). The BFA is also responsible for issuing residence permits on grounds worthy of consideration, but not for carrying out administrative criminal proceedings and visa

¹²¹ EU. Practical Guide: *Přístup k azylovému řízení*. Luxembourg: Publications Office of the European Union. [euaa.europa.eu](https://euaa.europa.eu/sites/default/files/publications/Practical_Tools-_Access_To_Procedures-Practical-Guide-CS.pdf) [online]. 2016 [viewed 20 December 2022]. Available from: https://euaa.europa.eu/sites/default/files/publications/Practical_Tools-_Access_To_Procedures-Practical-Guide-CS.pdf.

matters.¹²² At the initial reception centres and distribution offices, asylum seekers receive all relevant information about the procedure, their care and their rights and obligations.

In the admissions process, the federal government provides basic care to aliens in need of assistance and protection who have applied for asylum. The basic services include, but are not limited to, accommodation in suitable housing, food, care, and the provision of medical care that aliens in need of assistance and protection cannot pay for themselves due to lack of financial resources. Asylum seekers are placed in the basic care of the Federal State until their asylum application is approved. As a rule, entitlement to basic care ceases only if the proceedings in Austria are terminated with legal effect, and asylum seekers receive basic care during the first four months after the positive conclusion of their asylum proceedings.¹²³ Asylum seekers are questioned by a BFA official about their personal reasons for coming to Austria and the reasons for their flight. The interview is conducted in a language that the asylum seekers understand and is translated by court interpreters, as is the case in the Czech Republic. If the procedure is approved, the procedure continues at the regional office (or branch) of the BFA . Here the reasons for the application for international protection are explained in more detail.¹²⁴ From the moment they are admitted to the basic social security system of the federal state, a **residence** restriction applies which prohibits asylum seekers from establishing a place of residence or habitual residence in a federal state other than that in which they are granted basic social assistance.¹²⁵ The asylum application is decided by means of a **notice sent** to the asylum seeker. Each notification from the Federal Office for Foreigners and Asylum (BFA) contains the verdict, i.e. the outcome of the procedure, and instructions on appeals, also in a language that the foreigner understands. In principle, the BFA must issue this decision within 6 months.

¹²⁶

Unlike the Czech Republic, Austria declares that each person is entitled to stay in Austria for up to three years with a limited three-year residence permit.¹²⁷

¹²² Bundesamt für Fremdenwesen und Asyl. *Ablauf Asylverfahren*. [online]. 2022 [viewed 17 November 2022]. Available from: https://www.bfa.gv.at/201/Ablauf_Asylverfahren/start.aspx

¹²³ Oesterreich.gv.at. *Asylverfahren*. [online]. 2022 [viewed 16 November 2022]. Available from: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/asyl/Seite.3210002.html

¹²⁴ §19 of the Asylgesetz 2005

¹²⁵ §§ 7, 12, 16, 21 BFA-Verfahrensgesetz (BFA-VG)

¹²⁶ Bundesamt für Fremdenwesen und Asyl. *Ablauf Asylverfahren*. [online]. 2022 [viewed 17 November 2022]. Available from: https://www.bfa.gv.at/201/Ablauf_Asylverfahren/start.aspx

¹²⁷ Asylum, subsidiary protection and right to remain [online]. 8 June 2017 [viewed 7 March 2022]. Available from: <http://www.asyl-faq.at/content/?lang=en>

3.5.4 Common asylum system

As European Union (EU) Member States, the Czech Republic and Austria are bound to apply the rules of the Common European Asylum System. In the future, it is in the best interest of both countries to try to find a compromise in this area and to formulate a strategy supported by all EU members (taking into account the positions of the European Parliament, the European Commission and all Member States). In the future, the Czech Republic should actively participate in the reform of the asylum system with *„its own constructive offer of solidarity. In terms of building asylum and migration legislation at the EU level, the Czech Republic should advocate for the creation of regulations designed for both the normal situation and for crisis situations of significant migration pressure“*¹²⁸. It is also appropriate to distinguish between asylum procedures and legal migration management. In this context, the Czech Republic should discuss with representatives of municipalities and towns, NGOs, social partners and the general public, and possibly implement a resettlement programme for refugees from third countries. In the future, the Czech Republic should also support an increase in the amount of funding for migration and asylum policy from the EU budget.¹²⁹

Asylum procedures are based on the EU acquis. To further strengthen the system, UNHCR is working to streamline legislation on the accessibility and quality of asylum procedures and their compliance with European and international standards. Reception and accommodation conditions for asylum seekers are good in the Czech Republic and Austria. UNHCR monitors conditions and enforces standards with regard to the age and gender of applicants, their diversity and special needs. Currently and in the future, efforts to integrate refugees and promote social cohesion (positive attitude towards refugees, combating racism and xenophobia, promoting positive interactions between refugees and the host country, etc.) are important. In the field of education, educators, children and their parents face challenges during the process of integrating refugee children into domestic schools. In the Czech Republic, UNHCR supports the creation of a safe environment in schools through the Hello Czech Republic campaign and the dissemination of educational materials on this issue.¹³⁰ In particular,

¹²⁸ JUNGWIRTH, T. *Budoucnost migrační a azylové politiky Evropské unie*. Prague: National Convention on the European Union, 2018.

¹²⁹ JURNÍKOVÁ, J. and A. KRÁLOVÁ (eds.). *Společný evropský azylový systém v kontextu uprchlické krize*. Brno: MU, 2016.

¹³⁰ UNHCR. Czech Republic Fact Sheet. Geneva: UNHCR, 2022.

active communication of asylum and migration policy towards the public is important, and „*continuous rationalisation of the debate by political leaders is highly desirable and crucial to avoid the spread of myths and misinformation*“¹³¹ .

In the Czech Republic and in Austria, any person can apply for international protection if he or she is persecuted in his or her country of origin on the following grounds - exercise of political rights and freedoms, race, sex, religion, nationality, membership of a particular social group, holding certain political opinions in the country of his or her citizenship or, if stateless, in the country of his or her last permanent residence. International protection is granted either in the form of asylum or subsidiary protection. In addition to the above, reunification with a family member (spouse, child or, in the case of a minor child, parent) who has already been granted asylum is also a ground for granting international protection. Another case may be so-called humanitarian asylum, for which there is, however, no legal entitlement and which is decided by the Ministry of the Interior. If the Ministry does not find sufficient grounds to grant asylum, but the applicant's threat in his/her own country has been proven, he/she may be granted subsidiary protection. Unlike asylum, it is granted for a fixed period of time, after which it is examined whether the grounds for granting it continue; if so, it can be extended.¹³² As in Austria, the so-called blue card is granted in the Czech Republic, which means that the applicant is allowed to stay in the Czech Republic for a long period of time and is also allowed to work here.

In 2021, the Czech Republic received 1405 asylum applications (the same as Luxembourg), i.e. fewer than in other EU Member States - only the Netherlands (1200), Latvia (615), Slovakia (370), Estonia (80) and Hungary (40) had fewer applications. In contrast, five Member States received three-quarters of the applications - Germany (30 per cent - 190,545 applications), France (19.1 per cent - 120,685), Spain (10.4 per cent - 65,295), Italy (8.4 per cent - 53,135) and Austria (6.1 per cent - 38,615) - with applicants from Afghanistan, Syria and Iraq predominating.¹³³ In contrast, in the domestic context, the applicants for international protection were mainly from Ukraine, Georgia, Vietnam or Belarus. It can be stated that the Czech Republic is one of the countries that grant asylum for an indefinite period

¹³¹ JUNGWIRTH, T. *Budoucnost migrační a azylové politiky Evropské unie*. Prague: National Convention on the European Union, 2018.

¹³² Žadatelé o mezinárodní ochranu [online]. [viewed 7 March 2022]. Available from: <https://www.migrace.com/cs/poradna/informace-pro-cizince/zadatele-o-mezinarodni-ochranu>

¹³³ EUROPEAN COUNCIL. Infographic - Number of asylum applications in the EU. *consilium.europa.eu* [online]. 13 December 2022 [viewed 27 July 2022]. Available from: <https://www.consilium.europa.eu/cs/infographics/asylum-applications-eu/>

of time the least among EU Member States - only 6 per cent of applicants have been granted subsidiary protection or asylum since 1999 (almost 85 000 applications were submitted). Since 2011, 732 applicants (including 65 children) have been granted asylum here.¹³⁴

3.6 Comparison of appeals against refusals of applications for international protection

In the case of a rejected application for international protection, the applicant may appeal in the Czech Republic **within 15 days** of receipt of the decision. The applicant becomes a claimant and brings an action. With regard to the Administrative Procedure Code, the Asylum Act defines a special regulation according to which „*local jurisdiction is determined by the seat of the administrative authority which issued the decision in the last instance in the case or which interfered with the rights of the person who seeks protection in court.*”¹³⁵

Compared to the Czech Republic, the time limit for appeals in Austria differs and can be **one week** (for a decision in an airport procedure), **two weeks** (rejection of an application for international protection, accelerated withdrawal of the right to asylum, e.g. on grounds of criminal offences) or **four weeks** (in a normal case) from the receipt of the **notification**. This is stated in the decision in the statutory right of appeal.¹³⁶ The whole fact and the legal coercive power of the Independent Federal Asylum Board is a prerequisite for international protection proceedings with the rule of law.

In the Czech Republic, the regional court in whose district the applicant for international protection (i.e. the applicant) is registered as a resident on the date of filing the application is competent to hear the action.¹³⁷ The action has suspensive effect. Only in exceptions under the Asylum Act is there no statutory suspensive effect.¹³⁸

Whereas in Austria, the Federal Office for Immigration and Asylum (BFA) is responsible for the decision and appeals against decisions of the BFA can be lodged the Independent Federal Asylum Chamber. If an appeal is lodged, legal advisers provide

¹³⁴ JINDROVÁ, T. Data: V Česku uspěje minimum žadatelů o azyl. *Seznam zprávy* [online]. 2022 [viewed 17 November 2022]. Available from: <https://www.seznamzpravy.cz/clanek/data-v-cesku-uspeje-minimum-zadatelu-o-azyl-172962>

¹³⁵ § Section 7(2) of the Administrative Procedure Code

¹³⁶ Bundesamt für Fremdenwesen und Asyl. Ablauf Asylverfahren. [online]. 2022 [viewed 17 November 2022]. Available from: https://www.bfa.gv.at/201/Ablauf_Asylverfahren/start.aspx

¹³⁷ §32 odst. 3 zákona č. 325/1999 Sb. o azylu v aktuálním znění

¹³⁸ § 25 a dle § 16 odst. 1 písm. b), d), f) a g) zákona o azylu v aktuálním znění

support or act as representatives, there is no obligation to have a lawyer. It is also possible to be represented by a lawyer (at your own expense).¹³⁹

If the action has suspensive effect, the foreigner is in the position of an applicant for international protection during the proceedings against the decision of the Ministry of the Interior and cannot be expelled from the territory of the Czech Republic until the end of the court proceedings.¹⁴⁰ The alien has the right to lodge a **cassation complaint with** the Supreme Administrative Court in Brno against the decision of the Regional Court on the action against the decision of the Ministry of the Interior in the matter of international protection. The Asylum Act states that cassation appeals filed directly have suspensive effect by law only if the action filed with the Regional Court also had suspensive effect by law. Even in this case, if the lodged cassation complaint has suspensive effect, the foreigner cannot be expelled from the territory of the Czech Republic during the court proceedings on the cassation complaint.¹⁴¹ In proceedings before the Supreme Administrative Court, representation by a lawyer is compulsory by law. The Supreme Administrative Court does not hold oral hearings and decides without the participation of the parties. The applicant may pay for his/her own lawyer or, if he/she does not have sufficient financial means, he/she may apply to the court for the appointment of a free lawyer.¹⁴² Asylum or subsidiary protection is granted only by the Ministry of the Interior of the Czech Republic, not by the courts. The courts can only overturn the decision of the previous instance and return the case for further consideration.

The cassation or annulment system allows for a review of the contested decision in terms of law (but not in terms of fact). The higher court has two options - it can uphold or overturn the decision, but it is not empowered to decide the matter itself. In line with the Supreme Administrative Court's ruling 1 Azs 145/2017-32, Austria has the same procedural options as the Czech Republic in relation to the applicant. In the present case, in the applicant's view, the Ministry of the Interior incorrectly assessed the applicability of the Dublin Regulation and rejected the applicant's application as inadmissible, since Austria was the State competent to examine it under the Dublin III Regulation. The Court dismissed

¹³⁹ § 9 Verwaltungsgerichtsverfahrensgesetz (VwGVG)

¹⁴⁰ Ust. § 16 a 25 zákona č. 325/1999 Sb. o azylu v aktuálním znění

¹⁴¹ Ministry of the Interior of the Czech Republic. *Průběh správního řízení o udělení mezinárodní ochrany*. [online]. 2022 [viewed 18 November 2022]. Available from: <https://www.mvcr.cz/migrace/clanek/podrobnejsi-informace-o-prubehu-spravniho-rizeni-o-udeleni-mezinarodni-ochrany.aspx>

¹⁴² Association for Association and Migration. *Průběh o dělení mezinárodní ochrany*. [online]. 2022 [viewed 18 November 2022]. Available from: <https://www.migrace.com/cs/poradna/informace-pro-cizince/zadatele-o-mezinarodni-ochranu/rizeni-o-udeleni-mezinarodni-ochrany>

the appeal as inadmissible. In his appeal, the applicant alleges ineffectiveness of his transfer, which, according to him, stems from the fact that he was previously transferred to Austria, which was unable to deal with his situation. „His application for international protection should be examined by the Czech Republic, since Austria, which is supposed to have jurisdiction to decide on the application, has in the past failed to deal with the matter effectively. Although the defendant has stated that Austria has a number of possibilities to proceed, according to the complainant Austria has no such possibilities.”¹⁴³ The complainant himself states in his appeal that Austria has the same procedural options as the Czech Republic in relation to him; it is therefore not apparent in what respect the Czech Republic, proceeding under the same legislation, could have provided the complainant with more 'effective' protection. That is a perfectly logical consequence of the fact that both countries are part of the Dublin system.¹⁴⁴

With regard to the inadmissibility of a cassation complaint on international protection, inadmissibility is established in the Administrative Procedure Code in a negative manner, i.e. it determines in which cases a cassation complaint filed is inadmissible to the Supreme Administrative Court (see section 104a): if the cassation complaint in international protection matters does not substantially exceed the complainant's own interests in terms of its importance, and the resolution requires the consent of all members of the Chamber.¹⁴⁵ In this way, the Supreme Administrative Court seeks to strike a balance between the interest in achieving justice in each individual case and the interest in the effective operation of objective law. „The essence of inadmissibility lies in the selection of international protection appeals according to their seriousness into those which must be examined on their merits and those which may be rejected by order for failure to comply with the conditions of section 104a or for defects in the submission. It is a kind of intermediate stage between decisions which are fully reviewed by the Court of Cassation and decisions which are either completely excluded from judicial review by the Administrative Procedure Code or other law, or decisions which cannot be reviewed on the grounds of formal defects in the complaint.”¹⁴⁶

¹⁴³ Resolution 1 Azs 145/2017-32 [online]. 15.6.2017 [viewed 16 December 2022]. Available from: http://www.nssoud.cz/files/SOUDNI_VYKON/2017/0145_1Azs_1700032_20170616090446_prevedeno.pdf

¹⁴⁴ Ibid.

¹⁴⁵ Zákon č. 150/2002 Sb., soudní řád správní.

¹⁴⁶ FILIPOVÁ, J. *Tzv. nepřijatelnost kasační stížnosti o mezinárodní ochraně podle § 104a s.ř.s.* [online]. [viewed 17 December 2022]. Available from: <https://www.law.muni.cz/sborniky/dp08/files/pdf/sprava/filipova.pdf>

In Austria, as in the Czech Republic, the action has suspensive effect only in exceptions and under certain conditions, i.e. the person cannot leave the country until the court has ruled. Complaints in which an asylum application has been rejected as inadmissible - such as subsequent applications, third country security, protection in an EEA State and Switzerland or on the grounds of another Member State's responsibility (under the Dublin Decision) - do not have suspensive effect.¹⁴⁷ The complaint must be submitted in writing in German and in good time. It must identify the decision against which it is directed and the authority which issued the decision. It must also state the grounds on which the allegation of illegality is based. In Austria, a complaint may be lodged with the Constitutional Court of Justice or the Federal Court of Justice against a decision of the Independent Federal Asylum Chamber rejecting the application within six weeks of the date of notification of the decision. Austria takes a different approach to complaints lodged with the Austrian Supreme Courts, where they do not have suspensive effect as in the Czech Republic.¹⁴⁸

3.7 Conclusion – results of the comparison

No significant differences are found in the case of definitions related to asylum policy, which are based on the legislation in force in the countries concerned. Several directives have been adopted under secondary Community law concerning asylum procedures. The EC Directives oblige the Member States of the Union to implement their provisions and it is up to the Member States to decide how to transpose these provisions into national legislation.

Austria has seen a slight tightening of immigration and asylum policies related to the post-2015 migration crisis. The most notable difference is Austria's so-called '*Asylum on Time*' system, which reassesses an immigrant's application from the beginning after three years and can be deported on the basis of a repeated application. This means that after a decision to grant asylum, asylum in Austria is granted first for 3 years, then only indefinitely. In the Czech Republic, if the decision to grant asylum is made, asylum is granted for an indefinite period.

¹⁴⁷ Bundesamt für Fremdenwesen und Asyl. Rechtsmittel [online]. 2022 [viewed 18 November 2022]. Available from: <https://www.bfa.gv.at/201/Rechtsmittel/start.aspx>

¹⁴⁸ Oesterreich.gv.at. Asylverfahren. [online]. 2022 [viewed 16 November 2022]. Available from: https://www.oesterreich.gv.at/themen/leben_in_oesterreich/asyl/Seite.3210002.html

The process of applying for international protection in the comparator countries works very similarly. The application to the police authority is possible in both countries, in the Czech Republic in exceptional cases also to the Ministry of the Interior. In the Czech reception facility, newly arrived applicants for international protection are accommodated only for the duration of the necessary entry procedures or for the period of time stipulated by law. In the Czech Republic, as opposed to Austria, reception facilities do not perform the function of accommodation and foreigners are accommodated there only for a certain period of time, after which they are moved to a residence facility. The reception centre provides accommodation until the decision granting international protection becomes legally binding. In Austria, applicants are placed for the first time in a reception facility at federal level, where the admissibility of the application should be established and they can avail themselves of the accommodation option. Here, as in the Czech Republic, they are also admitted to the asylum procedure.

Administrative proceedings are conducted by the Asylum and Migration Policy Department of the Ministry of the Interior in the Czech Republic and by the Federal Office for Immigration and Asylum of the Federal Ministry of the Interior in Austria. During the procedure, an interview is conducted in the applicant's mother tongue in order to gain more insight into the reason for the applicant's flight from his/her country of origin.

The decision to grant international protection is issued in both countries within six months of the start of the procedure. In the event of a decision not to grant international protection, the applicant can appeal. It is evident that the legal regulation of the asylum procedure in the two countries compared is stricter in many respects than the normal administrative procedure. The Czech legislation sets a time limit of 15 days for lodging an appeal and the Austrian legislation sets a time limit of 14 days. A normal party to an administrative procedure is granted a two-month period to bring an action.

The action is brought in the Czech Republic against the decision of the Ministry of the Interior in the matter of international protection before a regional court. The foreigner has the right to file a cassation complaint against the decision of the regional court on the action to the Supreme Administrative Court in Brno. By contrast, in Austria, an appeal against a decision of the Federal Office for Immigration and Asylum (BFA) can be lodged with the Independent Federal Asylum Chamber. This decision can also be appealed to the Constitutional Court or the Federal Court of Justice.

CONCLUSION

The aim of this thesis was to compare the documents of asylum law in the Czech Republic and Austria in the form of a comparative analysis based on a historical analysis and comparison of the development of the selected countries, together with criteria indicating the situation in the field of European law. As asylum law is a very broad area, therefore more attention was focused on the asylum procedure in the selected countries, especially on the application for international protection, the issuance of the decision of the administrative authority and, last but not least, on the possibilities of judicial review of the decision.

Two research questions were chosen as part of the qualitative research and comparative case study, the first of which concerned the differences in the conception of the basic concepts of asylum law in the compared countries. The second research question focused on common and different elements in the approach of institutions in asylum settings. The primary source of data collection was the laws of the compared countries; therefore, the paper is largely based on primary sources.

The thesis is divided into a theoretical part, where in the first chapter the concepts of asylum, asylum procedure, refugee, foreigner and the authorities responsible for the assessment of the application are defined in the framework of conceptualization. The second chapter of the theoretical part deals with the international, EU and, last but not least, the national regulation of asylum policy in the Czech Republic and Austria.

The comparative part compares the different concepts of asylum law according to national legislations and their differences and similarities, including differences in approaches and conditions for asylum seekers.

As for the results of the comparison, it is obvious from the text that the asylum system in each country has changed, especially since 2015. This was due to the high number of asylum applications. This has mainly involved an increase in the number of facilities, but in the case of Austria, the whole system has been simplified in some way. The difference with the Czech Republic is the Austrian system of '*Asylum for Time*', whereby after the decision to grant asylum, asylum is granted in Austria first for 3 years, then only for an indefinite period. In the Czech Republic, if the decision to grant asylum is made, asylum is granted for an indefinite period of time.

No significant differences are found in the case of definitions related to asylum policy, which are based on the legislation in force in the countries concerned. The concepts of asylum

and asylum seeker are almost identical in the legislation of both countries, with the only difference being that in Austria, people whose asylum application is approved initially have a limited right of residence for three years, which is different from the Czech Republic, where this condition does not exist. However, if the requirements for initiating the deprivation procedure are not met, the law also grants an unlimited right of residence. Regarding the concept of refugee, in both cases, whether it is Czech legislation or Austrian legislation, the person concerned must prove that their fear of persecution is well-founded.

As regards the composition and number of foreigners, this varies considerably in the countries compared. The largest groups of foreigners in Austria are Germans, Romanians and Serbs. In total, there were about 1.6 million foreigners in Austria last year.¹⁴⁹ Whereas in the Czech Republic, these are people from Ukraine, Slovakia, Poland or Vietnam. In total, there were over 1.1 million foreigners in the Czech Republic at the end of 2022.¹⁵⁰

Similarly, the process of applying for international protection in the comparator countries works very similarly. In both countries, the submission of an application to the police authority is an option in the Czech Republic, but in exceptional cases it can also be submitted to the Ministry of the Interior. An important change in the Austrian legal system was the establishment of administrative courts in 2014. Since then, there is the possibility to appeal against any administrative decision to an independent administrative court with full jurisdiction. These administrative courts are supposed to be independent courts within the meaning of Article 6 ECHR. Decisions of administrative courts can be appealed to the Constitutional Court and the Supreme Administrative Court. In the Czech Republic, an action is brought against a decision of the Ministry of the Interior in the matter of international protection before a regional court. The foreigner also has the right to lodge a cassation complaint against the decision of the regional court on the action with the Supreme Administrative Court in Brno. In the event of an appeal, the Czech legislation provides for a 15-day time limit for filing an appeal and the Austrian legislation provides for a 14-day time limit. A normal party to an administrative procedure is granted a two-month period to bring an action.

The decision to grant international protection is issued in both countries within six months of the start of the procedure.

¹⁴⁹Statista.com [online]. 2022 [viewed 19 November 2022]. Available from: <https://www.de.statista.com/statistik/daten/studie/293019/umfrage/auslaender-in-oesterreich-nach-staatsangehoerigkeit/>

¹⁵⁰NOLL, G. *Negotiating asylum: The EU acquis, extraterritorial protection and the common market of deflection*. The Hague: Martinus Nijhoff Publishers, 2000, p. 360.

For both the Czech Republic and Austria, if the procedure for granting international protection has been terminated because the foreigner has not provided information on the application for international protection, a decision on the obligation to leave the territory of the Member States of the European Union will be issued.

Asylum policy is one of the areas in which the Czech Republic, unlike Austria, does not have a long tradition - and before 1989 it was a country that produced rather than received refugees. It was only after 1990 that it became necessary to regulate the entry of refugees into its territory. Before joining the EU, it was also necessary to harmonise Czech legislation with the relevant international documents and legislation of European countries, as well as to take into account the tendency to create supranational mechanisms in the form of a uniform visa policy and readmission agreements. This was ensured by Act No. 325/1999 Coll., on Asylum. On the other hand, however, the law also limited the asylum policy of the Czech Republic, which was classified as a country with a restrictive approach. It can be concluded that the Czech Republic is not yet one of the favourite destinations for migrants. Austria is in a different position - it is often the last stop before their final destination - Germany. In 2016, for example, it had to cope with an influx of tens of thousands of incoming migrants, followed by an influx of rejected migrants who were returned from Germany to their home country. Even so, more than 90,000 applications were made in Austria alone in 2015, to which the Austrian government responded by declaring that it would continue to accept less than half of asylum seekers. In the following year, Austria then took further measures - reinforcing border controls, setting quotas for the number of migrants crossing the Austrian border, and returning rejected asylum seekers and illegal immigrants back to their country of origin.¹⁵¹

The Czech Republic has not yet had to deal with the migration issue to the same extent as Austria, but it could still take inspiration from the Austrian example - in the author's opinion, Austria has shown that it can protect its borders and is able to take decisive and effective action against immigrants, especially those who do not officially apply for asylum or are refused asylum. If necessary, the Czech Republic should adopt a similarly swift approach and start acting at its own discretion - i.e. against the tide of orders from above from the European Union, which has long been known for its largely positive attitude towards migrants. Moreover,

¹⁵¹ Bmi.gv.at. *REPORT BY THE MIGRATION COUNCIL FOR AUSTRIA*. [Online]. 2016 [viewed 21 November 2022] Available from: http://bmi.gv.at/Downloads/files/Bericht_des_Migrationsrats_PDF_komplett_ENG_23_3_17.pdf

European structures are rather rigid and decision-making processes at European level are slow and inflexible if they are to respond to the rapidly growing and ever-changing dynamic process that is migration. Moreover, given that in recent years it has become clear that the EU is unable to secure even its external (Schengen) borders, the Czech Republic can be advised to follow Austria's approach in this area and act on its own. On the other hand, however, it is always advisable to consider each individual case and, instead of the 'machine' Austrian approach, to perceive the human side of things and to try to help refugees if they do not abuse the assistance.

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Abstract

The thesis aims to compare asylum procedure in the Czech Republic and Austria.

First, the thesis describes the historical development of the asylum institution itself, together with the definition of the basic subjects of asylum law from which the thesis will subsequently develop.

The attention will be paid to the sources of international and EU asylum law, together with Czech and Austrian legislation.

The main topics of the comparison part are different concepts of asylum law compared according to national legislations and their differences and similarities.

Key words: asylum, international protection, refugees, the Czech republic, Austria, asylum seeker