

# **Legal regulation of the status of persons with special needs in the EU Asylum directives**

*(Abstract)*

By the very nature of their status, applicants for international protection and recognized refugees are among the most vulnerable persons. Within this group, there is also a subgroup of persons with special problems, risks and needs that make them even more vulnerable. This subgroup of persons with special needs is provided special protection within the Common European Asylum System (CEAS). The foundation of this special protection consists of three legal acts commonly referred to as asylum directives – the Reception directive, the Qualification directive and the Procedural directive, adopted between 2003 and 2005

The legal status of persons with special needs is an important topic in the current discussion on the amendments to the Asylum directives and the general development of the CEAS system. The Dissertation „Legal regulation of the status of persons with special needs in EU Asylum directives“ has an ambition to contribute to this core discussion on the future content of the European asylum *acquis*. The paper analyses EU regulations and related national laws relevant to the treatment of this group of applicants for international protection as defined in art. 17 para. 1 of the Reception directive. Based on this analysis, the dissertation defines the basic characteristics of the legal regulation of the status of persons with special needs and identifies its main deficiencies – on the theoretical and factual levels.

The main fundament of the legal protection of persons with special needs has been laid out by the Reception directive which, as the only one of the Asylum directives defines the term „person with special needs“ through a demonstrative listing of characteristics which allow for a person to be included in this subgroup which includes e.g. minors, disabled persons, pregnant women, the elderly or persons who have been subjected to torture or other forms of violence. The Reception directive further includes a general requirement to take into account the special needs of these persons in the material conditions and healthcare provided to them. In the area of material conditions, the Czech Republic has transposed an almost identical requirement in its asylum law and so the deficiencies found were mostly of a factual nature. Among them is the fact that the equipment and quality of services provided is widely divergent in the individual asylum centres and the quality of life of the persons with special needs is highly dependent on which asylum centre they are placed. A more fundamental flaw

in the legal regulation and practice lies in the fact that in none of the asylum centres engages in systematic identification of persons with special needs and that no legal regulation explicitly provides for such a duty – even though proper identification of persons with special needs is a necessary condition for the provision of adequate material conditions and healthcare as required by the Reception directive.

The Qualification directive is relevant to the issue of persons with special needs mainly by defining the content of international protection – i.e. mainly with respect to persons with special needs who have already been awarded one of the forms of international protection. With respect to persons who have only applied for international protection, the Qualification directive establishes the duty of member states to process each application individually and take into account the personal situation of each applicant, including his vulnerability. This requirement has, however, not been transposed by the Czech Republic and one can only refer to the judicature of the Supreme Administrative Court

Similarly to the Qualification directive, the Procedural directive does not use the term „person with special needs“ and does not contain any provisions specifically targeted at this group. However, one can identify certain standards in the general provisions which are of increased relevance for this group. Specifically, the directive provides for the possibility to refrain from carrying out a personal interview in case of the applicant’s incapability to do so and also sets the standards for carrying out such an interview. The Czech Republic has transposed these requirements only formally and their real impact on the process of interviewing a person with special needs is very limited. The quality of the interview process and the extent to which special needs are taken into account is therefore highly dependent on the skills of the specific person conducting the interview

This thesis confirms that the legal positions of persons with special needs in the Asylum directives can only be understood in the context of the transposition of the relevant provisions into the given legal system and the ensuing application practice. With regards to above mentioned conclusions, it is apparent that to achieve a higher degree of protection of asylum-seeking persons with special needs, as is required by the concept of the second phase of the CEAS system, it will be necessary to further discuss specifications and clarifications of the legal regulations as well as the expansion of the extent of the protection provided.