

Forgotten migrants and Roma: The entrenched systemic racism and xenophobia in the Czech Republic.

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Abstract:

Protecting the values of the rule of law and human rights is not only an internal commitment of EU Member States, but also an integral part of the Union's identity. The Court of Justice of the EU has recently (Judgment of 16 February 2022, Case C-156/21 and Case C-157/21) expressed this principle directly, stating that Article 2 TEU is not a mere expression of political guidelines, but contains values that are integral to the very identity of the Union as a common legal order. These values include equality, the rule of law and respect for human rights, including the rights of minorities. The paper examines the Czech Republic's approach to the values of the EU identity against the background of pluralism and the protection of minorities and migrants. It shows that the indifference to the status of these groups was not only a problem during the Covid-19 Pandemic but is a part of long-standing systemic racism and xenophobia in the law, politics, and society. In this sense, the article fills a significant gap in the contemporary scholarship focused mainly on the implementation of the aforementioned values in Hungary and Poland.

I. Introduction

The thesis that measures against COVID-19 affected everyone equally was modified soon after the beginning of the pandemic as a reflection of the fact that certain groups in any society across the globe have been affected with greater force in the very access to basic human rights. These groups include among other migrants, asylum seekers and Roma who found themselves unable to access to the existential rights and services. These specific consequences have already been mapped in detail by several of studies provided predominantly by human rights organizations.¹ Therefore, the article opens with a brief account of examples of unequal effect of pandemic measures on vulnerable groups in the Czech Republic. Even though it can be argued that a similar unbalanced effect towards migrants and other minorities can be found across many countries and is a common feature of anti-liberal policies in Europe and elsewhere, the article aims to illustrate not only the startling extent of the problem in the Czech Republic, but also to provide broader context for the roots and consequence of the situation. Therefore, I will document the outlined problem on historical background, constitutional and statutory regulation as well as in the political sphere. The conclusion provides the reader a synthetic interpretation of the findings and places them into the context of the new Ukrainian refugee crisis and European values.

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¹ Cf. for instance Annual report on ECRI's activities covering the period from 1 January to 31 December 2020, Strasbourg, March 2021; Leave No One Behind, Racial Discrimination and the Protection of Minorities in the COVID-19 Crisis; Statement by the United Nations Network on Racial Discrimination and the Protection of Minorities, UN, April 2020; The anti-discrimination, diversity and inclusion dimensions of the response to COVID-19, Directorate of Anti-Discrimination, Council of Europe, April 2020; Statement on the COVID-19 pandemic and national minorities, adopted on 28 May 2020, Advisory Committee on the Framework Convention for the Protection of National Minorities.

During the pandemic migrants and asylum seekers have not been able to benefit from essential health care. This issue represents a grey zone in general praxis regardless of the pandemic, but the dynamic during the crisis has brought to light that the most vulnerable group in this respect are the newborn children of migrants and their mothers.² Although migrants have generally been subjected to abuse and harsh conditions, the pandemic has further placed them in a "second-class" status characterized not only by the limited access to the essential health care but also to protection of their working conditions. The chances to secure their economic subsistence diminished considerably. This situation became an existential threat to migrant workers and entrepreneurs because their residency status depended on proving income, which they could not adequately document at the time of the pandemic. Entire migrant families have lost their livelihoods.³

Roma in the Czech Republic - similarly to migrants and asylum seekers - were already suffering marginalization and exclusion in many areas before the pandemic and their situation has fundamentally worsened in terms of access to basic human rights. Roma communities mostly live in overcrowded accommodations without regular access to necessities such as water, sewage or electricity. As a result, they could not maintain the basic hygiene measures and distancing. Due to the lack of access to electricity, internet and computers, Roma pupils were excluded from access to education, which has increased the already high drop-out rate. This is associated with a loss of state social security support that depends on the pupil's participation in school. As a result, Roma families found themselves in a critical social situation. On average, 45% of Roma in the Czech Republic needed food assistance during the pandemic, 37% found themselves unable to pay their debts during the pandemic, and 23 % of Roma have had problems obtaining social benefits.⁴ The pandemic has also deepened the isolation of the Roma from the majority population because of the limited contacts outside the socially excluded area (characterized also by less intensive mobility connections).⁵

The above outlined information represent only a few examples of the limitations or denial of access to human rights suffered by these marginalized groups. The question I want to focus on is why have these problems met with such a strong level of indifference both from the state institutions and the wider society. More accurately, we can post a question why the only attention these marginalized groups have received was to be conceptualized as an object of hate speech combining the themes of the coronavirus and the migration crisis. Both linked together as an instrument of raising and reinforcing the fear of the unknown in the population. In respect to hate speech it is also worth noting that the Czech Public Defender of Rights (ombudsman)⁶ joined in on the hate speech against Roma during the pandemic, publishing a newspaper article in July 2020 entitled "Black Lives Matter and the Others." He expressed the opinion that the parallels between racism against African Americans and the situation of Czech Roma are

² This situation is not sufficiently mapped in the Czech Republic. In general, illegal migrants have access to health care only in the case of necessary and urgent health care, the exact scope of which is unspecified and which is used especially in the event of a direct threat to life. For details see <https://migrationonline.cz/en/themes/undocumented-migration-and-regularisation/> and the analysis (in Czech) on <https://migraceonline.cz/cz/e-knihovna/pristup-ne-legalnich-migrantu-ke-zdravotni-peci>.

³ For details see analysis accessible (in Czech), <https://www.soc.cas.cz/aktualita/dopady-opatreni-proti-pandemii-na-zeny-muze-na-trhu-prace>; accessed on 13. 4. 2022.

⁴ Zpráva o stavu romské menšiny v České republice za rok 2020 (Report on the state of the Roma minority in the Czech Republic), Úřad vlády ČR, October, 2021, p. 5.

⁵ Ibid.

⁶ The Public Defender of Rights is also a statutory anti-discrimination body and acts as the only equality body in the Czech Republic.

unjustified because "if it is generally accepted that black slave labor had a significant share of the wealth created in the USA in the past, then the same cannot be said of European Roma".⁷

Although Roma and migrants found themselves in a difficult situation in many countries during the pandemic, it is specific to the Czech Republic that these issues remained completely outside the attention of Czech state authorities, the public and, to a large extent, academia. Even the designated anti-discrimination body has marginalized their discrimination and participated in perpetuating prejudice against Roma.

However, this approach is not only characteristic for the time of the pandemic as can be illustrated by the infamous case *D. H. and Others v. the Czech Republic*, in which the European Court of Human Rights (ECHR) found that the practice of placing Roma in special schools with a reduced educational program for children with "mild mental disabilities" violates the prohibition of discrimination in relation to the right to education. As a result of the failure to enforce this judgment, the Czech Republic found itself under the enhanced supervision of the Committee of Ministers of the Council of Europe. This judgment has not yet been satisfactorily implemented and, despite some changes, inclusive education has failed to be introduced.⁸ The Czech Constitutional Court (hereinafter referred to as "CC"), which heard the constitutional complaint before submitting the case to the ECtHR, dismissed the case in part for a failure to exhaust previous available remedies and in part stating that it can only consider legal issues, not the social, cultural or societal context.⁹ Thus, it failed to make any significant contributions to the fight against discrimination.

II. Historical background of pluralism in the Czech Republic

When trying to identify the reasons leading to the recent accommodation of pluralism in the Czech Republic, we can differentiate many aspects. The structure of the article considers historical, legal, political, and social aspects.

From the Second World War until the 1990s, the Czech society has not been adjusted to a pluralistic phenomena. The creation of the Protectorate of Bohemia and Moravia under the Nazi leadership destroyed the pre-war multinational Czechoslovak state based on the principle of unifying citizenship. At the time of the establishment of the Protectorate of Bohemia and Moravia in 1939, more than 120 000 Jews were living in the territory. About 30,000 Jews managed to emigrate, but the vast majority of others were deported. The exact number of Czech Jewish victims of the Holocaust is unknown, but it is estimated that at least 80 000 Jews were murdered.¹⁰ The exact number of victims of the Romani Holocaust is also unknown. It is estimated that only one-tenth of Czech Roma survived the Holocaust.¹¹ After the war, more than 2 million Germans were displaced from Czechoslovakia as a result of both „wild“ and

⁷ The Daily Newspaper "Právo" ("Law"), from 9. 7. 2020, accessible on line (in Czech); https://neviditelnypes.lidovky.cz/spolecnost/spolecnost-black-lives-matter-a-ti-druzi.A200709_204541_p_spolecnost_wag; accessed 23. 4. 2022.

⁸ Schorm, Vít Alexander. Poznámky na okraj výsledků výzkumu k vnitrostátnímu soudcovskému zacházení s judikaturou Evropského soudu pro lidská práva (Sidelight on the Results of Research into National Judicial Treatment of the European Court of Human Rights' Case Law), in *Časopis pro právní vědu a praxi*, XXIX, 2/2021: 389–401; <https://doi.org/10.5817/CPVP2021-2-10>, p. 393.

⁹ Usnesení ze dne 20. října 1999, sp. zn. I. ÚS 297/99.

¹⁰ See KÁRNÝ, Miroslav. „Konečné řešení“: Genocida českých židů v německé protektorátní politice (The Final Solution: The Genocide of Czech Jews in German Protectorate Politics). 1. vyd. Praha: Academia, 1991. ISBN 80-200-0389-4. S. 110n. Dále jen Kárný (1991).

¹¹ It is reported, that fewer than 600 of the more than 5 000 victims returned from the forced-labour camps. Cf. e.g. Genocide of Roma and Sinti, Holocaust History, Institut Tereziánské iniciativy, available on-line: <https://www.holocaust.cz/dejiny/pronasledovani-a-genocida-romu/>, 30. 4. 2022.

organized post-war expulsions, and hundreds of thousands more fled.¹² The post-war Czech Republic thus became a de facto homogeneous state. According to the first post-war census in 1950, Czechs constituted 93.8% of the population and this number remained virtually unchanged throughout the following period until the turn of the millennium. By comparison, before World War II, Czechs represented 68.4% of the population.¹³

The new communistic regime further consolidated the homogeneity of society, both at the political and national level. After 1948, the state was built on the principle of a class society founded on communist ideology and loyalty to the Communist Party of Czechoslovakia. Society was divided into three main classes: workers, farmers, and intelligentsia, with the leading role of the working class. Rights were distributed according to group affiliation, with workers being the privileged group. The oppressive governance (referred to as "normalization" after 1968) was enforced through various forms of control, including coercive methods that penetrated not only politics but also education and culture, paralyzing both the public and private life. The mobility and migration of people was controlled by the state, both outside and inside the borders. Any diversity, including national diversity, was excluded by the regime.

In terms of the national composition of Czechoslovakia, the constitutions of 1948, 1960 and 1968 declared the equality of "fraternal nations" of the Czechs and Slovaks. However, concerning national minorities, the constitutional regulation recognized only those nationalities listed exhaustively, and their protection was only conceivable within the limits of the socialist ideology of *uniformity*. According to the Constitutional Act of 1968: "The Czechoslovak Socialist Republic, as a common state of the Czech and Slovak nations and nationalities living on its territory, in the spirit of socialist democracy and internationalism, provides the Hungarian, German, Polish and Ukrainian (Ruthenian) nationalities with opportunities and means of all-round development."¹⁴

For the entire period before 1990, the Roma, whose number is estimated at more than 100 000, were not officially recognized as a nationality in the Czech Republic on the grounds that they had not been endowed with territory of their own.¹⁵ Nevertheless, in order to regulate their assimilation, they were registered based on racial characteristics, language and their way of life. The Roma were relocated to ghettos outside the cities and their children were placed in special schools with a limited curriculum. The practice of sterilizing Romani women without their consent, for which the Government apologized only recently, has also been imposed. A similar approach to Roma persisted until the 1990s.

The absence of national, cultural, and political diversity has led to a self-centered and closed society. This attitude was not limited only to other national groups or foreigners but also religious and other minorities, such as sexual minorities. Several generations of Czechs were shaped by this experience which also significantly influenced the development after the fall of communism. A society that has long been enclosed within ideological and factual boundaries cannot rationally be expected to make a rapid transition to pluralism and tolerance. Moreover, since the 1990s, the main interests of the newly established democratic state have focused on issues other than building a multicultural society. The fear of the unknown was intensified by

¹² <https://www.pametnaroda.cz/cs/odsun-nemcu-z-csr>.

¹³ The census of 1930 indicates the following distribution of major nationalities of the total of 10 230 060 inhabitants of the Czech Republic: 68, 4 % Czech; 29,5% German; 0, 9% Polish; 0, 4% Slovaks and 0,1% Hungarian. According to the 1950 census the distribution of nationalities was as follow: 93,8 % Czech; 2,9 % Slovak; 1, 8 % German, 0,8 % Polish and 0,2 Hungarian. Information accessible in Czech: Český statistický úřad. Národnostní struktura obyvatel. In: Český statistický úřad [online], <https://www.czso.cz/documents/10180/20551765/170223-14.pdf>.

¹⁴ Constitutional Act of 27th October 1968, No. 144/1968 Coll., On the status of nationalities in the Czechoslovak Socialist Republic.

¹⁵ For detail see Šamanová, Gabriela. Národnost ve sčítání lidu v českých zemích (Nationality in the census in the Czech lands), Časopis naše společnost, 2005/1, p. 183.

social and economic changes and the fascination with the market economy at the expense of the rule of law and civil society. This atmosphere has also been reflected in the legal approach to the application of the principles of equality, non-discrimination, and minority rights and the concept of diversity protected as a constitutional value of any democratic society.

III. Czech reluctance to pluralism from legal perspective

A milestone in the democratic transition was the adoption of the Charter of Fundamental Rights and Freedoms in 1991, i. e. in the year when the country was still a part of the Czechoslovak federation. The Charter represented a major break from previous legal developments and became the foundation of a new legal order based on the rule of law, democracy, and the protection of human rights. At the time of its adoption, the Charter had a status superior to other constitutional provisions.

During the preparation of the new constitution of the independent Czech Republic in 1992 this position was questioned by governmental right-wing political parties.¹⁶ As a result, the recent Constitution of the Czech Republic regulates only organizational and institutional matters and does not contain fundamental rights.¹⁷ The Charter was eventually reaffirmed as part of the Czech legal order and was adopted as a separate document. It is referred to by the Constitution itself as a part of "the constitutional order".¹⁸ Although the status of the Charter of Fundamental Rights and Freedoms has changed, the protection of fundamental rights is one of the constitutional principles and has become an essential part of the new legal culture in the Czech Republic. This principle is also expressed in the Constitution in the description of the Czech Republic as "a sovereign, unified and democratic state governed by the rule of law based on respect for the rights and freedoms of man and the citizen".¹⁹

In reality, the approach to plurality as well as the relevant legal provisions face a many problems. Plurality as a social fact can be considered relatively limited in the Czech Republic in comparison to other European countries. The prevailing lines between individuals and groups are based on a national and religious identity, with Czech citizens of Christian faith dominating.²⁰ The increased mobility and migration since the beginning of the millennium has not changed the situation to a significant degree. The Czech Republic has so far mostly remained outside the global and regional migration dynamics due to its very restrictive political and legal approach. The number of persons granted international protection, i. e. asylum and subsidiary protection, and the number of admitted economic migrants remained significantly low until 2021.²¹ An exception is the accommodation of refugees from Ukraine after the Russian

¹⁶ When the new constitution of the Czech Republic was approved in the fall of 1992, the Prime Minister Václav Klaus did not wish the Charter of Fundamental Rights and Freedoms to be part of it. He criticized it as "cluttering up" the constitution. Cf. newspaper article of Petr Uhl, accessible in Czech; <https://www.novinky.cz/domaci/clanek/cetl-vubec-klaus-ustavu-276332>, accessed 19. 4. 2022.

¹⁷ Cf. Kuhn, Zdeněk. The Czech Republic: From a Euro-Friendly Approach of the Constitutional Court to Proclaiming a Court of Justice Judgment Ultra Vires. In: A. Albi and S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Springer Nature, 2019, p.

¹⁸ See Art. 3 Constitution of the Czech Republic of 16 December 1992, No. 1/1993 Coll. In: Ústavní soud [online]. [2022]. https://www.usoud.cz/fileadmin/user_upload/ustavni_soud_www/Pravni_uprava/AJ/Ustava_EN_ve_zneni_zak_c.98-2013.pdf.

¹⁹ Art. 1 Sec. 1 of the Constitution.

²⁰ The prevailing national identity is Czech, as indicated by the census of 2011, with other national minorities, most notably Slovaks, Ukrainians, Poles and Vietnamese, present in limited numbers.

²¹ The number of applications for international protection in 2021 was 1624. Asylum was granted in 191 cases and subsidiary protection in 120 cases. Information accessible in Czech: MVČR. Souhrnná zpráva o mezinárodní ochraně za rok 2017. In: Ministerstvo vnitra ČR [online]. 20. 4. 2022 [2022]. <https://www.mvcr.cz/clanek/souhrnna-zprava-o-mezinarodni-ochrane-za-rok-2021.aspx>.

aggression, when the Czech Republic has been able to grant more visas in one month than in its entire history. This represents a development that one needs to keep in mind when analyzing the political approach to pluralism as discussed below.

The Czech Republic has no comprehensive regulation of the status of stateless persons. The legal regulation of the status of foreigners is one of the most frequently amended legal norms. It has long been criticized for its extensiveness, complexity and unpredictability. The reluctance towards diversity is also evident in the legislation on minority rights and non-discrimination. Although the Charter contains general principles for the protection of the rights of national and ethnic minorities, it took eight years to adopt an implementing law. However, the law has not brought anything specific in terms of the status of minorities, as it only refers to the existing legislation and is thus not practically applied.²²

The so-called Anti-Discrimination Act was adopted in 2009. This happened after much reluctance and pressure to implement the European Community's anti-discrimination directives and international treaty obligations. The parliament did not want to enact this law at all. Lawmakers argued against it, saying it would lead not only to an end of traditional society, but even to the end of civilization.²³ After its adoption, there was a lack of practice in the application of the anti-discrimination statute, and the facts show that this is unfortunately still the case today. There are only few discrimination lawsuits in the Czech Republic overall: in 2010-2014, a total of 56 discrimination actions were brought before the Czech courts, and in 2015-2019, a total of 90 actions. Most plaintiffs (around 52%) who allege unequal treatment do not succeed in courts.²⁴

The case law of the CC of the Czech Republic concerning the prohibition of discrimination does not bear an overreaching significance. The case law of the CC is characteristic by the absence of emphasis on the so-called suspicious discriminatory grounds, which include criteria such as gender, nationality, race or ethnic origin, sexual orientation, or disability, which are subject to stricter constitutional control. Suspicious grounds are rarely found in case law. On the other hand, attention is paid to other reasons that are not inherently discriminatory - in the sense of morally objectionable reasons. As was already mentioned, the CC refused to address racial discrimination in *D. H. v. Czech Republic*, which was later decided by the ECtHR. The CC has also rejected discrimination against foreigners in the case of differential treatment in connection with restrictions on personal liberty.²⁵ In addition the CC also fails to address the important issue of gender equality regarding to social traditions.²⁶ Similarly, the CC rejects discrimination based on sexual orientation, arguing that it is "the prerogative of the national legislator" to change the institutions that affect the family and marriage, referring to its national traditions, history and culture.²⁷ The CC, on the other hand, focuses on the discrimination between strategic and non-strategic sugar mills or the position of the State as a party to the proceedings in terms of payment of the costs of the proceedings.²⁸

²² See the Act from 10 July 2001 No 273/2001 Coll. of Laws, on rights of members of national minorities and amendment of some acts, the text (in English) is accessible on line <https://www.vlada.cz/assets/ppov/rnm/anglictina.pdf>.

²³ For details see Anna Šabatová, Úvodní slovo, *Sborník stanovisek veřejného ochránce práv DISKRIMINACE* (Foreword, Collection of Legal Opinions of the Ombudsman on discrimination), Praha: Kancelář veřejného ochránce práv, Wolters Kluwer, 2019 str. 9.

²⁴ For details see the analysis *Rozhodování českých soudů o diskriminačních sporech 2015–2019*, Výzkum veřejného ochránce práv 2020. *Decisions of Czech Courts in Discrimination Disputes 2015-2019*, Research of the Public Defender of Rights 2020. Available in on line (in Czech) in https://www.ochrance.cz/fileadmin/user_upload/DISKRIMINACE/Vyzkum/2020-vyzkum_judikatura-DIS.pdf.

²⁵ Judgment of 12 May 2009, file No. Pl. ÚS 10/08.

²⁶ Judgment of 16 October 2007, file No. Pl. ÚS 53/04.

²⁷ Judgment of 15 December 2020, file No. Pl. ÚS 6/20.

²⁸ Judgment of 8 March 2006, file No. Pl. ÚS 50/04.

As for discrimination cases on the status of national minorities, there is virtually no case law of the CC at all. This does not mean that such discrimination does not occur. Indeed, members of marginalized groups are effectively denied access to the courts due to a lack of financial resources and ability to obtain information, as well as resignation due to prejudice against them. The result of the interpretation and application of the non-discrimination principle by the Czech courts is the absence of a consistent approach to the discrimination cases.

III. Czech political environment and pluralism

The political environment in relation to pluralism has been shaped since the 1990s, by the concept of a responsible pluralistic society based on freedom, morality, and responsibility as represented by Václav Havel. It was quickly replaced by a neoliberal economic model in which private and market interests are the main determinants. A consequence of this development is also the underestimation of the role of civil society and the rejection of an alternative political concepts. A new form of homogeneity based on common economic and private market interests has gradually emerged. In this environment, anything that disrupts the newly created economic and thus social status is perceived as a threat.

This political background is reflected in the context of diversity in several ways. Firstly, the completely negative approach to the European refugee crisis culminating in 2015, which on the one hand provoked a strong opposition to alternative forms of national, racial, and religious identity and on the other reinforced homogeneous identity politics.²⁹ Both the Government and the President have unequivocally refused to participate in any mandatory mechanism for the relocation and resettlement of asylum seekers at the EU level. The president interpreted this EU mechanism as contradictory to Czech national interests and sovereignty and compared it to the Brezhnev Doctrine of Limited Sovereignty.³⁰ The Prime Minister expressed his position on accepting refugees with the slogan "I don't want to accept a single migrant."³¹ These attitudes have permeated the entire political sphere. At the time of the refugee crisis, there was virtually no parliamentary party that stood up for the introduction of EU resettlement mechanisms.

Secondly, a new form of anti-liberal identity politics prevailed, based not only on national and religious identity but also on a political unity, linked to the restoration of national sovereignty in the sense of emancipation from a subordinate position in the EU. The emphasis on national interests and national sovereignty has become a popular slogan of politicians across the political spectrum.

Thirdly, along with these trends, an artificially constructed national and religious identity is being created, not based on inherent principles, but on a fear of the external. In relation to refugees, it can be characterized as "anti-Muslimism without Muslims".³²

²⁹ For details see HOFMANNOVÁ, Helena - ŘEPA, Karel. Othering through 'Unconcerned democracy' and rise of anti-liberal political divisions. In JESSE, M (ed.). 'European Societies, Migration, and the Law: The "Others" amongst "Us"'. Cambridge University Press, 2021, pp. 43-61.

³⁰ Speech of the President at the 29th Session of the Chamber of Deputies on 19 June 2015, accessible in Czech; www.zemanmilos.cz/cz/clanky/pojev-prezidenta-republiky-pri-29-schuzi-poslanecke-snemovny-parlamentu-cr-htm, accessed 24. April 2022.

³¹ Speech for the Czech ambassadors on 27th August 2018, accessible in Czech; https://www.idnes.cz/zpravy/domaci/premier-babis-porada-s-ceskymi-velvyslanci-ministr-hamacek.A180827_085053_domaci_kop.

³² The Czech Republic has accepted only about 12 of the more than 1 600 refugees it was supposed to take in under the so-called quotas. The number of Muslim refugees in the Czech Republic remains very small. Cf data accessible in Czech; <https://www.amnesty.cz/migrace/migrace-otazky-a-odpovedi>, accessed 22. April 2022.

Last but not least, these tendencies reinforce a long-standing attitude toward existing minorities on the margins of society, who are primarily Roma. Concerning them, systemic racism in the Czech Republic is entrenched at the social, political, and legal levels. Discrimination is neither a topic of social discussion nor a subject of the parliamentary debate. In addition, as already mentioned, anti-Roma attitudes are also held by the Ombudsman, the body that is legally responsible for their protection. Because of his repeated attacks, Roma organizations are demanding his removal from the office.³³

Conclusion

In the previous pages I tried to show that the indifference to the situation of migrants, asylum seekers and Roma at the time of the pandemic was not exceptionally determined by the emergency situation in the country, but has its roots in a long-term historical, political, and social context. While these phenomenon has manifested in many countries, we can see that the extent of indifference to the situation of vulnerable groups is the core characteristic of the Czech Republic's position. The Czech context can be described by almost absolute silence and ignorance of this issue, not only on the part of state authorities and society, but also by scholars in the field of constitutionalism and human rights protection. As a result, there is also a lack of expert analyses, scholarship, and relevant literature. The status and fundamental rights of Romani people and migrants in the Czech Republic are perceived as an activity that should be addressed only by human rights NGOs.

This situation has become even more apparent in the light of the current Czech politics and society's attitude towards Ukrainian refugees. While in 2021 the Czech Republic granted international protection in 311 cases (to applicants especially from the so-called third countries), within the two months since the war in Ukraine it has granted international protection to more than 316 000 Ukrainian applicants.³⁴ These facts show that politicians and society are capable of adopting an effective and responsive approach to persons in danger. However, it is questionable whether this can be seen as an indication of a shift in attitudes toward diversity and plurality, or rather an acceptance of "Ours" as those who are not consider socially and culturally different. Is a sense that these persons are not seen as a threat to the established model of society.³⁵

It should be added that apart from the appreciation of the generous help and support to Ukrainian refugees, this approach has also caused some frustration in terms of the selection of those whom Czechs are willing to accept. The differential treatment does not only apply to refugees from the so-called third countries. The differential treatment currently also includes Roma Ukrainian refugees, which has already been documented in a several cases.³⁶ Despite the

³³ See the statement of the director of Roma organization Romodrom Nikola Taragoš, accessible in Czech; <http://www.romea.cz/cz/zpravodajstvi/domaci/nikola-taragos-kvuli-opakujicim-se-utokum-proti-romum-budeme-usilovat-o-odvolani-stanislava-krecka-z-funkce.ombudsman>, accessed 22. April 2022.

³⁴ See for details the statistics of the Ministry of Interior of the Czech Republic, information accessible (in Czech): MVČR. Souhrnná zpráva o mezinárodní ochraně za rok 2021 (Summary Report on International Protection 2021). In: Ministerstvo vnitra ČR [online]. 20. 4. 2022 [2022] <https://www.mvcr.cz/clanek/souhrnna-zprava-o-mezinarodni-ochrane-za-rok-2021.aspx>.

³⁵ A similar approach can be identified in the case of war refugees from the former Yugoslavia in the 1990s, who were also not perceived as a threat to identity.

³⁶ See e. g. Information from municipal authorities, accesible (in Czech); https://www.novinky.cz/domaci/clanek/ukrajinsti-romove-jsou-pro-cesko-jako-horky-brambor-40395952?fbclid=IwAR2EdlOyXkmX6b99hUH23ZNNNkif9UVs2mxmsH0pQEgjPRE3NpArayY1N6w#source=hp&seq_no=7&utm_campaign=abtest196_discussion_timeline_varBB&utm_medium=z-boxiku&utm_source=www.seznam.cz; accessed on 13. 4. 2022.

recent wave of solidarity towards Ukrainian refugees, this is not a narrative shift from a human rights and plurality perspective.

While before the experience with the pandemic the Czech pattern of the process of othering could be characterized as "identification, homogenization, threat assignment, exclusion and closure",³⁷ nowadays one more step can be added: selectivity. But the historical experience sufficiently proves that constitutional democracy and the rule of law are not defined by how state power treats the majority and the powerful, but by how it treats the vulnerable and powerless. This also includes the ability to incorporate those trajectories of plurality that go against the mainstream perceptions of similarity. Or to put it another way, whether society is capable of "the solidarity of the shaken", i. e. whether we perceive democracy not in terms of the certainties of everyday routine, but in the light of the fact that we can lose them at any time.³⁸ The Czech Republic is a rather small player in the European space. However, if the identity of the European Union depends on a shared respect for the rule of law and the respect for human rights, including the rights of minorities, then it is also its position in which the gap between national identities and the Union's identity lies.

³⁷ HOFMANNOVÁ, Helena - ŘEPA, Karel. Othering through 'Unconcerned democracy' and rise of anti-liberal political divisions, p. 54-56.

³⁸ See Patočka, Jan. Války 20. století a 20. století jako válka (The wars of the 20th century and the 20th century as a war). In: Patočka, Jan. Kacířské eseje o filosofii dějin (Heretical essays on the philosophy of history), Praha, Academia 1990, str. 127.