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# Unemployed and thus criminal

## The symbolic power of categories in the case of migrants

**MARKÉTA BLAŽEJOVSKÁ (CZECH REPUBLIC)**

Masaryk University Brno (Czech Republic)

*Paper for the 2012-edition of the international (post)graduate course on Inclusion and Exclusion in Contemporary European Societies: 'Challenges of Europe, the Strength of Soft Power'.*

April 16-20, 2012 | Dubrovnik (Croatia)

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## **Introduction**

This essay deals with a new type of exclusion experienced in the time of financial crisis. It affects all parts of society – the EU, nation states, employers, self-employers and employees. One of the major consequences of the crisis is a high unemployment rate – both the state and the business sector are enhanced to create new jobs for citizens. Often, the unemployed citizens are regarded as excluded with big concern. However, exploring new types of exclusion we want to look at those who are in even more marginal position – the migrants. They are the first to lose their jobs in the period of crisis, being regarded as a threat to citizens. In contrast to citizens, the social and political rights of migrants are conditioned by law in the particular country. Only human rights are granted in every case. Therefore, migrants receive different rights when being from the EU country or a Third-Country or being employed or unemployed. In this essay, we focus on the unemployed Third-Country Nationals. What happens with these people, what rights do they have and what exclusion do they face – these are the questions we want to address.

We have chosen one case study to explore the way state and migrants deal with financial crisis. It is the Czech Republic, a rather new immigration country that faces migration flows from Eastern Europe and Asia. The first chapter of the essay introduces the Czech Republic and the Third-Country Nationals residing there and it continues with the case study describing state interventions that followed the financial crisis in 2008. In the next chapter, we explain what happened with the use of cognitive sociological paradigm that explains classification as a soft power of the state. Also, we compare the situation to the Oil Crisis in the 70ties. The whole process is called criminalization. In the next chapter, the cause for the extreme exclusion of unemployed migrants is searched. We use the same paradigm to explain gastarbeiterization that takes place in the time of economic expansion. We conclude with recommendations to avoid this type of exclusion in the future.

### **1. Third-Country Nationals in the Czech republic during the Financial Crisis**

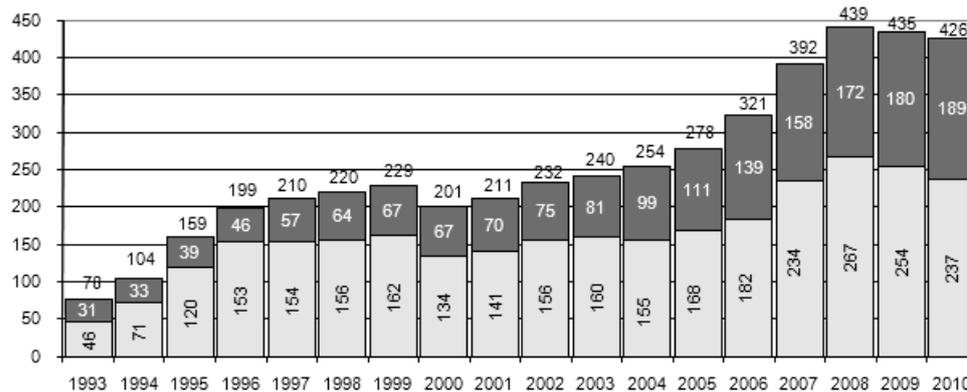
The first chapter is answering the key question of our case study: What was the impact of the global financial crisis on the Czech Third-Country Nationals. In the following chapters, we will explain sociologically what happened and we will try to find the causes for this. However, for the beginning we need to introduce the Czech Republic and different groups of migrants who reside here. Then, we will follow with description of the changes that followed the financial crisis in 2008. It is a small case study based on my visit on the Ministry of

Interior in April 2012 and on the resources that are available in the Internet – newspaper articles, news and information of the Ministry etc.

### 1.1. Introducing the Czech republic as an immigration country

The Czech Republic is a rather new immigration country. Forty years of communism after the Second World War significantly affected migration flows – an “illegal” emigration to USA and other Western countries formed the prevalent migration flow. Due to the extremely tough protection of national borders, almost no immigration took place until 1989. However, since the peaceful dissolution of Czechoslovakia in 1993, the newly formed Czech Republic turned into an immigration country. As Graph 1 shows, number of foreigners has grown from 70 to 426 thousand (six times more) from 1993 to 2010.

**Graph 1**  
**Growing numbers of foreigners with permanent and long-term residence permits in the Czech Republic in 1993 – 2010 (in thousands).**



Long-term (90 days and more) residence permits: LIGHT BLUE.

Permanent residence permits: DARK BLUE.

Source: The Czech Statistical Office, 2011.

Where do these migrants come from? The Czech Republic has never had any colony and therefore there is no historical reason for any sending country. However, gastarbeiters were invited to work in Czech industry. Whilst the Western European countries invited workers from Southern Europe and Turkey after the Second World War, the Czech Republic invited migrants from communist Vietnam to come in the 50ties. The Vietnamese people came to work in factories, educate themselves and bring the knowledge and economic potential back to Vietnam. The highest migration flow took place from 1979 to 1985 – up to 35 thousand of Vietnamese came following the bilateral agreement. (Kocourek, 2005)

Therefore, the Vietnamese are the second biggest group of Third-Country Nationals in the Czech Republic – in November 2011, there were 55 585 legally staying Vietnamese (The Czech Statistical Office 2011). The existing social network of co-nationals, co-workers and family members attracts new migrants every year.

However, there is one more aspect defining sending countries for immigration to the Czech Republic – it is cultural and linguistic proximity. Therefore, the biggest migration flow comes from Ukraine – in November 2011, there were 106 040 Ukrainians staying legally in the country (The Czech Statistical Office, 2011) and an unknown number of those staying illegally. There were 27 321 Russians (The Czech Statistical Office, 2011), thus representing the third biggest group of Third-Country Nationals. The other significant groups of migrants in the Czech Republic are numbered in the

**Chart 1**  
**Twenty biggest groups of legally staying Third-Country Nationals in the Czech Republic in numbers**

Country	Number
Ukraine	106 040
Vietnam	55 585
Russia	27 321
Moldavia	6 732
USA	6 385
China	5 019
Mongolia	4 882
Belarus	4 072
Kazakhstan	3 727
Serbia	3 611
Croatia	2 382
Bosnia-Herzegovina	2 023
Macedonia	1 665
Armenia	1 896
Turkmenistan	1 370
Uzbekistan	1 316
Japan	1 213
Korea	1 117
India	1 030
Canada	820

The Czech Statistical Office, 2011.

Chart 1. In total, there were 406 211 legal foreigners and an unknown number of irregular migrants – ranging from 40 to 400 thousand, according to Czech Ministry of Interior.

## **1.2. The Impact of the Financial Crisis on Migrants**

Our key question is what consequences did the financial crisis have for the situation of Third-Country Nationals – therefore, we need to compare data prior to 2008 and identify the important changes in the behavior of migrants, their employers and state – the main actors of the story. There are two main purposes on which a Third-Country National can base his long-term or permanent residency in the Czech Republic: reunion of one’s family and employment. Out of 439 thousand foreigners in 2008; 362 thousand were employed or self-employed – employment is thus the most frequent purpose of residency. Since financial crisis results in higher rates of unemployment, it is important to look into what happens with those migrants who lose their jobs. 43 thousand of foreigners lost their jobs in 2009 and 15 thousand more did the next year. According to Czech law that existed already before the crisis, if one leaves the job voluntarily, he immediately loses the residence permit. If one is fired, he has 60 days to find a new job. Otherwise, he has to either leave or become an irregular migrant.

The Czech state introduced benefits program of voluntary returns in 2009 to enhance the foreigners to leave. However, only 4 thousand people used the opportunity – compared to up to sixty thousand unemployed, that is not much. Why did not they leave? There are some explanations at hand. The migrants undergo a complicated, often dangerous and always costly process to come to Europe. Often, the whole family takes loans to pay for the journey, relying on the expected remittances. Therefore, they cannot go back even though they are paid the tickets. Also, they can have strong ties in the Czech Republic that they already do not want to abandon. Finally, the Czech Ministry of Interior explained that in the time when voluntary returns were offered, there was a rumor among migrants that regularization would come soon. And as they believe their friends more than the officials, they heavily rely on social networks and capital; they waited for the regularization that has never come. However, every foreigner who did not leave in the 60 days after losing his job became an irregular migrant.

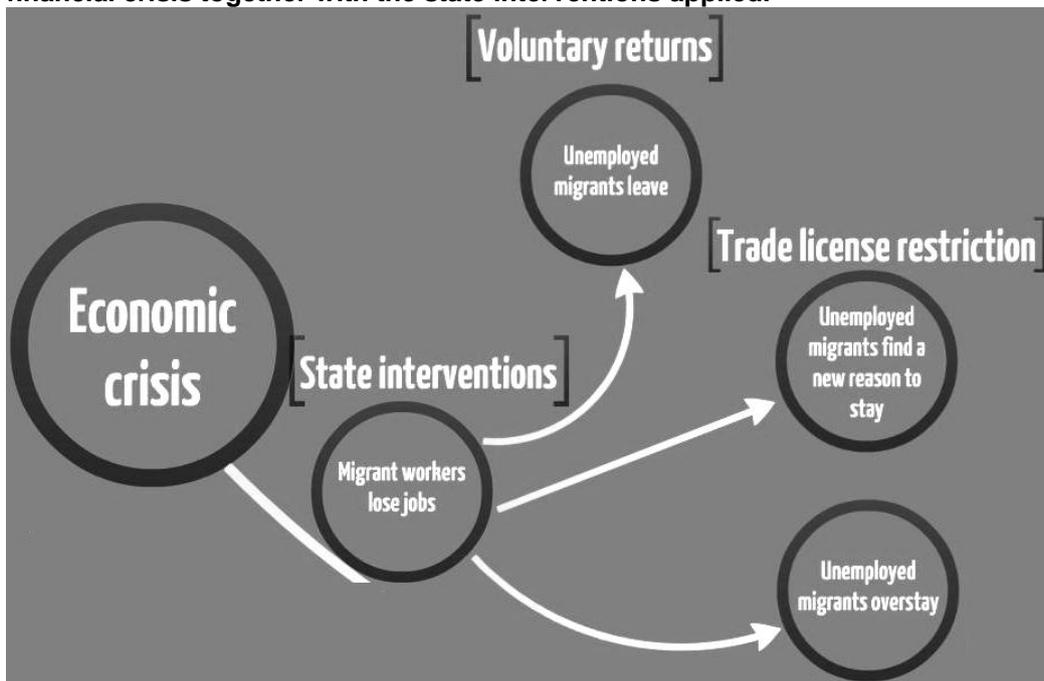
What does the high number of irregular migrants mean for the state and for the migrants themselves? Firstly, we have no idea how many they are – 40 or 400 thousands, the ministry does not know. Therefore, it is impossible to prepare or introduce any policy, to control or safeguard them when needed. It is well documented that the Mafioso practices are usual among the Ukrainians (Nekorjak 2006), Russians and Vietnamese (Pechová 2007) – it is a three levels system of exploitation where workers are dependent on dealers who are accountable to mafia. The dealers take care about jobs, rooms and wages for the workers and they give money to the mafia. Losing the legal status and becoming irregular, the workers turn to slaves without any rights and they are fully exploited. They do not have access to the health system while being ill or pregnant, they cannot ask for protection from the police or courts and their children do not get any education. Finally, there are no taxes if the work is illegal.

What were the following steps of the Czech state after the program of voluntary returns failed? As the general unemployment rate in the Czech Republic is growing, the state chose the approach to protect citizens against migrants who could occupy the small number of jobs available in the times of crisis. While in 2008 the unemployment rate was 4,4%, it is ranging from 6,5 to 7,3% ever since. Therefore, in January 2011 the state restricted the conditions for the self-employment license – migrants can change the purpose for residence permit from employment to self-employment only after 2 years of stay. However, this change of purpose used to be an important way for the migrants to stay legally in the country. This restriction was followed by a ban for agencies employing Third-Country Nationals in January 2012 – again, this used to be a prevalent way of employing migrants. Finally, the state plans to restrict the Employment Office from giving job permits to Third-Country Nationals with

less than secondary education from this summer. Generally, these state interventions restrict legal ways of working and staying in the Czech Republic for the Third-Country Nationals and they force them to leave or overstay as irregular migrants. However, only small number leaves as already described. The possible trajectories of Third-Country Nationals who lose their jobs in the Czech Republic are illustrated in the schema in Graph 2. In the next chapter, we would like to focus on the symbolic and legal production of irregular migrants and explain the process we have called “criminalization”.

**Graph 2**

**A schema of possible trajectories of Third-Country Nationals losing jobs because of the financial crisis together with the state interventions applied.**



Source: Markéta Blažejovská.

**2. Criminalization**

We have described that the main consequence of the financial crisis for Third-Country Nationals in the Czech Republic has mostly been that they lost their jobs, overstayed and became irregular migrants. Even though we do not have any statistics or registers on their numbers, it is clear that they are growing and that it is a big problem for the migrants themselves and for the state as well. However, we would like to bring the sociological point of view to the discussion and address the soft power of naming and shaming – the boundary work and the classifications that take place. The financial crisis is a great example to show that irregular or illegal migrant is not a naturally given category – who is defined as irregular, illegal or criminal depends on the topical interests of the state.

In the same way as Brubaker (2004) reveals ethnicity as a cognitive category, we want to explore the category of illegal migration. According to Zerubavel (1997) and following the so called cognitive turn in the social sciences, reality is inherently fluid and all the boundaries, distinctions, oppositions or categories are socially constructed. However, they are internalized and reified. According to Bourdieu (1998), the soft power to impose categories into the minds of citizens is one of the characteristic powers of the state. Status quo of the society is embodied in cognitive categories we use. When the subjective classification schema corresponds with the objective one, the categories are perceived as natural and legitimate. Thus, they serve as a powerful tool of the state (Bourdieu, 1998)

Let's illustrate this process on the example of criminalization of migrants who lost their jobs. We talk about people who came legally to the Czech Republic, worked here for couple of months or years, lost their jobs and the permits to stay and overstayed – the fact that they are unemployed made them into illegal foreigners – criminals. They could be called foreigners in illegal situation or choosing illegal strategies as Flynn and Düvell (2007) proposed since they have not been illegals couple of months ago. However, they are called illegals – the illegality is made into an inherent quality of a person, not of a situation or action. Thus, it seems more definitive and impossible to change. Then of course, there is discussion about a proper term. Whilst states tend to use “illegal”, the migrants and the NGOs argue for “irregular”, “undocumented” or “sans papier”. Also this is an important decision, because it affects what seems natural and what does not. People are going to say: “He is an illegal, of course that he should be in prison.” But they would say: “He is undocumented so he should probably fill in his documents, no need to lock him in prison.”

This is not specific for the Czech Republic in any case. The criminalizing tendencies come from the EU – it is the Directive 2008/115/EC for returning illegally staying Third-Country Nationals and the Directive 2009/52/EC about sanctions for employers. Stricter sanctions and the possibility to keep migrants in prison up to 18 months have been introduced with these directives into the Czech law system. Thanks to the established category of “illegals”, everybody took these directives for granted. However, nobody addressed the fact we described in the previous chapter that it was the Czech state that changed the “rules of the game” and thus created more illegals. A year before, one would not be illegal if changing his employment to self-employment license, now he is. Therefore, there are always two parts of a problem – the action of people (coming to the foreign country, having a job, losing a job) and our definition of the problem. Both can be changed in order to create or solve the problem.

The argument we want to make is that in time of financial crisis, the immigrant workers who do not leave are criminalized by the state. It is not just they the migrants fall into illegality – the illegality itself is made much bigger because it is not a natural but socially constructed phenomenon. Generally, there are two ways to reveal categories as socially constructed – they can be different in various places or they can be different in various periods in time. (Zerubavel 1997) We have already illustrated that the status of illegality can change over the life-time of a migrant. Now, we would like to compare the current financial crisis with that of the 70ties to show the historical instability of the “illegal” category.

Düvell (2006) and Castles with Miller (1998) reveal that the category of illegal migrants was not used before the Oil crisis in the 70ties. Before, the undocumented migration was understood as spontaneous and it was possible to regularize easily. Only when the period of inviting gastarbeiters ended, the category of illegal migration was constructed and introduced to make their criminalization by law natural and understandable. Coming back to our contemporary situation, the illegal category has of course already existed, but it’s extensity was made much broader – more actions of migrants are classified as criminal than before. Therefore, Jenkins (1997) says that the category says more about the interests of those who categorize than about the qualities of those categorized.

### **3. Gastarbeiterization**

Having explained to process of criminalization taking place after the financial crisis, we would like to search for the cause of this extreme exclusion. What did we do wrong before the financial crisis that we were not able to handle it? Why did the criminalization take place? Again, we would like to use the perspective of soft power of categories and also the historical analogy with the Oil Crisis in the 70ties. It seems that we could have learnt a lesson 30 years ago but we did not.

I have called the process that happens in the time of economic expansion “gastarbeiterzitation” – it is inherently connected with the criminalization coming during the financial crisis. Usually, we do not think about recession in the time expansion. Therefore, if the factories need workers and there are not enough of them in the country, it invites migrants to come and work. Invitations and bilateral agreements are made exactly like in the post war period. The Czech Republic introduced the green cards – easier permits to reside and work for migrants from desirable countries (USA, Japan, Australia, former Yugoslavia, Korea, New Zealand, Macedonia, Ukraine) and there is of course a European directive 2009/50/EC on the

residence of highly qualified migrants, so called blue cards. Both of them condition the residence permit with job or education.

Thus, a crucial mistake takes place – we reduce human beings to workers in our thoughts and laws. We do not think about their political, cultural, social selves and we expect them to leave as soon as there are no jobs any more. We do expect them to start families or to bring them over, we do not expect them to make friends, fall in love, get ill or pregnant in our country. Nevertheless they do. But the gastarbeiterization is embodied in the legal system – their permit to stay is bound with their job. As soon as they lose the job, they lose the permit to stay. As already described, as human beings they often overstay and are excluded as irregular migrants. This is what happened in the 70ties and this is what happened after 2008 in the Czech Republic.

Here again, the classification, naming and shaming as a soft power plays an important role. The term gastarbeiter, “guest worker” was introduced in Germany in the post-war period. There are two messages: They are workers, not humans and therefore they can stay here only while having a job. They are guests, thus they will be going back once. Both messages of course correspond to what was just described – exactly due to this naming, those false expectations were regarded as natural and obvious. Often, the migrants themselves live in the false belief that they would go back once. However, as the Ministry of Interior told me: There is nothing more permanent than a temporary migrant. In the Czech Republic, the term guest worker is not used. The Third-Country Nationals are called foreigners or aliens. Again, that means that they do not belong to the country and that they will never do. Contrary, the term immigrant would mean: “They came from abroad but they are going to stay here.” Therefore, state does not use the term.

Finally, how is the gastarbeiterization connected with criminalization? Biased with the economic expansion, we invite workers from abroad and we forget that they are humans. We condition their residence permit by having a job. When the economic crisis comes, they lose their jobs and they are expected to leave. Due to the categories imposed, it is perceived as natural for these “guest workers” and “aliens” to leave. However, they do not because they have lived as human beings not only workers. Now, being unemployed, they stay here only as humans. At this point, the state is surprised that they have not left. However, it is supposed to protect the citizens against the “aliens” and therefore it classifies even more actions or situations of migrants as illegal – it criminalizes those who stayed because they were not expected to stay. Again, this is supported by the categories used. Therefore, the exclusion is a

reaction of the state on the unexpected, unpredicted situation of migrants staying in the country in the times of crisis.

#### **4. Conclusion**

In the essay, we have focused on a new type of exclusion that Third-Country Nationals face in the time of financial crisis. We have presented a case study of the Czech Republic where various state interventions were introduced – a program of voluntary returns and restrictions on employment and self-employment of Third-Country Nationals. We have used this case study together with the analogy of the Oil Crisis in the 70ties to present a cycle of *gastarbeiterization* in the period of economic growth and criminalization in the period of crisis. We have applied the cognitive sociological paradigm to explain the soft power of the state to impose categories like “guest worker”, “alien” or “illegal”. Thus, we have described an extreme exclusion of unemployed Third-Country Nationals – they are made into criminals, they lose social and political rights and are victims of the Mafioso exploitation.

We have shown that we made the same mistakes like in the 70ties and therefore we would like to conclude with some recommendations or lessons learnt for the future. The general recommendation is to be aware of the symbolic power of categories, of the naming and shaming as a soft power. Even the state itself can become a victim of its own categories – it should be aware that it is up to the state who is defined as illegal, who is defined as undocumented or legally staying. It is not natural category or personal quality. The categories are powerful tools that should be used carefully and skillfully. The second recommendation is that legal position is always better – the state has no information about those who are irregular and no data means no effective policy. Also, there are no taxes from illegal workers. Then of course, illegals migrants get exploited by the Mafioso businessmen and they have no access to social, legal, health or educational system and that makes them marginalized.

The other two recommendations apply for the period of the economic growth. Firstly, there are no workers in the world, only humans. Categories of guest workers and foreigners and laws that bind residence permit with having a job are made with economic bias that gets very costly when the financial crisis comes. Thus, we are surprised that the “workers” started families, created personal ties and that they do not want to leave. This is a general experience from the 70ties and now again from the contemporary Europe – the guest workers do not go back. The period of economic growth are temporary but the families of migrants usually stay for good. Therefore, the final recommendation for the future is: invite only guests who can stay.

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