

Joint Submission to the  
Human Rights Council

# Universal Periodic Review

42<sup>nd</sup> Session

Fourth Cycle

23 January – 03 February 2023

## CZECH REPUBLIC

Organization for Aid to Refugees  
European Network on Statelessness  
Institute on Statelessness and Inclusion

14 July 2022



Joint Submission  
to the Human Rights Council  
at the 42<sup>nd</sup> Session  
of the Universal Periodic Review

## CZECH REPUBLIC

### Introduction

1. The Organization for Aid to Refugees (**OPU**), the European Network on Statelessness (**ENS**) and the Institute on Statelessness and Inclusion (**ISI**) make this joint submission to the Universal Periodic Review (UPR), on the right to a nationality and human rights challenges pertaining to statelessness in the Czech Republic.
2. The [Organization for Aid to Refugees \(OPU\)](#)<sup>1</sup> established in 1991, is the oldest and largest non-governmental organization in the Czech Republic which assists refugees, stateless persons and migrants. OPU provides free in-person legal and social aid throughout the country by means of aid in all eight reception, accommodation and detention centres and five regional offices. OPU has been the watchdog for any unlawful practices and systemic failures of Czech asylum and migration policy, appears in the media regularly and organises events for the public to raise awareness about discrimination and xenophobia.
3. The [European Network on Statelessness \(ENS\)](#)<sup>2</sup> is a civil society alliance of NGOs, lawyers, academics, and other independent experts committed to addressing statelessness in Europe. Based in London, it currently has over 170 members in 41 European countries. ENS organises its work around three pillars – law and policy development, awareness-raising, and capacity-building. ENS provides expert advice and support to a range of stakeholders, including governments. This submission partially draws on information and analysis from ENS’s Statelessness Index, which covers the Czech Republic.<sup>3</sup>
4. The [Institute on Statelessness and Inclusion \(ISI\)](#)<sup>4</sup> is the first and only human rights NGO dedicated to working on statelessness at the global level. ISI’s mission is to promote inclusive societies by realising and protecting everyone’s right to a nationality.

---

<sup>1</sup> For more information, see <https://www.opu.cz/en/>.

<sup>2</sup> For more information, see <https://www.statelessness.eu>.

<sup>3</sup> ENS, Statelessness Index: Czech Republic, <https://index.statelessness.eu/country/czech-republic>.

<sup>4</sup> For more information, see <https://www.institutesi.org/>.

The Institute has made over 90 country specific UPR submissions on the human rights of stateless persons. ISI has also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 40<sup>th</sup> UPR Sessions.

5. This submission focuses on:
  - I. Statelessness determination and access to rights
  - II. Liberty and security of the person and arbitrary detention
  - III. Children's right to a nationality
  - IV. The protection of stateless people and people at risk of statelessness fleeing the war in Ukraine

## Previous UPR and UN Treaty bodies' recommendations to the Czech Republic

6. The Czech Republic was previously reviewed under the Universal Periodic Review during the 28<sup>th</sup> session in 2017 (Third Cycle), the 14<sup>th</sup> session in 2012 (Second Cycle), and the 1<sup>st</sup> session in 2008 (First Cycle). In the Third Cycle, the Czech Republic received a recommendation from Belarus to *'ensure that the national practice on providing asylum is in line with international standards on the protection of migrants, refugees, asylum seekers and stateless persons'*<sup>5</sup>, and it has already received a similar recommendation from Belarus in the Second Cycle.<sup>6</sup>
7. During the First Cycle, the Czech Republic received five recommendations to implement measures to counter discrimination and to protect the rights of ethnic minorities, especially Roma.<sup>7</sup>
8. In 2021, the Committee on the Rights of the Child (CRC) recommended that the Czech Republic facilitate the acquisition of citizenship for children who would otherwise be stateless, regardless of their parents' citizenship, residence or marital status, and encourage parents of stateless children to apply for citizenship on their behalf. The CRC also recommended that the Czech Republic withdraws its declarations in relation to the Convention relating to the Status of Stateless Persons (1954 Convention).<sup>8</sup>
9. In 2019, the Human Rights Committee recommended that the Czech Republic introduce an internationally accepted definition of a stateless person so as to increase transparency and facilitate more effective handling of statelessness applications, and establish a dedicated and effective statelessness determination procedure with specific procedural considerations and safeguards. It also recommended that the Czech

---

<sup>5</sup>Human Rights Council (HRC), Report of the Working Group on the Universal Periodic Review, Czech Republic, 27 December 2017, A/HRC/37/4, para 115.185.

<sup>6</sup> HRC, Report of the Working Group on the Universal Periodic Review, Czech Republic, 26 December 2012, A/HRC/22/3, para 94.116.

<sup>7</sup> HRC, Report of the Working Group on the Universal Periodic Review, Czech Republic, 23 May 2008, A/HRC/8/33 (recommendations nos. 2, 15, 21, 24, 28 and 30)

<sup>8</sup> Committee on the Rights of the Child (CRC), Concluding observations on the combined fifth and sixth periodic reports of Czechia, 22 October 2021, CRC/C/CZE/CO/5-6, (recommendation no. 21). See also CRC, Concluding observations on the combined third and fourth period report of the Czech Republic, 4 August 2011, CRC/C/CZE/CO/3-4 (recommendation no. 38).

Republic should ensure that every child has a nationality, including by granting citizenship to children born to stateless parents irrespective of their legal status.<sup>9</sup>

10. In 2019, the Committee on the Elimination of Racial Discrimination (CERD) recommended that the Czech Republic withdraw its reservation to Article 27 of the 1954 Convention to facilitate access of every stateless person to identity documents; adopt a legal definition of a stateless person in line with the 1954 Convention; adopt a dedicated and effective statelessness determination procedure; systematically collect statistics on stateless persons; and facilitate access to a nationality without discrimination for all children born to stateless parents, regardless of their residence status, and for children born out of wedlock to a Czech father and a foreign mother.<sup>10</sup> In addition, CERD recommended that the Czech Republic increase its efforts to promote the economic, social and cultural rights of Roma and guarantee their access to services without discrimination.<sup>11</sup> Emphasising that the detention of asylum seekers should be a measure of last resort and applied for as short a time as possible, CERD also recommended that the Czech Republic end the practice of detaining asylum seekers with their children, including persons who are subject to transfer under the Dublin III Regulation, and develop alternative non-custodial types of accommodation for asylum-seekers, particularly for families with children.<sup>12</sup>
11. The Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also recommended in 2018 that the Czech Republic introduce a definition of a stateless person into its domestic legislation, establish a dedicated statelessness determination procedure, provide stateless persons with identification documents, and create a central database of stateless persons in its territory.<sup>13</sup> CAT had made similar recommendations in 2012, where it also recommended that, in order to avoid discrimination among different categories of stateless persons, the Czech Republic review provisions on the acquisition of nationality by children who would otherwise be stateless or who are born out of wedlock to foreign stateless mothers.<sup>14</sup>

## The Czech Republic's International Obligations

12. The Czech Republic acceded to the 1954 Convention in 2004. The Convention has direct effect in Czech law, but the Czech Republic retains a number of significant reservations, including by restricting rights to identity papers (Article 27) and travel documents (Article 28) to stateless people holding permanent residence permits. The Czech Republic has also been a State Party to the 1961 Convention on the Reduction of Statelessness (1961 Convention) since 2001, with no reservations.
13. The Czech Republic has international obligations to protect the right to a nationality and the rights of stateless persons on the basis of other UN and regional treaties to which it is a party. These include, among others:<sup>15</sup>

---

<sup>9</sup> Human Rights Committee, Concluding observations on the fourth periodic report of Czechia, 6 December 2019, CCPR/C/CZE/CO/4, para 45.

<sup>10</sup> Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twelfth and thirteenth periodic reports of Czechia, 19 September 2019, CERD/C/CZE/CO/12-13, para 28.

<sup>11</sup> *ibid*, para 16.

<sup>12</sup> *ibid*, para 22.

<sup>13</sup> Committee against Torture (CAT), Concluding observations on the sixth periodic report of Czechia, 6 June 2018, CAT/C/CZE/CO/6, para 23.

<sup>14</sup> CAT, Concluding observations on the fourth and fifth periodic reports of the Czech Republic, 13 July 2012, CAT/C/CZE/CO/4-5, para 19.

<sup>15</sup> See: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.

- International Covenant on Civil and Political Rights (see article 24.3)
- International Covenant on Economic, Social and Cultural Rights (see articles. 2.2 and article 3)
- Convention of the Rights of the Child (see articles 2, 3, 7 and 8)
- Convention on the Elimination of All Forms of Discrimination against Women (see article 9)
- International Convention on the Elimination of All Forms of Racial Discrimination (see article 5(d)(iii))
- Convention on the Rights of Persons with Disabilities (see article 18)
- International Convention for the Protection of All persons from Enforced Disappearance (see article 25.4)

Furthermore, the right to a nationality is included in Article 15 of the Universal Declaration on Human Rights.

14. The Czech Republic is State Party to the European Convention on Nationality, but not to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession. The Czech Republic is bound by the EU Returns Directive and is party to all other relevant regional and international human rights treaties (with no relevant reservations), except for the International Convention on the Rights of All Migrant Workers and Members of their Families.
15. The Czech Republic did not make any pledges at the UNCHR High Level Segment on Statelessness.<sup>16</sup>

## Snapshot of Statelessness in the Czech Republic

16. Statelessness in the Czech Republic is mainly linked with migration and there is no information available about the *in situ* stateless population. UNHCR estimates there to be 1,500 stateless people in the Czech Republic, based on a mapping study of statelessness carried out in 2018 and published in December 2020.<sup>17</sup> The population census from 2011 included the categories 'no citizenship' (1,502 people) and 'not identified' (60,208 people).<sup>18</sup> A new census was carried out in 2021 and includes the category 'not identified' (29,137 people). It no longer includes the category 'no citizenship'.<sup>19</sup>
17. The Czech Republic gathers and makes available statistical data on asylum, immigration and, to some extent, statelessness, which is disaggregated by sex (and some also by age). The Ministry of Interior reports the number of stateless people with legal residence on a monthly basis (93 stateless persons with a temporary residence permit and 401 with a permanent residence permit in September 2020).<sup>20</sup> The Czech Statistical Office and Ministry of the Interior publish annual disaggregated data under the combined nationality categories 'stateless and not identified and other' (719 people at the end of 2020, excluding people granted asylum),<sup>21</sup> 'citizenship unknown or non-

<sup>16</sup> See <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

<sup>17</sup> UNHCR, [Faces of Statelessness in the Czech Republic](#), December 2020.

<sup>18</sup> [Czech Statistical Office, Population census, Population by sex, type of residence, citizenship, housing arrangements, ethnicity and religious belief, 2011.](#)

<sup>19</sup> Czech Statistical Office, [Population census](#), 2021.

<sup>20</sup> [Ministry of the Interior of the Czech Republic, Statistics, Foreigners with valid residence](#), September 2020.

<sup>21</sup> [Czech Statistical Office, Foreigners in the Czech Republic \(Annual Report\) 2020, \(data up to December 2019\).](#)

identified' (31 people in December 2020), and 'Palestinians' (195 people in December 2020).<sup>22</sup> The Ministry of Interior also reports figures on the number of asylum seekers and people granted international protection disaggregated by nationality. It reported that, in 2020, 11 applications for international protection were initiated by people recorded as stateless, and up to December 2020 there had been 26 stateless persons granted refugee status and 62 granted subsidiary protection status.<sup>23</sup>

18. These numbers do not provide an accurate statistical overview of the Czech Republic's stateless population. The Government only regularly reports figures for stateless people legally residing in the country, or for persons who apply for international protection, and these numbers are spread across different registries. No government figures are available for the stateless population as a whole, so estimates are likely an underrepresentation and stateless persons living without residence status in the Czech Republic are mainly invisible in the data.
19. The legal and policy framework in the Czech Republic has some positive aspects and some significant gaps. The Czech Republic is party to most relevant international and regional instruments, including three of the four core statelessness conventions (although, as noted, with some important reservations to the 1954 Convention). However, the Czech Republic does not have a dedicated statelessness determination procedure. Since 2019, the Ministry of Interior has issued decisions confirming statelessness under the 1954 Convention, but there is no clear procedure set in law for these decisions, although jurisprudence requires that the rules applying to the refugee determination procedure should apply (see Issue 1). There are also gaps in the legal framework to protect stateless people from arbitrary immigration detention (see Issue 2). There are positive safeguards in place to prevent childhood statelessness, but the safeguard for children born in the Czech Republic is only partial and depends on the actions or status of parents (see Issue 3). Positively, there are no legal powers for the authorities to deprive someone of Czech nationality, no provisions for automatic loss, and safeguards are in place to prevent statelessness in cases of voluntary renunciation of nationality.

## Issue 1 – Statelessness determination and access to rights

20. Identifying stateless people in the country is the first step to providing adequate protection and rights enshrined in the 1954 Convention. Although the 1954 Convention does not specifically provide for how statelessness should be determined, UNHCR guidance has confirmed that this is best fulfilled through a dedicated statelessness determination procedure (SDP) with the necessary safeguards and procedural guarantees. In particular, it should be fair, efficient, and easily accessible.<sup>24</sup> The lack of an SDP results in a failure to uphold the rights of stateless people, leaving many facing years of uncertainty, social exclusion, risks of arbitrary immigration detention, and other human rights violations.<sup>25</sup>
21. Moreover, according to international norms and standards, statelessness status should

---

<sup>22</sup> [Ministry of the Interior of the Czech Republic, Statistics, Foreigners with valid residence](#), December 2020.

<sup>23</sup> [Ministry of the Interior of the Czech Republic, International Protection in the Czech Republic, annual statistical overview, 2019](#); [Czech Statistical Office, Foreigners in the Czech Republic \(Annual Report\), 2019](#) - data up to 31.12.2019; [Ministry of the Interior of the Czech Republic, International Protection in the Czech Republic, Annual Statistic Overview, Data up to 31.12.2020](#).

<sup>24</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014:

<http://www.unhcr.org/uk/protection/statelessness/53b698ab9/handbook-protection-stateless-persons.html>.

<sup>25</sup> Statelessness Index, [Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks](#), 2021.

include a residence permit, access to economic, social, civil, and political rights, the right to administrative assistance, exemption from requirements stateless people cannot meet because they are stateless, and other rights protected by international law. States should also establish a facilitated route to naturalisation so stateless people can acquire a nationality and resolve their statelessness.<sup>26</sup>

22. The Czech Republic does not currently have a dedicated SDP to identify stateless persons on its territory, determine their statelessness, and facilitate their access to rights. Czech legislation has no legal provisions reflecting the definition of a stateless person pursuant to Article 1 of the 1954 Convention. While there are other procedures in which statelessness can be identified, there is no clear procedure set in law, no guidance nor training on statelessness for decision-makers, and only limited rights are granted as a consequence of statelessness determination.
23. Until 2021, determination of statelessness was addressed in the Asylum Act. Between 2019 and 2021, jurisprudence conferred by analogy the same rights that asylum-seekers had to applicants for statelessness determination, such as the right to stay on the territory and receive an identity document during the procedure, the right to accommodation in the reception centre for asylum seekers and the right to health insurance.<sup>27</sup>
24. On 2 August 2021, an amendment to the Act on Residence of Foreign Nationals entered into force, moving the possibility to determine statelessness under the provisions of the Asylum Act to the Immigration Act, thus attempting to change how statelessness is recognised in the Czech Republic.<sup>28</sup> The amendment makes it more difficult for stateless people to have their status recognised and be granted the rights under the 1954 Convention.<sup>29</sup>
25. The new procedure is very unclear. There are no provisions to regulate the status of stateless applicants, nor procedural safeguards, and the right to remain on the territory is not guaranteed. Prior to the 2021 legislative amendment, procedural rights, including the standard of proof to evidence statelessness, were analogous to those applicable in asylum applications, thanks to several years of constant national jurisprudence, including the Supreme Administrative Court's case law.<sup>30</sup> The 2021 legislative amendment was an attempt by the Ministry to avoid having to implement the domestic jurisprudence. However, shortly after the entry into force of the amendment, a national case reiterated the necessity of preserving the analogy with the asylum procedure, regardless of whether the statelessness procedure is formally regulated under the Asylum Act or the Immigration Act.<sup>31</sup>
26. This amendment presents a risk to gradually erode the rights of stateless people and the procedural safeguards that were in place. It has resulted in the amended law not only being vague and unclear but also unconstitutional. The Czech Ombudsperson's office has reiterated the constitutional priority of international obligations and thus the

---

<sup>26</sup> Statelessness Index, [Statelessness Determination and Protection in Europe: Good Practice, Challenges, and Risks](#), 2021.

<sup>27</sup> The Supreme Administrative Court decided in March 2019 that the procedure to determine statelessness should be analogous to the refugee determination procedure. See [Supreme Administrative Court \(Nejvyšší správní soud\) case no. 4 Azs 365/2018-74 from 12 March 2019](#).

<sup>28</sup> [Section 170d of Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb. "Immigration Act"](#).

<sup>29</sup> New Legal Amendment Reduces the Rights of Stateless people in the Czech Republic, Statelessness Index, 2021, <https://index.statelessness.eu/news/new-legal-amendment-reduces-rights-stateless-people-czech-republic>.

<sup>30</sup> [Supreme Administrative Court \(NSS\), case no. 4 Azs 365/2018, 12 March 2019](#).

<sup>31</sup> Municipal Court Prague of 26. January 2022, Nr. 10 A 98/2021-45 (to be published on [www.nssoud.cz](http://www.nssoud.cz))

necessity to keep the procedural guarantees analogous to the asylum procedure.<sup>32</sup> .

27. This framework also means that recognition of statelessness in the Czech Republic does not lead to any status or residence rights. Since January 2019, upon determination of statelessness, the Ministry of Interior delivers a certificate stating a person's statelessness under the 1954 Convention. The decision that confers the person statelessness status is only declaratory and explicitly states that statelessness determination does not give a legal right to stay. It informs the person about the possibility to regularise their residence status.
28. The new Immigration Act provides that a person recognised as stateless will be granted a tolerated stay visa for one year. The visa is renewable after one year for a long-term stay for the purpose of tolerated stay on the territory (two years renewable). After five years in total, the person can apply for permanent residence.<sup>33</sup> Stateless persons are not entitled to any route to protection or regularisation in the Czech Republic on the grounds of statelessness. They must comply with the same residence requirements and administrative procedures as foreign nationals, which may be particularly difficult and contravenes the protective purpose of the 1954 Convention.
29. Stateless people may be able to access some of their rights under the 1954 Convention, but access is limited. For example, it is possible to apply to join the public health insurance programme after at least one year on a tolerated stay visa, but this is not automatic and is accorded on humanitarian grounds at the discretion of the Ministry of Interior. It is also possible for someone on tolerated stay to make a special request to obtain a work permit subject to certain criteria set out in the Employment Act. The right to family reunification is not granted to holders of a tolerated stay visa, but it is possible for holders of long-term residence. Legally residing foreigners can in some cases access social services and social security, including housing. A travel document accepted by the Czech Immigration Police and some other countries can be requested with tolerated stay, but once the stateless person leaves the Czech Republic their tolerated stay expires, so they cannot return. A 'foreigner's passport' will be issued to those who have acquired permanent residence.<sup>34</sup>
30. The duty to facilitate naturalisation of stateless persons defined in Article 32 of the 1954 Convention is included in the Citizenship Act and is formulated in the same way as in the case of recognised refugees. At the discretion of the Ministry of Interior, the general residence requirements of five years may be lifted. Stateless persons may also be exempted from the requirement that the applicant has not been a "burden on the social welfare system" in the three years prior to the application. Other conditions for naturalisation apply to stateless persons, including knowledge of the Czech language, citizenship test, proof of revenue for the last three years, and absence of criminal record. The application for naturalisation itself is free but in case of a positive answer, a fee of 2000 CZK for adults and 500 CZK for minors and refugees applies.<sup>35</sup>

---

<sup>32</sup> Czech Ombudsman's Investigation Report of 26. April 2022, Nr.: KVOP-26997/2022

<sup>33</sup> [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb.](#) "Immigration Act"; Section 33(3) of [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb.](#) "Immigration Act"; Section 43 of [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb.](#) "Immigration Act"; Section 68.2b) of [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb.](#) "Immigration Act".

<sup>34</sup> Section 48, 50(3), 113 and 114 of [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb.](#) "Immigration Act"; Section 97 of Czech Employment Act no. 435/2004 (regarding work permit)

<sup>35</sup> [Sections 5, 13-15 of Czech Citizenship Act;](#)

Act no. 634/2004 on administrative fees, "[Zákon č. 634/2004 Sb., o správních poplatcích, ve znění pozdějších předpisů](#)"

31. According to Article 10 of the Czech Constitution, international treaties have primacy in case of conflict with national legislation. International conventions on statelessness are thus part of the Constitutional order of the Czech Republic. Therefore, under certain circumstances, the absence of a legal status of persons recognised as stateless could be overcome by direct application of the 1954 Convention. Nonetheless, the Czech Republic does not fully implement its international obligations towards stateless persons, which has a considerable impact on the effective realisation of their rights as well as on the predictability and legality of administrative and judicial procedures which lack clear legal guidelines. The Czech Republic also made reservations to Article 27 and Article 28 according to which identity papers and travel documents shall be issued only to stateless persons with a valid permanent residence in the Czech Republic. Considering that permanent residence may only be obtained after completing five years of legal residence in the country and applicants, amongst other prescribed conditions, must have a valid passport in order to file the application, these reservations restrict the scope of the rights that should be granted to stateless people, contravening the object and purpose of the 1954 Convention. The Czech Republic made further reservations providing that Article 23 on public relief and assistance and Article 24(1)(a) on remuneration and working conditions shall be applied solely to the extent provided by national legislation. All reservations to the 1954 Convention should be withdrawn.

## Issue 2 – Liberty and security of the person and arbitrary detention

### *Arbitrary detention of stateless persons*

32. Stateless people face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.<sup>36</sup> Moreover, arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.<sup>37</sup> According to international norms and standards, detention should be a measure of last resort, used in exceptional cases and only justified where other less invasive or coercive measures have been considered and found insufficient. The UN has called upon States to adopt alternative measures to detention.<sup>38</sup> Regarding immigration detention, powers need to be provided for in law and restricted to purposes allowed under international and European law.<sup>39</sup> A proposed country of removal should be identified prior to detention for removal and detention only maintained for as long as removal arrangements are in progress and executed with due diligence.<sup>40</sup> A maximum period of detention should be set in law and upon expiry the detainee must be automatically released. Judicial oversight of detention is necessary as well as access to legal representation.<sup>41</sup>

---

<sup>36</sup> European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, 2017 [https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS\\_LockInLimbo\\_Detention\\_Agenda\\_online.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockInLimbo_Detention_Agenda_online.pdf)

<sup>37</sup> European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: A regional toolkit for practitioners*, 2017 [https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS\\_Detention\\_Toolkit.pdf](https://www.statelessness.eu/sites/www.statelessness.eu/files/ENS_Detention_Toolkit.pdf)

<sup>38</sup> Article 9 of International Covenant on Civil and Political Rights, 1966; Article 5 of European Convention on Human Rights; Article 15(1) of EU Returns Directive; UN General Assembly, Protection of migrants, A/RES/63/184 (2009).

<sup>39</sup> International Covenant on Civil and Political Rights, 1966: Articles 7 and 9(1). Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment.

<sup>40</sup> European Convention on Human Rights, 1950: Article 5 (1). EU Returns Directive: Articles 15(1), 15(4) and 16(3).

<sup>41</sup> International Covenant on Civil and Political Rights, 1966: Article 9(4). European Convention on Human Rights, 1950: Article 5(4). EU Returns Directive: Articles 12, 13(3) and 15(5); [HRC, Report of the Working Group on Arbitrary Detention \(2010\)](#); [UNHCR, Detention Guidelines \(2012\)](#); [UNHCR, Handbook on Protection \(2014\)](#).

33. Statelessness should also be a juridically relevant factor, which is considered in decisions to detain. Stateless people should be identified in order to protect their human rights and are not routinely detained on grounds of their statelessness. Vulnerability assessments should be carried out prior to detention. Specific circumstances of stateless people should be understood and addressed, as are other experiences, characteristics and circumstances leading to vulnerability.
34. However gaps exist in the legal framework to protect stateless people from arbitrary detention in the Czech Republic. Powers for immigration detention are provided for in law and are restricted to purposes allowed under Article 5(1)(f) of the European Convention on Human Rights. However, a proposed country of removal does not need to be identified prior to detaining someone, but merely a reasonable prospect for removal.<sup>42</sup> Although statelessness can be put forward by the individual as an argument for the impossibility of removal, statelessness is not assessed during the decision to detain nor considered relevant in vulnerability assessments.<sup>43</sup> The procedure is often long to determine the impossibility to remove the person because of statelessness. Although there is a requirement to consider alternatives to detention for each individual case, there is no need for the authorities to exhaust all alternatives prior to rendering a decision to detain. In practice, the police justify the ineffectiveness of alternative measures by the risk of non-respect of the removal decision.<sup>44</sup> Alternatives vary depending on the type of detention (deportation, Dublin transfer, asylum seekers) and include stay at an address designated by the Immigration Police, regular reporting to the Immigration Police, and obligation to stay at the asylum reception centre.<sup>45</sup> There is evidence that detention is used prior to all alternatives considered in practice.
35. There are some procedural safeguards, such as a time limit – although cumulative time spent in detention is not counted towards the maximum time limit -, written reasoned decisions, free legal aid, and the right to an appeal. However, there are no automatic periodic reviews of detention, and the detainee must request one.<sup>46</sup>
36. No public information is available about any guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality, which is carried out by the Immigration Police. No identification documents or legal status are issued to people on release from detention. A one-month departure order visa is issued if the person does not hold a travel document, but the law does not currently provide a route to regularisation if the person cannot be removed.<sup>47</sup> Statelessness is considered in most bilateral return or readmission agreements entered into by the Czech Republic, most of which explicitly permit the readmission of stateless people.<sup>48</sup>

---

<sup>42</sup> §126 of [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb. "Immigration Act"](#), purposes of detention; Jurisprudence of Supreme Administrative Court, [NSS, case no. 1 As 12/2009 – 61 from 15 April 2009](#).

<sup>43</sup> Section 2, i) of [Asylum Act, no. 325/1999 coll. \(in force since 2 August 2021\)](#).

<sup>44</sup> Article 46a of [Asylum Act, no. 325/1999 coll. \(in force since 2 August 2021\)](#); §124 and §124b, §129 of [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb. "Immigration Act"](#).

<sup>45</sup> Articles 123b-129 of [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb. "Immigration Act"](#)

<sup>46</sup> [Act on Residence of Foreign Nationals in the Czech Republic no. 326/1999 Sb. "Immigration Act"](#); [Asylum Act, no. 325/1999 coll. \(in force since 2 August 2021\)](#).

<sup>47</sup> Practice of the Immigration Police.

<sup>48</sup> See e.g. Agreement between the Czech Republic and the Republic of Kosovo on the readmission of persons residing without authorisation, no. 12/2013.

## Detention of children

37. International human rights standards absolutely prohibit detention of families with children.<sup>49</sup> While in other procedures, such as juvenile criminal justice, it is possible to consider detention of children as a measure of last resort, in the context of immigration proceedings, such detention conflicts with the principle of the best interests of the child and the right to development.<sup>50</sup> Children should never be detained for reasons related to their parents' migration status.<sup>51</sup> Despite NGOs' call for action and various UN treaty bodies' recommendations, the Czech Republic continues to detain children and families in the closed immigration detention centre in Bělá-Jezová. Most families affected by detention are asylum-seeking families. While those who have sought asylum in the Czech Republic are considered vulnerable and thus may not be detained, those who claimed asylum in another EU Member State and who are transferred to the Czech Republic under the Dublin III Regulation are excluded from the ban on immigration detention. Alternatives to detention include residence on an address in the Czech Republic or a financial guarantee. These are mostly inaccessible to families in detention, who usually do not know the country and have no ties to the Czech Republic. Conditions of detention of these families have been reported to be similar to prison and the Ombudsperson has found in several instances that the detention of children constitutes inhuman and degrading treatment.<sup>52</sup>

## Issue 3 – Children's right to a nationality

38. Every child has a right to a legal identity and nationality. This is a core principle of international law, which if applied in a comprehensive and non-discriminatory manner, would result in the prevention and reduction of statelessness.<sup>53</sup> States should have a provision in law to grant nationality to anyone born on the territory who would otherwise be stateless.<sup>54</sup> Conferral of nationality to otherwise stateless children born on the territory should ideally be automatic at birth. There should be no conditions on acquisition of nationality by a child relating to their or their parents' legal status, such as lawful residence.<sup>55</sup> If children are required to prove they cannot access another nationality, the burden of proof is shared, an appropriate standard of proof is adopted, and special procedural considerations are given to the challenges faced by children in communicating basic facts about their nationality.<sup>56</sup>

---

<sup>49</sup> CPRMW and CRC, Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, § 10.

<sup>50</sup> CPRMW and CRC, Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, § 10.

<sup>51</sup> CPRMW and CRC, Joint General Comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, §§ 5-13.

<sup>52</sup> Forum Human Rights, Organization for Aid to Refugees, [NGOs information to the United Nations Committee against Torture](#), The Sixth Periodic Report of Czechia under the United Nations Convention Against Torture, Immigration Detention of Families with Children, 2018.

<sup>53</sup> See Article 7 of the UN Convention on the Rights of the Child, read in conjunction with Articles 2 and 3.

<sup>54</sup> UN Convention on the Reduction of Statelessness, 1961: Article 1. European Convention on Nationality, 1997: Articles 2 and 6(2)(b).

<sup>55</sup> Convention on the Rights of the Child, 1989: Articles 3 and 7.

<sup>56</sup> Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return: States should

39. The matter of acquisition and loss of Czech nationality is governed by the Law on Czech Citizenship (“Citizenship Act”).<sup>57</sup> As a general rule, nationality is automatically acquired at birth if at least one parent has Czech nationality, no matter where the child is born. Positively, there are provisions to protect the right to a nationality of children born to refugees, foundlings, and to prevent statelessness in the adoption process. There are however some shortcomings with regard to the prevention of statelessness, where the Citizenship Act is not aligned with the Czech Republic’s obligations under the 1961 Convention.
40. While Czech law provides for stateless children born on the territory to acquire nationality, the child’s ability to acquire Czech nationality depends on the status and actions of the parents. A child born in the territory of the Czech Republic, who would otherwise be stateless, automatically acquires Czech nationality by birth if both parents are stateless and when at least one of the parents has a permit to reside in the Czech Republic for a period longer than 90 days at the time of the child’s birth. Where this is not the case, children must lodge an application for nationality (a Certificate of Czech Citizenship). In this case, children need to prove that they have not become stateless only because the parent who holds a nationality failed, without serious reasons, to take the necessary steps before the authorities of their country of nationality that would ensure that the child obtains the nationality of that country upon birth. As in the case of automatic acquisition of nationality, at least one of the parents must have a permit to reside in the Czech Republic for a period longer than 90 days at the time of the child’s birth. The decision is made by the MOI.<sup>58</sup> Therefore, the safeguard in place to prevent children being born stateless in the Czech Republic does not apply to all children.
41. Foundlings under three years old found in the Czech territory acquire Czech nationality on the day they are found. If their identity is not known, they acquire Czech nationality the day they are found if in a period of six months the authority has not found out that the child has acquired the nationality of another State. Foundlings over three years old whose identity may not be established due to their young age or disability acquire Czech nationality upon application filed by a guardian. There is no age limit for foundlings to acquire nationality and the provisions are in line with the standards set out in the 1961 Convention.<sup>59</sup>
42. Children adopted by foreign parents do not lose Czech citizenship, unless the parents of the adopted child prove the child has or will acquire another nationality. Safeguards are in place to prevent statelessness in the process.<sup>60</sup> If at least one parent is a Czech national, the adopted child acquires Czech nationality upon confirmation of the adoption by the Czech authorities.<sup>61</sup>
43. Positively, the law provides that all children must be registered within three days of birth and birth certificates issued to all children within 30 days. Not registering a birth is a criminal offence and punishable by a fine of up to 5000 CZK (approximately 190 EUR). The obligation to present documentation for birth registration can be waived in

---

strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless.

<sup>57</sup> Act on Citizenship of the Czech Republic no. 183/2013. Hereafter ‘Czech Citizenship Act’.

<sup>58</sup> Section 5 and 29, Subpart 4, Section 41 and following of [Czech Citizenship Act](#).

<sup>59</sup> Section 10 and 30 of [Czech Citizenship Act](#).

<sup>60</sup> Section 40 of [Czech Citizenship Act](#).

<sup>61</sup> Sections 8 and 45 of [Czech Citizenship Act](#).

special circumstances and a solemn declaration provided instead (e.g. in the case of refugees/asylum-seekers). All children, regardless of legal status or nationality will be issued with a Czech birth certificate by the Birth Registry within 30 days of notification of the birth. The child's nationality is not recorded in the birth registry nor on the birth certificate, but the parents' nationality is recorded. The child's nationality will be determined when they apply for a Czech passport, identity document or visa. The parents of a child who does not acquire Czech nationality at birth should apply for a visa on their behalf within 60 days at which point the Czech authorities will determine the child's nationality. If there is any doubt about the child acquiring Czech nationality at birth, parents must apply for a Certificate of Czech Citizenship at the local birth registry in the place of birth.<sup>62</sup>

44. There has been no recent proactive action or campaigns by the Czech authorities to reduce statelessness or promote birth registration among high-risk groups.

## Issue 4 – The protection of stateless people and people at risk of statelessness fleeing the war in Ukraine

45. Stateless people and people at risk of statelessness from Ukraine who fled the war for the Czech Republic may face barriers to accessing protection.<sup>63</sup> The European Union has adopted the Council Decision<sup>64</sup> implementing the Temporary Protection Directive<sup>65</sup> to grant temporary protection to eligible displaced people from Ukraine. However, there are significant protection gaps for stateless people and people at risk of statelessness. UNHCR has recommended that European States take an inclusive approach and grant temporary protection to stateless people, including those who did not have permanent residence status in Ukraine.<sup>66</sup> To prevent discrimination, avoid over-burdening asylum procedures, and facilitate eventual safe return to Ukraine, it is imperative that national authorities grant protection, including temporary protection, to all people fleeing the war in Ukraine.<sup>67</sup>
46. The Czech Republic has implemented the EU Temporary Protection Directive and Council Decision. Stateless people eligible to apply for temporary protection in the Czech Republic are beneficiaries of international protection or equivalent national protection in Ukraine, which includes statelessness status in Ukraine, and their family members, and those with a valid permanent residence permit in Ukraine who cannot return to their country of origin or former habitual residence. However, the Czech Republic has not extended protection to stateless persons and nationals of third countries other than Ukraine, who had temporary residence in Ukraine and who are unable to return in safe and durable conditions to their country or region of origin. Stateless people and those at risk of statelessness whose nationality is 'undetermined', who cannot prove their links to Ukraine (or any other country) through a national ID,

---

<sup>62</sup> [Act on Birth registry \(zákon o matrikách\) no. 301/2000 Sb. \(CZE\); Ministry of the Interior, Acquisition of Czech citizenship \(CZE\); Czech Citizenship Act.](#)

<sup>63</sup> See ENS Country briefing on the Czech Republic, Information for stateless people and those at risk of statelessness fleeing Ukraine (May 2022), available at <https://www.statelessness.eu/statelessness-ukraine-crisis>.

<sup>64</sup> [Council Implementing Decision \(EU\) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having effect of introducing temporary protection.](#)

<sup>65</sup> [Council directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.](#)

<sup>66</sup> UNHCR, [News Comment: UNHCR welcomes EU decision to offer Temporary Protection to Refugees fleeing Ukraine](#) (March 2022)

<sup>67</sup> ENS, [Briefing no 3: Protection gaps for stateless refugees from Ukraine](#) (June 2022)

passport, residence permit, or protection status, are excluded from temporary protection. Undocumented eligible persons should be able to access temporary protection, but, unlike for documented applicants, this will not be immediate. Stateless people who are ineligible for temporary protection may apply for international protection in the Czech Republic. If they are not eligible for either type of protection, they may apply for a renewable “tolerance visa” to stay in the country for 90 days if they are unable to return to their country of origin. Stateless people may also apply to have their statelessness determined by the Czech authorities, and, if successful, be granted a renewable tolerated stay visa for one year. However, as discussed under Issue 1, the procedure is vague and unclear, applicants are not guaranteed to be able to stay on the territory, and the procedure offers very limited protection status. There have been reports of discrimination and antigypsyism, in particular against Romani people from Ukraine in entering the registration centre in Prague, accessing housing or obtaining temporary protection.<sup>68</sup>

---

<sup>68</sup> The Guardian, [‘They won’t accept us’: Roma refugees forced to camp at Prague train station](#), 25 May 2022; ENS, [Country Briefing on the Czech Republic](#), 2022.

## Recommendations

47. Based on the above information, the co-submitting organisations urge reviewing States to make the following recommendations to the Czech Republic:
- I. Establish a clear and predictable statelessness determination procedure in law that guarantees basic procedural rights and safeguards during the procedure such as the right to remain on the territory, identification of applicants, access to healthcare, work permits, the right to an effective remedy) and leads to a statelessness status and rights in line with the 1954 Convention.
  - II. Provide recognised stateless persons with a right to residence with a route to permanent residence and naturalisation, in line with UNHCR guidance.
  - III. Assess statelessness during the decision to detain and vulnerability assessments, and ensure a country of removal is identified prior to detaining someone.
  - IV. Make it a requirement to exhaust all alternatives to detention prior to the decision to detain and include cumulative time spent in detention to count towards the maximum time limit.
  - V. Establish a regular periodic review of the necessity for continued detention and issue identification documents and a residence status to individuals upon release of detention.
  - VI. End the detention of children and families, especially in closed immigration detention centres, and introduce feasible and accessible alternatives to detention, including non-custodial accommodation for migrant families with children.
  - VII. Introduce a full safeguard in nationality law, policy, and practice to ensure that children born in the Czech Republic have their nationality status determined, irrespective of the actions or status of their parents, to guarantee the child's right to a nationality and ensure that stateless children born in the Czech Republic acquire a nationality.
  - VIII. Ensure that stateless people and people at risk of statelessness from Ukraine who fled the war and seek protection in the Czech Republic access protection and do not face discrimination.