

COUNTRY BRIEFING
AUGUST 2021

Czech Republic



INTRODUCTION

The [Statelessness Index](https://index.statelessness.eu/) (<https://index.statelessness.eu/>) is an online comparative tool that assesses European countries' law, policy and practice on the protection of stateless people and the prevention and reduction of statelessness against international norms and good practice. The Index was developed and is maintained by the [European Network on Statelessness \(ENS\)](#),¹ a civil society alliance of over 170 organisations and individuals in 41 countries working to end statelessness and ensure that stateless people in Europe access their rights.

ENS worked with its members to research and compile comparative information on statelessness in the Czech Republic.² This briefing summarises the findings on how Czech law, policy and practice performs against international norms and good practice on the protection of stateless persons and the prevention and reduction of statelessness. It covers five thematic areas – International and Regional Instruments, Stateless Population Data, Statelessness Determination and Status, Detention, and Prevention and Reduction – and makes a series of recommendations to the Czech Government for reform in priority areas.

To be stateless is not to be considered as a national by any state under the operation of its law. It is a legal anomaly that prevents more than 10 million people around the world - and more than half a million in Europe - from accessing fundamental civil, political, economic, cultural and social rights.



INTERNATIONAL AND REGIONAL INSTRUMENTS

Different international and regional treaties provide for the protection of stateless persons and the prevention and reduction of statelessness. The Czech Republic is a party to most relevant international and regional legal instruments on prevention and reduction of statelessness, including the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention), the 1961 Convention on the Reduction of Statelessness, and the European Convention on Nationality.

However, the Czech Republic retains significant reservations to the 1954 Convention, which impact on the rights of stateless people on the territory, for example, restricting rights to identity papers (Article 27) and travel documents (Article 28) to stateless people holding permanent residence permits. Czech Republic has not acceded to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.

The Czech Government should consider withdrawing its reservations to Articles 27 and 28 of the 1954 Convention.

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STATELESS POPULATION DATA

States should collect reliable quantitative and qualitative data on statelessness and adopt and strengthen measures to count stateless persons on their territory.³ Identification of stateless persons remains the first step to protecting their rights, but also leads to a better understanding of the challenges that need to be addressed.

The Czech Republic publishes asylum and immigration data, which contains some disaggregated information on stateless migrants and refugees. The Ministry of Interior also reports monthly on the number of stateless people holding residence permits. However, there are potentially overlapping categories such as 'citizenship unknown or unidentified' and 'Palestinians', and the data only counts stateless people legally residing in the country, so the figures are likely to be an underestimate of the stateless population. In December 2020, UNHCR published a mapping study of statelessness in the Czech Republic which is the first study to qualitatively and quantitatively map statelessness in the country.

The Czech Government should take concrete steps to improve and harmonise the recording of statelessness, including of people without legal residence, to ensure effective policies to prevent and eliminate statelessness. This should include the introduction of a 'stateless' category in all relevant data collection efforts.



STATELESSNESS DETERMINATION AND STATUS

To be able to provide the protection and rights enshrined in the 1954 Convention, including a residence permit and the right to work, study and facilitated naturalisation, State parties need to be able to identify stateless people on their territory. UNHCR recommends that this is best fulfilled through a dedicated statelessness determination procedure.

The Czech Republic does not have a dedicated statelessness determination procedure, but the Ministry of Interior in 2019 began to determine and issue certificates to confirm statelessness under the 1954 Convention. However, there is no clear procedure set in law, no guidance for decision-makers, and only limited rights are granted as a consequence of statelessness determination. The Supreme Administrative Court decided in March 2019 that the procedure to determine statelessness should be analogous to the refugee determination procedure as enshrined in the “Asylum Act”.

In 2020 and 2021, Czech courts continued to issue judgments aligning the status of those seeking recognition of their statelessness with asylum applicants (in particular with respect to protection against detention, and access to accommodation and healthcare).

Legal aid is not guaranteed to stateless people in the Czech Republic, and other procedural safeguards are limited. In order to secure any rights, people recognised as stateless are advised to initiate a removal procedure and seek a tolerated stay permit on the grounds that removal is impossible, which provides a route to residence and some rights at the discretion of the ministry. The Ministry of Interior may facilitate naturalisation for stateless people with permanent residence, but this is discretionary.

A new amendment to the “Act on Stay of Foreigners, in force since August 2021 removes the possibility for statelessness to be recognised under the Asylum Act. The new process is vague and unclear. The amendment does not regulate the status of stateless applicants, nor does it secure procedural rights or the right to remain on the territory. It is likely that the positive case law developed so far will no longer be applied by the Ministry of the Interior.

The Czech Government should 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) in line with the 1954 Convention.

The Czech Government should provide recognised stateless persons with a right to residence with a route to permanent residence and naturalisation, in line with UNHCR guidance.



DETENTION

The Czech Republic is bound by the EU Returns Directive, which requires particular attention to be paid to the situation of vulnerable persons; and the EU Returns Handbook requires attention to be paid to the specific situation of stateless persons, ensuring that there is a reasonable prospect of removal *prior to detaining* or prolonging a person’s detention.

There are gaps in the legal framework to protect stateless people from arbitrary detention in the Czech Republic. A proposed country of removal does not need to be identified prior to detaining someone, statelessness is not assessed during the decision to detain nor

considered relevant in vulnerability assessments and, although there is a requirement to consider alternatives to detention, there is no need to exhaust all alternatives prior to detention. There are some procedural safeguards (time limit, written decisions, free legal aid), but there are no automatic periodic reviews of detention, and no identification documents or residence status are issued to people released from detention. 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.

Some progress has been made since 2019 when the Ministry of Interior began to issue a certificate to confirm statelessness applications under the 1954 Convention. Since then, repetitive detentions of applicants for stateless status have ceased although one case of a certified stateless applicant has been recorded recently. Moreover, people who have been issued with a certificate still face many barriers to access their rights, as the certificates are not recognised by most public authorities (e.g. post office, employment and housing services) thus preventing applicants from accessing those public services. The recent legal amendment to the Act on Stay of Foreigners does not provide any details regarding the issuing of these certificates.

The Czech Government should take further steps to protect stateless persons from arbitrary detention by ensuring clear referral routes to a procedure to determine statelessness for people in detention.

Czech law should be amended to introduce the obligation to identify a country of removal in the detention decision and to provide access to basic rights for those released from detention, in order to protect against re-detention.

The Czech Government should clearly establish in law that a certificate be issued to applicants for stateless status and ensure that this is recognised by all authorities to ensure access to public services.



PREVENTION AND REDUCTION

Every child’s right to a legal identity and nationality is not only essential to the prevention and reduction of statelessness but is a core principle of international law. As State party to the 1961 Convention and the European Convention on Nationality, the Czech Republic has obligations to prevent and reduce statelessness on its territory.

The Czech Republic performs relatively well on the prevention and reduction of statelessness, but there is an important gap for children born stateless in the Czech Republic, as the child’s ability to acquire Czech nationality depends on the actions or status of the parents. For a child born on the territory to acquire Czech nationality, at least one of the parents must have held legal residence in the country for at least 90 days at the time of the child’s birth.

There is a specific provision to protect the right to a nationality of children born to refugees, foundlings, and to prevent statelessness in the adoption process. The law also provides that all births must be registered within three days and birth certificates issued to all children within 30 days. Documentation requirements may be waived in certain circumstances (for refugees and asylum-seekers) and a solemn declaration provided instead. The child’s nationality is not recorded on the birth certificate and a procedure is in place for determining nationality later. 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.

The Czech Government should amend the law to ensure that all children born on the territory who would otherwise be stateless acquire Czech nationality at birth or as soon as possible after birth, regardless of the residence or documentation status, or actions of their parents.

SUMMARY OF RECOMMENDATIONS

The Czech Government should:

- Withdraw all reservations to the 1954 Convention Relating to the Status of Stateless Persons and the European Convention on Nationality.
- Accede to the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession.
- improve and harmonise the recording of statelessness, including of people without legal residence, to ensure effective policies to prevent and eliminate statelessness. This should include the introduction of a 'stateless' category in all relevant data collection efforts.
- Establish a clear and predictable statelessness determination procedure in law that guarantees basic procedural rights and safeguards during the procedure in line with the 1954 Convention.
- Provide recognised stateless persons with a right to residence with a route to permanent residence and naturalisation, in line with UNHCR guidance.
- Protect stateless persons from arbitrary detention by ensuring clear referral routes to a procedure to determine statelessness for people in detention.
- Introduce the obligation to identify a country of removal in the detention decision and to provide access to basic rights for those released from detention, in order to protect against re-detention.
- Clearly establish in law that a certificate be issued to applicants for stateless status and ensure that this is recognised by all authorities to ensure access to public services.
- Amend the law to ensure that all children born on the territory who would otherwise be stateless acquire Czech nationality at birth or as soon as possible after birth, regardless of the residence or documentation status, or actions of their parents.

ENDNOTES

¹ <https://www.statelessness.eu>

² The Lead Country Researcher for the Statelessness Index in Czech Republic is ENS Member, Organization for Aid to Refugees (OPU)

³ Conclusions of the Council of the European Union and the Representatives of the Governments of the Member States on Statelessness, 4 December 2015, <http://www.consilium.europa.eu/en/press/press-releases/2015/12/04/council-adopts-conclusions-on-statelessness/>

CONTACT

Hana Franková

Head of Legal Department, Organization for aid to refugees

hana.frankova@opu.cz

Nina Murray

Head of Policy & Research, European Network on Statelessness

nina.murray@statelessness.eu



European
Network on
Statelessness

London, United Kingdom
Media: +44 7522 525673
info@statelessness.eu
www.statelessness.eu



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Network on
Statelessness