

## UPR Pre-sessions 42

29 November – 2 December 2022

### CZECHIA

#### **Statement relating to the rights of stateless persons**

This presentation will focus on the human rights of stateless persons in Czechia and is delivered on behalf of the Organization for Aid to Refugees, the European Network on Statelessness, and the Institute on Statelessness and Inclusion.

In previous UPR cycles, Czechia received only two general recommendations on statelessness to ensure that national legislation is in line with international standards, which Czechia failed to implement. Treaty bodies made several recommendations to Czechia in that sense.

I will focus my presentation on two issues concerning Czechia's international commitments to reduce and end statelessness and to safeguard the rights of stateless people living in Czechia:

1. statelessness determination and access to rights
2. arbitrary detention of stateless persons

#### **Statelessness determination and access to rights**

Identifying stateless people is the first step to providing protection in line with the 1954 Convention. According to UNHCR, the identification and determination process should be ensured with a dedicated statelessness procedure. The lack of such a procedure can lead to human rights violations.

Czechia does not have a dedicated statelessness procedure. Moreover, there is no legal definition of a stateless person in national legislation. In 2021, the determination of statelessness was moved from the Asylum Act to the Immigration Act which resulted in more limited procedural safeguards for applicants. Even though the analogy with rights under the asylum procedure should be preserved according to current jurisprudence, the new procedure is very unclear, and the rights granted to stateless applicants are weaker. The current determination procedure does not include any provisions to regulate the status of stateless applicants – for example, the right to accommodation and the right to remain on the territory are not guaranteed, and applicants are issued with an identity certificate that is not regulated by law, and therefore, is not recognised by most public authorities.

Civil society organisations have made recommendations about the 2021 legislative amendment to the Ministry of the interior, emphasizing the impact on stateless applicants, but none of the recommendations have been considered.

According to this amendment, persons recognised as stateless are granted a tolerated stay visa for one year. After this period, they can obtain a renewable long-term stay for two years.

After five years in total, they can apply for permanent residence. This approach contravenes the protective purpose of the 1954 Convention.

Access to some rights under the 1954 Convention is also limited, because people granted only a tolerated stay permit cannot join public health insurance immediately, work without obtaining a permit, and are not allowed to leave the country.

Therefore, we call upon reviewing States to recommend Czechia the following:

- I. Establish a clear and predictable statelessness determination procedure in law that guarantees basic procedural rights and safeguards during the procedure and leads to a statelessness status and rights in line with the 1954 Convention, and in conformity with SDG 10.3.
- II. Provide recognised stateless persons with a right to residence with a route to permanent residence and naturalization, in line with UNHCR guidance.

### Arbitrary detention of stateless persons

Stateless people face a heightened risk of arbitrary detention, particularly where procedural safeguards to identify and determine statelessness are lacking.

In Czechia, a proposed country of removal does not need to be identified prior to detaining someone. Statelessness is not assessed during the decision to detain, leading to stateless persons may be arbitrarily detained where it is impossible to remove them. Moreover, it often takes a long time to determine the impossibility to remove a person and to release them from detention due to the lack of identification of statelessness.

There are alternatives to detention in national legislation, but in practice, contrary to international standards, detention is used prior to all alternatives. National legislation also lacks procedural safeguards, in particular not counting the cumulative time spent in detention towards the maximum time limit.

Finally, people do not obtain any legal status or identification document upon 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 regularization if the person cannot be removed. This could lead to repetitive instances of arbitrary and lengthy detention.

We therefore urge reviewing States to make the following recommendations to Czechia:

- I. Implement the obligation to assess statelessness, conduct vulnerability assessments, and ensure a country of removal is identified prior to detaining someone.
- II. Ensure that all alternatives to detention are exhausted prior to the decision to detain and include cumulative time spent in detention to count towards the maximum time limit.
- III. Take steps towards issuing identification documents and residence status to individuals upon release from detention, in line with SDG 16.9.