



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:**

CZECH REPUBLIC

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

The Czech Republic is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (jointly, the *1951 Convention*). It also is a party to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*), the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*) and the *1997 European Convention on Nationality*. However, no statelessness determination procedure has been established yet.

The national asylum process in the Czech Republic is governed by the provisions of the Asylum Act No. 325/1999, as later amended, which came into force on 1 February 2002; Act No. 273/2008 Coll., on the Police of the Czech Republic, as later amended, which entered into force on 1 January 2009; and of Act No. 326/1999 Coll., on the Residence of Aliens on the Territory of the Czech Republic (the Aliens Act), also amended, which entered into force on 1 January 2000.

The Czech Charter of Fundamental Rights and Freedoms provides for political asylum. Asylum also may be granted for family reunification and on humanitarian grounds. The status of a person granted asylum on humanitarian and/or family reunification grounds is identical to the status of a person who is recognized as a refugee under the *1951 Convention*. Following the incorporation of the EU Qualification Directive¹ into national legislation, international protection now includes subsidiary protection in line with the criteria set out in the Directive. Czech legislation also provides for subsidiary protection when the return of an alien to his or her country of origin would “*contradict the international obligations of the Czech Republic.*”

All applications for international protection are adjudicated in the first instance by the Department for Asylum and Migration Policy of the Ministry of the Interior (DAMP). Since September 2006, the Czech Republic has applied a single procedure for the determination of applications for refugee and subsidiary protection status and has granted subsidiary protection in cases where asylum could not be granted. UNHCR is not

¹ 2004/83/EC of 29 April 2004.

formally involved in the Refugee Status Determination (RSD) process, but has access to the case files upon written consent by the applicants.

In general, there are no obstacles to access the territory of the Czech Republic, and the principle of *non-refoulement* is respected. Throughout the years, the reception conditions and the RSD procedure have continuously improved; however, some challenges remain.

The number of applications for international protection in the Czech Republic has steadily been decreasing in recent years: 1,258 in 2009, 833 in 2010 (mainly from Ukraine, Mongolia, Belarus and the Russian Federation), and 756 in 2011 (mainly from Ukraine, Belarus, the Russian Federation, Vietnam and Mongolia). In 2010, 125 persons were granted asylum, and 104 were granted subsidiary protection. In 2011, 113 persons were granted asylum, and 270 were granted subsidiary protection.

II. ACHIEVEMENTS

UNHCR welcomes the following positive steps undertaken by the Czech Government:

1. The ratification of the Rome Statute of the International Criminal Court on 21 July 2009, which entered into force on 1 October 2009.
2. The adoption in 2009 of Act No. 198/2009 on equal treatment and on legal means of protection against discrimination (the Anti-discrimination Act), which extends the competences of the Ombudsman, to assist victims of discrimination and the efforts of the Government to combat racism and xenophobia.
3. The establishment in 2008 of the Agency for Social Inclusion that underscores the Government's commitment to combat the acute problem of social exclusion.
4. The commitment of the Government to engage in the formalized resettlement programme, including cooperation with UNHCR. The Government has been willing to consider individual cases, including families, for emergency resettlement on an *ad hoc* basis. UNHCR hopes that the cooperation in the field of resettlement can be further enhanced and remains ready to provide assistance to the Czech Government.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: Legislation relevant to Refugees and Asylum-seekers

In August 2011, the Ministry of Interior circulated a draft of the proposed outline for legislation on the entrance and stay of aliens in Czech territory, on the free movement of EU citizens and members of their family, and on the protection of state borders for comments. The Government adopted the proposal on 29 February 2012. UNHCR provided extensive feedback and made suggestions on how the proposed legislative project could be brought in line with the *1951 Refugee Convention*, the *Convention on the Rights of the Child* and EU legislation. While UNHCR welcomes the fact that the

Government intends to revise and simplify the current Alien Act, concerns remain that if adopted, the legislation will mandate that any alien in proceedings for administrative expulsion – including asylum-seekers, children older than 16 years, and families with children – will be placed in detention.

Recommendations:

- Consider UNHCR's comments and suggestions, in particular the suggestion to revise the provisions of the proposed legislative changes on detention, to ensure that asylum-seekers, including minors older than 16 years and families with children, will not be detained in the future.

Issue 2: Nationality legislation and Statelessness

In its 2011 Concluding Observation on the Czech Republic the Committee on the Rights of the Child expressed concern about the situation of stateless minor applicants in the Czech Republic whose applications for nationality have been pending for a prolonged period of time and urged the State party to undertake all necessary measures to ensure the expeditious granting of nationality to all children born in its territory.

In August 2011, the Ministry of Interior circulated a draft Act on the Citizenship of the Czech Republic. UNHCR expressed its concerns relating to several provisions that do not conform to international law and as a result of which some children born in the Czech Republic may remain stateless.

In particular, UNHCR is concerned that Article 5 of the draft Act states that a child born in Czech territory, who would otherwise be stateless, acquires Czech citizenship at birth if one of the parents holds a Czech residence permit for a period longer than 90 days.

Concerning issue 2, UNHCR wishes to note that the Czech Republic acceded to the 1961 Convention on the Reduction of Statelessness in December 2001. Article 1 of the Convention clearly states that the Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless either at birth, by operation of law or upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of Article 1, no such application may be rejected.

The Government's obligation under the 1961 Convention to children born on the territory who would otherwise be stateless is distinct and separate from any obligation arising vis-à-vis the parents. Accordingly, the Convention does not permit conditioning the grant of nationality to a child who would otherwise be stateless on the parents having lawful, permanent or other residence.

Furthermore, UNHCR is concerned that the draft Act differentiates in the conditions for acquisition of nationality between stateless children in general and those who are placed in institutional, foster or another form of alternative care. For the latter, a three-year time limit is proposed for the submission of a citizenship application on behalf of the child. The proposal risks leaving the child stateless if the legal guardian fails to take timely action to apply on behalf the child.

The draft Act also distinguishes between children born in and out of wedlock when the mother is a foreign citizen or stateless: while children born in wedlock acquire citizenship from birth, those born to a foreign or stateless mother out of wedlock only acquire nationality following a DNA test, court order, or other recognition. Thus, children born out of wedlock to non-citizen mothers potentially remain stateless until the relevant and potentially expensive verification procedures have been carried out. UNHCR notes that under article 7 of the Convention on the Rights of the Child, children have the right to a nationality from birth. Thus, there should be no delay in the acquisition of nationality where the grounds of acquisition are fulfilled. Where paternity is only determined after birth, the child should be considered a citizen since the time of birth.

UNHCR also notes that the relevant draft provision does not comply with Article 24 of the International Covenant on Civil and Political Rights which requires children be protected against discrimination on any grounds. In its General Comment no. 17, the UN Human Rights Committee stated that “*no discrimination with regard to the acquisition of nationality should be admissible under internal law as between legitimate children and children born out of wedlock or of stateless parents or based on the nationality status of one or both of the parents.*” Children born out of wedlock should therefore acquire citizenship in the same manner as children born to married parents.

Additionally, the draft does not incorporate Articles 18, 18a, 18b and 18c of the current Act on the Citizenship of the Czech Republic, which provide for specific rules relating to citizenship in connection with the dissolution of Czechoslovakia. While these provisions have helped thousands of people to acquire citizenship in recent years,² UNHCR is aware of persons who may remain stateless, 20 years after State succession. The Act should therefore continue to provide such individuals and their descendants with adequate possibilities to acquire citizenship.

Finally, it should be mentioned that the Czech Republic maintains reservations to Articles 23 (public relief), 24 (labour legislation and social security), 27 (identity papers) and 28 (travel documents) of the 1954 Convention. As a consequence, the Alien Act grants identity and travel documents to some categories of stateless persons only, namely those with permanent residence. In addition, the Government has not established a procedure for the determination of statelessness.

Recommendations:

- To avoid the risk of statelessness, the Government should review the provisions of the draft Citizenship Act relating to acquisition of nationality by children who would otherwise be stateless and children born out of wedlock to foreign or stateless mothers with a view to bringing them in line with obligations under the 1961 Convention on the Reduction of Statelessness.
- To give full effect to its international obligations under the 1954 Convention relating to the Status of Stateless Persons, the Czech Republic is encouraged to establish a

² 6,278 persons acquired citizenship according to these provisions in 1999, 1,567 in 2004, 494 in 2007, 418 in 2008, and 320 in 2009.

statelessness determination procedure. This would ensure that stateless persons are recognized and afforded the rights as set out in the Convention.

- To urge the Czech Republic to lift its reservations to the 1954 Convention, in particular with regard to Articles 27 and 28 (identity and travel documents), and to amend relevant legislation accordingly.

Issue 3: Integration

The pursuit of successful integration programmes continues to be a major challenge in the Czech Republic. Recognized refugees and beneficiaries of subsidiary protection have the right to work and do not need to obtain a work permit to access the labour market. However, due to language difficulties and problems with recognition of foreign diplomas, many recognized refugees fail to obtain jobs in their field of expertise and remain unemployed for years after being granted asylum. The majority of those who find a job work as unskilled workers. Asylum-seekers have the right to work 12 months after their application for international protection is submitted, but need to acquire a work permit.

Persons of concern also face additional problems. First, the lack of subsidized housing offered by the Government under its State Integration Program (SIP) remains a challenge. Second, language training guaranteed by the Asylum Act had not been provided for nearly two years, though it has been renewed as of 2011.

UNHCR continues to share its expertise with the Government in the field of integration. In 2010, through its implementing partner – Association of Citizens Assisting Migrants (SOZE), UNHCR commissioned and presented four expert studies related to integration (access to employment, to housing, to nationality and to education) and shared a set of recommendations with the authorities. Furthermore, UNHCR's national consultancy project on education resulted in a detailed analysis on the Czech language training under the SIP and on the access of refugee children to education; both included recommendations for the Government.

Recommendation:

- UNHCR recommends that the Government help asylums-seekers and refugees integrate by implementing the recommendations proposed in the above-mentioned studies.

Issue 4: Detention

All individuals who apply for asylum in the Czech Republic are initially placed in reception centres (Prague Ruzyně airport and Zastavka u Brna). The reception centres are closed institutions, and asylum-seekers are not allowed to leave for up to 120 days pursuant to the Asylum Act. Furthermore, the conditions in the reception centre in Prague Ruzyně airport are inadequate, as there is insufficient natural light and air in the building, and there are no facilities for outdoor activities.

Foreigners placed in administrative detention who apply for international protection must remain in the detention centre for up to 180 days, despite the fact they are asylum-seekers within the meaning of the Asylum Act. Moreover, like other foreigners, asylum-seekers also are required to pay for the costs of transportation to, and the basic services at, the detention centre. According to the Aliens Act, there are two alternatives to detention

applicable to foreigners placed in administrative detentions, namely paying bail and reporting to the police station on a regular basis. However, these alternatives are not applied in practice systematically. In 2011, there were only 58 cases when reporting was applied instead of detention, and release with bail is rarely applied because of the cumbersome procedure it implies.

Recommendations:

- UNHCR encourages the Czech Government to create adequate reception conditions and to ensure the freedom of movement for asylum-seekers. UNHCR also advises extending the list and types of alternatives to detention as per UNHCR – OHCHR recommendations made during the Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons.³ The Government should also consider removing the costs for transportation to, and basic services at, the detention facilities.

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April 2012**

³ The summary conclusion of the Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons held in Geneva on 11-12 May 2011 can be accessed at the following link: <https://intranetapps.unhcr.org/refworld/pdfid/4e315b882.pdf>.