

Statelessness and Roma Communities in the Czech Republic: Competing Theories of State Compliance

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1. Introduction

The system of national sovereignty, underpinning international relations in the modern world, is one wherein individuals exercise their rights and obligations primarily through citizenship in a state. Holding citizenship in a state willing to extend rights and protections is therefore the definitive factor in the exercise of rights, especially human rights. When an individual does not possess membership in any state, that individual is considered stateless. Statelessness is a problem that affects millions of people, and although the exact number of stateless people is unknown, *Refugees International* estimates it to exceed eleven million.¹ While stateless people are found throughout the world, the largest numbers reside in the former Soviet Union, East and South Asia, especially Thailand, Nepal, Burma and Sri Lanka, as well as in Europe, the Great Lakes region of Africa, and the Middle East.²

Statelessness has multiple causes; among the most common are intentional exclusions that limit an individual's citizenship to that of his or her parents, to place of birth, or to a conflict between these alternative means of citizenship conferral. States may also revoke or refuse to grant citizenship when a marriage takes place between citizens of different states or when a state discriminates against individuals on the basis of gender, religion, political opinion or ethnicity.³ Statelessness can also occur because of administrative processes that are unnecessarily complex or because of fees that discourage individuals from applying for citizenship. Finally, statelessness can occur because of a transfer of territory following the dissolution, independence or succession of a state when long-term residents cannot obtain citizenship in the new state.⁴

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¹ M. Lynch, 'Lives on Hold: The Human Cost of Statelessness' (Refugees International, Washington D.C., 2005), p. 1.

² *Ibid.*

³ *Ibid.*, p. 3, E. Simperingham, 'The International Protection of Stateless Individuals: A Call for Change' (University of Auckland, 2003).

⁴ Lynch, *supra* note 1, p. 5. Simperingham, *supra* note 3.

States can protect individuals by becoming party to the treaties and declarations found in international law and by respecting their treaty obligations. Foremost among these agreements are the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. Under these and other treaties, states have specific obligations to refrain from creating stateless persons. States can also confer citizenship on non-nationals, thus enabling them to participate in the employment sector and national and local politics as well as have access to educational opportunities, the judiciary and healthcare systems.⁵

This paper examines the Czech Republic's passage in 1993 of a citizenship law that rendered approximately 10,000 to 25,000 members of the Roma community stateless.⁶ The Czech Republic, a former satellite state of the Soviet Union, peacefully split from the Slovak Republic with the dissolution of the Czechoslovak Federal Republic (hereafter Czechoslovakia) in 1993, a process known as the Velvet Divorce. Following the dissolution, a new citizenship law came into effect that put steep requirements on individuals who wished to gain or retain Czech citizenship. These requirements included verification of a five-year period of residence, a clean criminal record, and unwieldy fees and administrative procedures. Many argued that these requirements unfairly affected Roma, who were considered Slovakian by many non-Roma Czechs. Many Roma did not have documentation to prove citizenship or residence, had criminal records that prevented successful applications, or could not understand or afford the administrative procedures and costs required by the new law.

Following a string of previous revisions, an amendment to the law in 1999 reinstated the citizenship of the majority of these individuals. This paper examines the full spectrum of factors that led to the 1999 amendment with a special focus on the role of local nongovernmental organizations (NGOs), human rights activists, international pressure, economic policy, and the unique qualities of the post-Soviet world environment. Additionally, two major ideological trends in the Czech Republic will be presented: the 1992–1997 Civic Democratic Party (ODS) era of *euroskepticism* and the *European Society* school represented by former President Vaclav Havel and the rise of the Social Democrats (CSSD) in 1998. The Czech case is especially instructive because the citizenship law was written, enacted and revised within a period of six years. Although a number of changes took place during this time period, this paper suggests that not least of these was the accession process to join the European Union (EU) and a general trend in the Czech Republic toward participation in other international and regional institutions, including the North Atlantic Treaty Organization (NATO), the Organization for Security and Co-operation in Europe (OSCE), and the Council of Europe.

⁵ Lynch, *supra* note 1, p. 3.

⁶ Due to a number of factors including a distrust of authorities, the exact number of Roma who were affected is difficult to estimate. The number varies from the low estimate of 10,000 to 25,000 according to Human Rights Watch to 100,000 according to early estimates by the Tolerance Foundation (as reported by the European Roma Rights Commission, 'Czech Government Amends Anti-Romani Citizenship Law, but the Improvements Are Cosmetic,' review of Reviewed Item, *Roma Rights*, no. (1996); Human Rights Watch, 'Roma in the Czech Republic: Foreigners in Their Own Land', (1996). The earlier estimate of 100,000 appears to have been too high based on its rejection by more recent reports.