

## COMMENTARY

# STATELESS PERSONS IN THE CZECH REPUBLIC: FILLING THE GAPS WITHOUT GOOD FAITH?

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### I INTRODUCTION

‘I feel like I am nobody. That’s it. A stateless person is nobody. Someone who does not exist. This is how I feel.’<sup>1</sup> This sense of invisibility or non-existence as illustrated by the words of one of Czechia’s (more commonly known as the Czech Republic) stateless persons is often associated with the phenomenon of statelessness. What reinforces this feeling is that State authorities themselves treat stateless persons as invisible. This only intensifies the disintegration of their personal and social identity. Furthermore, states not only ignore the plight of stateless persons, but they also seem to disregard their international commitments to this extremely vulnerable group.<sup>2</sup> This includes the Czech Republic, which appears reluctant to uphold the principle of good faith while interpreting its international obligations towards stateless persons.

Statelessness in the Czech Republic today appears in the migratory context, similarly to other European countries. It is estimated that up to 1,500 stateless individuals live in the Czech Republic, including both those residing legally and illegally.<sup>3</sup> However, the issue has received very little attention and has long been perceived as non-existent, due to both a lack of public awareness and the Czech government’s reluctance to address it. For several decades, stateless persons have

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<sup>1</sup> United Nations High Commissioner for Refugees (‘UNHCR’), *Faces of Statelessness in the Czech Republic* (Report, 2020) 47 (‘*Faces of Statelessness*’).

<sup>2</sup> See, eg, David Weissbrodt and Clay Collins, ‘The Human Rights of Stateless Persons’ (2006) 28(1) *Human Rights Quarterly* 245, 265–70, 272–5; Katia Bianchini, *Protecting Stateless Persons: The Implementation of the Convention Relating to the Status of Stateless Persons across EU States* (Brill Nijhoff 2018) 1–6.

<sup>3</sup> UNHCR, *Faces of Statelessness* (n 1) 24–32.

been caught in a cycle of lacking legal pathways to regularise their stay, facing expulsion proceedings and repeated detentions.<sup>4</sup>

The Czech Republic acceded to the 1961 *Convention on the Reduction of Statelessness* ('1961 Convention')<sup>5</sup> in 2001<sup>6</sup> and the 1954 *Convention relating to the Status of Stateless Persons* ('1954 Convention')<sup>7</sup> in 2004.<sup>8</sup> However, it took more than 10 years after the ratification of the 1954 *Convention* before the first (very minimalistic and poorly functioning) statelessness determination procedure ('SDP' or 'the procedure') was introduced into Czech domestic law and a further few years until it began to be implemented by the Czech Ministry of Interior ('the Ministry'). The number of applicants for the SDP has remained extremely low. As of November 2023, only 63 applications had been submitted in the entire history of the procedure, with 29 persons having been recognised as stateless and nine cases pending.<sup>9</sup> There are several reasons for this strikingly low number of applications compared to the estimated total number of stateless persons in the country. One reason is the Ministry of Interior's reluctance to disseminate any information about the existence of the procedure.<sup>10</sup> Additionally, the poor quality of legal regulation and the Ministry's inactivity in proceedings<sup>11</sup> have resulted in a general lack of awareness about the procedure among both legal professionals and stateless persons.

This demonstrates that merely acceding to the 1954 and 1961 *Conventions* is never enough without fully committing to the obligations they impose in good faith; this guides the interpretation of the treaties<sup>12</sup> in two important ways. Firstly, interpreting treaty obligations in good faith requires prioritising the search for the spirit (or purpose) of the treaty, rather than placing excessive emphasis on its literal wording. Secondly, it requires searching for a reasonable interpretation that an honest and reasonable party should and could understand.<sup>13</sup>

However, neither of those aspects has guided the implementation of treaty obligations and subsequent changes to the legislation toward stateless persons in the Czech legal system. Despite acceding to the 1954 *Convention* in 2004, actions

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<sup>4</sup> *ibid* 44–5.

<sup>5</sup> *Convention on the Reduction of Statelessness*, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975) ('1961 Convention').

<sup>6</sup> Ministry of Foreign Affairs, *Communication No 43 of 2002*, 'Communication of the Ministry of Foreign Affairs on the Czech Republic's Approach to the Convention on the Restriction of Homelessness Cases' (13 May 2002) Collection of International Treaties (Czech Republic).

<sup>7</sup> *Convention relating to the Status of Stateless Persons*, opened for signature 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960) ('1954 Convention').

<sup>8</sup> Ministry of Foreign Affairs, *Communication No 108 of 2004*, 'Communication of the Ministry of Foreign Affairs on the Negotiation of the Convention on the Legal Status of Stateless Persons' (15 October 2004) Collection of International Treaties (Czech Republic).

<sup>9</sup> Ministry of the Interior of the Czech Republic, *Information on the Request for the Provision of Information Pursuant to Act No 106/1999 Coll* (Freedom of Information Response No MV-186834-2/OAM-2023, 8 November 2023) <<https://mv.gov.cz/clanek/poskytnuti-informace-pocet-zadosti-o-priznani-statusu-osoby-bez-statni-prislusnosti.aspx>>, archived at <[perma.cc/4FWX-LV7Q](https://perma.cc/4FWX-LV7Q)> ('FOI Response').

<sup>10</sup> There is nothing to be found on the Ministry's website about the statelessness determination procedure ('SDP'), in contrast to the very detailed information and guidance for foreigners applying for any other type of residence permit or international protection.

<sup>11</sup> See, eg, Public Defender of Rights, *Report of the Investigation in the Matter of Delays in the Procedure for the Determination of a Stateless Person* (Joint Report, No KVOP-11603/2019, 7 March 2019) 1–2 ('Delays in Procedure Report').

<sup>12</sup> *Vienna Convention on the Law of Treaties*, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980) arts 26, 33.

<sup>13</sup> Robert Kolb, *Good Faith in International Law* (Hart Publishing 2017) 62–3.

to date have fallen short of the Czech State's obligations under the treaty. We argue that the subsequent legislative steps (and their absence during the first 10 years after the ratification) have lacked good faith. This includes the current consideration by the Czech Parliament of the *New Act on the Entry and Residence of Foreigners* ('*New Aliens Act*'),<sup>14</sup> which again fails to address the needs of stateless individuals and the interpretation of existing legislation by the Ministry of Interior. The proposed *New Aliens Act* reproduces the problems of existing legislation, with no prospect of a shift to full compliance with international standards despite the efforts of several stakeholders to increase protection standards in the consultation procedure.

To illustrate the Czech Republic's lack of good faith in interpreting and applying its international commitments under the *1961* and *1954 Conventions*, we will provide an overview of past and contemporary legislation in the Czech Republic, highlighting the pitfalls in the current interpretation of the state's obligations under these *Conventions*. Additionally, we will investigate the problems associated with the proposed *New Aliens Act*.<sup>15</sup> We will introduce the Czech Republic's legal framework for stateless persons in three stages that go hand in hand with the changes in the legislation: (1) the initial implementation of the *1954 Convention* ('awakening from lethargy'); (2) attempts to level down the protection of stateless persons through legislative changes thwarted by court decisions ('searching for ways to go backwards'); and (3) the proposed *New Aliens Act* which fails to address the needs of stateless persons ('continuing evasion of international commitments'). In analysing the steps taken by Czech authorities, we argue that the Czech Republic demonstrates a lack of good faith to fulfil its obligations under the *1954 Convention*.

## II THE FIRST STAGE — AWAKENING FROM LETHARGY

Historically, Czech law lacked legal regulation concerning statelessness. After the Czech Republic ratified the *1954 Convention* in 2004, the treaty became an integral part of the Czech Republic's legal framework. However, it wasn't until 2015, more than a decade later, that legislators took steps to implement the *1954 Convention*,<sup>16</sup> initially through a single sentence to introduce the SDP into the *Asylum Act*.<sup>17</sup> Prior to this, stateless persons had to navigate standard immigration proceedings and residence permits,<sup>18</sup> which often provided only illusory ways to recognise their rights. The revised *Asylum Act* provision assigned the Ministry responsibility for handling applications from stateless persons under the *1954*

<sup>14</sup> The material was submitted to the government by the Ministry of the Interior: Parliament of the Czech Republic, Chamber of Deputies, Bill, '*Draft Act on the Entry and Residence of Foreigners (Aliens Act)*' (Parliamentary Print No 782, 9<sup>th</sup> Parliamentary Term, 29 August 2024) (Czech Republic) <<https://www.psp.cz/sqw/tisky.sqw?O=9&T=782>>, archived at <[perma.cc/A27K-45H8](https://perma.cc/A27K-45H8)> ('*New Aliens Act*').

<sup>15</sup> *ibid.*

<sup>16</sup> *Act No 314 of 2015, 'Act Amending the Asylum Act and Other Laws'* (Czech Republic).

<sup>17</sup> *Act No 325 of 1999, 'Act on Asylum'* (Czech Republic) ('*Asylum Act*').

<sup>18</sup> Helena Hofmannová, 'Právní Postavení Osob Bez Státní Příslušnosti v České Republice' ['Legal Status of Stateless Persons in the Czech Republic'] (2012) (21)5 *Jurisprudence* 13 [tr author].

*Convention*.<sup>19</sup> Despite its minimalist nature<sup>20</sup> — containing only the competence rule for the Ministry to decide on the applications submitted under the *1954 Convention* — it provided a sufficient basis for the SDP as confirmed by subsequent case law. It effectively underscored the close link between refugee and statelessness determination procedures,<sup>21</sup> providing a basis for the courts to draw parallels with refugee determination procedures using a systematic reading of the provision within the *Asylum Act* and an interpretation that respected Czech commitments under the *1954 Convention*.

However, it was evident from the outset that the Ministry lacked the will to practically implement the provision. Despite having only received a small number of applications, the Ministry failed to recognise any rights of the applicants and effectively ignored all applications, leaving them pending for over three years without any action. Both the courts<sup>22</sup> and the Ombudsperson (officially the Public Defender of Rights)<sup>23</sup> criticised the Ministry's inactivity and ordered that these delays be rectified. The Ministry's inaction appeared deliberate, as there were no legitimate reasons evident in the case files to justify such prolonged delays, especially given the limited number of applications — only 45 applications in total were submitted between 15 December 2016 and 31 July 2021 when regulation under the *Asylum Act* was in force.<sup>24</sup> Finally, after three years of inaction, the Ministry began to process applications, albeit with still significant delays.

Over time, Czech courts confirmed the need for analogy with asylum seekers,<sup>25</sup> while relying heavily on international law arguments and similarities between the *Convention Relating to the Status of Refugees* ('*1951 Refugee Convention*')<sup>26</sup> and the *1954 Convention*. The extent of the protection provided to asylum seekers under Czech law goes beyond the wording of the *1951 Refugee Convention*. The courts therefore used analogy to extend the scope of the rights available to applicants under the SDP beyond those available under a narrow textual interpretation of the *1954 Convention*. This concerned the procedural rules, the status of applicants, as well as the rights of applicants.<sup>27</sup> Rights related to the status of asylum seekers, such as the right to an ID during refugee determination procedures, accommodation, access to the health insurance system or employment rights — although not explicitly embedded in the *1951 Refugee Convention* but

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<sup>19</sup> *Act on Asylum* (n 17) art 8(d), which was in force until 1 August 2021.

<sup>20</sup> It resulted from a pragmatic approach to avoid a separate procedure for what were then relatively rare cases in the Czech Republic: Parliament of the Czech Republic, Chamber of Deputies, Bill, *Explanatory Memorandum to Act No 314 of 2015, 'Act Amending the Asylum Act and Other Laws'* (Parliamentary Print No 463, 7<sup>th</sup> Parliamentary Term, 15 April 2015) (Czech Republic) <<https://psp.cz/sqw/text/tiskt.sqw?o=7&ct=463>>, archived at <[perma.cc/7LMD-E5R6](https://perma.cc/7LMD-E5R6)>.

<sup>21</sup> See, eg, Michelle Foster and Hélène Lambert, *International Refugee Law and the Protection of Stateless Persons* (Oxford University Press 2019) 43–4.

<sup>22</sup> Municipal Court in Prague, Case No 10A 155/2017 (29 November 2017).

<sup>23</sup> See, eg, Public Defender of Rights, *Delays in Procedure Report* (n 11) 1–2.

<sup>24</sup> See, Ministry of the Interior, *FOI Response* (n 9).

<sup>25</sup> Please note that in the Czech Republic, the term 'asylum seeker' is used for a refugee that is subject to a refugee determination procedure ('RDP'). All references to analogies made by the Czech courts to RDPs that inform the interpretation of the SDP in the Czech Republic therefore encompass both asylum seekers and refugees under Czech terminology.

<sup>26</sup> *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

<sup>27</sup> See, eg, Supreme Administrative Court of the Czech Republic, Case No 4 Azs 365/2018 (12 March 2019) [11]–[12]; Supreme Administrative Court of the Czech Republic, Case No 7 Azs 488/2018 (9 April 2019) [12]–[14]; Supreme Administrative Court of the Czech Republic, Case No 10 Azs 347/2020 (10 March 2021) [29].

related to further development and interpretation of the State's commitments towards refugees in Europe — were therefore recognised by the courts as also applicable to applicants subject to a SDP. However, the Ministry of Interior never respected this case law and continued to deny any rights to applicants subject to a SDP.

Recognised stateless persons were issued a 'visa of tolerated stay', the lowest and least stable type of residence permit under the *Aliens Act*.<sup>28</sup> This practice persisted despite not aligning with neither the United Nations High Commissioner for Refugees ('UNHCR') recommendations<sup>29</sup> nor doctrinal conclusions advocating for permanent residency<sup>30</sup> equivalent to those granted to recognised refugees.<sup>31</sup> Attempts to litigate a more favourable interpretation of the *Aliens Act* which would allow applicants subject to SDPs the grant of rights analogous to those granted to refugees have not succeeded, as the Supreme Administrative Court concluded in a 2022 ruling that the *1954 Convention* does not provide an obligation to guarantee a specific residence title.<sup>32</sup>

The initial legislative efforts to implement commitments arising from the *1954 Convention* thus occurred long after ratifying the treaty and proceeded at a sluggish pace. Despite their minimalist nature, these efforts when combined with court interpretations theoretically provided a relatively high standard of protection by drawing analogies with the protection granted to asylum seekers. This included recognising an applicant's right to reside within the territory until the end of the SDP, providing applicants with ID cards (often the first official document for many stateless persons after years of being undocumented), access to public health insurance and the option to access accommodation centres. However, the Ministry of Interior did not respect the broader normative binding force of the case law, making the actual level of protection granted to stateless applicants dependent on their willingness to pursue individual legal action. Consequently, the rights recognised by settled case law were available only to those who had access to legal aid and the possibility to take their cases to the courts.

### III THE SECOND STAGE — SEARCHING FOR WAYS TO GO BACKWARDS

In the meantime, the Ministry of Interior introduced an *Aliens Act* amendment in 2021,<sup>33</sup> transferring the sole specific provision concerning the SDP from the *Asylum Act* to the *Aliens Act*. This alteration was not undertaken for neither systemic nor conceptual reasons, as it was not accompanied by any other legislative adjustments nor the introduction of more precise regulations. The only apparent intention behind this was to invalidate the case law established by the courts, thus eliminating the possibility of drawing analogies with applications for

<sup>28</sup> *Act No 326 of 1999 'On the Residence of Foreign Nationals in the Territory of the Czech Republic'* (Czech Republic) art 33 ('*Aliens Act*'). See, eg, Public Defender of Rights, *Report of the Status of Stateless Persons* (Joint Report, KVOP-53065/2019, 29 November 2019) 3 <<https://eso.ochrance.cz/Nalezene/Edit/8784>>, archived at <[perma.cc/PJ6W-WT8Q](https://perma.cc/PJ6W-WT8Q)>.

<sup>29</sup> UNHCR, *Faces of Statelessness* (n 1) [147].

<sup>30</sup> Bianchini (n 2) 246.

<sup>31</sup> Gábor Gyulai, 'The Determination of Statelessness and the Establishment of a Statelessness-Specific Protection Regime' in Alice Edwards and Laura van Waas (eds), *Nationality and Statelessness under International Law* (Cambridge University Press 2014) 116, 125–7.

<sup>32</sup> Supreme Administrative Court of the Czech Republic, Case No 7 Azs 299/2020 (11 January 2022) [21], [24].

<sup>33</sup> *Act No 274 of 2021, 'Act Amending Act No 326/1999 Coll' (Czech Republic) ('2021 Aliens Act Amendment')*.

international protection under the refugee determination procedure, including an applicant's rights and status during the procedure. Nevertheless, this attempt to level down the protection standards failed, as the courts subsequently reaffirmed their previous case law in response to the amended legal regulation, confirming that undertaking a SDP requires an analogy with the determination of refugee status and its associated rights. The courts emphasised that the primary justification for this analogy in their established case law stemmed directly from international law and the similarities between the *1951 Refugee Convention* and the *1954 Convention*. Therefore, this interpretation remained applicable regardless of the specific legislative act governing the SDP, even if unsystematically removed from the *Asylum Act*.<sup>34</sup> Since there was still no comprehensive regulation of the SDP and the legal status of applicants after the amendment, the courts argued it remained necessary to address the gaps by referring to the most relevant legal framework, being the *Asylum Act*. However, the Ministry declined to act in accordance with these new judgments and failed to confer any rights to the applicants, which were once again only acknowledged on an ad hoc basis following individual courts' interventions.

Following the latest amendment which took effect in July 2023, the legal framework concerning stateless persons remains within the *Aliens Act*.<sup>35</sup> Although more detailed, it still does not provide sufficient legal basis for the SDP, nor procedural guarantees for stateless persons and their rights. There are several shortcomings in the procedure, such as discretionary instead of obligatory interviews with applicants, a lack of burden of proof distribution, absence of free legal assistance, and no mandatory translation or interpreting services during the procedure.<sup>36</sup> The current legal status and scope of rights of the applicants during the procedure also remains problematic, as the legal regulation still does not entitle them to social benefits, accommodation or public health insurance, which are otherwise granted with the status of asylum applicants. Even though the courts had previously and repeatedly recognised these rights for applicants under the SDP, the Ministry of Interior has once more attempted to partially override the relevant case law with this more detailed legal regulation, as the courts' argument relied on an analogy that filled the gaps in earlier regulations. However, many aspects remain unregulated after the amendment and it remains to be seen whether the courts will continue to uphold their previous case law in relation to the current legal amendment.

The only positive exception regarding reception rights is employment, as SDP applicants may work after six months following their application.<sup>37</sup> However, unlike applicants for refugee protection, the Ministry denies them entitlements to health insurance and accommodation in reception centres during the first six months, which places them in an extremely vulnerable position of absolute poverty or potential exploitation in irregular work.

Recognised stateless persons are still issued a 'visa of tolerated stay', the lowest and least stable type of residence permit that is contrary to UNHCR recommendations.<sup>38</sup> They can only attain permanent residency after five years of

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<sup>34</sup> See, eg, Municipal Court in Prague, Case No 14 A 18/2023 (24 April 2023) [27]–[30].

<sup>35</sup> *Act No 173 of 2023, 'An Act Amending Act No 325/1999 Coll' (Czech Republic) ('2023 Aliens Act Amendment')*.

<sup>36</sup> *Aliens Act* (n 28) arts 49a, 170(d)–(g).

<sup>37</sup> *ibid* art 48(3)b).

<sup>38</sup> *ibid* art 33(3).

stay beginning from the moment of their recognition.<sup>39</sup> Permanent residency then opens the door to naturalisation, typically after another five years of permanent residency. In contrast, recognised refugees gain permanent residence together with asylum,<sup>40</sup> providing them with immediate stable and permanent residence status and opening a much shorter path to naturalisation.<sup>41</sup>

Overall, the legislative solution for stateless persons, which was initially minimalist but more respectful of the close connection between the refugee and stateless protection regimes, has been repeatedly amended in ways that diminish the previous levels of provided protection. This situation raises legitimate doubts about the good faith of responsible authorities in their fulfilment of international commitments under the *1954 Convention*.

#### IV THE THIRD STAGE — CONTINUING EVASION OF INTERNATIONAL COMMITMENTS

In 2023, the Ministry of Interior submitted a draft law to the Government, the *New Aliens Act*, which is expected to proceed to the parliamentary phase of the legislative process in 2024, with planned entry into force from 2026. The proposed act represents the complex recodification of the current *Aliens Act*. The regulation of the SDP and recognised stateless persons represents only a fraction of the newly proposed legal framework. However, the trend of evading international law commitments towards stateless persons persists, as the proposed act not only fails to rectify persisting problems but, in some aspects, weakens even further the legal status of stateless persons in the Czech Republic. The proposed draft of the *New Aliens Act* maintains this negative trend despite the comments and objections from several actors in the legislative procedure, including the Ombudsperson, Ministry of Justice, Government Commissioner for Human Rights and NGOs.<sup>42</sup> Moreover, during the consultation phase to settle these comments, relevant ministries such as the Ministry of Health and Ministry of Labour and Social Affairs proclaimed their willingness to provide a broader scope of protection to SDP applicants. However,

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<sup>39</sup> *ibid* art 68.

<sup>40</sup> *Asylum Act* (n 17) art 76.

<sup>41</sup> See Linda Janků, 'Právní Ochrana Osob Bez Státní Příslušnosti v České Republice: 15 Let Po Ratifikaci Úmluvy o Právním Postavení Osob Bez Státní Příslušnosti Stále Popelkou?' ['Legal Protection of Stateless Persons in the Czech Republic: 15 Years After the Ratification of the Convention on the Legal Status of Stateless Persons Still Ash'] in Dalibor Jílek and Pořízek Pavel (eds), *Ročenka Uprchlického a Cizineckého Práva 2018* [*Yearbook of Refugee and Alien Law 2018*] (Wolters Kluwer 2019) 181–225 [tr author].

<sup>42</sup> See the settlement of comments available in the material submitted to the government from the Bill's comments procedure: 'Draft Act on the Entry and Residence of Foreigners (Aliens Act)' (Vypořádání připomínek [Handling Comments], OVA No 5224, Submitter No MV-132202-21/OBP-2022, filevp\_KORNCZQHTMII) <<https://odok.cz/portal/veklep/material/KORNC9BXQCP/KORNCZQHTMII>>, archived at <[perma.cc/VW23-4B7F](https://perma.cc/VW23-4B7F)>.

the Ministry of Interior opposed their suggestions and compelled them to withdraw their proposals during the legislative process.<sup>43</sup>

Under the proposed *New Aliens Act*, applicants for recognition of stateless status would find themselves in a new category known as ‘tolerated stay’<sup>44</sup> — essentially a transitional status that neither grants legal residence nor deems their stay illegal. Individuals in this ‘grey zone’ have no particular rights aside from being protected from expulsion proceedings. They are unable to work legally, travel or access public health insurance. The regulation therefore continues the trend of adopting a minimalist approach, providing a basic legal framework for the SDP with no reception rights for the applicants. It does not build on previous case law and does not continue the analogy with asylum seekers. Moreover, the concept of ‘tolerance’ is proposed to be partially extended to recognised stateless persons, who would receive a ‘certificate of stateless person’<sup>45</sup> that will be materially similar to a ‘certificate of tolerance’ in terms of rights and conditions to access more stable residence permits.<sup>46</sup> Although stateless persons may have their stay deemed legal with this certificate (as an exception),<sup>47</sup> it remains the least stable form of legal residence under the proposed *New Aliens Act*. Stateless persons will only be allowed to apply for a general long-term stay after two years of recognition,<sup>48</sup> while the pathway to permanent residency will only open after five years from recognition.<sup>49</sup>

In conclusion, the newly proposed regulation perpetuates the trend of deteriorating the status of stateless persons, not only in terms of the specific rights conferred to them but also with respect to the very nature of their legal status by deepening this legal vacuum through concepts of ‘toleration’ rather than ‘recognition’. Stateless persons are not considered as worthy of stronger protection despite the *1954 Convention* obligations that the Ministry of Interior is bound to uphold, since all the Ministry’s legislative efforts are aimed at keeping their position at the minimum level of protection. It remains to be seen whether further changes to the proposed regulation of statelessness in the *New Aliens Act* will take place in the parliamentary phase of the legislative process, based on the advocacy of NGOs and other relevant stakeholders.

## V CONCLUDING REMARKS

All three phases of the legislative amendments and proposals analysed above, along with the decision-making practice of the Ministry, demonstrates an apparent

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<sup>43</sup> The content of the negotiations is not public, however, one of the participants of the consultation process shared a summary pointing out the fact that the Ministry of Health and the Ministry of Labour and Social Affairs were ready to include the applicants into the health insurance system and provide them with access to employment after an application for a SDP is submitted, whereas the Ministry of Interior blocked this effort: see Pavel Pořízek, ‘Historiky z vypořádání aneb co ty osoby bez státní příslušnosti (stateless) komu udělaly?’ [‘Stories of Settlement of Comments in the Legislative Process: What are Stateless Persons Being Punished For?’], *LinkedIn* (online, 28 May 2024) [tr author] <[https://www.linkedin.com/posts/pavel-po%C5%99%C3%ADzek-8a79331b5\\_studie-unhcr-k-stateless-osob%C3%A1m-v-%C4%8Dr-z-roku-activity-7198263907373772801-VdVC](https://www.linkedin.com/posts/pavel-po%C5%99%C3%ADzek-8a79331b5_studie-unhcr-k-stateless-osob%C3%A1m-v-%C4%8Dr-z-roku-activity-7198263907373772801-VdVC)>, archived at <[perma.cc/Z5VB-V6QD](https://perma.cc/Z5VB-V6QD)>.

<sup>44</sup> For this new status for SDP applicants, see *New Aliens Act* (n 14) art 18(2)(d).

<sup>45</sup> *ibid* art 330(2).

<sup>46</sup> *ibid* art 234, 239, 266, 294.

<sup>47</sup> *ibid* art 17.

<sup>48</sup> *ibid* art 139(2)(g).

<sup>49</sup> *ibid* art 229(1)(a).



unwillingness to interpret and implement in good faith the international obligations outlined in the *1954 Convention*, nor adhere to the purpose of the international protection regime of stateless persons. The exploitation of loopholes in the explicit wording of the *1954 Convention* ignores both a systematic and theological reading of the *Convention* as well as the UNHCR interpretative recommendations. This results in the denial of the required protection standard to stateless persons and contradicts the principle of good faith, which should instead reflect the humanitarian essence of the *1954 Convention*.

The motivation driving the Czech administrative authorities to adopt such an approach remains unclear. However, several reasons were repeatedly mentioned by the Ministry during the settlement of the comments in the legislative procedure. One of them is a fear of potential abuse of the procedure and a consequent increase in applicants. Nonetheless, the statistics do not support this argument. Despite a limited sample being the 54 decisions so far adopted in the SDP, the recognition rate is relatively high as it reaches almost 54% of all decisions, including discontinued cases.<sup>50</sup> This does not seem to indicate any abuse of the procedure. Furthermore, unlike in refugee status determinations, there are more avenues to verify the claims of SDP applicants with their alleged country (or countries) of origin, which are typically cooperative with authorities in ascertaining the absence of SDP applicants' nationality.<sup>51</sup>

The restrictive approach of the Ministry of Interior is entrenched in a failure to acknowledge the human rights dimension of statelessness and a refusal to perceive it as a protection issue. Authorities often use the rhetoric linking stateless persons with criminal activity and the impossibility of deporting them,<sup>52</sup> despite the fact that the criminal records of some stateless persons often stem from their long-term inability to obtain any legal status.<sup>53</sup> This fundamental discourse, associating statelessness with negligent or even criminal behaviour, shapes the Ministry's stance in debates on the topic, resulting in the continuous denial of rights to stateless persons. Despite this framing being inconsistent with international obligations, stateless persons are often perceived as having broken the rules or having landed in their situation due to their own fault. However, this rather exacerbates the difficulties in breaking out from the cycle of illegality on the part of stateless persons.

Unfortunately, nothing changes with the proposed *New Aliens Act*. The debate lacks a constructive, evidence-based and solution oriented process that is aimed at finding the most effective way to fulfil international commitments and provide stateless persons with rights. Stateless persons seem to be trapped in interpretive

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<sup>50</sup> Out of 54 decided cases, the Ministry of Interior recognised the applicants' stateless status in 29, dismissed the application in 14 cases and discontinued the proceedings in 12 cases. There were still nine cases pending in November 2023: *FOI Response* (n 9).

<sup>51</sup> Within the SDP, statelessness determination authorities regularly make enquiries with foreign authorities regarding the nationality of the applicants (unless there is a well-founded fear of persecution): UNHCR, *Handbook on the Protection of Stateless Persons under the 1954 Convention* (Handbook, 2014) 34.

<sup>52</sup> A lot of articles related to statelessness touch on the aspect of the impossibility of extraditing stateless person: see, eg, Artur Janoušek, 'Vydírání, ublížení, prodej drog dětem. Soud cizince vyhošťuje, policie je ale ze země nedokáže dostat' ['Blackmail, Harm, Selling Drugs to Children. The Court Deports Foreigners, but the Police Cannot Expel them from the Country'], *iRozhlas* (online, 16 December 2019) [tr author] <[https://www.irozhlas.cz/zpravy-domov/vyhosteni-ze-zeme-armanec-bez-obcanstvi-soudy-prodej-drog-nezletilym\\_1912160600\\_jgr](https://www.irozhlas.cz/zpravy-domov/vyhosteni-ze-zeme-armanec-bez-obcanstvi-soudy-prodej-drog-nezletilym_1912160600_jgr)>, archived at <[perma.cc/MF4H-ZK5S](https://perma.cc/MF4H-ZK5S)>.

<sup>53</sup> UNHCR, *Faces of Statelessness* (n 1) 34.

loopholes that administrative authorities fill in a way that apparently lacks the good faith necessary to fully implement international obligations, as they continuously try to minimise the scope of rights of stateless persons, either during the SDP or after the granting of statelessness status.

As it currently stands, the proposed *New Aliens Act* represents yet another missed opportunity to rectify the unsatisfactory implementation of international obligations towards stateless persons in the Czech Republic. The reluctance to reflect on or even seriously discuss concerns raised during the legislative procedure suggests that the long-awaited and advocated shift towards fulfilling international obligations towards stateless persons in good faith is not yet on the agenda.