

LEGAL STATUS OF STATELESS PERSONS IN THE CZECH REPUBLIC

Helena Hofmannová*

Abstract: *The subject of this study is an analysis of the consequences of the Czech Republic's declarations and reservations to Article 27 and Article 28 of the 1954 Convention relating to the Status of Stateless Persons in the Czech Republic. The study addresses the issues and definition of the category of stateless persons in the Czech Republic, their legal status and the possibility of applying the Convention relating to the Status of Stateless Persons insofar as the above reservations have been made. The analysis has been prepared on the basis of an interpretation of the Convention relating to the Status of Stateless Persons and national legislation associated with the issues addressed.*¹

Keywords: *The Convention relating to the Status of Stateless Persons, stateless persons, stateless persons lawfully staying in the territory of the contracting state, identity papers, travel documents, Act on the Residence of Foreign Nationals in the Czech Republic*

I. CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS

1. Adoption and objectives of the Convention

The Convention relating to the Status of Stateless Persons (the “Convention”) was adopted by the United Nations (the “UN”) on 28 September 1954. Along with the subsequently adopted 1961 Convention on the Reduction of Statelessness, it is a fundamental universal international instrument governing the status of stateless persons.

By adopting the Convention relating to the Status of Stateless Persons, the UN was building on the prohibition of discrimination against any persons in the exercise and protection of their fundamental rights and freedoms expressed in the UN Charter and the Universal Declaration of Human Rights of 10 December 1948.

The purpose of the Convention follows from its preamble, which emphasizes the UN's deep concern for stateless persons and efforts to ensure that these persons may exercise fundamental rights and freedoms as broadly as possible. Another major reason for adopting the Convention was the fact that only those stateless persons who are also refugees are covered by the 1951 Convention relating to the Status of Refugees, and that there are stateless persons who are not refugees and who are not covered by that Convention.²

The content of the Convention was largely inspired by the 1951 Convention relating to the Status of Refugees. Many provisions of the Convention are essentially copied or modified versions of provisions contained in the Convention relating to the Status of Refugees. Despite the close relationship between the two Conventions, it should be emphasized, however, that these are two independent, international treaties that relate to different population groups.

* JUDr. Helena Hofmannová, Ph.D., Faculty of Law, Charles University, Czech Republic. This article was written as part of the project NAKI, IČ DF12P010VV013.

¹ The Convention uses the term “stateless persons” to mean the people not having citizenship of any state. For the sake of clarity, it should be noted that the concept of citizenship and nationality in literature is used in a broader sense which should also include the nationality of legal entities. See e.g. BERAN, K. *Pojem osoby v právu (Osoba, morální osoba, právnická osoba)*. Praha, Leges 2012.

² Based on UNHCR statistics there are up to 12 million people living in the World. See <http://www.unhcr-central-europe.org/pdf/what-we-do/protecting-the-stateless/helping-the-worlds-stateless-people.html>.

When interpreting the Convention, the basis should be the origin of UN efforts to regulate internationally the status and protection of both refugees and stateless persons, as the regulation of these two groups had common roots. The situation after the Second World War made it necessary to respond to the status of refugees and stateless persons and to the need to adapt existing international law to the post-war situation. The UN Commission on Human Rights called on the UN Economic and Social Council to initiate negotiations to this end. In March 1948, the UN Economic and Social Council adopted Resolution 116, which called on the UN Secretary-General to commission a study on the situation of stateless persons and proposals for action within the UN to protect them. Based on the UN Secretary-General's study, in August 1949 the Economic and Social Council adopted Resolution 248, establishing the *Ad Hoc* Committee on Statelessness and Related Problems, which was made up of representatives of 13 governments. The main tasks of this committee were to consider the adoption of a convention regulating the international status of refugees and stateless persons and, if appropriate, to draft such a convention. In February 1950, the *Ad Hoc* Committee adopted the draft Convention relating to the Status of Refugees and Protocol relating to the Status of Stateless Persons, which, following the incorporation of the positions of the various governments had been intended as a basis for deliberations of the fifth session of the UN General Assembly. However, rather than discuss the draft Convention, the fifth session of the UN decided to convene a Conference of Plenipotentiaries in Geneva to finalize the draft Convention relating to the Status of Refugees and the Protocol on the Status of Stateless Persons. The Conference of Plenipotentiaries was held in Geneva from 2 to 25 July 1951 and was attended by representatives of 26 states, with a further two states represented by observers. On 28 July 1951, the Convention relating to the Status of Refugees and a Final Act containing recommendations for states were adopted in Geneva. The conference agreed that the competent UN bodies should prepare a draft protocol on the status of stateless persons who are not refugees.³

After the Convention relating to the Status of Refugees came into force on 22 April 1954, the UN Economic and Social Council decided to convene a second Conference of Plenipotentiaries to discuss the finalization of the draft protocol relating to the status of stateless persons, the adoption thereof and its opening for signature by all UN member states and other countries that had been invited to the first Conference of Plenipotentiaries. The second conference was held in New York from 13 to 23 September 1954 and was attended by representatives of 27 states, with a further five states represented by observers.

The second Conference of Plenipotentiaries eventually decided to adopt a special separate convention instead of a protocol relating to the status of stateless persons. The Convention relating to the Status of Stateless Persons was adopted in New York on 28 September 1954.

The final form of the Convention relating to the Status of Stateless Persons was influenced by the initial preparations, as most provisions of the Convention were borrowed from the Convention relating to the Status of Refugees. Yet there is a fundamental difference

³ See more details in the Convention Relating to the Status of Stateless Persons, Its History and Interpretation, A Commentary by Nehemiah Robinson, Institute of Jewish Affairs, World Jewish Congress 1995, reprinted by the Division of International Protection of the United Nations High Commissioner for Refugees 1997, Part Two: The Interpretation of the Convention, available at: http://www.oas.org/dil/1954_Convention_relating_to_the_Status_of_Stateless_Persons.pdf (accessed 25 June 1012).

between the two Conventions in that they treat the legalization of the entry of refugees and stateless persons into the territory of the Contracting States differently.

In terms of the implementation of these Conventions, another fundamental factor, as indicated above, was that the purpose of the Convention relating to the Status of Stateless Persons is to regulate the status of and provide protection to stateless persons who are not refugees.

2. STRUCTURE AND CONTENT OF THE CONVENTION

The Convention relating to the Status of Stateless Persons has a Preamble, six Chapters and a Schedule. Chapter I contains general provisions; Chapter II regulates the juridical status of stateless persons; Chapter III is devoted to the gainful employment of stateless persons; Chapter IV regulates the welfare of stateless persons; Chapter V sets out administrative measures in relation to such persons; and Chapter VI contains final clauses.⁴

The general provisions of the Convention primarily define the term “stateless persons”. For the purpose of the Convention, the term “stateless person” means a *person who is not considered as a national by any State under the operation of its law* (Article 1(1) of the Convention). The Convention does not apply to:

- persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;
- persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;
- persons with respect to whom there are serious reasons for considering that:
 - a) they have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;
 - b) they have committed a serious non-political crime outside the country of their residence prior to their admission to that country;
 - c) they have been guilty of acts contrary to the purposes and principles of the United Nations (Article 1(2)).

Other articles of the Convention are similar to the Convention relating to the Status of Refugees, with the difference that in the case of the Convention relating to the Status of Stateless Persons they concern this category of persons.

Article 2 of the Convention covers the *general obligations* of stateless persons. Under this provision, every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

The general obligations also guarantee the *prohibition of discrimination*, based on which the Contracting States undertake to apply the provisions of the Convention to stateless persons without discrimination as to race, religion or country of origin (Article 3).

⁴ Convention relating to the Status of Stateless Persons, No. 108/2004 Coll. of International Treaties.

Articles 7 to 11 of the Convention govern the exemption from reciprocity, the exemption from exceptional measures, provisional measures, continuity of residence in connection with the displacement of stateless persons during the Second World War, and the status of stateless seamen.

In its general provisions, the Convention also regulates the *personal status* of stateless persons. According to the Convention, the personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless (Article 13).

In terms of the provision of rights or other advantages to stateless persons, the Convention recognizes two basic principles:

- a) *the principle that Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances;*
- b) *and the principle that Contracting States shall accord to stateless persons the same treatment as is accorded to nationals.*

The Convention contains *specific provisions on the right of freedom to practise a religion and freedom as regards the religious education of children*. In respect of these rights, under Article 4 of the Convention stateless persons must be treated *at least as favourably as nationals of the Contracting State* (this appears to refer to the possibility of providing certain advantages as compared to nationals of the state in the exercise of the right to freedom of religious expression).⁵

The Convention also ties the enjoyment of certain rights to the concept of a *stateless person lawfully staying in the territory of a Contracting State*.

The general rule for the treatment of stateless persons in the territory of the Contracting States is set out in Article 7 of the Convention, according to which, except where the Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.

More favourable provisions, or the same treatment of stateless persons as is accorded to nationals of the Contracting State, are laid down by the Convention with respect to the implementation and protection of the following rights:

- the protection of artistic rights and industrial property (Article 14);
- the right of access to courts (Article 16);
- where a rationing system exists, treatment in the distribution of products in short supply (Article 20);
- the right to elementary education (Article 22(1));

⁵ The word “as least as favourable” were introduced in the Refugee Conference in a motion of the representative of the Holy See, who declared at first that “national treatment” would not do in countries where religious liberty was circumscribed; he asked for using the words “at least” for the purpose to guarantee refugees a minimum of religious liberty in such countries. See more details in *Convention Relating to the Status of Stateless Persons, Its History and Interpretation*, p. 29.

- the right to public relief and assistance (Article 23);
- insofar as such matters are governed by laws or regulations or are subject to the control of administrative authorities, rights in labour-law relations concerning remuneration, including family allowances, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining (Article 24(1)(a));
- social security rights governed by legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme, subject to the limitation that there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition. National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension (Article 24(1)(b)). The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State (Article 24(2));
- under the Convention, the Contracting States shall not impose upon stateless persons duties, charges or taxes other or higher than those which are or may be levied on their nationals in similar situations (Article 29(1)).

Under the Convention, the principle that Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances applies to the following rights:

- the acquisition of movable and immovable property and other rights pertaining thereto, and leases and other contracts relating to movable and immovable property (Article 12);
- the right of association in non-political and non-profit-making associations and trade unions (Article 15);⁶
- the right to wage-earning employment; the Contracting States shall give sympathetic consideration to assimilating the rights of stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes (Article 17);
- the right to engage on one's own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies (Article 18);
- the right to practise a liberal profession, accorded to stateless persons who hold diplomas recognized by the competent authorities of the Contracting State (Article 19);

⁶ It includes the rights of stateless persons to form their own associations and unions or to join associations or unions established by others. See *Convention Relating to the Status of Stateless Persons, Its History and Interpretation*, p. 57.

- in the field of housing, insofar as the matter is regulated by laws or regulations or is subject to the control of public authorities (Article 21);
- the right to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships (Article 22);
- the right of stateless persons to choose their place of residence and to move freely within the territory of the Contracting State, subject to any regulations applicable to aliens generally in the same circumstances (Article 26).

The Convention ties the exercise of the rights set out in Articles 15, 17, 18, 19, 21, 23, 24 and 26 to the concept of a *stateless person lawfully staying in the territory of a Contracting State*.⁷

For the purposes of the Convention, the term “*in the same circumstances*” implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling (Article 6). The Convention also provides that nothing therein shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from the Convention (Article 5).

Chapter V of the Convention regulates *administrative measures*. Article 25 of the Convention provides that when the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by its own authorities. This concern the issue of such documents or certifications as would normally be delivered to aliens by their national authorities. Under the Convention, documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary. Article 25 also regulates fees, which shall be moderate and commensurate with those charged to nationals for similar services.

Articles 27 and 28 of the Convention regulate the issue of identity papers and travel documents. Under Article 27, Contracting States shall issue *identity papers* to any stateless person in their territory who does not possess a valid travel document.⁸ Article 28 provides that Contracting States shall issue to stateless persons *lawfully staying* in their territory *travel documents* for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in

⁷ The term “lawfully in the territory of a Contracting State” together with article 7 para 1 means that the “treatment as favourable as possible” under the Article 7 is granted only to such stateless persons as live in the country on a more or less permanent basis, i. e. some kind of residence (even if temporary). See *Convention Relating to the Status of Stateless Persons, Its History and Interpretation*, p. 56.

⁸ The “identity papers” are for internal use, as contrasted with the „travel documents“ to be used for journeys abroad. It is a paper certifying the identity of a stateless person and, in countries with a passport system, a substitute for passport.

particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

Further details on travel documents and issue thereof are set out in the Schedule to the Convention. According to the Schedule, a travel document shall indicate that the holder is a stateless person under the terms of the Convention. The document shall be made out in at least two languages, one of which shall be English or French. Subject to the regulations in the country of issue, children may be included in the travel document of a parent or, in exceptional circumstances, of another adult. A travel document shall be made valid for the largest possible number of countries and shall have a validity of not less than three months and not more than two years. The renewal or extension of the validity of the document is a matter for the authority which issued it, so long as the holder has not established lawful residence in another territory and resides lawfully in the territory of the said authority. The issue of a new document is, under the same conditions, a matter for the authority which issued the former document. The Contracting States shall recognize the validity of travel documents issued in accordance with the provisions of Article 28 of the Convention. The competent authorities of the country to which the stateless person desires to proceed shall, if they are prepared to admit him and if a visa is required, affix a visa on the document of which he is the holder. The Contracting States undertake to issue transit visas to stateless persons who have obtained visas for a territory of final destination.

When a stateless person has lawfully taken up residence in the territory of another Contracting State, the responsibility for the issue of a new document, under the terms and conditions of Article 28 shall be that of the competent authority of that territory to which the stateless person shall be entitled to apply. A travel document issued in accordance with Article 28 of this Convention shall, unless it contains a statement to the contrary, entitle the holder to re-enter the territory of the issuing State at any time during the period of its validity. In any case the period during which the holder may return to the country issuing the document shall not be less than three months except when the country to which the stateless person proposes to travel does not insist on the travel document according the right of re-entry. Neither the issue of a travel document nor the entries made thereon determine or affect the status of the holder, particularly as regards nationality.

Further details on the issue of travel documents and a model travel document are set out in the Schedule to the Convention (Paragraphs 1 to 16).⁹

Pursuant to Article 31, the Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order. The expulsion of such a stateless person shall be *only in pursuance of a decision reached in accordance with due process of law* (see Article 31(2)). Article 32 addresses the *naturalization* of stateless persons; Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

⁹ See also the discussion concerning the adoption of article 27 and 28 in the conference in in Convention Relating to the Status of Stateless Persons, Its History and Interpretation, p. 79 and next.

The final clauses of the Convention govern the issue of any implementing regulations adopted by the Contracting States to apply the Convention, the settlement of disputes, signature, ratification and accession to the Convention, the territorial application clause and federal clause, the entry into force of the Convention, the denunciation of the Convention by Contracting States and any revisions of the Convention. Article 38 of the Convention regulates the possibility for Contracting States, at the time of signature, ratification or accession, to make reservations to articles of the Convention other than to Articles 1, 3, 4, 16(1) and 33 to 42 inclusive. Any State making a reservation may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

3. THE CZECH REPUBLIC'S ACCESSION TO THE CONVENTION

The Convention relating to the Status of Stateless Persons came [into force], pursuant to Article 39(1) thereof, on 6 June 1960. The Czech Republic acceded to the Convention in 2004. After the Convention was ratified by the Parliament of the Czech Republic, the Instrument of Accession of the Czech Republic to the Convention, signed by the President on 17 May 2004, was deposited with the Convention depositary on 19 July 2004. Pursuant to Article 39(2), the Convention came into force for the Czech Republic on 17 October 2004. The text of the Convention was published under number 108/2004 Sb.m.s. Upon acceding to the Convention relating to the Status of Stateless Persons, the Czech Republic made the following declaration and reservation to the Convention:

“1. Pursuant to Article 27 of the Convention, identity papers shall be issued only to stateless persons having permanent residence permits in the territory of the Czech Republic in accordance with the country's national legislation.

2. Article 23 of the Convention shall be applied to the extent provided by the national legislation of the Czech Republic.

3. Article 24, paragraph 1(b) shall be applied to the extent provided by the national legislation of the Czech Republic.

4. Pursuant to Article 28 of the Convention, travel documents shall be issued to stateless persons having permanent residence permits in the territory of the Czech Republic in accordance with the country's national legislation. Such persons shall be issued “aliens' passports” stating that their holders are stateless persons under the Convention of 28th September 1954.”

The reasons for the Czech Republic's accession to the Convention relating to the Status of Stateless Persons and the reasons for the above declaration and reservations made by the Czech Republic stem from an explanatory report to the Parliament of the Czech Republic on a government proposal to issue a law, by which [the proposal] the Parliament was presented, for ratification, with a proposal for the accession of the Czech Republic to the Convention relating to the Status of Stateless Persons of 28 September 1954 (the “explanatory report”).¹⁰ The subject of this study, in accordance with the assignment, is the reservations made in respect of Article 27 and Article 28 of the Convention.

According to the explanatory report, the Czech Republic's accession to the Convention was fully in line with the country's foreign policy interests. The explanatory report also highlights the fact that the issue of stateless persons had become topical again in Europe

in the first half of the 1990s, particularly in connection with the disintegration of, for example, the USSR and Yugoslavia. In this respect, besides the general level of respect for human rights, the Czech Republic's accession to the Convention is also in keeping with the efforts of the international community and the Czech Republic to eliminate and mitigate the negative consequences of these events.

According to information in the explanatory report, statelessness affects several hundred persons in the Czech Republic; as at 31 December 2002, there were 395 stateless persons with permanent residence permits and 18 stateless persons on long-term visas in the Czech Republic.

In the explanatory report, the Government notes that the Convention relating to the Status of Stateless Persons is based on the 1951 Convention relating to the Status of Refugees, to which the Czech Republic is party, as a complement thereto in the sense that *it applies to all stateless persons regardless of whether or not they are also refugees.*

The Convention is regarded as an international treaty governing the rights and obligations of persons under Article 49(a) of Constitutional Act No 1/1993, the Constitution of the Czech Republic (the “Constitution”). Accordingly, it is a presidential-category treaty document requiring the consent of both chambers of Czech Parliament for ratification under Article 49 of the Constitution.

In assessing the compatibility of Czech law with the requirements of the Convention, the explanatory report observes that the *issue of statelessness is not addressed in the Czech Republic by comprehensive special legislation*, but that the basic principles of the Convention are contained in the Charter of Fundamental Rights and Freedoms (the “Charter”) and Act No 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain laws, as amended (the “Foreign Nationals Act”). *Under Section 1(2) of the Foreign Nationals Act, stateless persons are regarded as foreign nationals. Under this Act, a foreign national is a natural person who is not a national of the Czech Republic; according to the explanatory report, this definition is applied subsidiarily in the definition of the term “foreign national” as used in other legislation. Legislation referring to foreign nationals and stateless persons simultaneously makes no technical differences between these two categories.* The explanatory report also states that *where it is necessary under the Convention to ensure the same status of stateless persons as foreign nationals, this position is guaranteed by the very definition of “foreign national” in the Czech legal order.*

The end of the general section of the explanatory report states that the conditions of entry and residence of stateless persons in the Czech Republic are governed by the provisions of the Foreign Nationals Act. *The rights and obligations of foreign nationals, and, hence, also stateless persons, living in the Czech Republic depend on their residence status, i.e. whether they are staying in the territory temporarily or have permanent residence permits.*

¹⁰ The Czech Government approved the accession of the Czech Republic to the Convention under its Resolution No 517 of 30 May 2001, subject to the making of a reservation to Article 27 and a declaration concerning Articles 23, 24(1)(b) and 28 of the Convention. Under Resolution No 20 of 8 January 2003, the Czech Government agreed to resubmit an accession proposal to the Czech Parliament seeking ratification of the Czech Republic's accession to the Convention. The text of the government proposal, including the explanatory report, is available at <http://www.psp.cz> (Parliamentary Press No 250/0, Chamber of Deputies, Fourth Term, 2002–2006).

With regard to the Czech Republic's reservation and declaration on Articles 23, 24(1)(b), 27 and 28 of the Convention, the explanatory report points out that, in connection with the application of Articles 23 and 24 and the resulting obligations to treat stateless persons as nationals, *the term "stateless person lawfully staying in its territory" needs to be interpreted*. In this context, the explanatory report notes that the opinion of the Permanent Mission of the Czech Republic to the UN in New York, which also addressed certain other Contracting States in this matter, indicated that the purpose of the concept in question is not to prejudge the Convention's links to any of the recognized types of residence within the meaning of national legislation on the residence of foreign nationals, but only to stipulate that all rights are only established under the Convention for stateless persons in the territory of Contracting States provided that their entry into the territory and their subsequent stay are not the result of violations of immigration and other relevant legislation of the Contracting State. The group of "lawfully staying" persons to be accorded specific rights under the various provisions of the Convention can then be interpreted *ad hoc* with regard to the meaning of any such provision and national legislation. In terms of Article 23 and 24 regarding the granting of certain benefits conditional on permanent residence as defined in the law of the Contracting State, all the Contracting States addressed grant such benefits only to stateless persons with permanent residence in their territory.

With regard to the reservation to Article 27 and the interpretative declaration on Article 28 (the main subject of this study), the explanatory report sets out the following reasons for their adoption.

Article 27 of the Convention relating to the Status of Stateless Persons provides that Contracting States shall issue *identity papers* to any stateless person in their territory who does not possess a valid travel document. In respect of this provision, the explanatory report states that this commitment is worded very broadly and absolutely. From a formal point of view, the concept of the *identity papers of a stateless person is not legally provided for*. Nevertheless, according to the explanatory report it can be assumed *that this function is replaced by a residence permit in the case of these persons with permanent residence in the Czech Republic*, and by an administrative decision on the granting of residence drawn up in writing and issued in accordance with Section 73 of the Foreign Nationals Act in the case of stateless persons under 15 years of age. Based on the above, it was suggested that, in accordance with Article 38(1) of the Convention, the Czech Republic make a reservation to Article 27 in the sense that *identity papers will be issued only to stateless persons with permits for permanent residence in the Czech Republic*. (In a footnote to this point of the explanatory report, it is observed that another state making a reservation to the same article is Germany.)

Article 28 provides that Contracting States shall issue to stateless persons lawfully staying in their territory *travel documents* for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require. As, according to the explanatory report, it is not desirable for a travel document under Article 28 to be issued, for example, to a person who, during a stay in the Czech Republic on the basis of a visa, forfeits a travel document issued by another state, and, in view of the interpretation of the term "lawfully staying", it was suggested that the Czech Republic make an interpretative declaration on Article 28. Within the meaning of that interpretative declaration, a travel document under Article 28 of the Convention will be issued to stateless persons with permits for permanent residence in the Czech Republic, providing that, in

accordance with national legislation, these persons will be issued with an “alien’s passport” stating, in keeping with the Convention, that the holder is a stateless person within the meaning of the Convention. Due to the low number of stateless persons residing permanently in the Czech Republic, the explanatory report does not regard the introduction of a new kind of travel document, anticipated by the Convention, as appropriate, partly because of the financial costs involved.

According to the explanatory report, an alien’s passport will be issued in accordance with Section 113(1) of the Foreign Nationals Act. Other stateless persons who, for example, have their travel document issued by another state forfeited during a valid stay in the Czech Republic shall be issued, in accordance with national law and under the same procedure applied to other foreign nationals, with a “certificate of identity” [*cestovní průkaz totožnosti*] enabling them to travel out of the Czech Republic.

4. IMPLEMENTING LEGISLATION IN THE CZECH REPUBLIC

As is clear from the observations above, the issue of stateless persons is not regulated separately in the Czech Republic. At the level of constitutional law, the status of stateless persons in the Czech Republic is governed by the Charter of Fundamental Rights and Freedoms. In terms of guarantees and the enjoyment of human rights and freedoms, the Charter distinguishes the following categories of entities: any person, a Czech national, and a foreign national.

Article 42(1) of the Charter provides that, where the Charter uses the term “national” [*občan*], this shall be taken to mean a citizen of the Czech Republic. Under paragraph (2) of that Article, *foreign nationals* [*cizinci*] enjoy human rights and fundamental freedoms guaranteed by this Charter in the Czech Republic, unless they are granted expressly to nationals. Paragraph (3) provides that, where current regulations use the term “national” [*občan*], this shall mean *any person* in the case of fundamental rights and freedoms granted by the Charter, regardless of nationality.

Legislation on citizenship of the Czech Republic is provided for in Act No 40/1993 on the acquisition and loss of citizenship of the Czech Republic, as amended.

The legal status of foreign nationals in the Czech Republic is regulated by Act No 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain laws, as amended, and by Act No 221/2003 on the temporary protection of foreign nationals, as amended.

The status of stateless persons in the Czech Republic is also covered by legislation on applicants for international protection, in the form of asylum or subsidiary protection, in the Czech Republic, recognized refugees and persons enjoying subsidiary protection in the Czech Republic, as contained in Act No 325/1999 on asylum, as amended.

As this entails administrative procedure, Act No 500/2004, the Rules of Administrative Procedure, as amended, and Act No 150/2002, the Rules of Judicial Administrative Procedure, as amended, are applied subsidiarily.

The main international treaties governing this matter include in particular the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention relating to the Status of Refugees and the related 1967 Protocol (the Geneva Protocol), and the [1989] Convention on the Rights of the Child.

II. STATUS OF STATELESS PERSONS IN THE CZECH REPUBLIC

1. Number of stateless persons in the Czech Republic

Figures on the number of stateless persons in the Czech Republic can be found in statistics maintained by the Ministry of the Interior, the Czech Statistical Office and Police of the Czech Republic (Alien Police Service).¹¹

These statistics show that the number of persons classified as foreign nationals with registered (temporary or permanent) residence permits in the Czech Republic who are stateless persons runs into the hundreds (692 as at 31 July 2011).¹² It is important to note that stateless persons are often referred to and recorded in statistics under the category of foreign nationals, even though they are not nationals of any state and therefore are not “foreign nationals” in the true sense. This designation is based on the definition of a foreign national as provided in the Foreign Nationals Act. The number of stateless persons registered as applicants for international protection between 1990 and 2010 totals 866.¹³ The number of applications from stateless persons for Czech citizenship stood at 12 in 2008, 22 in 2009 and 26 in 2010.¹⁴

As follows from the above statistics, figures on the number of stateless persons are based on the number of foreign nationals or applicants for international protection.

In the Czech Republic, the authority responsible in proceedings relating to stateless persons is the Ministry of the Interior, specifically the Department of Asylum and Migration Policy. However, this department does not keep separate statistics on the number of applications submitted by stateless persons seeking this status, i.e., seeking the status of a stateless person in the Czech Republic. According to information from the Department of Asylum and Migration Policy of the Ministry of the Interior, no applications seeking the status of stateless persons as defined in the Convention relating to the Status of Stateless Persons have been recorded in the Czech Republic since its accession to that Convention. As a result, the Department of Asylum and Migration Policy of the Ministry of the Interior notes that, therefore, no status of stateless person has been granted to anyone. Consequently, no identity papers or travel documents under Article 27 and Article 28 of the Convention indicating that the holder is a stateless person have been issued either.

Nevertheless, as is clear from the above statistical data relating to foreign nationals and applicants for international protection in the Czech Republic, these figures include the category of stateless persons. So who, then, is classified as a stateless person in the Czech Republic? In answering this question, it is necessary to draw on current legislation, particularly in the field of alien and asylum law.

¹¹ These statistics are available at the websites of these institutions: <http://www.mvcr.cz>; <http://www.czso.cz/>; <http://www.policie.cz/soubor/tudu-04-2008-pdf.aspx>.

¹² Statistics of the Ministry of the Interior: Foreign nationals with a registered residence permit in the Czech Republic and foreign nationals from the EU + Iceland, Norway, Switzerland and Liechtenstein with registered residence in the Czech Republic as at 31 July 2011. Source: CIS IS (Alien Information System). Statistics available at <http://www.mvcr.cz/clanek/cizinci-s-povolenym-pobytem.aspx>.

¹³ See the statistics of the Ministry of the Interior: Number of applicants for international protection, available at <http://www.mvcr.cz/clanek/mezinarodni-ochrana-253352.aspx>.

¹⁴ Statistics provided by UNHCR in Prague.

2. Concept of a stateless person in Czech law

The concept of a stateless person is not provided for in Czech law. To define entities that enjoy human rights and freedoms regardless of nationality, the Charter of Fundamental Rights and Freedoms uses the term “everyone” or “any person” [každý].¹⁵ This term, however, concerns the fact that certain human rights and freedoms are guaranteed to persons regardless of whether or not they are nationals of the Czech Republic.

National legislation in the Czech Republic distinguishes and defines the following categories of persons:

- Czech nationals [státní občané ČR] (the Citizenship Act);¹⁶
- foreign nationals [cizinci] under the Act on the Residence of Foreign Nationals in the Czech Republic and the Act on the Temporary Protection of Foreign Nationals;
- applicants for international protection [žadatelé o mezinárodní ochranu] in the form of asylum or applicants for subsidiary protection under the Asylum Act;
- recognized refugees [azylanti] under the Asylum Act; and
- persons enjoying subsidiary protection [osoby požívající doplňkové ochrany] under the Asylum Act.

In all cases (except for Czech nationals), these persons are regarded as foreign nationals under national law:

Under the Foreign Nationals Act, a *foreign national* is a natural person who is not a Czech national (pursuant to Act No 40/1993 on the acquisition and loss of citizenship of the Czech Republic, as amended), including a national of the European Union (Section 1(2) of the Foreign Nationals Act).¹⁷

For the purposes of the Asylum Act, an *applicant for international protection* means a foreign national who has applied to the Czech Republic for international protection, or a foreign national who has applied for international protection in another Member State of the European Union, if the Czech Republic is competent to assess that application (Section 2(5) of the Asylum Act).

A *recognized refugee* is a foreign national who has been granted asylum under the Asylum Act for the duration of the decision granting asylum (Section 2(6) of the Asylum Act).

A *person enjoying subsidiary protection* is a foreign national who does not qualify for asylum under this Act, but who has been granted subsidiary protection for the duration of the decision granting subsidiary protection (Section 2(7) of the Asylum Act).

The definition contained in Section 1(2) of the Foreign Nationals Act also forms the basis for the definition of a stateless person, who, within the meaning of this provision, is a person who is *not a Czech national*. Therefore, from the perspective of this provision, the decisive criterion is not the fact that a particular person is *stateless*, but that he is not a *Czech national*. *In this regard, the definition of a stateless person under Czech law lacks a significant feature of this status – the fact that such a person is not a national of any state.*

¹⁵ The Charter of Fundamental Rights and Freedoms, adopted in the period of the Federation as Constitutional Act No. 23/1991 Sb., then newly promulgated in the Czech Republic as No. 2/1993 Sb.

¹⁶ The Act No. 40/1993 Coll. of Laws on the acquisition and loss of citizenship of the Czech Republic, as amended.

¹⁷ For these categories see also PAVLÍČEK, V., a kolektiv, *Ústavní právo a státověda*, II. díl, Ústavní právo České republiky, 1. úplné vydání. Praha: Leges, 2011, p. 394–396.

However, precisely this fact is the essence of the status of stateless persons, and it also results in the need to protect these people and provide for their status under the Convention relating to the Status of Stateless Persons. Furthermore, the definition contained in Section 1(2) of the Foreign Nationals Act is inconsistent with the definition of a stateless person provided in the Convention. For the purpose of the Convention, the term “stateless person” means a person who is not considered as a national by any state under the operation of its law (Article 1(1) of the Convention).¹⁸

In light of the above, it can be noted that national law does not provide for the status of stateless persons as a separate category. Therefore, where statistics use the category of stateless persons, this is a reference to those cases where these persons themselves say that they do not have the nationality of any state. In other words, this has nothing to do with the granting of the status of a stateless person by the state; rather, it is a declaration of this fact by the individual.¹⁹ National law does not even provide for proceedings in which the status of a stateless person can be recognized as a separate category and these persons can be issued with documents as stateless persons within the meaning of Articles 27 and 28 of the Convention.

The concept of a stateless person is identical to that of a foreign national under national legislation. This has a direct impact on the legislative provisions on the status of stateless persons in the Czech Republic.

3. Legislation on the status of stateless persons in the implementation of the Convention from the perspective of the reservations to Article 27 and Article 28 of the Convention

Based on current legislation related to the reservations made by the Czech Republic to Articles 27 and 28 of the Convention, a stateless person is required to legalize his stay in Czech territory through one of the regimes provided for in the laws above. This follows from the wording of the Convention relating to the Status of Stateless Persons, based on the concept of a *stateless person lawfully staying in the territory of a Contracting State*.

From this perspective, there is a fundamental difference between this Convention and the Convention relating to the Status of Refugees. While Article 31(1) of the Convention relating to the Status of Refugees enshrines the obligation of Contracting States not to impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence, the Convention relating to the Status of Stateless Persons has no such provision. Conversely, certain rights provided for by the Convention related to the Status of Stateless Persons may be exercised by such persons only if they are lawfully staying in the territory of a Contracting State (see, for example, Articles 15, 17, 18, 19, 21, 23, 24 and 26 of the Convention).

¹⁸ For the definition of term „foreigner“ in the Czech Republic see Foreigners in the Czech Republic, Český statistický úřad, 2010.

¹⁹ See e. g. statistics on Proceedings of International Protection in 2009, Czech Republic see Foreigners in the Czech Republic, Český statistický úřad, 2010, p. 66.

At this point, however, it should be emphasized that, according to the wording of Article 27 of the Convention, Contracting States shall issue identity papers to any stateless person who does not possess a valid travel document *regardless of whether that person is lawfully staying in the territory of a Contracting State*. In contrast, Article 28 requires Contracting States to issue travel documents to *persons lawfully staying in the territory of a Contracting State*.

In practice, however, both articles are interpreted to mean that, in order to reside lawfully in the Czech Republic, stateless persons must legalize their stay either by obtaining resident status under the Foreign Nationals Act or by submitting an application for a form of international protection under the Asylum Act. In terms of the application of **Article 27 of the Convention**, in the context of the reservation made by the Czech Republic **identity papers** may be issued only to those stateless persons **who have been granted permanent residence** in the Czech Republic in accordance with national law. The national law in question is the Act on the Residence of Foreign Nationals in the Czech Republic. Under this Act, foreign nationals are entitled to *stay permanently in the Czech Republic on the basis of a permanent residence permit* issued on fulfilment of the basic requirement of five years' continuous stay in the Czech Republic or based on a decision by a competent authority to place a foreign national into foster care, subject to other statutory conditions. Special arrangements exist for European Union citizens (Section 65 of the Foreign Nationals Act).

The Act also regulates cases where it is possible to issue a permit for permanent residence in the Czech Republic without the condition of previous continuous residence in the Czech Republic. These include cases where a foreign national applies for this permit on humanitarian grounds (especially if the applicant is the spouse of a recognized refugee and they married before the recognized refugee entered the country, or if the applicant is the minor child of a recognized refugee or a child who is dependent on the care of a recognized refugee, if asylum has not been sought for that child, or if the applicant was a Czech national in the past), cases where a foreign national applies for this permit for other reasons worthy of special consideration, cases where a foreign national so requests on the grounds that his stay will be in the interests of the Czech Republic, or cases where a foreign national applies for this permit as a minor or adult dependent child of a foreign national residing in the Czech Republic on the basis of a permanent residence permit if the reason for the application is family reunion (Section 66 of the Foreign Nationals Act).

After four years of continuous residence, a permanent residence permit may also be issued at the request of a foreign national who is staying in the country as a temporary resident on completion of international protection proceedings, provided that the latest international protection proceedings have been pending for at least the last two years, subject to other statutory requirements (Section 67(1) of the Foreign Nationals Act).

A permanent residence permit is also granted if the applicant is a foreign national who is under 18 years of age or is unable to take care of himself because of a long-term adverse medical condition, or is alone and over 65 years of age (Section 67(2) of the Foreign Nationals Act), or in cases where, subject to the conditions referred to in subsection (1), the applicant is a foreign national who is a parent of a foreign national referred to in subsection (2) (or into whose care a foreign national referred to in subsection (2) has been placed by a decision of the competent authority), or is another direct relative of a foreign national referred to in subsection (2), on whose care this foreign national is dependent (Section 67(3) of the Foreign Nationals Act). Subject to the conditions described in subsection (1),

an application may also be submitted by a foreign national who is seeking this permit for other reasons worthy of special attention (Section 67(4) of the Foreign Nationals Act).

Besides permanent residence, foreign nationals may also stay in the Czech Republic temporarily, either on the basis of a visa, on the basis of a long-term residence permit or temporary residence permit, or on the basis of a departure order (which entitles them to a temporary stay in the country's territory for the period necessary to perform urgent tasks and to leave the country – Section 50(3) of the Foreign Nationals Act). In the absence of a visa, a foreign national may stay in the Czech Republic only where this is permitted under directly applicable legislation of the European Communities or under an international treaty on the abolition of visa requirements, or subject to other conditions stipulated by law (Section 18 of the Foreign Nationals Act).

For temporary residence purposes, the Foreign Nationals Act distinguishes between a short-term visa granted under directly applicable legislation of the European Communities and a long-term visa.

From the perspective of this study, a long-term visa is particularly important. This means a visa for a stay of over 90 days [*vízum k pobytu nad 90 dnů*] (Section 17b, set out in detail in Section 30 *et seq.* of the Foreign Nationals Act), a visa for a stay of over 90 days as exceptional leave to remain [*vízum k pobytu nad 90 dnů za účelem strpění pobytu*] (Section 33 *et seq.* of the Foreign Nationals Act) and a visa for temporary protection [*vízum za účelem dočasné ochrany*]. Visas for exceptional leave to remain are granted by the Police of the Czech Republic to foreign nationals if, beyond their control, obstacles prevent them from leaving or if their departure is not possible for reasons specified by law. A visa for temporary protection is granted to foreign nationals fleeing armed conflict, civil war or constant violence, subject to other statutory conditions (Act No 221/2003 on the temporary protection of foreign nationals).

Foreign nationals may also temporarily reside in the Czech Republic on the basis of a long-term residence permit. Applications for a long-term residence permit may be submitted by foreign nationals who are present in the country's territory on the basis of a visa for a stay of over 90 days and plan to reside temporarily in the country's territory for a period of more than six months, and the purpose of their stay remains unchanged. Applications for a long-term residence permit may also be submitted by foreign nationals who are present in the country's territory on the basis of a visa for a stay of over 90 days as exceptional leave to remain, subject to other statutory conditions (Section 42 of the Foreign Nationals Act). The Foreign Nationals Act also provides for the possibility of a long-term residence permit for the purpose of family reunification in the Czech Republic, study in the Czech Republic, protection in the Czech Republic, scientific research, and employment in special cases (the green and blue card system) - Sections 42a to 42j. Long-term residence permits may also be issued for exceptional leave to remain in the Czech Republic at the request of foreign nationals who have been granted a visa for a stay of over 90 days as exceptional leave to remain, subject to other statutory conditions (Section 43 of the Foreign Nationals Act).

Key provisions of the Foreign Nationals Act concerning identity papers can be found in Chapter IXa, which regulates conditions for the issue of residence permits. The Foreign Nationals Act defines a *residence permit as a public document issued to foreign nationals granted long-term or permanent residence in the Czech Republic*. Since 1 May 2011, resi-

dence permits have been issued in the Czech Republic as separate documents containing biometric data.

Under the Foreign Nationals Act, it is therefore possible to issue a residence permit that serves as an identity paper not only for a foreign national granted permanent residence, but also a foreign national with long-term residence. Under the reservation made to Article 27 of the Convention, however, it is possible to issue *identity papers* only to those stateless persons who have been granted permanent *residence*. In this respect, the text of the reservation narrows down the possibility for a stateless person to obtain an identity paper (subject to conditions under the Foreign Nationals Act), and contains a stricter condition than national legislation, which allows applicants with either permanent residence or long-term residence to obtain a residence permit. In the current situation, the practical application of the reservation would result in a situation where a stateless person would not be issued with an identity paper even if he possessed a long-term visa or long-term residence permit.

This is because the reservation incorporates two different steps: the issue of an identity paper and the acquisition of permanent residence. In reality, however, it only affects the issue of identity papers, not the acquisition of residency status in the Czech Republic, which the applicant must already have obtained, under the conditions laid down by national legislation, in order to apply for an identity paper. The reservation should not, however, impose more stringent conditions than those provided for in national legislation.

Based on the reservation to Article 28 of the Convention, a travel document may be issued to stateless persons who have been granted permanent residence in the Czech Republic in accordance with its national law. Those persons are issued with an “alien’s passport”, stating that the holder is a stateless person within the meaning of the Convention. Therefore, this reservation, like the reservation to Article 27, contains the condition of permanent residence. The same circumstances as those stated above for the reservation to Article 27 of the Convention apply to the acquisition of permanent residence.

The issuance of travel documents is governed by Chapter IX of the Foreign Nationals Act, according to which the Ministry of the Interior issues an alien’s passport under the following conditions:

- at the request of a foreign national who is staying in the territory of the Czech Republic on the basis of a permanent residence permit but does not possess a valid travel document, and proves that, against his will, he is unable to acquire such a document;
- at the request of a foreign national who is entitled to permanent residence under Section 87 (a foreign national placed into foster care by a competent authority);
- to a foreign national enjoying temporary protection under a separate piece of legislation who does not hold a travel document; and
- at the request of a foreign national who has been granted subsidiary protection under a separate piece of legislation but does not possess a valid travel document, and proves that, against his will, he is unable to acquire such a document (Section 113(7) of the Foreign Nationals Act).

In terms of content, the reservation to Article 28 of the Convention, or interpretative declaration, is therefore consistent with the provisions of the Foreign Nationals Act conditioning the issue of an alien’s passport on permanent residence.

In summary, to obtain the documents referred to in Articles 27 and 28 of the Convention, a stateless person must complete the following steps:

- obtain residency status (with both reservations requiring permanent residence) and thus legalize his stay in the Czech Republic;
- obtain identity papers;
- obtain an alien's passport.

In terms of the status of stateless persons, the fact that they *must have a travel document* which they have to produce (alongside other documents) and attach to an application for a residence permit or a visa application in order to be able to legalize their stay in the Czech Republic (in any form, even for the purpose of obtaining a visa) can be a major problem.

All foreign nationals (and hence, by law, stateless persons) are required to submit a travel document to enter the territory of the Czech Republic (Section 5 of the Foreign Nationals Act). If a foreign national does not possess a valid travel document, he is refused entry into the Czech Republic (Section 9 of the Foreign Nationals Act). Not only is a stateless person who does not have a valid travel document unable to apply for legalization of his stay, but he is also prevented from entering the Czech Republic legally.

The only option available to a stateless person without a valid travel document is to seek international protection – either asylum or the so-called subsidiary protection under Act No 325/1999 on asylum, as amended. Under that Act, a foreign national who has made a declaration on international protection may prove his identity either by means of a travel document or a solemn declaration (Section 3(4)). In this case, the right to asylum is at issue and the stateless person thus finds himself in the position of a refugee. This procedure, facilitated by the Asylum Act, therefore cannot be regarded as procedure in line with the Convention relating to the Status of Stateless Persons, as it is procedure covered by the Convention relating to the Status of Refugees.

At the same time, it should be noted that the mere fact that a person is stateless is no reason to grant international protection.

At present, a stateless person at the Czech border has therefore two options: either to proceed in line with the Foreign Nationals Act, which places him in the legal regime applicable to all foreign nationals, or to become a refugee and proceed in line with the Asylum Act.

Since the Convention relating to the Status of Stateless Persons was adopted primarily in order to address the legal status of stateless persons who are not refugees, these procedures cannot be regarded as a means of implementing the Convention.