



STATELESSNESS

Case Law Database

Czech Republic - A.K. and E.K. v. Ministry of Interior

The court stated that “not admitting applicants for statelessness status to an asylum seekers' accommodation centre is an unlawful action” and the applicants should be admitted to an accommodation centre until a decision is made on their applications for recognition as a stateless person. The case was argued based on an analogy with the asylum procedure, as the reference to stateless persons is currently in the Czech Asylum Act.

Case name (in original language) : A.K. a E.K. proti Ministerstvu vnitra

Case status: Decided

Case number: 5 A 168/2019

Citation: Czech Republic - A.K. and E.K. v. Ministry of Interior, 26.10.2020

Date of decision: 26/10/2020

State: Czech Republic

Court / UN Treaty Body: Municipal Court Prague

Language(s) the decision is available in: Czech

Applicant's country of birth: Russian Federation

Applicant's country of residence: Czech Republic

Legal instruments: 1954 Statelessness Convention, 1961 Statelessness Convention, International Covenant on Civil and Political Rights (ICCPR), Other international law

Key aspects: Access to social and economic rights, Protection, Residence permit, Stateless status and documentation, Statelessness and asylum, Statelessness determination

Relevant Legislative Provisions:

Czech Asylum Act, Nr.325/1999 Coll., 1954 Statelessness Convention, 1961 Statelessness Convention, International Covenant on Civil and Political Rights (ICCPR)

Legal arguments by the applicant

The applicants argued that the Ministry breached the law by not admitting them to the refugee accommodation centre. The applicants filed an application for stateless status determination while in detention and state that they should have been transferred to an open refugee accommodation centre after their application. The applicants further argue that they should have been accepted to the refugee accommodation centre after they arrived there by themselves, and repeatedly attempted to be admitted there after their detention period ended.

There is brief reference to stateless persons in §8/d Asylum Act, Nr.325/1999 Coll. Therefore, by analogy, stateless persons should have the same rights as asylum-seekers, including access to housing for asylum-seekers. This is in line with the 1954 Statelessness Convention and is also recommended in the UNHCR Handbook on Protection of Stateless Persons.

Legal arguments by the opposing party

The opposing party argues that housing rights for stateless persons cannot be inferred from the Asylum Act, an argument rejected by the court.

Decision & Reasoning

The court decided that:

1. The main question is whether there should be an analogy with the asylum procedure, especially §79/3 which guarantees housing for asylum-seekers. There is no dispute that the law does not specifically contain a provision on the right to housing for stateless persons. This is a gap in law which needs to be filled by analogy and is implicit in the Asylum Act. This is supported by the reasoning of the amendment to the Asylum Act, which introduced a provision into the Asylum Act stating the Ministry's competence on stateless persons. The amendment specifically states that there is no special procedure for stateless persons, and in deciding those applications the Ministry should use the mechanism of international protection procedures.
2. This is in line with the 1954 Statelessness Convention and is also recommended in the UNHCR Handbook on Protection of Stateless Persons, according to which the rights of stateless persons in the Statelessness Convention are formulated almost the same way as in the Refugee Convention and so it is advisable that the individuals awaiting the refugee status determination procedure have the

same standard of treatment as asylum seekers.

3. Further, it would be unjust if the Ministry could chose to apply only certain provisions of the Asylum Act and neglect other provisions. See also Czech Supreme Administrative Court of 12. 3. 2019, č. j. 4 Azs 365/2018 in which the Supreme Administrative Court applied an analogy with the Asylum Act, albeit in the context of identity documents of a stateless applicant.

The court stated that “not admitting applicants for statelessness status to an asylum seekers' accommodation centre is an unlawful action”.

The court further stated that “[the Ministry] is hereby prohibited to continue the breach of the applicants' right to housing in an accommodation centre, and is also ordered to enable the applicants to be housed in the accommodation centre until the entry in force of the decision on their application for statelessness status”.

Caselaw cited

Czech Supreme Administrative Court, Nr. 4 Azs 365/2018