

## UNHCR Comments to the draft amendment of the Residence of Aliens Act

On 5 October 2017, the Ministry of Interior of the Slovak Republic (hereinafter the “Ministry of Interior“) issued the Draft Act Amending the Residence of Aliens Act” (“draft Act”) no. 404/2011 Coll. on Residence of Aliens Act. The Office of the United Nations High Commissioner for Refugees (“UNHCR”) welcomes the opportunity to comment on the draft Act and would like to submit the following observations.

The Slovak Republic acceded to the 1954 Convention relating to the Legal Status of Stateless persons (“1954 Convention”) and the 1961 Convention on the Reduction of Statelessness (“1961 Convention”) in 2000. The Slovak Republic has made a reservation to Article 27 of the 1954 Convention which provides that 1954 Convention Identity Documents shall be issued only to those stateless persons who have been granted permanent or long-term residence.

### Proposed Article 45a § 1

In the proposed Article 45a § 1 a) the Ministry of Interior introduces the possibility to grant a permanent residence permit for 5 years to a stateless person with a possibility of renewal. While appreciating that the newly drafted provision is still in compliance with international obligations of the Slovak Republic and UNHCR guidelines,<sup>1</sup> UNHCR wishes to note that introduction of this provision will lead to a significant reduction of the protection space currently available for stateless persons in Slovakia. UNHCR would therefore recommend the Ministry of Interior to preserve Article 46 § 2 of the Residence of Aliens Act allowing the Ministry to grant permanent residence to stateless persons for an unlimited time.

### Proposed Article 45a § 2

The proposed Article 45a § 2 concerning the definition of a stateless person provides:

*“A stateless person is a person who is not considered as a national by any State under operation of its law. To prove this fact it is sufficient if such a person demonstrates his/her statelessness by certifying that he/she does not hold citizenship*

- a) of a country of his/her birth;*
- b) of the place of his/her previous residence or his/her stay;*
- c) of his/her parents or siblings.“*

While appreciating that the first sentence of the proposed provision is fully in compliance with Article 1 of the 1954 Convention, the second sentence goes beyond the scope of the definition contained in the 1954 Convention. UNHCR wishes to note that given the nature of statelessness, stateless persons are often unable to substantiate a claim with much, if any, documentary evidence.<sup>2</sup> As the proposed Article 45a § 2 lies the burden of proof entirely with the stateless person, it might be difficult in practice for a stateless person to demonstrate before the State’s authorities the points listed in a-c of the provision. In addition, there is currently no dedicated identification mechanism for stateless persons in place. Instead of proving the elements listed in a-c, UNHCR recommends establishing a proper statelessness determination

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<sup>1</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014, para 148, available at

[http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=53b676aa4&skip=0&query=Handbook%20on%20stateless\]](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=53b676aa4&skip=0&query=Handbook%20on%20stateless)

<sup>2</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014, para 90.

procedure which sets out the applicable procedural safeguards.<sup>3</sup> UNHCR stands ready to provide the Ministry of Interior with technical advice and support to establish such a procedure.

#### **Proposed Article 45a § 4**

In the proposed Article 45a § 4 the Ministry of Interior introduces the possibility to cancel a permanent residence, if the police authority finds out that the concerned person is not a stateless person. The introduction of a statelessness determination procedure would make the use of such a provision less likely and will prevent permanent residence permits from being granted to a person who is not stateless. UNHCR therefore wishes to encourage the Ministry of Interior to establish a statelessness determination procedure to facilitate the identification and protection of stateless persons.

**UNHCR RRCE**

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<sup>3</sup> UNHCR, Handbook on Protection of Stateless Persons, 2014, para 57 onwards. Also action 6 of the UNHCR Global Action Plan to end statelessness 2014-2024: <http://www.unhcr.org/54621bf49.html>