

## **Comparative Study on Statelessness Determination Procedure**

### **EXECUTIVE SUMMARY**

#### **Objective and Structure of the Research**

The Republic of Korea (hereafter "RoK") joined the 1954 Convention Relating to the Status of Stateless Persons (hereafter "1954 Convention") in 1962. However, no action was taken for almost 60 years to implement the provisions of the 1954 Convention into domestic legislation. Various policies will need to be amended to guarantee the status and rights of stateless persons as stipulated in the 1954 Convention; the most urgent task being the introduction of a 'Statelessness Determination Procedure (hereafter "SDP").' To protect the rights and legal status of persons under the 1954 Convention, a procedure for recognizing statelessness by the Contracting State is foremost required. With this perspective, this research set out to design and recommend an SDP appropriate in the context of RoK. To this end, the research first examined the cases of France, the United Kingdom, and Moldova, which have SDPs, and cases of Germany, the United States, and Australia, which do not have separate laws for SDPs or the protection of stateless persons. Thereafter, this research analysed the necessary considerations in designing an SDP according to the following categories: structure, accessibility, procedure, determination, administrative and judicial appeal, and status. The research attempted to examine the 1954 Convention, international human rights laws, good practices from other States, the UNHCR Statelessness Handbook, and existing RoK legislations from various angles. Based on the above analysis, this research proposes the introduction of certain legislative provisions for SDP. Major components are as follows.

#### **The legislative structure and the competent authority**

To ensure fairness, transparency, and clarity, SDP needs to be prescribed by law. It would be desirable to enact an independent legislation that regulates the recognition procedure and the status of stateless persons; however, it is also possible to consider amending the existing laws such as the Refugee Act, the Nationality Act, and the Immigration Act. To ensure consistent interpretation and application of the definition of stateless persons and to enhance the caseworker's capacity, it is necessary to designate the Minister of Justice as the single competent authority for SDP in a centralised manner. The issue of accessibility for non-nationals living outside of Seoul can be solved by allowing local immigration offices to receive applications.

### **Initiation of the procedure**

Considering the vulnerability of stateless persons, it is necessary to initiate SDP not only upon the request of stateless persons but also *ex officio*. Nevertheless, the procedure requires the consent of the concerned persons, as their wish must be respected. Requirements of legal stay or time limits to applications violate the 1954 Convention; therefore, no additional conditions or restrictions other than presence in RoK are required. A status shall be granted to the person until the procedure is completed in order to ensure fair and effective SDP. In relation to refugee status determination (hereafter "RSD") procedures, this research proposes the prioritization of RSD in order to ensure that the prohibition on the sharing of applicant's information with the home country contained in the Refugee Act is respected and SDP proceeds upon the completion of procedures related to RSD.

### **Determination**

It is recommended that personal interviews be mandatory and recorded in the form of interview transcripts. To ensure the accuracy of the interview transcript, verification of the transcript at the end of the interview, as well as audio and video recording of the interview is necessary. In principle, the procedure shall be limited to 6 months, but can be extended by another 6 months in unavoidable cases. Throughout the procedure, including the interview, interpretation shall be provided so that any supporting information could be accurately provided. The applicant can be assisted by legal counsel through legal representation, accompanying the applicant's interview, or submitting opinions or supporting materials. The burden of proof shall be shared between the applicant and the administrative agency, and the administrative agency has an obligation to actively collect and utilize information in favour of the applicant. In consideration of the particularity and difficulty of proving statelessness, a presumptive provision was included. For the protection of minors, a guardian must be present when interviewing them.

### **Decision**

The decision on SDP shall be notified in writing, and in case of non-recognition, the reasons for non-recognition shall be included. If the applicant cannot understand Korean, the decision shall be translated into a language the applicant can understand. Administrative and judicial appeal procedures shall be guaranteed for non-recognition decisions.

## **Treatment**

Referring to the current law on refugees, the research recommends that an initial 3 years of stay for recognized stateless persons and 6 months for applicants be given, which can be subsequently renewed until the basis for granting status ceases. For recognized stateless persons, the proposed provision explicitly stipulates that the application of the 1954 Convention takes precedence over other domestic laws on the status of non-Koreans and exempts them from reciprocity requirements. Recognized stateless persons shall be issued with travel documents, and they shall enjoy the same right to work, social security, and education as recognized refugees. Considering the spirit of the 1954 Convention to facilitate the naturalisation of stateless persons, recognised stateless persons shall have access to simplified naturalisation procedure which requires 3 years of residency. Considering that the right to family reunification under the current Refugee Act is somewhat limited, scope of family was defined widely. For applicants, provisions on limiting detention, living support, work permit, medical and housing support, and right to education were included to ensure a certain level of treatment until the end of the SDP.