

Legal opinion

The text below is a legal opinion respectfully submitted and prepared by the Consuls of the Anti-War Committee and the Russian anti-war diaspora in the Czech Republic regarding the introduction of the Parliamentary Print no 727 into the Act No 65/2022 colloquially known as “Lex Ukraine”, and specifically about the resolution to include Sections 7x and 7y, as suggested by the Committee on Security on 06 September 2024.

The aim is to underline the limitations of the Resolution, any and all potential legal complications arising from it as well as explain the procedure of renunciation of the citizenship of the Russian Federation and the complications it entails.

The opinion is true at the time published, and is a joint effort between those directly affected as well as independent legal experts. Should any facts relevant to this opinion change at any time, the writers undertake to amend the opinion as well as to promptly inform the intended recipients of this opinion.

The Legal Opinion is structured as follows:

1. Summary of facts;
2. Legal analysis;
3. Summary of the procedure of renunciation of the citizenship of the Russian Federation and legal commentary;
4. Test of Conformity of the Amendment to the existing Constitution;
5. Conclusion;
6. Annexes.

PART 1 - SUMMARY OF FACTS

Shortly after the outbreak of the war in Ukraine the Czech Republic has received a vast number of Ukrainian refugees. Due to the existence of a strong Ukrainian community as well as geographical proximity hundreds of thousands of Ukrainians sought refuge in the Czech Republic.

In order to respond to the influx of refugees, the Czech Parliament adopted act No. 65/2022 Coll., on several measures in relation to the military conflict in the territory of Ukraine caused by the invasion of the armed forces of the Russian Federation (the “**Act**”).¹ The Act is widely known under its popular name “Lex Ukraine”.

The Act has been amended several times, also in connection with the decision of the EU to grant temporary protection to the Ukrainian refugees.² At this moment, the Act regulates the following matters (see Section 1 of the Act):

- (a) conditions for granting the temporary protection to the citizens of Ukraine following the decision of the Council (EU) 2022/382,*
- (b) provision of accommodation and related services to the persons with temporary protection;*
- (c) assisted voluntary return;*
- (d) special rules for provision of health services; and*
- (e) registration of motor vehicles with Ukrainian plates.*

The Act does not deal with any matters related to Russian citizens. Measures aimed to restrict Russian nationals in connection with the war in Ukraine (such as the introduction of a national sanction list, ban on issuing visas to Russian nationals etc.) have been dealt with by other acts or legislative instruments.

On June 12, 2024, the Czech Government passed to the Chamber of Deputies (the lower chamber of the Czech Parliament) a legislative proposal for an act amending the Act, which shall introduce additional changes to the Act. The proposal is registered as Parliamentary Print No. 727 (the “**Proposal**”).³

The Proposal provides a number of technical changes to the existing matters. On top of it, it widens the scope of application of the Act, providing a new “special long-term permit” for the Ukrainian refugees, providing a framework for allowing them to assimilate as standard immigrants.

¹ Its current consolidated version (in Czech) can be seen e.g. here: <https://www.zakonyprolidi.cz/cs/2022-65>

² See the Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection

³ All relevant documentation to the Proposal from the Chamber of Deputies available here: https://www.psp.cz/sqw/historie_sqw?o=9&t=727

The first reading of the Proposal took place on June 25, 2024 and was sent to the respective parliamentary committees.

On September 6, 2024, the Committee for Security passed a resolution, (i) recommending the Proposal for adoption and (ii) proposing an amendment restricting the Russian nationals from acquiring dual Czech-Russian citizenship (according to the general rule, Czech law allows everyone to have two or more citizenships) (the “**Amendment**”). The English translation of the resolution of the Committee for Security is attached as Annex No. 1 hereto.

According to the Amendment a new Section 7x shall be added to the Act, according to which Czech citizenship can be granted to a Russian citizen only on the condition that the applicant has renounced the citizenship of the Russian Federation.

There are only a limited number of exceptions for this condition, namely for

- (i) asylum holders;
- (ii) pursuant to Section 16 of the Czech Republic Citizenship Act (granting of citizenship for merits scientific, educational, cultural or sport merits); and
- (iii) pursuant to Section 28 of the Czech Republic Citizenship Act (granting of citizenship to a child, whose mother is not a Czech citizen, whereas she and a Czech male citizen make a joint declaration that he is the father of the child).

This list of exceptions is exhaustive. It can be observed that these exceptions have very little room for application and there will be an extremely limited number of those who will be able to enjoy them, regardless of the number of years spent in the Czech Republic, level of their economic, social or family integration in the society, their political views or even their activity against the Russian regime.

For instance, as the Czech Republic is very strict in their asylum policy. For instance, in 2023 the Czech authorities granted asylum in only 8 cases out of 108 cases concerning Russian nationals.⁴ Accordingly, there is an extremely small number of asylum seekers who receive Czech citizenship in practice – 8 persons in the past five years (2019-2023). Similarly, there is a very small number of persons who receive citizenship for merits – approximately 10 persons (from whole world, not only Russia) per year.

Moreover, Section 7y provides that motions for granting of Czech citizenship would not be considered at all and respective proceedings would be suspended until Section 2 the term of the Act expires. The exceptions from the rule provided by Section 7y are the same as in case of Section 7x.

⁴ See the official statistic data in the website of the Czech Ministry of Interior here: <https://www.mvcr.cz/clanek/souhrnna-zprava-o-mezinarodni-ochrane-za-rok-2023.aspx>

PART 2 - LEGAL ANALYSIS

We respectfully submit that the Amendment can be considered doubtful in several aspects, and shall benefit from an exhaustive legal analysis.

It is our expert opinion that on several occasions, the Amendments were prepared contrary to the Legislative Rules of the Government (the „**Legislative Rules**“).⁵

1. The Amendment is a „legislative rider“⁶

Firstly, the Amendment is contrary to Art. 39(4) of the Legislative Rules, according to which „*[t]he same act, including an act amending another regulation cannot govern different matters, which are not immediately connected to each other.*“

As mentioned above, the Act has always dealt only with matters related to Ukrainian refugees, such as rules of temporary protection, provision of different services to them or registration of the vehicles they brought from Ukraine to the Czech Republic.

The Proposal, as prepared by the Ministry of Interior, did not have any ambition to extend the application scope of the Act. It only provided certain necessary technical changes and introduced a new system for long-stay permits for the Ukrainian refugees.

Neither the Act nor the Proposal have ever regulated matters related to citizenship and/or legal status of Russian citizens residing in the Czech Republic. For instance, there has been a rule since 2022 prohibiting Czech consulates to accept visa requests from the citizens of the Russian Federation or Belarus – however, this rule has never been included in the Act, but instead governed by different regulations – now by the governmental decree No. 55/2024 Coll.⁷

If the Amendment is adopted and becomes a part of the Czech legal system, there will be serious doubts regarding the conformity of the procedure of its adoption. In essence, the Committee for

⁵ Full text see here: <https://vlada.gov.cz/assets/jednani-vlady/legislativni-pravidla/Legislativni-pravidla-vlady-s-prilohami-platna-od-1--unora-2023.pdf>

⁶ For explanation of this term, see e.g. here [https://en.wikipedia.org/wiki/Rider_\(legislation\)#PL_ÚS_77/06:_Legislative_Riders](https://en.wikipedia.org/wiki/Rider_(legislation)#PL_ÚS_77/06:_Legislative_Riders)

⁷ See here: <https://www.zakonyprolidi.cz/cs/2024-55>

Security proposed the Amendment on a completely different matter which had little to do with the original text of the Proposal. As a result, the proposers skipped the first reading in the Chamber of Deputies and did not allow the Government (more specifically, the Legislative Council of the Government) to give its position on this matter.

Applicable in this case is the judgment of the Czech Constitutional Court **Pl. ÚS 77/06**, in which the Constitutional Court considered the conformity of an amendment to an act on termination of the National Property Fund, which did not deal with the fund at all, but provided changes to the Bank Act related to the Deposit Insurance Fund. The Constitutional Court derogated the amendment with the following reasoning:

*„The Constitution requires to construe provisions allowing presentation of amendments to a legislative proposal only in a way that the amendments really changes the regulation at hand. This means that in accordance with the requirements of the so-called close-relation rule, according to which an amendment must concern the same subject-matter that is being debated, the respective amendment shall not step outside the limited space defined for the amendments by going excessively beyond the subject-matter of the legislative proposal. This is, in view of the Constitutional Court, in accordance with the proper interpretation of the beginning of Section 63(1) of the act No. 90/1995 Coll., the rules of procedure of the Chambers of Deputies.⁸ This requirement was not, in view of the Constitutional Court, fulfilled. This resulted in a breach of the rules on division of powers, with consequences for principles of creation of harmonic, clear and predictable law, which the Constitutional Court has connected with the attributes of a democratic legal state and rules of law, **circumventing the rules of legislative initiative pursuant to Art. 41 of the Constitution of the Czech Republic** and breach of the right of the Government to give its statement to the proposal pursuant to Art. 44 of the Constitution of the Czech Republic*

Having considered the content and the purpose of the original proposal, as well as the respective amendment the Constitutional Court concluded that the content and purposes of both are radically different. For this reason only, it was necessary to conclude that the amendment stepped beyond the limited space defined for amendments. In other words, it was an amendment perhaps only within a formal sense, but not materially.

In a material legal state, an act (in the formal meaning) cannot be considered as a mere carrier of different changes introduced throughout the legal system. On the contrary, the legal state, seen materially, requires an act to be a foreseeable and consistent source of law, both in its form and in its content.”

With regard to the above, it can be reasonably objected that the Amendment to the Proposal cannot be adopted (and if adopted, it must be revoked by the Constitutional Court), as both the Act and

⁸ Section 63 odst. 1 of the Rules of Procedure of the Chamber of Deputies “ „A deputy may table proposals to the debated matter. **They shall concern a specific issue of the debated matter** and it must be clear what the Chamber shall decide upon.”

the Proposal deal with the status of Ukrainian refugees. It does not deal with matters of acquiring Czech citizenship nor with the legal status of Russians.

The only connection that these matters have is that Ukrainian refugees and Russian long-term residents in the Czech Republic applying for citizenship are nationals of both sides of the Ukrainian conflict. This, however, barely suffices, to satisfy the requirements set out by the Constitutional Court.

Also, as pointed out in the judgment above, if members of the Committee for Security have an ambition to table such a proposal, **they are free to present it as a separate legislative proposal** at any time. This course of action will allow (i) the Chamber of Deputies to hold first reading on this matter and (ii) the Government to give its position on such a proposal.

It is noteworthy that the fact that the Amendment is a legislative rider was **expressly confirmed by Mr. Martin Exner, the deputy-reporter of the Committee on Security**, in one of his public appearances. In a political debate with an opposition politician, Ms. Gabriela Svárovská (Green Party), held in the public radio channel Český rozhlas Plus on October 2, 2024,⁹ he said the following: “Well, since this is, of course, a matter of time, we were looking for a certain carrier which could carry it, and I do not think completely that it is a legislative rider, because this act is called ‘on several measures in relation to the military conflict in the territory of Ukraine caused by the invasion of the armed forces of the Russian Federation.’ And, well, this is one of the measures, so we used the fact that this act is going to be approved and tabled it as an amendment. And, of course, if it was tabled separately, then it is clear to everyone who knows parliamentary procedures that this could easily take six or nine months.”

Such an interpretation is obviously absurd for several reasons. Firstly, the lack of time cannot justify circumventing the parliamentary procedure. The Rules of Procedure of the Chamber of Deputies provides a special regime of legislative urgency for extraordinary situations, where state security or other values can be jeopardized, in which legislative proposals cannot be adopted in expedited manner.¹⁰ Secondly, such an interpretation paves a way for implementing a number of other changes, circumventing the standard legislative process. In such a way, immigration laws, regulations of Czech armed forces, public procurement rules for military tenders, energy regulations, crisis management laws, state budget, and a wide range of other laws could potentially be changed without a proper legislative process, being presented as another measure in connection with the armed conflict in Ukraine

⁹ See link here: <https://plus.rozhlas.cz/cesky-pas-vymenou-za-rusky-neni-diskriminace-tvrdi-stan-tento-navrh-problem-9324914>

¹⁰ See Section 99 et seq. of the Rules of Procedure of the Chamber of Deputies, available e.g. here: <https://www.zakonyprolidi.cz/cs/1995-90#f1609383>

2. Infinite validity of Section 7y

Section 7x of the Amendment provides a new rule that Czech citizenship can be granted to a Russian Federation citizen only on the condition that the applicant has renounced the citizenship of the Russian Federation.

Put simply, it does not prohibit citizens of the Russian Federation to acquire Czech citizenship, but only on the condition that they renounce the Russian citizenship, and provide evidence of the same.

Section 7y of the Amendment introduces a rule that if a Russian citizen files a motion for granting of Czech citizenship, the proceedings shall be suspended once the application is delivered to the Ministry of Interior; in other words, the ministry will not consider it at all. It is also provided that the proceedings will continue as soon as Section 2 of the Act expires. According to the existing wording of the Act, Section 2 shall expire on March 31, 2025, i.e. on the date when the temporary protection of Ukrainian refugees shall expire.¹¹

Struggling, we see the following logic to both amendments

- The temporary protection for the Ukrainian refugees will remain in force at least until the end of the active phase of the Ukrainian war; and
- As long as active phase of the Ukrainian war continues, it will be (for whatever – so far unexplained – reason) a security risk to grant citizenship to long-term Russian residents of the Czech Republic; and
- After the active phase of the Ukrainian war ends, it will be possible to start considering the applications for citizenship, but since the Russian regime is the clear aggressor, punitively, the Russian applicants will have to decide between citizenships and cannot have both.

We base the above logic on the public statements of Martin Exner, who has repeatedly said that he is proposing a time-limited measure. However, we find this statement to be without merit.

Firstly, the requirement for waiving Russian citizenship before acquiring the Czech one is not limited in any way and there is no visible attempt to limit it by a certain period of time (see Section 7x).

Secondly, Section 7y shall also remain in effect indefinitely, which seems to be a legislative oversight.

Section 7y(2) provides that the proceedings on a motion for granting of Czech citizenship to a Russian citizen (previously suspended pursuant to Section 7y(1)) will continue on the day following the day Section 2 of the Act expires, relying on the existing provision of Section 9(2) of the Act,¹² according to which the term of Section 2 of the Act shall expire on March 31, 2025.

¹¹ But will likely be prolonged by the EU authorities

¹² Section 9 (2): „Provisions of Sections 1-5a(1), Sections 5a(3)-6(10) and Sections 6(14)-8 shall expire on March 31, 2025.

However, there has been a failure to consider that one of the changes introduced by the Amendment as a whole is that Section 9(2) shall be canceled, thus making the Act valid and effective as a whole for an unlimited period of time. Consequently, effectiveness of Section 2 is also not limited in any way and the proceedings on granting Czech citizenship to Russian citizens will not be considered *ad infinitum*.

3. Objections on merits

We submit that The Amendment is in direct contradiction to the Constitution of the Czech Republic not only for formal reasons, but especially on the merits.

The Russian citizens applying for Czech citizenship are persons who have been permanently residing in the Czech Republic for approximately 10 years, as per the Czech Legislation.¹³ There are very few shortcuts to obtain Czech citizenship; e.g. there is no possibility to receive resident permit or citizenship in an expedited consideration of the matter based upon monetary investment in the Czech Republic. Moreover, the Czech Republic has decided to stop issuing visas to Russians and Belorussians since March 2022; therefore, there has been none or very little new influx of Russians to the Czech Republic.

The Czech Republic already has strict conditions for granting citizenship. There is **no legal right** to receive Czech citizenship (Section 12 of the Czech Republic Citizenship Act), and there are limited possibilities for appeal or judicial review of a negative decision. The applicants are considered very rigorously, and the usual term for the consideration of an application is about 1,5 years.¹⁴ Pursuant to Section 22(3) of the Czech Republic Citizenship Act a mandatory part of the proceedings is having a clean criminal record and positive statements from the Czech Police and Czech intelligence services.

Therefore, citizens of the Russian Federation seeking to receive Czech citizenship are persons, who have been living in the Czech Republic for a considerable time period and who wish to receive equal rights as the rest of the natural population. Many of them have been struggling with issues related to their citizenship, e.g. for instance, there has been a consistent problem with regulated entities such as banks, as they have been closing bank accounts belonging to or affiliated with Russian citizens on a regular basis with reference to AML regulations. Young Russian sports athletes that seek to receive Czech citizenship to pursue their careers - they can represent neither the Czech Republic (for the lack of citizenship) nor Russia (for Russia being excluded).

Even if we put aside the above-mentioned regulation under Section 7y which prohibits not only dual citizenship, but considering the motions at all, the Amendment causes

¹³ For more details please see Section 14 of the Czech Republic Citizenship Act.

¹⁴ The statutory term of 180 days pursuant to Section 23(1) of the Czech Republic Citizenship Act is being constantly ignored by the Ministry of Interior.

- **unjustified inequality between the Russian citizens residing in the Czech Republic and other foreigners in the Czech Republic; and**
- **unjustified inequality between categories of persons seeking to acquire dual Czech-Russian citizenship.**

4. Discrimination, inequality

Expanding on the above, we submit that the Amendment is an unjustified discrimination against the citizens of the Russian Federation, in a stark contrast to citizens of any other other countries who may acquire citizenship without any limitation.

Pursuant to Art. 1 of the Czech Charter of Fundamental Rights and Freedoms (constitutional act No. 2/1993 Sb., the “**Charter**”) the people are free and equal in rights.

Pursuant to Art. 3(1) of the Charter “***Fundamental rights and freedoms are guaranteed to everyone regardless of sex, rase, color of skin, language, faith and religion, political or other views, national or social origin, nationality, ethnicity, property, family or other status.***” Further pursuant to Art. 42(2) of the Charter “*Foreigners shall enjoy in the Czech and Slovak Federative Republic the human rights and fundamental freedoms guaranteed by the Charter, unless they are expressly guaranteed to the citizens.*”

We note that the Amendment will also constitute a violation of the guaranteed rights and freedoms as it directly discriminates against the Russian nationality and ethnicity, placing Russian nationality at a distinct disadvantage compared to other nationalities when it comes to the freedom of obtaining Czech citizenship.

Although the citizenship is not expressly mentioned in the list of characteristics, regarding which discrimination is forbidden,¹⁵ citizenship **can also be, in certain circumstances, one of the personal characteristics, for which discrimination is not allowed.** According to case law of Czech Constitutional Court or the European Court for Human Rights (the “**ECHR**”) the list of these characteristics is not exhaustive, which is expressed at the end of the sentence (“*other status*”).

See e.g. resolution of the Constitutional court case No. I. ÚS 3271/13, which defines “other status” in a way that it must “***concern any personal characteristics, which, as a rule, cannot be influenced (e.g. sex, race), or it must be reasons based upon personal choices reflecting the personal features of each of us, such as religion or political views.***” Since everyone is born with a certain citizenship and a change of citizenship is usually conditional upon fulfillment of a number of criteria (including a very long period of stay in the territory of the country, citizenship of which

¹⁵ And foreign citizens can, indeed, be treated differently. For instance, Czech Republic does not need to allow foreigners - citizens of certain states – to enter the country or make entry subject to receiving a visa. There may be different rules to acquire certain assets or hold certain positions.

is to be acquired), citizenship can be considered as “*other status*” within the meaning of Art. 3(1) of the Charter.

Illustrative are e.g. conclusions of the Supreme Administrative court in the case No. **2 As 43/2018**.¹⁶

*[23] In the judgment No. 2 As 338/2016-27, the Supreme Administrative Court pointed out the regulations which provide citizenship as one of the reasons for discrimination (act No. 262/2006 Coll. Labour Code, as of July 29, 2017, and act No. 435/2004 Coll., on employment, as of July 20, 2017), although they had not yet provided this discrimination reason at the time of decision. It is necessary to point out at this moment that citizenship is currently also a discrimination reason according to the Antidiscrimination Act. **Citizenship as a discrimination reason is also possible pursuant to Art. 3(1) of the Charter and Art. 14 of the European Convention on Human Rights (the “Convention”), as neither of these documents contain an exhaustive list of discrimination reasons. Case law of the European Court of Human Rights can be helpful, as it has repeatedly declared a breach of ban on discrimination pursuant to Art. 14 of the Convention on the basis of citizenship [see e.g. judgment of the European Court of Human Rights of September 16, 1996 in the case Gaygusuz v. Austria (No. 17371/90), judgment dated February 18, 2009 in the case Andeyeva v. Latvia (No. 55707/00) or judgment dated September 30, 2009 in the case Koua Poirrez v. France (No. 40892/98).***

And the further conclusions of the Constitutional Court in the judgment case No. **II. ÚS 3212/18**, which decided on the constitutional complaint against the above-mentioned judgment of the Supreme Administrative Court.

*24. In this case the complainant received a fine pursuant to Section 6 of the Consumer Protection Act, according to which “[t]he seller may not, when selling goods or providing services, discriminate against a consumer. Majority of the conclusions made by the Supreme Administrative Court in the interpretation of this provision the Constitutional Court considers correct and the quality of the argumentation is significantly above standard. The difference of opinions of the Constitutional Court and the Supreme Administrative Court rests “only” in the values, i.e. with a different accent on some basic values. **Therefore, the Constitutional Court fully agrees with the general principle that there is a breach of the principle of equality, if different subjects in the same or similar situation are treated differently without objective and reasonable reasons for a different approval, i.e. unless difference in treatment does not follow a legitimate goal and if the used means are not proportionate to the objective. The Supreme Administrative Court also made a correct conclusion that the absence of the criterion of citizenship as a forbidden reason of***

¹⁶ This case started with a fine imposed by the Czech Commercial Inspection to an entrepreneur, who made provision of accommodation services to citizens of Russian Federation conditional upon signing of an affidavit that they disagree with the occupation of Crimea. In this decision the administrative courts decided that the fine was imposed in accordance with law, as it was unjustified discrimination of Russian citizens. The decision of the was later cancelled by the Constitutional Court, however for a completely different reason. The Constitutional Court agreed with the Supreme Administrative Court that there may be discrimination on the basis of citizenship. However, it concluded that in this specific situation (the Russians could have signed the affidavit or seek accommodation or catering services in any different hotel in the region which did not require such actions) the entrepreneur’s right to speech (to present its political views on the occupation of Crimea and breach of international law, especially to Russians) prevailed.

discrimination in the Antidiscrimination Act (Section 2(3)) does not mean that it is not possible to discriminate against for exactly this reason. There may be a discrimination if a foreigner is treated differently with an explanation that it is a foreigner, but this distinguishing has no legal basis (see also Boučková/Havelková/Koldinská/Kühn/ Kühnová/Whelanová: Antidiskriminační zákon. Komentář, 1. vyd. Praha: C. H. Beck, 2010, page. 59). The Constitutional Court also fully respects the “discrimination test” following from the case of the European Court of Human Rights (see eg. Bobek/Boučková/Kühn (eds.): Rovnost a diskriminace. Praha: C. H. Beck, 2007, page. 163), according to which when considering complaints pursuant to Art. 14 of the Convention on protection of human rights and fundamental freedoms the court shall consider whether: (1.) the objected breach of Art. 14 falls within the ambit of any other rights guaranteed by the Convention (ambit test), (2.) if there was a difference in treatment, (3.) the treatment in question pursued a legitimate aim, (4.) the measures taken were proportionate to the legitimate aim (test of proportionality) and finally whether (5.) The different treatment went beyond the state's margin of appreciation. It is – among others – clear that not any different treatment is considered as discrimination, but only if it is not rationally explained.

Also, as it follows from the constant case law, the Constitutional Court applies the following direct discrimination test to consider whether the contested measure led to discrimination. As one of many examples see point 45. of the judgment **Pl. ÚS 31/13** or the cited older case law of the Constitutional Court or the European Court of Human Rights.

45. In order to assess whether there has been unequal treatment between same or comparable individuals or groups, the Constitutional Court applies the direct discrimination test, which consists of the following questions: **1. Are there comparable individuals or groups?; 2. Are they treated differently on the basis of one of the forbidden reasons?; 3. Is this different treatment to the detriment of the affected individual (by imposing a burden or denying any good)?; 4. Is this different treatment justifiable, i.e. does it follow a legitimate interest and b) is it proportionate?** [see judgment dated October 16, 2007 case No. Pl. ÚS 53/04 (N 160/47 SbNU 111; 341/2007 Sb.), article 29; judgment dated April 30, 2009, case No. sp. zn. II. ÚS 1609/08 (N 105/53 SbNU 313), as amended by the resolution dated July 9, 2009, sp. zn. II. ÚS 1609/08; judgment dated December 1, 2009, case No. Pl. ÚS 4/07 (N 249/55 SbNU 397; 10/2010 Sb.); judgment dated January 28, 2014, sp. zn. Pl. ÚS 49/10 (44/2014 Sb.), available also at <http://nalus.usoud.cz>, article 34, judgment of the grand senate of the European Court of Human Rights dated November 13, 2007 in the case No. 57325/00 – D. H. v. the Czech Republic; judgment of the grand senate of the European Court of Human Rights dated March 16, 2010 in the case No. 42184/05 – Carson v. the United Kingdom, article 61]. It also follows from the case law of the European Court of Human Rights that a different treatment also follows from its reason. While different treatment due to race, ethnical origin, sex, sexual orientation, nationality or child's origin it is necessary to present very good justification [see e.g. judgment dated June 21, 2011 in the case No. 5335/05 – Ponomaryov and other v. Bulgaria (nationality); the above-mentioned judgment D.H. v. the Czech Republic (rase) or judgment dated November 16, 2004 in the case No. 29865/96 – Ünal Tekeli v. Turkey,

article 53 (sex)], in case of other reasons the review of the European Court of Human Rights is less intense. In this regard, it is possible to add a fifth step of the direct discrimination test, i.e. distinguish the level of “suspicion” of the reason for different treatment, which determines the intensity of the judicial review by the court (judgment case No. Pl. ÚS 49/10, art. 34).

PART 3 - SUMMARY OF THE PROCEDURE OF RENUNCIATION OF THE CITIZENSHIP OF THE RUSSIAN FEDERATION

On March 19, 2004, the Czech Republic ratified the European Convention on Citizenship of 1997. Since July 2004, the Convention has been in effect in the territory of the Czech Republic.

According to Article 16 of the aforementioned Convention, the participating state must not condition the acquisition or retention of its citizenship on the renunciation of another citizenship or its loss, if such renunciation or loss is impossible or cannot be reasonably demanded.

Therefore, to decide on the possibility or impossibility of renouncing or losing citizenship, an analysis of the current legislation of the Russian Federation is necessary.

1. Governing law

The procedure for renouncing the Russian citizenship is regulated by paragraph 1 of part 1, part 2 of Article 22, Article 23, and other provisions of the Federal Law of April 28, 2023, No. 138-FZ "On Citizenship of the Russian Federation" (hereinafter referred to as the **Citizenship Law**) and the "Regulation on the Procedure for Considering Citizenship Issues of the Russian Federation," approved by the Decree of the President of the Russian Federation dated November 22, 2023, No. 889 (hereinafter referred to as the **Regulation**).

Matters of citizenship, according to paragraph "a" of Article 89 of the Constitution of the Russian Federation, fall under the competence of the President of the Russian Federation. Decisions on the termination of citizenship for individuals outside the Russian Federation are made by the Ministry of Foreign Affairs of Russia or by diplomatic missions or consular establishments (part 2 of Article 22, part 2 of Article 23 of the Citizenship Law).

According to paragraph 4 of Article 30 of the Citizenship Law, diplomatic missions and consular establishments accept and consider applications for renunciation of citizenship of the Russian Federation submitted from abroad. According to paragraph 7 of Article 30 of the Citizenship Law, they make decisions on the termination of citizenship of the Russian Federation based on the grounds provided in paragraph 1 of part 1 of Article 22 of the law.

In addition, in accordance with paragraph 9 of Article 30 of the Citizenship Law, they verify the information provided by the applicant when submitting the application regarding citizenship of the Russian Federation and the documents presented, and if necessary, request and obtain additional information from the relevant state authorities and organizations, including information that constitutes bank, tax, or other legally protected secrets.

According to paragraph 94 of the Regulation, diplomatic missions and consular establishments of the Russian Federation, within their competence, make decisions on applications based on the

results of checks of the information contained in the applications and the documents submitted alongside them, and their compliance with the grounds, requirements, and conditions provided by the Federal Law, including checks conducted by the Ministry of Internal Affairs of Russia or its territorial bodies, as well as checks carried out by the Federal Security Service of Russia (paragraph 96 of the Regulation).

Applications for which decision-making is assigned to the competence of diplomatic missions and consular establishments of the Russian Federation and which are submitted from abroad are sent by the diplomatic missions and consular establishments of the Russian Federation to the Ministry of Foreign Affairs of Russia for the organization of necessary checks carried out by the Ministry of Internal Affairs of Russia, its territorial bodies, and the Federal Security Service of Russia (paragraph 98 of the Regulation).

In the event of identifying facts indicating the presence of grounds for rejecting applications for renunciation of citizenship of the Russian Federation as provided in paragraphs 1 and 3 of part 4 of Article 23 of the Federal Law, the Federal Security Service of Russia and territorial security bodies send a conclusion about this to the authority responsible for citizenship matters of the Russian Federation, from which the application was submitted, along with the accompanying documents for verification (paragraph 104 of the Regulation).

Decisions to reject applications are made by the authorities responsible for citizenship matters of the Russian Federation, taking into account the results of the checks conducted, including based on information received in written and/or electronic form from state information systems and resources, from government bodies, organizations, and applicants, as well as taking into account the position of the authority whose approval is necessary for making a decision on citizenship matters of the Russian Federation in accordance with the requirements of the Federal Law (paragraph 119 of the Regulation).

The citizenship of the Russian Federation is terminated from the day the relevant decision is made by the authority responsible for citizenship matters of the Russian Federation (part 5 of Article 39 of the Citizenship Law).

2. Exceptions

According to part 4 of Article 23 of the Citizenship Law, renunciation of citizenship of the Russian Federation is not permitted for certain categories of individuals, outlined below.

2.1. Individuals who have an obligation to the Russian Federation, a subject of the Russian Federation, or a municipal formation that has not been fulfilled, as established by federal law, law of the subject of the Russian Federation, or regulatory legal act of the representative body of the municipal formation, concerning the payment of duties, taxes, fees, or fines, or any other

obligation that has not been fulfilled towards the Russian Federation, as established by federal law, cannot renounce citizenship.

As can be seen from this provision, the list of grounds for refusing to renounce citizenship is open-ended and undefined, as the list of "obligations to the Russian Federation" may be supplemented by newly adopted federal laws or by interpreting existing federal laws. Currently, such obligations include not only those related to the payment of duties, taxes, fees, and fines but also the obligation to defend the homeland (military duty).

It is important to note that the certificate from the Federal Tax Service confirming the absence of debt and the certificate from the Federal Bailiff Service confirming the absence of enforcement proceedings are not proof of the absence of an obligation to "pay duties, taxes, fees, or fines." According to paragraph 9 of Article 30 and part 2 of Article 31 of the Citizenship Law, the collection of information about citizens of the Russian Federation is carried out by authorities responsible for citizenship matters by obtaining the specified information from state bodies, local government bodies, and organizations of the Russian Federation or foreign states. Specifically, the existence of a fine (of which the applicant may not be aware) can be revealed during the monitoring of judicial and other services or from other sources, which can serve as grounds for refusing to renounce citizenship of the Russian Federation even in the presence of the aforementioned certificates.

As mentioned above, the verification of documents and information, in addition to the Ministry of Internal Affairs, is also conducted by the Federal Security Service (FSB), which may not approve the renunciation of citizenship based on "national security" interests. Additionally, individuals who once had access to state secrets or who simply worked in organizations that the FSB may consider "important" are at risk of refusal to renounce citizenship.

2.2. Individuals against whom enforcement proceedings are being carried out in the territory of the Russian Federation cannot renounce citizenship.

This includes a significant percentage of Russian citizens. Furthermore, this category also encompasses individuals who have not settled enforcement proceedings while being outside Russia. For such individuals, entry into the Russian Federation poses the risk of being unable to leave until information about the enforcement proceedings is removed from the registry. Given the high level of crime in the country and the unsatisfactory functioning of courts and bailiffs, resolving such issues may take years.

For example, there have been cases of enforcement proceedings initiated against individuals with the same names as those of others, stemming from fraudulent actions. Often, fraudsters take out loans in the name of a person who is abroad, which go unpaid, resulting in subsequent debts being enforced through legal proceedings. For instance, an individual from Prague, whose identity was used to secure a loan in Russia by fraudsters while she was in the Czech Republic, cannot prove

the fraud from abroad and is unable to return to Russia to resolve the issue due to the risk of being stranded there for years until the matter is resolved by law enforcement.

2.3. Individuals who have been charged by competent authorities of the Russian Federation in a criminal case or who have a legally binding and enforceable guilty verdict cannot renounce citizenship.

This category includes all individuals convicted for anti-war and opposition activities under "political" articles as well as those convicted under other articles, including "terrorism" ones.

2.4. Individuals who do not have citizenship (nationality) of a foreign state or guarantees for acquiring it cannot renounce citizenship.

In this case, individuals without any other citizenship must provide a document confirming guarantees for acquiring citizenship of the Czech Republic. However, the authorities responsible for citizenship matters in Russia may not recognize a document issued in the Czech Republic as a promise to provide citizenship as such guarantees. The grounds for non-recognition can vary.

3. Procedure

The procedure for processing and submitting applications and documents necessary for the termination of citizenship of the Russian Federation is regulated by the "Regulation on the Procedure for Considering Citizenship Issues of the Russian Federation," approved by the Decree of the President of the Russian Federation dated November 22, 2023, No. 889 (hereinafter referred to as the **Regulation**).

According to paragraph 81 of the Regulation, when renouncing citizenship of the Russian Federation, a citizen of the Russian Federation who is in a foreign state must submit, along with the application prepared in accordance with the form in Appendix No. 5: a) a document from the competent authority of the foreign state confirming the applicant's citizenship (nationality) of that state or a document confirming the existence of guarantees for the provision of citizenship (nationality) of the foreign state in case of renunciation of citizenship of the Russian Federation; b) documents from the tax authority of the Russian Federation confirming the absence of tax arrears for the applicant; c) documents from the enforcement authority of the Russian Federation confirming the absence of unfinished enforcement proceedings against the applicant; d) documents confirming the absence of grounds for recognizing the citizen as having not completed military service without legal grounds (for male applicants aged 18 to 30).

According to paragraph 83 of the Regulation, together with the application for the renunciation of citizenship of the Russian Federation for a child, prepared in accordance with the form in Appendix No. 6, the following documents must be submitted: a) the child's birth certificate, as well as the child's passport (if the child has reached the age of 14 on the date of the application); b) the

adoption certificate of a citizen of the Russian Federation for a child under 18 in case of adoption (if the adoption information is not included in the child's birth certificate); c) the act of the guardianship authority appointing a guardian or custodian (if the application is submitted by the guardian or custodian of the child left without parental care); d) a document from the competent authority of the foreign state confirming the child's citizenship (nationality) of that state or a document confirming the existence of guarantees for the provision of citizenship (nationality) of the foreign state in case of renunciation of citizenship of the Russian Federation; e) a document confirming the legal grounds for the child's stay in the territory of the foreign state (if the application is submitted regarding a child who is in the territory of the foreign state).

According to paragraph 86 of the Regulation, when a child renounces citizenship of the Russian Federation simultaneously with one of the parents (adoptive parents), in addition to the documents specified in subparagraphs "a" - "d" of paragraph 83 of this Regulation, a written consent from the other parent (adoptive parent), who is a citizen of the Russian Federation, must be provided. This consent must be notarized in accordance with the legislation of the Russian Federation, or there must be a legally binding court decision declaring the other parent (adoptive parent) deceased, or recognizing them as missing, or revoking their parental rights, or a death certificate of the other parent (adoptive parent), or a statement from one of the parents (adoptive parents) in a free form stating that they have no information about the whereabouts of the other parent (adoptive parent) who is a citizen of the Russian Federation, and no information about any objections from the other parent (adoptive parent) regarding the termination of the child's citizenship of the Russian Federation.

As indicated by information obtained from various sources, the requirements of Russian consulates in different countries can vary significantly in both the required documents list and in the form of the documents accepted.

For instance, the website of the Embassy of the Russian Federation in the Czech Republic lists the following documents as necessary for renouncing the citizenship of the Russian Federation:

1. An application for renunciation of citizenship on the established form (to be filled out on the website <http://nation.kdmid.ru>) and printed in two copies;
2. Original documents confirming the identity and citizenship of the applicant of the Russian Federation (a valid international passport and an internal passport of the Russian citizen) + copies of the pages with personal data.
3. Original document confirming the right and place of residence of the applicant in the Czech Republic (residence permit) + copies of the pages with personal data translated into Russian. The accuracy of the translation must be certified by a Russian notary or consular official (more details in the "Notary" section);
4. Original birth certificate + copy;

5. Original marriage/divorce certificate/name change certificate + copy. In case of foreign documents, a copy with translation into Russian is required. The accuracy of the translation must be certified by a Russian notary or consular official (more details in the "Notary" section);
6. Educational diploma + copy. If the diploma is in a foreign language, a copy with translation into Russian is required. The accuracy of the translation must be certified by a Russian notary or consular official (more details in the "Notary" section);
7. Three color matte photographs of the applicant measuring 3.5 x 4.5 cm;
8. Original document of deregistration from the place of residence in the Russian Federation + copy (if this information is not present in the internal passport of the Russian citizen);
9. Document from the tax authority of the Russian Federation confirming the absence of tax arrears (certificate from the territorial authority of the Federal Tax Service of Russia);
10. Document from the competent authority of the foreign state regarding the applicant's other citizenship or confirmation of the possibility of providing the applicant with another citizenship in case of renunciation of the citizenship of the Russian Federation + copy of the document translated into Russian. The accuracy of the translation must be certified by a Russian notary or consular official (more details in the "Notary" section).

This list does not include the document from the enforcement authority of the Russian Federation confirming the absence of unfinished enforcement proceedings against the applicant and documents confirming the absence of grounds for recognizing the citizen as having not completed military service without legal grounds, which likely indicates that the information has not been updated in accordance with the requirements of the new Citizenship Law.

The writer has questioned several people who have made the attempt of renouncing the citizenship of the Russian Federation. From our information it follows that there is no uniform list of documents, for example, not all embassies require an "internal passport" for individuals over 18 years old and a document confirming deregistration. There are also different approaches to the certificates from the Federal Tax Service (FTS) and the Federal Bailiff Service (FSSP), with some allowing the submission of these documents in electronic form, while others require documents with a blue stamp.

Additionally, our sources reveal the following difficulties in gathering documents without visiting Russia: Communication with the authorities through the public services website is impossible for many categories of citizens, particularly for those without a Russian phone number. The website of the Federal Bailiff Service (FSSP) does not operate outside of Russia, and there are difficulties with using VPNs. There is often a lack of feedback when submitting applications through the FSSP website; applications remain in the status of "registered," with no progress. Documents that applicants request to be sent to an address outside of Russia do not arrive. Documents that need to be submitted with the application may be missing, or there are errors in these documents that require correction, which is either difficult or impossible to do remotely. Overcoming these

obstacles largely depends on specific circumstances, such as having a person in Russia acting on behalf of the applicant, as well as the discretion of the authorities and officials. These obstacles can be considered conditionally removable.

In addition, there are obstacles that cannot be overcome without visiting Russia or that cannot be overcome at all:

- The absence or expiration of an internal Russian passport, which is required by several consulates, including the consulate in the Czech Republic (the details of this document are specified in the application) and is required for children who have reached the age of 14. An internal passport can only be obtained in Russia, and this process takes at least a month, during which a number of other documents must be arranged for its issuance.
- The absence of a stamp in the passport regarding deregistration from military accounting (the relevant certificate), or for citizens who are required to be on military accounting and are not in reserve – a certificate of a citizen subject to conscription with a military commissariat note regarding a deferral from military service; for citizens in reserve – a military ID or a temporary certificate issued in place of the military ID. It is practically impossible to resolve this issue without visiting the military enlistment office.
- The expiration of a foreign passport without the possibility (refusal) to issue a new one to the person applying for it. Cases of refusal to issue a foreign passport to individuals opposing the war and criticizing the Putin regime are increasing. Passport issuance is denied due to ongoing criminal cases, outstanding "obligations," and enforcement proceedings, as well as arbitrarily, without explanation. A person left without a foreign passport cannot only renounce Russian citizenship but also extend their permanent residency in the Czech Republic. The longer Russians are unable to obtain Czech citizenship, the more individuals there will be in the Czech Republic who have changed their status from legal residence to being in the country without legal grounds.

For example, a respondent named Ilya reports the following: *“The exit is complicated because for guys under 30, a certificate from the military enlistment office is required to confirm that they have no claims against them. I submitted through public services, but they told me to appear in person at my last registered address (which is somewhat problematic for me). Ultimately, I had to go to the military enlistment office, where I was asked about my attitude towards service, how I feel about Ukraine, and why I left the country when it was in danger. I had to think about whether to tell the truth, as they might hand me a summons (I have category A, I served). I ended up lying, saying I had sick relatives and needed urgent care for them. They called me to the military commissar in Krasnodar, where they asked me harshly why I left and if I was not a man to fulfill my duty to the homeland. I struggled to get this certificate. Then I returned to Kazakhstan and submitted documents to the consulate (the consulate also seems to be defending itself from its own citizens, with triple barriers). Scheduling an appointment to submit documents is a separate story;*

for three months, you confirm your place in line every day, hoping to get an appointment (the problem is that the certificates have an expiration date, and I had to redo them twice)."

A Czech citizen and doctor reports the following:

"I have been living in Prague since 2011, I went through the process of validating my medical diploma and I work as a gynecologist. In 2017, I received permanent residency (trvalý pobyt). In August 2021, I submitted my documents for Czech citizenship. About 15 months later, I received a letter from the Ministry of the Interior requesting additional documents, and in February 2023, I received Czech citizenship. After Russia's attack on Ukraine, I decided to renounce my Russian citizenship. Around August 2023, I started the process, which I still have not been able to complete. At first glance, everything seems not too difficult if you are in Russia, but without going there, it is almost impossible. Fortunately, I deregistered from my apartment in Moscow back in 2016, so that step was easier for me; I ordered the tax certificate online, and when someone I knew was coming from Moscow, they brought it to me. However, in October, when I collected the documents, Russian legislation changed, and the embassy's website blocked the ability to fill out the application for renouncing citizenship. Then it turned out that according to the new law, I also needed a certificate from the FSSP, which at that time could only be obtained in person. Later, I learned that there was a possibility to order it online, but you can only access the FSSP website using a VPN. I collected all the information piece by piece from various online groups of people like me who wanted to leave. In February, the order of actions finally became clear; I ordered the tax certificate again (the old one had expired) and the one from the FSSP. I was also able to fill out the application on the embassy's website. Then the most difficult part began: trying to schedule an appointment online at the embassy. But the embassy is openly sabotaging its work. Despite checking the status of the appointment daily for a month and a half, I was unable to get an appointment. I confess, I then resorted to the services of intermediaries, who promised to schedule an appointment for 100 euros. They also failed to do this after two months of daily attempts. In June 2024, my passport expired. I do not have an internal passport. Therefore, at the end of May, I asked the intermediary to schedule an appointment for me to apply for a new passport; they scheduled me within a couple of days. This leads me to conclude that while the embassy offers slots for passport appointments, they do not for renunciation. As a result, I applied for a new 5-year passport solely to be able to renounce my Russian citizenship. Recently, I received a message that the passport is ready, so I will pick it up and reorder all the certificates from Moscow, as the old ones are again invalid. However, in the process, I somehow overlooked that I am a doctor and received a military ID, making me subject to military duty until the age of 50. This cannot be hidden because the documents for renunciation must include my diploma. For those subject to military duty, there is an additional quest: a certificate from the military enlistment office, which can only be obtained in person. So I will wait until I turn 50, which is soon, and then start gathering documents again and look for opportunities to apply for renunciation, perhaps in some other country."

The Russian diaspora also reports other problems with renouncing Russian citizenship. According to recent news¹⁷ Russian immigrants in Serbia report that the personnel of the Russian consulate in Belgrade does not allow them to renounce Russian citizenship due to an internal limit of 250 persons renouncing Russian citizenship per year.

The difficulty of renouncing Russian citizenship is confirmed by the fact that nine months ago, a petition was created for the possibility of a declarative renunciation of Russian citizenship: <https://www.change.org/p/свободу-заложникам-российского-гражданства>. The petition states that many political emigrants do not have the opportunity to renounce their Russian citizenship and are held hostage by the Russian government.

The authors of the initiative have appealed to the entire international community, the UN, the heads of state, and the President of Ukraine with a request to develop a procedure that would grant these individuals the right to a declarative renunciation of Russian citizenship and issue them new identity documents, "passports not linked to the Russian Federation."

4. Asylum seekers

When considering the possibility of citizenship acquisition solely for asylum seekers, the following should be taken into account:

Individuals applying for Czech citizenship must have permanent residency. If they become asylum seekers, they lose all the advantages of permanent residency, are forced to leave their jobs (as applicants for refugee status can only work six months after applying, and the job must be registered with the regional branch of the Czech Republic Employment Bureau), they may be sent to a special camp, and they face restrictions on leaving the territory of the Czech Republic. All of this occurs without any guarantee of obtaining refugee status (which is rarely granted even with compelling reasons) and even less so for citizenship (as the individual no longer meets many of the conditions for obtaining it due to these restrictions).

For example, Sergey Sh. collected funds for the Ukrainian Armed Forces, was noticed by Russian embassy employees, and was denied a new foreign passport after the expiration of his old one. He applied for asylum, was unable to work for six months, and spent about a week in a camp (despite having housing and family). Currently, his permanent residency has not been extended due to the lack of a foreign passport, and his application for refugee status was denied.

The decision to detain someone for subsequent criminal prosecution can, as practice shows, be made right at the border crossing into Russia. Accordingly, a person who formally has no grounds for seeking political asylum faces the danger of being detained and subsequently convicted when

¹⁷ See e.g. here: <https://t.me/c/2413339963/1/5646>

traveling to Russia. For instance, Ksenia Karelina was detained during her visit to Russia and sentenced for treason for donating \$50 to a charity fund, while Makara Nikolaev, a student from Germany who visited his parents, was arrested for comments on social media.

Thus, we can conclude that for most Russian citizens, renouncing citizenship is either impossible or requires their personal presence in Russia. Moreover, since Putin's decree on mobilization has not been revoked and remains in effect, traveling to Russia poses a danger for individuals subject to military duty, risking forced conscription to fight in Ukraine. Many people who publicly oppose the war in Ukraine and Russian policies, who donated money to assist Ukrainian refugees or to charitable organizations deemed "undesirable" in Russia (such as the Czech Člověk v tísní), or who have publicly defended LGBTQ rights or come out as LGBTQ, also face administrative and criminal prosecution upon returning to Russia.

Additionally, it should be noted that there is only one remaining consulate in the Czech Republic, located in Prague, and scheduling an appointment there is very difficult, as is the case with the consulates of neighboring countries, significantly prolonging the process of renouncing citizenship. At any moment, the provision of services for renouncing citizenship could be halted, as occurred, for example, in Estonia. In such a case, the conditions for renouncing citizenship without traveling to Russia cannot be met.

Therefore, the requirement to renounce Russian citizenship as a condition for obtaining Czech citizenship is a condition whose fulfillment ultimately does not depend on the will of the applicants for citizenship, which contradicts fundamental legal principles, including the principle of legal certainty and the requirement of legitimate expectation. It is discriminatory and should not occur in a rule-of-law state. In many cases, attempting to fulfill this requirement endangers not only the freedom but also the life and health of individuals seeking Czech citizenship.

PART 4 - TEST OF CONFORMITY OF THE AMENDMENT TO THE EXISTING CONSTITUTION

Lastly, we shall review the Amendment in accordance with the discrimination test, for which the following questions shall be answered:

- 1. Are there comparable individuals or groups?**
- 2. Are they treated differently on the basis of any of the forbidden reasons?**
- 3. Is this different treatment to the detriment of the affected individual (by imposing a burden or denying any good)**
- 4. Does this different treatment follow a legitimate interest?**
- 5. Is this different treatment proportionate, i.e. is there a less intense measure capable of achieving the same result?**

As follows from the analysis below, we believe that the Amendment is an example of forbidden direct discrimination and is contrary to the constitutional system of the Czech Republic.

Are there comparable individuals or groups?

Generally speaking, the legislator may forbid double or multiple citizenship or allow it only if there is an international treaty (this applied until 31.12.2013). Due to the level of European integration and level of trust between the Member States it will be perhaps also acceptable to allow double citizenship also in relation to citizens of other Member States of the EU.

However, the Amendment follows another path – it applies exclusively to citizens of Russian Federation, who, in order to be eligible, must be permanent residents (about 10 years) in the Czech Republic and fulfill **all** other conditions for qualifying for Czech citizenship, such as:¹⁸

- they are integrated into Czech society,
- they do not pose a threat to national security, its sovereignty, territorial integrity, democratic fundamental principles, lives, health or property;
- they have not been criminally convicted;
- they have passed a text of knowledge of Czech language and cultural facts;
- they were not a burden for the Czech social system.

We note with interest that there are no burdens or complications in relation to obtaining dual citizenship for citizens of Belarus, which has been supporting Russia in its military aggression, nor have any been proposed. The Amendment does not apply to any other states which may pose a security threat, such as Syria, Iran, DPRK or China – e.g. according to the annual report of the Czech Security and Intelligence System (BIS) for 2023 dated September 12, 2024¹⁹ China remains a significant security concern and their intelligence activity in the Czech Republic is rather active.

¹⁸ See Sections 13 and 14 of the Czech Republic Citizenship Act.

¹⁹ See here: <https://www.bis.cz/vyrocní-zpravy/>

In its attempt to protect the security and sovereignty of the Czech Republic, the Amendment, quite counterintuitively, entirely disregards the fact that there may be foreigners from other states that may sympathize with the Putin regime. For instance, there are a number of sympathizers and supporters of Russia in Moldova and other CIS countries, including Ukraine itself. There is even a significant amount of persons with Russian origin in Germany, who are often quite sentimental with their birth land. None of those are precluded from obtaining dual citizenship.

Furthermore, the Amendment is one-sided, i.e. it poses an obstacle to obtaining dual citizenship for Russian citizens seeking Czech citizenship. However, there is no obstacle whatsoever that would prevent Czechs to acquire Russian citizenship and thus have dual Czech and Russian citizenship.

We can illustrate this with hypothetical examples.

A Russian national, who moved to Prague from Russia at the age of 9 years old, has Czech education, wishes to apply for Czech citizenship at the age of 20. He is fully integrated into the Czech society, is highly critical to the Russian regime, does not intend to visit Russia in order to avoid military service and does not even have a Russian internal passport, which, we note, is necessary to undergo formal procedures for waiving Russian citizenship. If the Amendment is adopted, he will not be able to keep Russian citizenship before acquiring Czech citizenship or, due to administrative obstacles on the Russian side, will not be able to receive Czech citizenship at all.

A Czech-born citizen, sympathizer with the Putin regime, organizes disinformation campaigns, actively supports Russia's aggression in social networks. Eventually, they relocate to Russia, actively collaborate with the regime or sign the contract with the Russian Ministry of Defense to participate in the "special military operation". There is nothing preventing such a person from holding double Czech-Russian citizenship. Czech law does not allow anyone to deprive him of Czech citizenship.²⁰

One may argue that the latter examples are rather exceptional or non-existent, but they do exist. For instance, see the case of Pavel Botka (callsign "Kavkaz"), who has been fighting in the militia of the "Donetsk People Republic" since 2015.²¹

Are they treated differently on the basis of any of the forbidden reasons?

According to case law (see above) discrimination against citizenship can be considered as "other status" pursuant to Art. 3(1) of the Charter or Art. 14 of the Convention.

Is this different treatment to the detriment of the affected individual (by imposing a burden or denying any good)

²⁰ Art. 12(1) of the Constitution of the Czech Republic: „No one can be deprived of citizenship against his will.“

²¹ See link <https://www.rferl.org/a/why-is-a-czech-firm-selling-furniture-in-separatist-controlled-donetsk-ukraine-/30686581.html>

This special rule is to the detriment to the affected individuals, as it poses an additional obligation (give up Russian citizenship prior to receiving Czech one).

At the same time, the consequences of giving up Russian citizenship are not formal (as opposed to e.g. giving up Czech citizenship and acquiring Austrian citizenship instead), but have serious consequences to the guaranteed rights and freedoms of the affected individual.

1. Infringement to private and family life

The obligation to give up Russian citizenship entails a significant infringement to the right to private and family life (see Art. 10(2) of the Charter).²²

Vast majority of Russians living in the Czech Republic have family members (parents, siblings, adult children, other relatives). As a rule, they wish to visit each other, participate in family events and support each other.

When giving up Russian citizenship, the applicant becomes a foreigner from an “unfriendly country”, who does not have a right to enter Russia and must request a visa, which does may or may not be granted. As a result, the applicant loses his right to visit relatives in Russia.

This is exacerbated by the fact that the applicant cannot even meet his relatives in the Czech Republic. The decree of the Government of the Czech Republic No. 55/2024 Coll²³ forbids Czech consulate offices to accept visa applications from Russian and Belorussian nationals. Although it is difficult to enforce this rule, Russian citizens are not allowed to enter the Czech Republic with a short-term Schengen visa issued by another state.

2. Infringement to ownership right

If the Amendment is adopted, it would have negative effects on the right to ownership, guaranteed by Art. 11 of the Charter.

The Russian Federation has adopted a number of counter-sanctions as a response to sanctions adopted by the EU and other countries following the invasion of Ukraine.

By the decree of the president of the Russian Federation No. 81 dated March 1, 2022 and decree of the president of the Russian Federation No. 618 dated September 8, 2022 **special procedure has been introduced in the fulfillment of contracts, subject-matter of which are dispositions with real estate, securities or shares in companies, if a party to this transaction is a person from the “unfriendly country”, including the Czech Republic**. Pursuant to these decrees the transaction is conditional upon receiving a consent of the Governmental Commission of Supervision over Foreign Investments in Russia.

²² Art. 10(2) of the Charter: “Everyone has right to protection against unjustified infringement to private and family life.”

²³ Full text see here: <https://www.zakonyprolidi.cz/cs/2024-55>

On our knowledge, the current conditions for granting an approval are roughly as follows:

- (i) presenting an independent appraisal made by an expert;
- (ii) evidence that the sale of assets will be made with a discount of at least 60%, as opposed to the appraisal price;
- (iii) make a “voluntary” contribution to the Russian federal budget in the amount of 35% of the price of the assets (and thus finance Russian state and its war efforts);
- (iv) agree upon a payment schedule of at least two years, if price is paid to an account outside of Russia.

Therefore, it means for the applicants for Russian citizenship that if they should renounce it, they will no longer be able to dispose of their movable or immovable property located in the Russian Federation as they wish for unlimited time. They will also be unable to sell any and all property which they may have inherited from their relatives.

Does this different treatment follow a legitimate interest?

The Amendment does not contain (as is customary) any explanatory report to shed light on the thoughts of the author of the Amendment. The text of the Amendment (Section 7x(1) reads that it is adopted “*to protect security and foreign political interests of the Czech Republic in connection with the armed conflict in the territory of Ukraine caused by the invasion of the armed forces of the Russian Federation.*” This is, however, such a vague explanation that no reasonable person can be expected to draw a meaningful conclusion.

We can nevertheless examine the statements of the sponsor of the Amendment, Mr. Martin Exner. For instance, in the e-mail he has circulated to the authors of the petition against the Amendment, he notes the following:

„Therefore, it is absolutely not about any collective guilt on Russian citizens, it is only a temporary security measure until Czech-Russian relationships normalize.

Russia declares Czech Republic as enemy state²⁴ and conducts asymmetric war against the Czech Republic – commits influence operations, disinformation operations, terroristic attacks, sabotages and other economic operations. There are also a large number of Russian companies or companies owned by Russians.

Citizenship gives citizens protection and certain rights, but also imposes obligations. For instance, right to work in security forces or state service with access to classified information, right to vote or be voted etc. The obligations are e.g. military service, following the laws of the country, loyalty to the state. According to Russian laws men in the age of 18-27 must serve in the army. If Russia is in enemy, hybrid state of war military

²⁴ This is probably of a little importance, but this is an linguistic issue in Czech language which aggravates the situation. The Russian word „недружественный“ is usually translated as „nepřátelský“, which means both „unfriendly“ and „enemy“. For this reason, the expression “недружественная страна” sounds more offensive in Czech translation.

He wrote similar laments on Facebook²⁵ and LinkedIn.²⁶

Fighting against disinformation operations, terrorist attacks or sabotage by the Russian Federation can, of course, be considered as clearly legitimate interests. It remains, however, absolutely unclear how it is possible to thwart a terrorist attack, sabotage or disinformation campaign by denying dual citizenship to Russian applicants permanently residing in the Czech Republic. Such actions are such grave violations of Czech laws that even if they are committed, the perpetrator will not be deterred to commit them by his citizenship or lack thereof.

After all, the only (known so far) terrorist attack – the explosion of the ammunition warehouse in Vrbětice – was committed by Russian GRU agents Chepiga and Mishkin, who entered the Schengen area with fake Moldovan and Tadzhik passports. The Amendment did not, and does not, safeguard against any such future horrific actions.

We dismiss the fact that there are a large number of companies owned by Russians as absolutely irrelevant. Russians enjoy the same right to ownership and freedom to do business (Art. 26 of the Charter) as Czechs. The large number of companies owned by Russians is caused by the fact that Russians became one of the most numerous minorities. Moreover, most of companies owned by Russians (and equally Ukrainians, Belarussians etc.) are or were SPVs set up by families many years ago for the purpose of purchasing of an apartment or other real estate at the time when Section 17 of the Currency Control Act (No. 219/1995 Coll.) did not allow foreigners to own real estate directly. In the past, these companies also allowed them to receive business visas (but has not been in effect for at least 15 years).

A large amount of Russian business capital was withdrawn from the Czech Republic after the outbreak of the war.

The necessity of a legislative barrier to prevent Russians to acquire Czech citizenship is not even supported by the statistics. Although the existing law already forbids granting Czech citizenship to anyone who pose threat to state security or democratic system of the Czech Republic, according to the official statistic data of the Ministry of Interior, the ratio of denied applications to the total number of applications is very low and is steadily declining. In 2019, the Czech Ministry of Interior satisfied 574 motions of Czech citizenship filed by Russian nationals and refused 33 applications (5,4%). In 2023, there were 1257 granted citizenships and 29 refusals (2,2%). Such statistics clearly do not justify such a harsh measure.

Is this different treatment proportionate, i.e. is there a less intense measure capable of achieving the same result?

²⁵https://www.facebook.com/martin.exner.stan/posts/pfbid02Tdt5UJ8dfboNJqCVA79PWQtd3rhFyxeA7U7dgQxNx322uwwuy3h7G5Zk45qtduCRI?comment_id=1177903473316435&reply_comment_id=1962023150968537¬if_id=1727080803846634¬if_t=comment_mention&ref=notif

²⁶ <https://www.linkedin.com/feed/update/urn:li:activity:7243880912524894208/>

We submit that the measures foreseen by the Amendment are not proportionate.

There are already a number of safeguards in Czech law to make sure that Czech citizenship is granted only to a loyal and decent person, such as:

1. Czech Republic Citizenship Act

The Czech Republic Citizenship Act acts as the main guarantor.

The application for granting of Czech citizenship can be granted only as long as the applicant proves fulfillment of a number of conditions specified by the Czech Republic Citizenship Act:

- family, work and social integration – Section 13(1) of the Czech Republic Citizenship Act;
- **the person may not endanger security of the state, its sovereignty and territorial integrity, democratic fundamentals, lives, health and property** – Section 13(2) of the Czech Republic Citizenship Act;
- uninterrupted residence for a specified period of time – Section 14(1) of the Czech Republic Citizenship Act. As specified above, usually ten years is required prior to filing an application. Only the mere fact that the applicant spent this portion of his life usually guarantees a substantial degree of loyalty to the country and creation of strong connections to it;
- knowledge of Czech language and cultural facts – Section 14(5) of the Czech Republic Citizenship Act;
- respecting the Czech immigration law during the entire term of residence – Section 14(6) of the Czech Republic Citizenship Act;
- not being a burden to the Czech social system – Section 14(8) of the Czech Republic Citizenship Act

As noted above, a mandatory part of any proceedings on granting Czech citizenship is having a clean criminal record and a positive statement from the Czech Police and Czech intelligence services. Therefore, each applicant is already investigated by intelligence services and will not receive Czech citizenship if intelligence services have any objection to the same.

2. Classified Information Act

Another reason mentioned by Mr. Exner is that it is necessary to make sure that Russian spies are not granted access to state service and security forces, as they can receive access to classified information after their naturalization.

This matter is already regulated by the Classified Information Act (No. 412/2005 Coll.), which defines which persons may have an access to classified information (and which level) and which do not. As opposed to the Amendment, it is a specific, targeted and appropriate measure to ensure safety of classified information.

For instance, pursuant to Section 11 et seq. of the act a natural person may receive access to the classified information of level Top Secret, Secret or Classified, if he is, among others, a holder of a respective valid certificate. In order to receive it, it is necessary that the person at hand is a Czech citizen, but also **no security risk was found regarding the person.**

Pursuant to Section 14(2,3) of the Classified Information Act security risk is

- serious or repeated activity against the interests of the Czech Republic;
- activity aimed at suppressing of fundamental rights and freedoms or supporting of such activities;
- activities which may have an influence on trustworthiness of the person or possibility to influence it and may affect its ability to keep information secret or
- connection with a person who conducted activities against the interests of the Czech Republic.

Practically speaking, it is highly unlikely that granting of Czech citizenship would suddenly enable a Czech-Russian dual citizen to receive access to classified information and/or to a high position in Czech state service or security forces. It is difficult to imagine that a fresh Czech citizen, who retained his Russian citizenship, has property, relatives or other influence in Russia and is therefore sensitive to any pressure can conceivably receive a security clearance of any kind.

3. Voting right

It is clearly absurd to argue that granting voting rights to Russians living in the Czech Republic may cause a security risk to the Czech Republic.

As regards right to vote: firstly, the total number of citizenships (of any nationalities) granted in 2023 was 6 453. This is a clearly negligible number. Secondly, the most numerous minority in the Czech Republic are (and were before the war) Ukrainians; consequently, there are more Ukrainians than Russian applicants for Czech citizenship.²⁷ Even if all Russians living in the Czech Republic were hardline supporters of Vladimir Putin,²⁸ The Czech Republic would never become a country sympathising with Russian regime, as there would always be more new voters with the exactly opposite views.

As regards right to be voted: theoretically a person with dual citizenship could be granted access to classified information through receiving a high-ranking political function. However, there are no signs of this. Currently, there are (and have been for decades) **no politicians with Russian background** in Czech politics. Also, it may be reasonable to expect that under the current international circumstances the Russian citizenship would be frowned upon by Czech electorate and would probably prevent such a politician from being elected.

²⁷ In 2019-2023, Czech citizenship was granted to 6 049 Ukrainian nationals and 3 976 Russian nationals.

²⁸ Which is clearly not the case. According to exit polls from the Russian presidential elections V.V. Putin received 4% of votes in Prague: <https://freerussiansglobal.cz/cs/2024/03/23/exit-poll-results-for-prague/#more-276>

5 - CONCLUSION

Therefore, we conclude that the amendment is not only discriminatory and incompatible with the current constitution of the Czech Republic, but also fails to meet even the minimal standard of what the original writer has intended it to do.

We encourage further independent legislative review of this proposition, and hope that we have provided a sufficient explanation on Czech, Russian and international law and policies that it triggers a review not only of the necessity, but also of the validity of the Amendments.

Respectfully submitted.

Annex No. 1

Parliament of the Czech Republic
CHAMBER OF DEPUTIES

2024
9th term

172

RESOLUTION
of the committee for security
of its 46th meeting
of September 5, 2024

on the Governmental proposal for an act amending the act No. 65/2022 Coll., on several measures in relation to the military conflict in the territory of Ukraine caused by the invasion of the armed forces of the Russian Federation, as amended, and other related acts
/parliamentary print 727/

The Committee for Security, after the initial speech of the minister of interior Mgr. Bc. Vít Rakušan, after the report of the deputy head of the committee, Martin Exner, and after the general and detailed debate

I. r e c o m m e n d s to the Chamber of Deputies of the Parliament of the Czech Republic to a p p r o v e

the proposal for an act amending the act No. 65/2022 Coll., on several measures in relation to the military conflict in the territory of Ukraine caused by the invasion of the armed forces of the Russian Federation, as amended, and other related acts (parliamentary print 727)

w i t h t h e s e a m e n d m e n t s :

1. Special rules for acquiring of citizenship

1. In the first part Art. 1 (3) shall read as follows:

„3. In Section 1 in the end of the paragraph 1 the dot is replaced by comma and the following letters f) and g) are added:

„f) long-term stay in connection with the armed conflict in Ukraine caused by the invasion of the armed forces of the Russian Federation (the “special long-term stay”) and

g) special rules for acquiring of citizenship of the Czech Republic in connection with the armed conflict in Ukraine caused by the invasion of the armed forces of the Russian Federation (the “special rules of acquiring of citizenship”)

2. In the first part Art. 1 (31) the first sentence the text “7w” is replaced by “7y” and new Sections 7x and 7y are added, which shall read as follows:

„Special rules of acquiring of citizenship

Section 7x

(1) In order to protect security and foreign policy interests of the Czech Republic in connection with the armed conflict in Ukraine caused by the invasion of the armed forces of the Russian Federation citizenship of the Czech Republic can be granted only to a natural person who was, at the moment of filing the request for granting the citizenship of the Czech Republic, citizen of the Russian Federation, only if it presents a certificate of loss of Russian citizenship.

(2) The paragraph 1 does not apply

a) if the person to be granted the citizenship of the Czech Republic is an asylum holder,

b) in case of a motion according to Section 16 of the Czech Republic Citizenship Act

c) in case of a motion according to Section 28 of the Czech Republic Citizenship Act

(3) The Ministry of Interior shall, in case of fulfillment of conditions pursuant to Sections 13 and 14 of the Czech Republic Citizenship Act, issue to the petitioner pursuant to par. 1 a promise of granting the citizenship of the Czech Republic, request the petitioner to present a certificate of loss of Russian citizenship and suspends the proceedings. If the petitioner does not present the certificate in the set deadline, the Ministry of Interior shall terminate the proceedings.

(4) The citizenship of the Czech Republic shall be acquired on the basis of a declaration by a person who was, at the moment of making the declaration on acquiring of the citizenship of the Czech Republic a citizen of the Russian Federation, if he presents a certificate of loss of citizenship of the Russian Federation. If the petitioner does not present the certificate in the set deadline, the Ministry of Interior shall terminate the proceedings.

Section 7y

(1) Proceedings on granting the citizenship of the Czech Republic filed by a citizen of the Russian Federation older than 15 years or filed on his behalf, shall be terminated on the day following the day when the motion is granted to the Ministry of Interior pursuant to Section 21 (1) of the Czech Republic Citizenship Act.

(2) The proceedings suspended pursuant to par. 1 shall be continued on the day following the date of expire of Section 2 of this act.

(3) In case of proceedings a joint motion filed pursuant to Section 18 of the Czech Republic Citizenship Act, suspended pursuant to par. 1, in which there is a participant, who is not a citizen of the Russian Federation, the Ministry of Interior shall issue a resolution of excluding the motion related to this person from joint proceedings and decide on it separately.

(4) The paragraph 1 does not apply if

- a) the person to be granted the citizenship of the Czech Republic is an asylum holder,
- b) in case of a motion according to Section 16 of the Czech Republic Citizenship Act
- c) in case of a motion according to Section 28 of the Czech Republic Citizenship Act

(5) In proceedings on declaration on acquiring of citizenship of the Czech Republic made by a citizen of the Russian Federation older than 15 years or on his behalf, provisions of par. 1, 2 and 4(a) shall apply analogically.

3. A new Art. II shall be added to the first part after Art. I, which shall, including the title, read as follows:

„Art. II

Transitional provision

Provisions of Section 7x and Section 7y of the act č. 65/2022 Sb., as amended by the date of effect of this act, shall apply to a motion on granting of citizenship of the Czech Republic filed prior to the date of effect of this act, provided that no decision was taken on the motion pursuant to Section 24 of the Czech Republic Citizenship Act.”

The existing Art. II-VIII shall be referred to as Art. III-IX.

2. Změna v oblasti daní

A new fifth part shall be added after the fourth part, which reads, including the title, as follows:

FIFTH PART

Amendment of the act on tax measures in connection with the armed conflict in Ukraine caused by the invasion of the armed forces of the Russian Federation

Art. V

The act No. 128/2022 Coll.,

Zákon č. 128/2022 Sb., on tax measures in connection with the armed conflict in Ukraine caused by the invasion of the armed forces of the Russian Federation, as amended by the act No. 366/2022 Sb. and the act No. 349/2023 Sb., shall be amended as follows:

1. In Section 1 par. 1 words „years 2022 and 2023" are replaced by words „years 2022-2026".
2. In Section § 1 par. 2 words „February 29, 2024" are replaced by words „ February 28, 2027".
3. In Section § 1 par. 3 initial parts of the provision and par. 4 the words „years 2022 and 2023" are replaced by words „years from 2022 to 2026".
4. In Section § 1 par. 6 words „years 2022 and 2023" are replaced by words „years from 2022 to 2026" and words „years 2022 and 2023" are replaced by words „years from 2022 to 2026".
5. In Section § 2 par. 1 letter a) words „taxable periods of years 2022 and 2024 “ are replaced by words „ taxable periods of years 2022-2024“.
6. In Section § 2 par. 1 letter b) and Section 3 par. 1 se slova words „years 2022 and 2023" are replaced by words „years from 2022 to 2026".

The existing fifth to eight parts shall be newly referred to as sixth to ninth part and the existing articles V-VIII are newly referred to as articles VI-IX.

II. e m p o w e r s the committee reporter to

- inform the meeting of the Chamber of Deputies of the Parliament of the Czech Republic of the position of the committee;
- make necessary legislative and technical changes in collaboration with the proposer and the legislative committee of the Administration of the Parliament of the Czech Republic

III. a u t h o r i s e s the chairman of the committee to present this resolution to the chairman of the Chamber of Deputies.

Michal ZUNA v. r.
minutes clerk

Martin EXNER v. r.
deputy chairman and committee reporter

PhDr. Pavel ŽÁČEK, Ph.D. v. r.
chairman of the committee

