



[Austria - Constitutional Court case of 15 September 2016](#)

The applicant was born in Iraq and formerly possessed Iraqi identity documents. After establishing permanent legal residence in Austria he applied for a travel document for foreigners on the basis that he has an "unclear nationality" status. The application was rejected without granting the applicant the right to an oral hearing. The Constitutional Court upheld the applicant's right to have an opportunity to explain his allegedly unclear nationality status in an oral hearing.

Case name (in original language) : Ra 2016/21/0104

Case status: Decided

Case number: Ra 2016/21/0104

Citation:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_20162101

Date of decision: 15/09/2016

State: Austria

Court / UN Treaty Body: Constitutional Court of Austria (Verfassungsgerichtshof)

Language(s) the decision is available in: German

Applicant's country of birth: Iraq

Applicant's country of residence: Austria

Key aspects: Burden of proof, Determination/confirmation of nationality, Establishing identity, Protection, Residence permit, Standard of proof, Stateless status and documentation, Statelessness and asylum

Facts

The applicant left Iraq at the age of two, and lived in Lebanon with his family, where he last worked as a construction worker until 1997, before returning to Iraq in 1998. Soon after he came to Europe. The applicant has had various types of residence permits in Austria, most recently one issued in 2015 as a "permanent resident of the EU". In May 2015 he applied to Austrian authorities to be issued with

a foreigner's passport, on the basis that his nationality status is "unclear" and he complies with other requirements for this type of travel document, such as permanent residence status and lack of a criminal record. The applicant's nationality has been determined interchangeably as "unclear" or "Iraqi" in the course of various procedures for residence permits in Austria. The authorities requested that the applicant submits proof of not being an Iraqi national, and upon not having received such proof they rejected the application for a travel document on 1 October 2015.

The applicant filed a complaint against the decision, requesting an oral hearing, where he could elaborate on his efforts of the past eight years of trying to obtain documents from the Iraqi diplomatic mission. The lower instance court rejected his appeal without granting him a hearing. According to the lower instance court, the "oral hearing could have been omitted because the facts had been clarified on the basis of the files". The applicant appealed his right to a hearing to the Constitutional Court.

Legal arguments by the applicant

The applicant argued that he had repeatedly and for many years tried to obtain an Iraqi passport from the Embassy of Iraq. However, since he neither had an Iraqi identity card nor an Iraqi citizenship certificate, he was denied a passport. The requests from his legal representative were left unanswered. In a statement on the 31 August 2015 he submitted that he had recently tried again to obtain the necessary documents from the Iraqi diplomatic mission, or at least a confirmation that such documents would not be issued to him. However, he was not admitted to the premises of the embassy. He then went to the embassy again with a friend, with the same result. He submitted the testimony of his friend confirming relevant events.

Legal arguments by the opposing party

The authorities argued that the applicant has himself testified that he was an Iraqi national. The fact that this nationality could not be proven with certainty due to lack of relevant documents does not mean that the applicant is of “uncertain nationality”. The authorities claimed it is incomprehensible why the applicant, despite having previously possessed an Iraqi passport and an identity card, and despite obviously knowing his civil register number, was not able to provide a clear proof of his identity, and procure new identity documents from Iraq.

Decision & Reasoning

The Court struck down the lower instance court’s decision confirming the applicant’s right to a hearing where he would be able to explain why his nationality status can be regarded as “unclear” for the purposes of his entitlement to a foreigner’s travel document. The Court reasoned as follows:

"15 [...] there can be no claim of a clarified issue in the current case. Thus, the oral hearing requested by the applicant would have been necessary to clarify the accuracy of the allegations that the Iraqi diplomatic mission had refused to issue him a passport and denied him access to the embassy premises, as well as the reasons given to him. These can - contrary [the authority's claim] - also relate to the question of clarifying his current (Iraqi) nationality status [...]"

"Incidentally, the [the authorities] could also have turned to the aforementioned embassy in order to clarify the nationality of the applicant - with reference to the evidence presented by him."

"16 Since the hearing did not take place without an adequate reason, the contested decision is unlawful as a result of a violation of procedural regulations [...]."

Decision documents

[Verfassungsgerichtshof_15Sep2016.pdf](#)

Outcome

The Court repealed the lower instance court's decision on the basis that the applicant was not given the opportunity to elaborate on his nationality status in an oral hearing.