



[Austria - Constitutional Court case of 20 March 2014](#)

After having been born, having lived, worked and and paid taxes in Austria his whole life the applicant was told he is not entitled to unemployment benefits as he did not have a right to work in Austria. While he was granted Austrian nationality upon application, he argued that he was entitled to unemployment benefits also in the time frame between becoming unemployed and acquiring the nationality, invoking his statelessness, and lack of implementation of Statelessness Conventions by Austria. The Court denies direct applicability of the Statelessness Conventions in Austria, and rules against the applicant.

Case name (in original language) : 2013/08/0004

Case status: Decided

Case number: 2013/08/0004

Citation:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_20130800

Date of decision: 20/03/2014

State: Austria

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

Language(s) the decision is available in: German

Applicant's country of birth: Austria

Applicant's country of residence: Austria

Legal instruments: 1954 Statelessness Convention

Key aspects: Access to social and economic rights, Acquisition of nationality, Determination/confirmation of nationality, Protection, Residence permit, Stateless status and documentation, Statelessness determination

Relevant Legislative Provisions:

Articles 17 and 24 of the Convention on the Status of Stateless Persons

Facts

The applicant was born in Austria on 8 November 1963 to a Romanian mother and an Austrian father. As the parents were not married, the applicant did not acquire his father's Austrian nationality. Although the applicant has never, in his own words, "actively applied for" Austrian nationality before 2012, he had worked in Austria for many years without any problems, most recently at the ÖBB [Austrian National Railway company] full time for 11 years, until May 31, 2012. He always paid his social security contributions, including the unemployment insurance contribution. He was never asked to provide proof of nationality or any other proof of right to work. He always had his habitual residence in Austria, and only went to Greece once on vacation, for which he received an alien's passport.

The applicant's request for employment benefits was rejected because in the relevant time frame (between 1 June 2012 and 7 October 2012) he was "not available for work" within the meaning of relevant laws, due to lack of a residence permit that entitled him to a right to work. He acquired Austrian nationality on 8 October 2012.

Legal arguments by the applicant

The applicant argued that he was stateless in the disputed time frame, and that Austria is at fault for not having a statelessness determination procedure. His application for Austrian nationality can be seen as an application for a statelessness status in light of applicable international law. Based on the 1954 Convention, which Austria ratified in 2008, and the implementing UNHCR Guidelines, as an applicant for a statelessness status he should be granted social and economic rights, including a right to work and to unemployment benefits.

Legal arguments by the opposing party

The authority argued that one of the eligibility criteria for unemployment benefits is to be available for work, which includes a legal right to work. It is irrelevant whether the applicant was legally or illegally employed previously, and whether he has paid social security contributions.

Decision & Reasoning

The Court reasoned as follows:

"2.1. It is undisputed that the applicant was neither an Austrian citizen nor had a

valid residence permit at the time for which he requests unemployment benefit, namely from June 1, 2012 until he was granted citizenship on October 8, 2012. Thus, he was not lawfully residing in Austria to take up employment. Since this is a prerequisite for availability within the meaning of [relevant national laws], and such availability does not depend on the subjective intention of the person concerned to want to take up employment in Austria, but on that his right to take up employment in legal terms [...], the applicant was not available for the labour market.”

“2.2. Articles 17 and 24 of the Convention on the Status of Stateless Persons, Federal Law Gazette III No. 81/2008, mentioned by the applicant, do not help the complaint to succeed either. From this point of view, the applicant essentially submits that he has legal residence under the Convention. He can take up employment in Austria, as the Convention entitles him to take up employment and to receive unemployment benefits. Austria acceded to this UN convention in 2008 and this is therefore applicable to him. The authorities failed to review the application of the Convention. Art. 24 of the Convention is also an Austrian constitutional provision, the non-award of benefits is therefore unconstitutional [according to the applicant].”

“In this regard, it is sufficient to point out that the legal source named by the complainant is an international treaty concluded with a reservation in accordance with Art. 50 (2) B-VG, which has no direct domestic legal effects for those affected by the relevant international norm (cf. also Explanations of the government bill (205 BlgNR 23rd GP, 2), and thus the aforementioned Convention is not directly applicable in domestic law, so that the enactment of implementing national laws in accordance with Art. 50 Para. 2 B-VG (as amended before the amendment BGBl No. 2/2008) is required. The cited provisions do not confer any enforceable rights on the individual, but rather oblige the contracting states to enact corresponding norms in national legal systems (see also the revision of December 19, 2007, No. 2007/08/0288 for conventions that are not directly applicable).”

“2.3. With reference to the "Guideline on Statelessness No. 3: The Status of Stateless Persons at the National Level", RZ 18, published by the United Nations High Commissioner for Refugees on July 17, 2012, the applicant argues that Austria has not yet introduced a "determination procedure", that is a determination procedure to end statelessness, and is therefore at fault. His application for nationality could therefore also be regarded as this determination procedure. In his opinion, the duration of the procedure until he was granted nationality could not

lead to the loss of his unemployment benefit, since the status was granted to him, and the conditions for entitlement to unemployment benefit were therefore met.”

“Apart from the non-binding nature of these guidelines, the complainant's views are in direct contradiction to RZ 17 of the "Guideline on Statelessness No. 2: Procedures for Determining whether an Individual is a Stateless Person", according to which the Convention (on the Reduction of Statelessness) does not oblige states to legalise the residence of persons who have submitted an application for a statelessness determination procedure.”

Decision documents

[Verfassungsgerichtshof_20Mar2014.pdf](#)

Outcome

The Court upheld the administrative decision denying the applicant his social security benefits.