

Austria - Constitutional Court, case no. G154/10

The applicant received an assurance of acquiring Austrian nationality if she renounces her former, Serbian, nationality. Shortly after the renunciation the applicant lost her job and was unable to find alternative employment due to her statelessness, which resulted in her no longer complying with the income requirement for acquiring Austrian nationality. The Court declares unconstitutional the law which requires continuous fulfilment of all the conditions for naturalisation, even after Austrian nationality has been conditionally granted and the former nationality has been renounced.

Case number: G154/10

Citation:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09889071_1

Date of decision: 29/09/2011

State: Austria

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

Language(s) the decision is available in: German

Applicant's country of birth: Serbia

Applicant's country of residence: Austria

Legal instruments: European Convention on Human Rights (ECHR), European Union law, Other international law

Key aspects: Access to social and economic rights, Acquisition of nationality, Voluntary renunciation of nationality

Relevant Legislative Provisions:

Article 20 (2) StbG

Facts

The applicant, a Serbian national at the time, came to Austria in 1995 and married an Austrian national. Her daughter, born in 1997, is an Austrian national. The

marriage ended in 1999. The applicant has been residing legally and without interruptions in Austria since 1997.

On 3 July 2006 the applicant was given a letter of assurance of acquisition of Austrian nationality if she can provide proof of renunciation of her former nationality within 2 years. She submitted proof of having renounced Serbian nationality on 4 July 2007.

Since June 2000 the applicant was working in a pizzeria, which she also owned. The pizzeria went bankrupt in October 2007, which led to the applicant requesting social benefits assistance, as she was unable to find alternative employment due to her statelessness. This led to the rejection of finalisation of her naturalisation, as her relying on benefits meant she no longer complied with the income requirement for naturalisation. Having already renounced her former nationality the applicant became stateless as a result.

Decision & Reasoning

The Court does not explicitly engage with the concept of statelessness, but declares unconstitutional the law allowing for the revocation of assurance of naturalisation after the former nationality has been renounced for other reasons:

“2.1. The letter of assurance is intended to facilitate or enable the alien to renounce his or her other nationality. The assurance signifies entitlement to naturalisation which is conditional only on the proof of renunciation of the other nationality (see VwGH February 27, 2004, 2003/11/0253 mwH). In spite of this already existing conditional right to acquire the Austrian nationality, Article 20 (2) StbG provides for the possibility to revoke the assurance without exception if any of the requirements for naturalisation are no longer met.”

“Thus, that means that the naturalisation requirements that were already met at the time of issuance of the assurance are no longer applicable - which is why the conditional right to be granted nationality only requires the renunciation of the previous nationality - and with it becomes inapplicable the equalisation of “rejection grounds” at this advanced stage of the procedure, which disregard whether, for example, the foreigner is to blame for the discontinuation of the fulfilment of the naturalisation requirements.”

“2.2. In addition, the fact that the renunciation of a foreign nationality is required to be granted Austrian nationality, the event of a job loss due to no fault of one's own after renouncing the foreign nationality and before granted Austrian citizenship - as in the present case - can lead to the fact that no legal employment can be obtained. In such a case, the establishment of one requirement for acquisition of nationality (renunciation of a foreign nationality) simultaneously leads to the reason for rejection of the acquisition (in the absence of the possibility of obtaining a residence permit and thus securing an income).”

“2.4. Although it is fundamentally within the discretion of the legislator to choose to only grant Austrian nationality to foreigners who have adequately secured their means of sustenance in Austria through income or equivalent resources, without the use of social assistance benefits, for reasons of objectivity it is not allowed to treat in the same way serious crimes on the one hand and emergency situations through no fault of one's own on the other in the context of the legal right to be granted nationality, which has already been conditionally acquired through the letter of assurance. The fact that Austrian citizenship could subsequently still be acquired via a new application does not change this.”

Decision documents

[Verfassungsgerichtshof 29Sep2011.pdf](#)

Outcome

The Court declares unconstitutional the law that requires continuous compliance with all of the naturalisation requirements even after having renounced the former nationality, and sets the deadline for the Government to amend this law accordingly.