



## [Austria - Constitutional Court case of 13 March 2019](#)

The applicant was issued an assurance that she will acquire Austrian nationality if she renounced her former Serbian nationality, which she did. However, after the assurance was issued the applicant committed a number of administrative offences, leading to the assurance being withdrawn after the renunciation of the former nationality has already taken place, resulting in the applicant's statelessness. The Court emphasised the constitutional significance of a letter of assurance of acquisition of nationality, and sided with the applicant.

**Case status:** Decided

**Case number:** E4081/2018

**Citation:**

[https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT\\_20190313\\_18E04081\\_00/JFT\\_20190313\\_18E04](https://www.ris.bka.gv.at/Dokumente/Vfgh/JFT_20190313_18E04081_00/JFT_20190313_18E04)

**Date of decision:** 13/03/2019

**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)

**Key aspects:** Acquisition of nationality, Deprivation of nationality, Determination/confirmation of nationality, Voluntary renunciation of nationality

### **Facts**

First applicant was a national of Serbia, and had legal and uninterrupted residence in Austria since 2003. She is the mother of the second applicant.

On 1 July 2015 the first applicant received the assurance of being granted Austrian nationality if she renounces her Serbian nationality within 2 years. The second

applicant was included on that assurance. She had previously committed three administrative offences, which however were not considered by the authority to be frequent or severe enough to be an obstacle to her naturalisation. On 24 August 2016 she formally renounced her Serbian nationality.

On 18 January 2018 the authorities revoked the assurance of obtaining Austrian nationality, based on the administrative offences she committed between 2010 and 2018, thus posing a threat to public peace, order and security. She has committed twelve additional violations after the assurance of acquiring the nationality was granted. The second applicant's assurance was consequently also revoked.

### **Legal arguments by the applicant**

The applicant argued that the decision violated the constitutional principle of equal treatment among foreigners established by the Constitutional Court in earlier case law, as well as her rights to family life under article 8 ECHR as well as her right to fair trial under article 6 ECHR.

She argued that the assurance of acquisition of nationality has been issued to her with the authorities knowledge of some administrative offences, and should therefore not be withdrawn on this ground. She moreover submitted that most of the offences have been committed by her ex-husband, and she paid the fines in order to avoid debt.

### **Decision & Reasoning**

The Court found the claim to be admissible and well-founded. In particular, it reasoned as follows:

“2. According to the case law of the Constitutional Court [...] it is forbidden, both in legislation and practice, to make objectively unjustifiable distinctions between foreigners. The constitutional norm of equality entails a requirement of equal treatment among foreigners, which also includes the requirement of objectivity; their unequal treatment is only permissible if and to the extent that there is a reasonable ground for this and the unequal treatment is not disproportionate.”

“3. The assurance of the nationality [...] means that - aside from renouncing the previous nationality within two years - the foreigner has met all the requirements for acquiring the nationality. This supports the claim that an assurance is a form of

granting nationality which is conditional only on the renunciation of previous nationality [...]. However, according to [relevant nationality law provisions] the assurance is to be revoked if the foreigner no longer fulfils even one of the requirements for acquiring a nationality - with the exception of the requirement of adequate and secure means of sustenance. If one of these requirements is no longer met by an applicant after the proof of renunciation of the former nationality has been provided, the applicant is left stateless as a result of the revocation of assurance of acquisition of Austrian nationality."

"In this context, the Constitutional Court in judgment VfSlg 19.516/2011 has already stated that the assurance should only be revoked if there are serious reasons for it. The [legal provision] according to which the assurance of acquisition of nationality had to be revoked, "if the foreigner no longer fulfils even one of the requirements necessary for the acquisition of nationality", was repealed as unconstitutional. The Constitutional Court found the regulation unlawful, since it treats "serious crimes on the one hand and emergency situations which are not the applicant's fault on the other hand in the same way, and eliminating the legal right to be granted nationality which was created through the letter of assurance". The legislature is free to "provide for a revocation of the letter of assurance if there are serious reasons"."

"5. The [lower instance Court] misjudged the constitutional importance of an assurance [...] in the context of assessing the sufficiently serious reasons exist for its revocation."

### **Decision documents**

[Verfassungsgerichtshof\\_13Mar2019.pdf](#)

### **Outcome**

The Court ruled that the decision withdrawing the assurance of acquisition of nationality violated the applicant's constitutional right to equal treatment among foreigners.

### **Caselaw cited**

Constitutional Court, judgment VfSlg 19.516/2011