



[Austria - Vienna Administrative Court judgment of 23 January 2018](#)

The applicant received assurance of obtaining Austrian nationality if she renounces her Estonian nationality. After the renunciation, it appeared that the applicant committed two administrative offences related to her driving, which in addition to the eight she committed previously were considered as an indication of her no longer fulfilling the public order requirement for naturalisation. This resulted in the withdrawal of assurance of obtaining Austrian nationality, leaving the applicant stateless.

Case name (in original language) : VGW-152/065/11511/2017-7

Case status: Decided

Case number: VGW-152/065/11511/2017-7

Citation:

<http://www.verwaltungsgericht.wien.gv.at/Content.Node/rechtsprechung/152-065-11511-2017.pdf>

Date of decision: 23/01/2018

State: Austria

Court / UN Treaty Body: Vienna Administrative Court

Language(s) the decision is available in: German

Applicant's country of birth: Estonia

Applicant's country of residence: Austria

Legal instruments: 1961 Statelessness Convention, European Convention on Human Rights (ECHR), European Union law

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

Facts

On 11 March 2014 the applicant received assurance of acquiring Austrian nationality if she renounces her Estonian nationality within two years. In November 2015 she submitted evidence that she was no longer an Estonian national as of 27

April 2015. In late 2015 – early 2016 the applicant received several administrative fines related to driving, in addition to a number of those she already had. On that basis the assurance of acquisition of Austrian nationality was revoked, and her application for naturalisation was rejected.

Legal arguments by the applicant

During the public hearing, the applicant made the following statement:

"There is no excuse for my behaviour or for driving my motor vehicle when I was drunk. I was in shock at the time. In my defence I would like to say that I have lived and worked in Austria for 16 years. I work in social care. I am a good mother. I, and Austria, can be very proud of my son. I made a conscious choice for Austrian nationality, even though I would have had all the opportunities also with my Estonian nationality. The consequences of me not acquiring the nationality must also be considered. In particular, I am now stateless."

Decision & Reasoning

The Court reasoned as follows:

" [...] The assurance of Austrian nationality must be revoked if the alien no longer fulfils one of the requirements for acquiring nationality, with the exception of [the income requirement]. This also applies if a reason for refusal occurs only after proof of renouncing previous nationality has already been provided. According to the unambiguous wording, the legislator accepts such cases may result in statelessness (cf. the findings of the VwGH of January 26, 2006, 2005/01/0815 and November 11, 1998, 98/01/0082). This is to ensure that, in particular, the integrity of the candidates for naturalisation remains relevant even after the assurance has been given [...]."

"Not meeting a naturalisation requirement already at the time the assurance was issued does not constitute a reason for revocation, even if the authority was not aware of the administrative criminal offences at the time (see VwGH of 08/30/2005, 2004/01 / 0444). The legal situation is different, however, if, after the letter of assurance has been issued, circumstances arise which form an obstacle to naturalization in accordance with Section 10 (1) (6) StbG. In such cases, when assessing the overall behaviour of the naturalization applicant, not only the misconduct that was committed after the letter of assurance was issued, but also

those violations that were committed before the letter of assurance was issued need to be considered (see VwGH 2007/01/0260 as well as from 04.09 .2008, 2006/01/0740)."

"The decisive factor is whether the violation committed by the applicant is of such nature that it justifies the conclusion that the applicant will continue to disregard relevant regulations on protection against threats to life, health, safety, public peace and order - or other legal interests listed in Art. 8 Paragraph 2 of the ECHR."

"The type, severity and frequency of such violations express the - possibly negative - attitude of the person concerned towards the laws in force aiming to avoid such dangers (cf. most recently the decision of the VwGH of June 25, 2009, 2006/01/0032)."

"According to the case law of the Constitutional Court, such massive and repeated speeding violations are serious violations, which stand in the way of making a positive prognosis on the applicant's attitude towards the provisions regulating public order and safety in road traffic."

"The "Rottmann" decision referred to by the applicant deals with the loss of Union citizenship and is not applicable (any more) to the case at hand, especially since the applicant is already stateless and therefore not a Union citizen. Regarding the Convention on the Reduction of Statelessness, it should be noted that, contrary to the applicant's view, the violations she committed are "serious offences", which is why the revocation of the assurance and the rejection of her application for Austrian nationality is regarded proportionate."

"The long stay of the applicant in Austria and her professional and personal integration are not adequate to make a positive future prognosis with regard to her overall behaviour within the meaning of [naturalisation requirements]."

Decision documents

[Vienna_23January2018.pdf](#)

Outcome

The Court rejected the appeal and upheld the decision denying the applicant Austrian nationality, leaving her stateless as a result.