



[Austria - Constitutional Court case of 6 March 2014](#)

The applicant is of Roma ethnic origin, with parents from former Yugoslavia, who was born, grew up, and worked his whole life in Austria. He has had a permanent residence permit until 1995, when the latter was withdrawn due to applicant's criminal convictions. The Court found the applicant to be stateless, and determined that expulsion of a stateless person without a former country of habitual residence amounts to violation of Article 3 ECHR.

Case name (in original language) : U2131/2012

Case status: Decided

Case number: U2131/2012

Citation:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20140306_

Date of decision: 06/03/2014

State: Austria

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

Language(s) the decision is available in: English, German

Applicant's country of birth: Austria

Applicant's country of residence: Austria

Legal instruments: 1954 Statelessness Convention, European Convention on Human Rights (ECHR)

Key aspects: Burden of proof, Childhood statelessness, Country of return, Deportation and removal, Protection, Residence permit, State succession, Statelessness determination

Relevant Legislative Provisions:

Article 3 ECHR

Article 31 of the 1954 Convention on the Status of Stateless Persons, Federal Law Gazette III 81/2008

Facts

The applicant is a stateless person belonging to the Roma ethnic group, who was born on 11 August 1979 in Austria. He attended school in Austria, and subsequently worked as a bricklayer, without having lived in any other country. According to the applicant, his father is a Bosnian national and his mother is a Serbian national; both his parents live in Austria. The Serbian Ministry of the Interior and the Bosnian Embassy have both confirmed that the applicant was not a national of their state. He resided legally in Austria until 1995 on the basis of permanent residence permit, but his legal residence rights were withdrawn due to criminal convictions. He has 14 minor criminal convictions in total, including drug use and attempted theft.

On 26 April 2011, the applicant filed for international protection in an attempt to regularise his stay, which was rejected.

Legal arguments by the applicant

The applicant stated that he was applying for international protection in order to be able to stay and work in Austria. Although he had no problems with the Bosnian or Serbian authorities, he had never lived in Bosnia or Serbia. He once had a Yugoslav passport but lost it. Finally, the applicant stated that medical care for his illnesses - he suffered from HIV and hepatitis C - was not available in Serbia.

Decision & Reasoning

The Court reasoned as follows:

"1.1. According to the definition [of "country of origin" under Austrian Asylum Law], the country of origin is the country of nationality of the foreigner or - in the case of statelessness - the country of his previous habitual residence."

"[...] the reply of the Serbian Ministry of the Interior dated November 19, 2010 to the readmission request made by the Austrian Federal Ministry of the Interior shows that the applicant is not a Serbian national [...], and on the other hand from the

response of the Bosnian embassy in Vienna dated March 28, 2012 to the request made by the applicant's legal representative as to whether the complainant was a Bosnian national, which was sent by email - available in the court file of the Asylum Court, it can be seen that the applicant is not a Bosnian national. In addition, the applicant does not have a state of "previous habitual residence", considering that he - with the exception of short vacation stays outside Austria - has, as far as can be seen, spent his entire life so far in Austria."

"2.2. [...] In the opinion of the Constitutional Court, the expulsion of a person who was born in Austria, who resides exclusively in Austria (from birth for several decades), and who has no other state of reference due to statelessness and lack of habitual residence in a country other than Austria, violates their the human dignity, because this deprives them of any legal basis for their existence, and they are not in a position to establish a legal existence elsewhere at the same time."

"It thereby follows, that the [lower instance court] must declare the applicant's expulsion unlawful, whereby the applicant must at least be given a reasonable period of time in which he can acquire a nationality of another state, within the meaning of relevant international law provisions (see Article 31 of the Convention on the Status of Stateless Persons of September 28, 1954, Federal Law Gazette III 81/2008, according to which the State Parties grant stateless persons a reasonable period of time in which they may apply for entry into the country they are being expelled to, whereby the contracting states reserve the right to take domestic measures which they consider necessary during this period); should this not be possible in the long run, despite the applicant's reasonable efforts, the unlawfulness of the expulsion would become permanent."

Decision documents

[Verfassungsgerichtshof_6Mar2014.pdf](#)

[Verfassungsgerichtshof_6Mar2014ENG.pdf](#)

Outcome

The Court found that expulsion from Austria of a stateless person who was born and always lived in Austria would amount to a violation of Article 3 ECHR.