



[Austria - Constitutional Court case of 30 September 2019](#)

The applicant acquired Austrian nationality in 1995 and renounced her former Turkish nationality in 1996 as a condition for retaining the Austrian nationality. In 2018 the Austrian authorities declared that she has no longer been an Austrian national since 1997 as it appeared that she voluntarily re-acquired her Turkish nationality at that time, which is a ground for automatic loss of Austrian nationality. The Court set aside the determination of loss of Austrian nationality as it did not carry out a proportionality test on the basis of the Tjebbes judgment.

Case name (in original language) : Ra 2018/01/0477

Case number: Ra 2018/01/0477

Citation:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_20180104

Date of decision: 30/09/2019

State: Austria

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

Language(s) the decision is available in: German

Applicant's country of birth: Turkey

Applicant's country of residence: Austria

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

Key aspects: Acquisition of nationality, Burden of proof, Deprivation of nationality, Determination/confirmation of nationality, Respect for private and family life, Standard of proof, Voluntary renunciation of nationality

Relevant Legislative Provisions:

ECJ March 12, 2019, C-221/17, Tjebbes et al., Rn. 48

Article 8 ECHR

Facts

The applicant acquired Austrian nationality in 1995, and was requested to renounce her Turkish nationality within two years, as otherwise a withdrawal procedure of her Austrian nationality would be initiated. The applicant submitted proof of having renounced Turkish nationality in 1996.

On the 23rd of May 2018 the Austrian authorities determined that the applicant is no longer an Austrian national since 12 August 1997, as the authorities have found that on that date the applicant voluntarily reacquired Turkish nationality.

Decision & Reasoning

The Court rejected the applicant's arguments concerning the lack of proof that she has voluntarily re-acquired Turkish nationality, but accepted the argument that the authorities were obliged to carry out an EU-based proportionality test, as well as proportionality test in light of Article 8 ECHR. With regard to the latter the Court reasoned as follows:

"15 Since the loss of Austrian nationality is associated with the loss of Union citizenship status of the applicant, in addition to the conditions for the loss of Austrian nationality [based on national law], a proportionality test of the consequences of her loss of [EU] citizenship must be carried out. (See ECJ March 12, 2019, C-221/17, Tjebbes et al., Rn. 48; and VfGH June 17, 2019, E 1832/2019, to examine the consequences of any loss of citizenship for their proportionality with regard to Art. 8 ECHR)."

"16 The contested decision must therefore be set aside [...] as unlawful."

Decision documents

[Verfassungsgerichtshof_30Sep2019.pdf](#)

Outcome

The Court set aside the determination of loss of Austrian nationality as it did not carry out an EU-based proportionality test.

Caselaw cited

CJEU, Tjebbes et al., 12 March 2019, C-221/17,.