



[Austria - Constitutional Court case of 30 August 2018](#)

The applicant was born in Armenia and belongs to Yazidis minority. After many years of unlawful residence in Austria, and several unsuccessful attempts to deport him, he applied for a toleration permit, which was refused as he did not cooperate sufficiently with the authorities' attempts to obtain travel documents for him to travel to Armenia, and there is also a possibility he may be a Russian or a Ukrainian national. The Court sided with the applicant, stating that it was the authorities' responsibility to substantiate any presumed links between the applicant and a specific state, before the duty to cooperate could be imposed.

Case name (in original language) : Ra 2018/21/0029

Case number: Ra 2018/21/0029

Citation:

https://www.ris.bka.gv.at/Dokumente/Vwgh/JWT_2018210029_20180830L00/JWT_2018210029

Date of decision: 30/08/2018

State: Austria

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

Language(s) the decision is available in: German

Applicant's country of birth: Armenia

Applicant's country of residence: Austria

Key aspects: Burden of proof, Country of return, Deportation and removal, Determination/confirmation of nationality, Establishing identity, Residence permit, Standard of proof, Statelessness and asylum, Statelessness determination

Facts

The applicant was born in Armenia, and entered Austria in 2005, and then again in 2006 after having been deported to Slovakia. He attempted to regularise his residence several times, but those requests were rejected and followed by expulsion orders to Slovakia, Armenia, and Ukraine. Only the deportation to Slovakia was once successfully carried out. The applicant has been residing

continuously in Austria since May 2006. In December 2012 he applied for a tolerated stay permit, which was rejected most recently before this judgment in 2018. The applicant belongs to the Yazidis minority, and as he has claimed in his asylum procedures since 2007, he is stateless, and therefore his deportation is unrealistic.

Legal arguments by the applicant

The applicant argued that although he originally claimed to be an Armenian and a Ukrainian national, since 2007 he has consistently claimed to be stateless. He refused to fill out forms for the Armenian Embassy, but he claimed that in the absence of sufficient evidence to presume that he is an Armenian national his refusal to fill out those forms cannot be held against him as lack of cooperation in obtaining travel documents - a refusal in the context of lack of reasoning on the part of the authorities as to why he may be an Armenian national cannot disqualifying him from access to the toleration status.

Legal arguments by the opposing party

The authorities argued that the applicant did not cooperate in filling out forms to determine his eligibility for Armenian travel documents, and therefore did not comply with the requirement of sufficient cooperation for the toleration status. Moreover, the authorities argued that it cannot yet be ruled out that the applicant may be a Russian or a Ukrainian national.

Decision & Reasoning

The Court did not directly engage with the applicant's alleged statelessness in its reasoning. It found, however, that there needs to be a sufficiently convincing reason to presume the existence of a certain nationality before cooperation can be required of an applicant. The Court reasoned as follows:

"10. [...] As to the claim that the applicant refused to cooperate in a reasonable manner in obtaining a replacement travel document, it should be noted that the "acts of denial" (failure to fill out a form to obtain a laissez-passer) refer exclusively to Armenia. In the case at hand the actions of the applicant cannot lead to concrete conclusions. It has already been stated that relation to Armenia has not been established in the given context. As far as the opinion expressed in the contested decision that the obligation to cooperate exists vis-à-vis any state which the

authority suspects to potentially be a state of origin is devoid of substance.”

“11 It is moreover not true, contrary to what the authorities argue, that the rejection of the applicant’s request [for tolerated stay] is (already) justified on the basis that not all possibilities have been fully investigated, "especially with regard to the Russian Federation and the Republic of Ukraine". It is the authorities' responsibility to carry out the investigations it considers necessary [...], and their failure to take necessary investigative steps cannot disadvantage the applicant."

Decision documents

[Verfassungsgerichtshof_30Aug2018.pdf](#)

Outcome

The Court declared unlawful the authorities' decision to deny the applicant a tolerated stay status.