



[Austria - Constitutional Court case of 20 December 2013](#)

Applicant is a refugee from Vietnam, whose refugee status was withdrawn after a number of criminal convictions, combined with the fact that he made a safe trip to Vietnam. He applied for a travel document for foreigners claiming that he is stateless or at least that his nationality status is unclear. The authorities maintained that he was still a Vietnamese national, but the Court sided with the applicant, insisting that the authorities should have taken more factors into account in considering the applicant's potential statelessness.

Case name (in original language) : 2013/21/0111

Case status: Decided

Case number: 2013/21/0111

Citation:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_20132101

Date of decision: 20/12/2013

State: Austria

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

Language(s) the decision is available in: German

Applicant's country of birth: Vietnam

Applicant's country of residence: Austria

Key aspects: Burden of proof, Country of return, Deprivation of nationality, Determination/confirmation of nationality, Protection, Residence permit, Standard of proof, Stateless status and documentation, Statelessness and asylum, Statelessness determination

Facts

The applicant left Vietnam in 1977 and entered Austria in 1980, with a visa. Here he applied for asylum, which was granted to him. In 1986 the authorities issued an indefinite residence ban on the applicant due to several criminal convictions. His

asylum status was withdrawn in 1994, which was, among other things, based on the fact that he travelled to Vietnam for several weeks at the end of 1993 – beginning 1994 without any trouble, and therefore the circumstances under which he was granted a refugee status no longer existed.

The applicant remained in Austria, and applied for a protection status again in 2007, which was rejected in 2009. This resulted in an expulsion order to Vietnam.

Since 2012 the applicant was in possession of a temporary residence permit between 3 July 2012 until 2 July 2013. On 13 August 2012 he applied for an alien's passport, which was rejected. The present judgment deals with the review of the administrative decision that rejected the applicant's request for an alien's passport.

Legal arguments by the applicant

The applicant argued that since he was stateless, or at least his nationality could not be determined, he was entitled to an alien's passport. He submitted a letter from the embassy of Vietnam of 12 April 1999, according to which the embassy could not issue the applicant a passport because he had not presented enough documents to prove his identity and that he is a Vietnamese national. The applicant stated that he suspects his data has in the meantime been deleted. He also argued that since various Austrian authorities have already labelled him as stateless, for example on his card for tolerated persons, it should be accepted that he is in fact stateless.

Legal arguments by the opposing party

Authorities argued that the applicant was neither stateless nor had an unclear nationality. He does not have a permanent right of residence in Austria, and does not meet any of the requirements for being issued an alien's passport.

The authorities also submitted that the revocation of Vietnamese nationality does not take place automatically, but requires a special legal act by the Vietnamese government. Those Vietnamese nationals who fled Vietnam during the Chinese-Vietnamese conflict would only have lost their nationality if an individual decision had been issued to revoke their nationality. The applicant's claim of an automatic loss of his Vietnamese nationality has no legal basis. Since the applicant did not submit any documents that prove a decision to withdraw his Vietnamese nationality has been taken, it is not unreasonable to assume that he is still a Vietnamese

national. The fact that the Vietnamese authorities did not issue the applicant a permit to travel to Vietnam and that as a result he was granted a tolerated stay status in Austria is separate from the question of whether the applicant is stateless or of unclear nationality. The two questions are not necessarily linked.

Moreover, the authorities argued that the reference to the applicant's statelessness as noted on his card of tolerated stay is irrelevant, as it has been issued by a different authority than the one dealing with nationality questions.

Decision & Reasoning

The Court reasoned as follows:

“Concerning the issue that the applicant had not submitted any documents confirming the withdrawal of his nationality, the authority did not deal with the issue of the extent to which the applicant could have done this. For this reason alone, the assumption that the applicant is still a Vietnamese national is not conclusively justified. Moreover, the reasons why the police authorities assumed the applicant's statelessness in other proceedings should have been taken into account. Even if these assumptions are not binding for the present proceedings, they nevertheless have an indicative value. After all, the entry in the complainant's "St. Ang .:" [nationality status] in the current extract from the information system about foreigners, attached to the files submitted, reads as "STATELESS formerly VIETNAM". Above all, however, in view of his current tolerated stay after the end of the second asylum procedure, it would have been necessary to investigate why the Vietnamese embassy is currently not issuing a permission to return for the applicant. Although the refusal to issue such document by the embassy does not necessarily mean that the applicant, as the authority puts it, is "inevitably stateless", but it cannot be ruled out that the circumstances of the refusal could have been decisive to establish the deprivation of nationality of the applicant or lack of clarity as to his nationality status. The authority could also have approached the embassy in order to clarify the question of the applicant's nationality.”

Decision documents

[Verfassungsgerichtshof_20Dec2013.pdf](#)

Outcome

The Court struck down the administrative decision denying applicant a foreigner's travel document, on the basis that not sufficient consideration has been given to

factors that are relevant in establishing the applicant's potential statelessness.