

Austria - Constitutional Court case of 29 January 1997

The applicants arrived to Austria in 1989 from the Soviet Union, and became stateless the same year. They applied for Austrian nationality in 1993, before fulfilling the ten year residency requirement, and the judgment considers whether their statelessness can be considered as a circumstance "worthy of special consideration" allowing for an exception to the ten year residency requirement.

Case name (in original language) : 94/01/0744

Case status: Decided

Case number: 94/01/0744

Citation:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_19940107

Date of decision: 29/01/1997

State: Austria

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

Language(s) the decision is available in: German

Applicant's country of birth: Soviet Union {former}

Applicant's country of residence: Austria

Key aspects: Acquisition of nationality, Statelessness determination

Relevant Legislative Provisions:

Section 14 StbG - the domestic implementation of the UN Convention on the Reduction of Statelessness of 30 August 1961, Federal Law Gazette No. 538/1974

Facts

The applicants (a couple and their daughter) lived in the Soviet Union until September 1989 and have had their (main) residence in Vienna since then. They were Soviet nationals until 1989, and are now stateless. They applied for Austrian nationality in 1993. They did not fulfil the 10-year residency requirement, and the

only way nationality could be granted to them if there was a "reason worthy of special consideration".

Decision & Reasoning

On the issue of whether statelessness constitutes a "reason worthy of special consideration", the Court reasoned as follows:

"Since the first complainant is stateless and has been employed by the same employer since August 13, 1990, it remains to be investigated whether one of these circumstances is a "reason particularly worthy of consideration" for the granting of nationality, which the applicant did not expressly claim."

"The statelessness of the first applicant, however, fulfils the requirement of the "other lack of protection of the home country" contained in the list mentioned. The fact that the legislature has viewed statelessness as an factor for a positive settlement of an application for the granting of nationality also results from the fact that stateless persons have a right to a nationality under the conditions of Section 14 StbG - the domestic implementation of the UN Convention on the Reduction of Statelessness of 30 August 1961, Federal Law Gazette No. 538/1974."

"According to Section 14 (1) (1) StbG, a stateless person only has a legal right to be granted nationality if he was born in the territory of the Republic of Austria and has been stateless since birth. Since the first applicant was not born in Austria, but only entered it at the age of 37, the Administrative Court believes that there are no similar or comparable circumstances to those described in Section 14 of the StbG."

"The statelessness of the first applicant - which, by the way, does not allow for any conclusions to be drawn about a level of assimilation having been achieved beyond what would be expected after the normally required ten-year period - does not constitute a reason "particularly worthy of consideration" for being granted nationality that justifies neglecting the default naturalization requirement of ten-year main residence in Austria."

Decision documents

[Verfassungsgerichtshof_29Jan1997.pdf](#)

Outcome

The Court ruled against the applicant.