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Joachim Stern, Gerd Valchars

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Report on Austria

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Austria

Joachim Stern and Gerd Valchars[1]

Based on a former version of the report by Dilek Çınar
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1 Introduction

According to the latest Austrian statistical data from 1 January 2013[2], 1,004,268 non-nationals make up 11.9 per cent of Austria's population (8,451,860). Nationals of Germany (157,793), Turkey (113,670) and Serbia (111,280) are the three largest groups, accounting together for 38.1 per cent of the total foreign population. 41.4 per cent of the foreign population are EU citizens (416,022), after the accession of Croatia 47.3 per cent (474,641). 7,726 persons living in Austria are listed as stateless or of unknown nationality. With 23 per cent, the share of non-nationals in the province (and capital city) of Vienna is much higher than the national average. It should be noted that these figures include foreign nationals born in Austria. In 2012, 144,369 of the 970,541 foreign nationals living in the country (14.9 per cent of the foreign population) had been born in Austria. 35.7 per cent of all naturalisations in 2012 concerned foreign nationals born in the country.[3] The number of persons born abroad who live in Austria is much higher than the number of foreign nationals. In 2012, 1,349,006 persons, i.e. 16 per cent of the population, were foreign-born. Thus, the share of the foreign-born population in Austria is higher than in the USA (Jandl & Kraler 2003). However, as in many other European states, Austria's self-image is not that of an immigration country. At the same time, 418,900 people with Austrian citizenship reside outside Austria; the vast majority of these (42.0 per cent) live in Germany.[4]

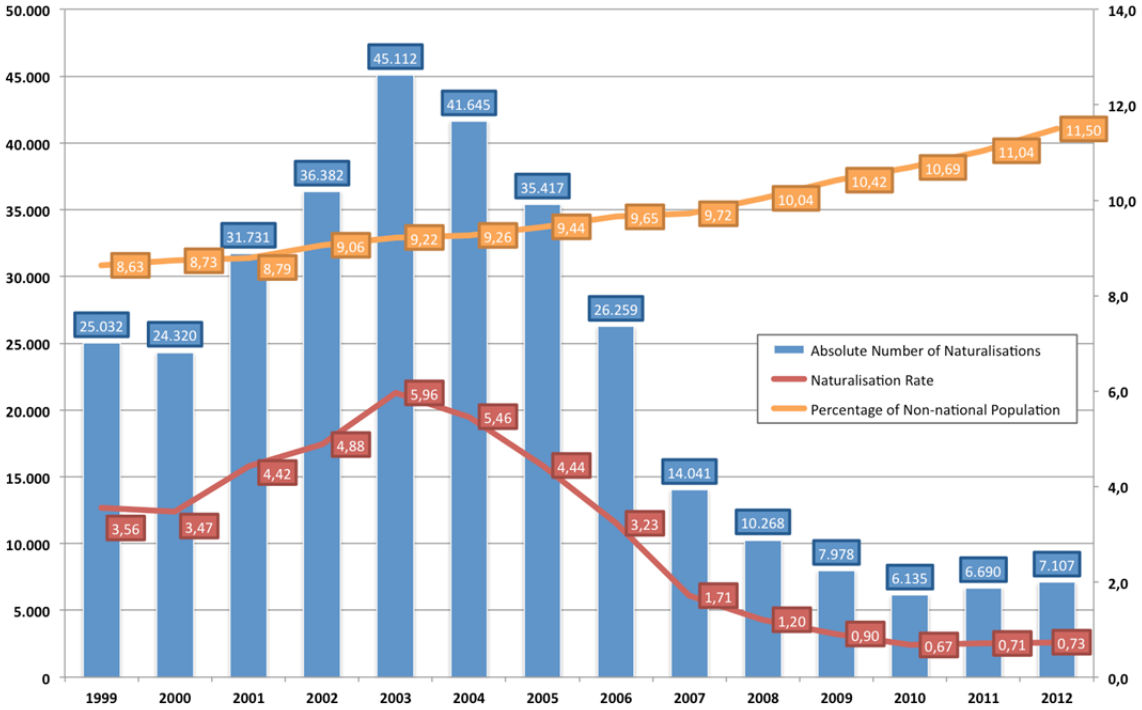
[1] Any views expressed are solely those of the authors and do not necessarily reflect those of institutions or organisations they are associated with.
[2] Statistics Austria, Population Structure, *Statistik Austria, Bevölkerungsstruktur*, http://www.statistik.at/web_de/statistiken/bevoelkerung/bevoelkerungsstruktur/index (consulted 16 July 2013).
[3] Statistics Austria, Naturalisations, *Statistik Austria, Einbürgerungen*, http://www.statistik.at/web_de/statistiken/bevoelkerung/einbuergerungen/index.html (consulted 16 July 2013).
[4] Statistics Austria, Austrians Abroad, *Statistik Austria, Auslandsösterreicher und Auslandsösterreicherinnen 2012,* http://www.statistik.at/web_de/statistiken/bevoelkerung/internationale_uebersich/036450.html (consulted 16 July 2013).

Austrian citizenship legislation is based on the principles of ius sanguinis, a ban on multiple citizenship and the idea that naturalisation should be only the last step of a 'successful integration process'. Until the mid-1990s, there were no major political debates on the conditions of citizenship acquisition or the number of naturalisations. Apart from the need to eliminate gender inequalities in citizenship legislation, developments abroad had little impact on domestic legislation. Thus, Austria remained among the few Western European countries that are exclusively committed to ius sanguinis and apply the ban on dual citizenship in a strict manner. Compared to other European countries, Austria further stands out with its high barriers for ordinary naturalisation and its low barriers for fast track naturalisations for famous artists, sports people or major investors.

Austrian citizenship law is a federal competence, whereas provincial governments are responsible for the implementation of the legal provisions. Since the early 1990s, the separation of legislative and administrative powers in matters of citizenship has been a major source of increasingly diverging naturalisation practices. Two of the three most recent reforms of citizenship legislation were adopted in 1998 and 2005 with the official aim of 'harmonising' the implementation of different legal provisions. Another important policy goal was the prevention of cases where authorities were allegedly using their discretion to reduce the long waiting period of ten years to facilitate the naturalisation of immigrants, especially in the federal province of Vienna. The reforms of 1998 and 2005 redefined the conditions of facilitated naturalisation and introduced a uniform level of German language requirement as well as a citizenship test. Thus, with these reforms of citizenship legislation Austria joined the group of European countries that adhere to the principle of 'civic integration' as a precondition for naturalisation.

Partly as a consequence of the legislative changes, naturalisation numbers in Austria have fluctuated intensively since 1999. In 2003, naturalisation reached an all-time high, both in terms of absolute numbers and in relation to the foreign population. After 2003, numbers decreased steadily with a massive drop in 2007, when the major amendment of 2005 had come into force. The number of naturalisations reached its low point in 2010. Not since 1973 have figures been as low as since then. From 2003 to 2011 the absolute number of naturalisations dropped by 85 per cent. An almost identical picture can be observed by looking at naturalisation rates. Like absolute numbers, they steadily decreased from the late 1990s onward, peaked in 2003 and decreased sharply after the 2005 reform until 2011 by a massive drop of 88 per cent.

Figure 1: Naturalisation in Austria 1999 – 2012. Absolute numbers, naturalisation rate and non-national population



Source: Statistics Austria, Population Structure, Naturalisations. Own Compilation.

Lately the Constitutional Court has annulled several provisions of the Austrian Citizenship Law. In a series of judgments, the Court found unconstitutional inter alia the denial of citizenship iure sanguinis to children of Austrian fathers born out of wedlock and the unconditional income requirements for naturalisation making it de facto impossible for people with disabilities to acquire citizenship by naturalisation. An amendment partly covering these issues and introducing an alternative track towards citizenship for those considered to be 'exceptionally well integrated' was adopted in July 2013 and came into force on 1 August 2013.

In the Austrian context, the term *Staatsbürgerschaft* refers both to the legal bond between the individual and the state (nationality) as well as to the bundle of rights enjoyed by citizens (citizenship). However, unlike some uses of the English term nationality, *Staatsbürgerschaft* has no ethnic connotations. Therefore, in this report citizenship and nationality are used synonymously and without any reference to ethnicity.

2 Historical background and changes

2.1 Developments up to 1945

Legal provisions concerning the acquisition and loss of Austrian citizenship were introduced in the early nineteenth century and remained effective in the Austrian part of the Habsburg Empire until the end of the First World War. According to art. 28 of the Civil Code of 1811[5] acquisition of Austrian citizenship by birth was based on the principle of ius sanguinis (Bauböck & Çınar 2001: 255). Children born in wedlock acquired Austrian citizenship if the father was an Austrian national; children born out of wedlock became Austrian nationals only if the mother held Austrian citizenship (Goldemund, Ringhofer & Theuer 1969: 473). Children born out of wedlock to an Austrian father became Austrian nationals upon legitimation only. Another automatic mode of citizenship acquisition concerned foreign women who acquired their husband's Austrian citizenship upon marriage.

Foreigners without family ties to Austrian nationals became Austrian citizens ipso iure either upon entry into the civil service, when starting a business, or after ten years of uninterrupted residence (Buschmann 1841: 13-62). Finally, foreign nationals could be naturalised by application if they could prove 'good manners' and sufficient income; a certain period of residence in the country prior to the application was not required, but in this case naturalisation was ultimately an 'act of grace'. As the automatic naturalisation of foreign nationals after ten years of residence gave rise to diplomatic disputes, this provision was overruled in 1833 by an Imperial decree[6] which changed the law into discretionary naturalisation by application (Heinl 1950: 33; Burger 2000: 88ff). A renunciation of former citizenship was no precondition for naturalisation. Acquiring citizenship automatically by starting a business was abolished in 1860 (Thienel 1989: 41).

The relevant legal source concerning the loss of Austrian citizenship was the 1832 *Auswanderungspatent* (Emigration Law)[7]. Emigration of Austrian nationals was subject to authorisation. Austrian nationals who intended to live abroad permanently had to apply for release from Austrian citizenship prior to emigration in order not to incur a penalty. According to art. 9 of the Emigration Law, the loss of the status as an Austrian 'subject' became effective after departure from Austria. Austrian nationals were granted the right to leave the country without prior authorisation in 1867, but emigration continued to provide a ground for loss of citizenship (Brandl 1996: 62). The Emigration Law was relevant not only for Austrian nationals who went abroad but also for the citizenship status of women. According to art. 19 of the Emigration Law, Austrian women lost their status as 'female subjects' upon marriage to a foreigner (Goldemund et al. 1969: 474).

[5] Civil Code of 1811, *Allgemeines Bürgerliches Gesetzbuch 1811*, JGS 946.
[6] Imperial Decree of 5 February 1833, *Hofkanzleidekret vom 5. Februar 1833*, Goldemund et al. 1969: 80f.
[7] Emigration Law of 1832, *Auswanderungspatent 1832,* JGS 2557.

Although Austrian citizenship formally granted unlimited access to civil rights, the right to unconditional residence and public assistance for the poor was dependent on the so-called *Heimatrecht*, i.e. the right of abode in a municipality. Austrian nationals living in a municipality where they did not enjoy *Heimatrecht* were liable to deportation if they became a 'public burden'. The right to unconditional residence and public assistance was acquired either automatically by descent, marriage, the practice of public or clerical professions or, after 1896, by legal entitlement after ten years of uninterrupted residence in the respective municipality if the person had not become a 'financial burden' during this time.[8] The naturalisation of foreigners was dependent on a municipality's willingness to grant a foreigner *Heimatrecht* which meant that the two concepts of citizenship and *Heimatrecht* were closely interlinked.

After the end of the First World War and the collapse of the Austro-Hungarian monarchy in 1918, the *Heimatrecht* was decisive for the reassignment of former nationals to one of the successor states. According to the Peace Treaty of Saint-Germain-en-Laye, which entered into force in July 1920[9], the acquisition of Austrian citizenship was conditional upon having *Heimatrecht* in a municipality within the new borders of the Republic of Deutsch-Österreich and not holding the citizenship of another signatory state (art. 64 and 70; Brandl 1996: 63; Thienel 1989: 49-60). Ethnic minorities, defined as persons differing from the majority population with regard to 'race and language' (*nach Rasse und Sprache von der Mehrheit der Bevölkerung verschieden*), had the right to opt for the state whose population spoke their language and belonged to the same 'race' [art. 80]. The racial reference in this provision was used to prevent mostly Jewish refugees from acquiring Austrian citizenship – according to estimates 25,000 to 34,000 Jewish refugees lived in Vienna at the end of the First World War (Bauböck 1996: 4; Burger & Wendelin 2004a; Kolonovits 2004: 39-75). Due to the fact that many people did not possess *Heimatrecht* of the municipality they lived in at the end of the war an important share of the population faced unsolved citizenship issues and statelessness was a major phenomenon throughout the interwar period.

[8] Law of 5 December 1896 amending various provisions of the Law of 3 December 1863 concerning the right of abode, *Gesetz vom 5. December 1896, wodurch einige Bestimmungen des Gesetzes vom 3. December 1863, betreffend die Regelung der Heimatverhältnisse, abgeändert werden*, RGBl. 222/1896.
[9] Treaty of Saint-Germain-en-Laye of 10 September 1919, *Staatsvertrag von Saint-Germain-en-Laye vom 10. September 1919*, StGBl. 303/1920.

The laws to be passed in the new Republic did little to resolve these issues. The new Constitution of 1920 introduced two important elements in matters of citizenship. First, legislation concerning the acquisition and loss of citizenship was declared a matter of the federal state (*Bund*) and administration of the legal provisions a competence of the federal provinces (*Länder*) (Brandl 1996: 65). Second, a separate provincial citizenship (*Landesbürgerschaft*) was created for each of the nine Austrian federal provinces. According to the Citizenship Law which was finally passed in 1925,[10] acquisition of Austrian citizenship was henceforth conditional upon holding or acquiring the citizenship of a federal province. Persons who were Austrian citizens and had *Heimatrecht* in a municipality were declared citizens of the respective federal province (*Landesbürger*). Children of Austrian citizens acquired provincial citizenship and Austrian citizenship according to the principle of ius sanguinis. Foreign nationals could acquire provincial citizenship after four years of residence in Austria (de Groot 1989: 150). Even though from today's point of view this appears quite liberal the intentions were not – the travaux préparatoires explicitly state that 'concern about the maintenance of the German character of the republic necessitates measures to be taken against being overrun by foreign influences'.[11] In this sense the acquisition of Austrian citizenship was again made dependent upon the eligibility for *Heimatrecht* in an Austrian municipality. This prolonged the waiting period to at least ten years of uninterrupted residence in one single municipality. Other modes of acquisition of provincial citizenship and Austrian citizenship concerned the automatic acquisition of citizenship by professors upon taking office at an Austrian university, by a foreign woman upon marrying an Austrian national, and by the children of foreign nationals who obtained Austrian citizenship. Applicants for naturalisation had to give up their previous citizenship – a requirement that could be waived though if their state of origin allowed for double nationality.

The authoritarian regime established in 1933 amended the Citizenship Law of 1925 during its first year in office by government ordinance and inserted a provision allowing a person's citizenship to be revoked for political reasons.[12] Between 1933 and 1938 10,400 Austrians were denaturalised because they allegedly had conducted 'anti-Austrian activities' or left the country without permission (Davy & Çınar 2001: 642f; Reiter 2006: 175f; Reiter-Zatloukal 2012: 80). Naturalisation after 1933 was possible only in individual cases if granting Austrian citizenship served the interests of the government (Goldemund et al. 1969: 409).

[10] Federal Law of 30 July 1925 on the acquisition and loss of federal and provincial citizenship, *Bundesgesetz vom 30. Juli 1925 über den Erwerb und den Verlust der Landes- und Bundesbürgerschaft,* BGBl. 285/1925.
[11] StenProt 358 BlNR 2. GP.
[12] Government ordinance amending the Citizenship Law of 1925, *Verordnung der Bundesregierung vom 16. August 1933, womit das Bundesgesetz vom 30. Juli 1925, BGBl. 285, über den Erwerb und den Verlust der Landes- und Bundesbürgerschaft abgeändert wird*, BGBl. 369/1933.

Following the annexation of Austria to Nazi Germany in 1938, persons holding Austrian citizenship were declared nationals of the German Reich, unless they had been naturalised after 1933.[13] The Austro-fascist revocations of citizenship were only declared invalid if the persons were of 'German or related blood'. The material provisions of the German Citizenship Law of 1913[14] as amended by the national socialists became effective in Austria in July 1939 simultaneously with the abrogation of the Austrian Citizenship Law of 1925 and the concept of *Heimatrecht*[15] (Heinl 1950: 48f). This also meant that there was no *right* to naturalisation – the Minister of Interior had to approve each individual decision.[16] Immediately afterwards also the German law relating to revocation of citizenship was introduced.[17] Citizens abroad could have their citizenship revoked especially in cases of supporting 'anti-German propaganda' with their assets becoming property of the Reich. From 1933 to 1945 a total of 39,000 of such individual revocations came into force, approximately 1,400 of them affecting people from Vienna (Burger & Wendelin 2004a: 280). Not only from this perspective did nationalist socialist ideology shape the citizenship regime: The 1938 implementation of the Nuremberg Race Laws of 1935, especially the 'Law on the protection of German blood and honour' also took effect in annexed Austria in 1938 and provided *inter alia*: 'A Jew cannot be a Reich citizen. He is neither entitled to vote on political matters nor may he hold public office'. A series of discriminatory amendments to the citizenship law followed and peaked in the 11th Decree on Citizenship:[18] All people considered Jews outside the territory of the German Reich collectively lost their nationality, their assets became property of the Reich. Jews who were deported thus became automatically stateless. This regulation was put into effect at the same time as the first mass extermination transports. It was intended to remove all hindrances to a 'radical solution' (Burger & Wendelin 2004a: 296).

[13] Ordinance on German citizenship in the land of Austria of 3 July 1938, *Verordnung über die deutsche Staatsangehörigkeit im Lande Österreich vom 3. Juli 1938*, GBlfLÖ. 236/1938.
[14] German Citizenship Law, *Reichs- und Staatsangehörigkeitsgesetz*, 22. Juli 1913, RGBl. 583/1913.
[15] Second ordinance on German citizenship in the land of Austria of 30 June 1939, *Zweite Verordnung über die deutsche Staatsangehörigkeit im Lande Österreich vom 30. Juni 1939*, GBlfLÖ. 840/1939.
[16] Law amending the German Citizenship Law of 15 May 1935, *Gesetz zur Änderung des Reichs- und Staatsangehörigkeitsgesetzes vom 15. Mai 1935*, RGBl. I 593/1935.
[17] Ordinance on the withdrawal of citizenship and the revocation of naturalisations in the Ostmark of 11 July 1939, *Verordnung über die Aberkennung der Staatsangehörigkeit und den Widerruf des Staatsangehörigkeitserwerbes in der Ostmark vom 11. Juli 1939*, GBlfLÖ. 892/1939
[18] Eleventh ordinance on the Law on citizens of the Reich of 25 November 1941, *Elfte Verordnung zum Reichsbürgergesetz vom 25. November 1941*, RGBl. 133/1941.

2.2 Developments 1945-1985

The German Citizenship regime was abrogated in April 1945 after the reestablishment of Austria. A few months later, the Law on the Transition to Austrian Citizenship[19] and the Citizenship Law of 1945[20] came into force. They were based on the fiction of continuity of Austrian citizenship throughout the Nazi-era: All persons who had held Austrian citizenship on 13 March 1938, the date of annexation of Austria to Nazi Germany, and those who would have acquired it iure sanguinis, through marriage or legitimation in the years up until 1945 on the basis of the Citizenship Law of 1925 were declared Austrian nationals. However, persons who were considered to have fulfilled a condition that would have entailed the loss of Austrian citizenship between 1938 and 1945 were excluded (Mussger et al. 2001: 19). According to art. 7 of the Citizenship Law of 1925, persons who acquired a foreign nationality including women having married foreign nationals lost Austrian citizenship. Thus, the Austrian citizenship of persons who had been forced to leave the country during the Nazi regime was restored automatically only if they had not acquired another citizenship in the meantime (Burger & Wendelin 2004b: 2). Austrians who had lost their citizenship for political reasons before 1938 could only reapply within one year. These restrictive conditions of the 1945 acts laid the cornerstone for prolonging national socialist injustices. Up until today, the situation has only been improved partially and still gives rise to calls for amendments. Even provisions to ensure that having served in the Allied Forces did not entail the loss of Austrian citizenship were introduced only gradually.[21]

The Citizenship Law of 1945 was based on the Citizenship Law of 1925, but provincial citizenship and *Heimatrecht* were not reintroduced. Due to numerous amendments of the transitional provisions, the Citizenship Law of 1945 was republished in 1949.[22] In many aspects it was still in line with the legal provisions in force since 1925, but also contained some changes.

[19] Law on the Transition to Austrian Citizenship, *Staatsbürgerschaftsüberleitungsgesetz*, StGBl. 59/1945.
[20] Citizenship Law of 1949, *Staatsbürgerschaftsgesetz 1945*, StGBl. 60/1945.
[21] BGBl. 51/1946; BGBl. 25/1947.
[22] Amendment of the Citizenship Law of 1949, *Staatsbürgerschaftsrechtsnovelle 1949*, BGBl. 142/1949.

First, according to art. 9 of the Citizenship Law of 1949, women who acquired a foreign citizenship automatically upon marriage could henceforth apply for permission to retain their Austrian citizenship. Second, naturalisation of foreign nationals was made more difficult and different waiting periods were introduced. Art. 5 of the Citizenship Law of 1949 provided that foreign nationals could acquire Austrian citizenship at any time if the federal government considered that the naturalisation would benefit the interest of the federal state or after four years of residence if the Federal Chancellor and the Minister of the Interior confirmed that naturalisation would not be to the detriment of the Federation. After ten years of residence naturalisation by discretion was possible if the applicant fulfilled the general conditions. Foreign nationals who had resided uninterruptedly and voluntarily in Austria for 30 years and fulfilled the general conditions had a legal entitlement to naturalisation. This provision was a reformulation of the legal entitlement to naturalisation, first introduced in 1945, of persons who could prove to have had their residence in Austria since 1915. Candidates for naturalisation had to undergo a screening of their relationships with the home country as well as of the personal and family situation and could only be naturalised if authorities came to the conclusion that naturalisation would not be to the detriment of the federation or of one of its provinces. This implied economic self-sufficiency as well as the absence of a criminal record, especially including sentences for national socialist crimes. As in 1925, the requirement of renunciation of a previous citizenship could be waived if the country of origin allowed for double nationality.

The rather unique provision for a naturalisation entitlement after 30 years as well as the privileged citizenship admission of people whose naturalisation is considered to be in the federal interest is still part of the current citizenship law.

Between 1945 and 1950, roughly one million displaced persons from Eastern Europe and the former Soviet Union, among them more than 300,000 so-called *Volksdeutsche* (ethnic Germans), became stranded in Austria. About 530,000 of them settled permanently (Fassmann & Münz 1995: 34). Between 1954 and 1956, displaced persons of German descent who were either stateless or whose citizenship status was unclear were granted the right to acquire Austrian citizenship by declaration and with reduced fees.[23] Ironically, this was argued inter alia as a necessary step to comply with art. 34 of the 1951 Geneva Convention on the Status of Refugees which provides that the contracting states shall as far as possible facilitate the assimilation and naturalisation of refugees and in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings (Stern 2012a 68). By 1958, roughly 230,000 ethnic Germans had acquired Austrian citizenship by declaration. In contrast, displaced persons who were not ethnic Germans could only apply for discretionary naturalisation (Stieber 1995: 149). The contradiction with art. 3 of the 1951 Refugee Convention, according to which the provisions shall be applied to refugees 'without discrimination as to race, religion or country of origin', is rather obvious.

[23] Law concerning the acquisition of citizenship by ethnic Germans, *Bundesgesetz betreffend den Erwerb der Staatsbürgerschaft durch Volksdeutsche*, BGBl. 142/1954.

During the first half of the 1960s, discussions about legislative reform concentrated on domestic as well as international issues in citizenship matters, namely the need for a register of Austrian nationals (*Staatsbürgerschaftsevidenz*) and the adoption of the UN Convention on the Status of Married Women, the UN Convention on the Reduction of Statelessness, and the Convention of the Council of Europe on the Reduction of Multiple Citizenship (Thienel 1989: 95). A new citizenship law was passed in 1965, which entered into force in July 1966.[24] Again, the Citizenship Law of 1965 maintained, on the one hand, the basic principles of citizenship legislation as it had developed since 1925; on the other hand, several changes were introduced in order to eliminate the discrimination of women in matters of citizenship. The most important changes in this respect were:

– Children born in wedlock could acquire the Austrian citizenship of their mother if they would otherwise be stateless (art. 7).

– Automatic loss of Austrian citizenship by marriage to a foreign national was abolished (art. 26).

– Automatic acquisition of citizenship by marriage to an Austrian national was transformed into a right to naturalisation by declaration (art. 9).

– Automatic granting of citizenship to a foreign woman whose husband acquired Austrian citizenship was transformed into a legal entitlement to the extension of the husband's naturalisation upon application (art. 16).

Two further changes were introduced with respect to the ban on multiple citizenships and the loss of Austrian citizenship. First, according to art. 10 of the Citizenship Law of 1965, recognised refugees were explicitly exempt from the requirement to renounce their previous citizenship in order to be granted Austrian citizenship. Second, the principle of individual autonomy was strengthened by providing for the first time for a loss of citizenship by voluntary renunciation if a person held another citizenship (art. 37 of the 1965 Citizenship Law; Thienel 1989: 95).

A small but important amendment was also made with regard to the general naturalisation requirements: the obligation to be economically self-reliant was amended to also allow for the naturalisation of persons who were not to blame for their lack of financial means (art. 10(1)(7); Stern 2012a: 65).

Until the mid-1980s, the Citizenship Law of 1965 was amended several times with regard to the naturalisation of foreign nationals, the reacquisition of citizenship and the citizenship status of men and women (Mussger et al. 2001: 22f). The amendments of 1973 and 1983 deserve special attention. The original aim of the amendment in 1973 was, among other things, to facilitate the naturalisation of the so-called 'guest workers' while the latter reform eliminated the remaining inequalities between men and women (Novak 1974: 589).

[24] New codification and re-announcement of the Federal Law on Austrian Citizenship 1965, *Staatsbürgerschaftsgesetz 1965*, BGBl. 250/1965.

Until the early 1960s, Austria was a country of emigration. Germany and Switzerland were the main destination countries for Austrian labour migrants. The aggregate migration balance between 1951 and 1961 was negative and amounted to 129,000 (Waldrauch 2003). When Austria started facing labour shortages during the economic boom of the late 1950s, the Austrian Economic Chamber, which is a public body representing the interests of employers, entered into negotiations with German and Swiss companies to stop the recruitment of Austrian workers (Münz, Zuser & Kytir 2003: 21). Because these negotiations were unsuccessful, the Social Partners (the organisations representing employers and labour) agreed to recruit workers from Mediterranean countries. Recruitment agreements concluded with Spain (1962), Turkey (1964) and Yugoslavia (1966) led to an increase in the share of foreign workers from 1.6 per cent in 1965 to 7.2 per cent in 1975 (Waldrauch 2003). The share of foreign nationals living in Austria increased from 1.4 per cent in 1961 to 2.8 per cent in 1971 (Münz et al. 2003: 38). It is against this background that the amendment of the Citizenship Law of 1973 was supposed to liberalise the conditions of naturalisation.

Until the reform of 1973, the constitutional provision[25] of art. 10(4) of the Citizenship Law of 1965 stated that foreigners could be granted Austrian citizenship irrespective of some of the general conditions for naturalisation in cases where their 'extraordinary achievements' would serve the interests of the Republic. Thus, the draft version of the government bill allowed for 'ordinary' achievements to be a sufficient reason in order to waive the requirements of ten years of residence, sufficient income, and renunciation of the original citizenship. The intention was to remove the most important obstacles to the naturalisation of so-called 'guest workers' and their descendants. However, during the preliminary stages of the parliamentary procedure the government was accused of 'fishing for voters' (Novak 1974: 590). In addition, the proposed amendment would have required a two-thirds majority vote by the parliament to amend the constitutional provision, which may explain the reluctance of the Constitutional Committee to support the amendment and their eventual rejection of it. Instead, the Constitutional Committee agreed on abolishing the requirement of a certain period of residence in the country for minors with a foreign citizenship. Since, according to art. 17 of the Citizenship Law of 1965, minor children already had a legal entitlement to be granted Austrian citizenship together with their parents without having to fulfil any residence requirements, this amendment had hardly any impact in practice.

[25] In Austria, a two-thirds majority in parliament can pass constitutional laws or protect specific provisions in ordinary laws against easy amendment or scrutiny of the Constitutional Court by granting them constitutional status.

The reform of 1973 also brought changes with regard to survivors of the Holocaust, political emigrants and expatriates (Novak 1974). The time limit for applications for the reacquisition of Austrian citizenship by former nationals who had had to leave the country to escape political persecution between 1933 and 1945 was extended to December 1974 (art. 58 as amended 1973). The same group of persons was granted the right to reacquire Austrian citizenship by notifying (*Anzeige*) the authorities of the re-establishment of their habitual residence in Austria. However, reacquisition of nationality by notification was possible only if applicants could prove that they had been Austrian nationals for at least ten years and fulfilled the general conditions for naturalisation (art. 58c). Finally, permission to retain Austrian citizenship when acquiring a foreign citizenship was made conditional on 'expected future achievements' for the benefit of the Republic instead of 'extraordinary achievements' (art. 28).

A profound change of citizenship legislation in the mid-1980s aimed to bring about equality between men and women.[26] Most importantly, the gender inequality with respect to the acquisition of citizenship by children born in wedlock was eliminated. Since September 1983, children born in wedlock acquire Austrian citizenship by birth if one of the parents is an Austrian national. Minor children born before September 1983 who could not acquire Austrian citizenship because their father was not an Austrian national were given the option to obtain Austrian citizenship from their mother by declaration up to December 1988.[27]

However, the gender equality reform also eliminated a 'female privilege' (Bauböck & Çınar 2001). Until then, women married to an Austrian national could acquire their husband's citizenship by simple declaration without having to fulfil any other conditions. Since the reform of 1983, all persons married to Austrian nationals must fulfil the general conditions of naturalisation except for shorter residence requirements.

[26] Citizenship Law Amendment 1983, *Staatsbürgerschaftsgesetz-Novelle 1983*, BGBl. 170/1983.
[27] Citizenship Law Amendment 1986, *Staatsbürgerschaftsgesetz-Novelle 1986,* BGBl. 386/1986.

2.3 From 1985 to today: efforts to restrict access to naturalisation

The Citizenship Law of 1965 was reissued in 1985[28] and has been amended several times since. The most important amendments between 1985 and 2013 concerned the relationship between citizenship of the Federal Republic (*Staatsbürgerschaft*) and citizenship of the federal provinces (*Landesbürgerschaft*), the reacquisition of Austrian citizenship, and the naturalisation of foreign nationals.

According to art. 6(1) of the Constitution of 1929[29], each federal province had its own 'provincial citizenship' (*Landesbürgerschaft*) which was declared a prerequisite for the acquisition of 'federal citizenship' (*Bundesbürgerschaft,* as it was called back then). Although art. 6(1) also provided that the acquisition and loss of the citizenship of each federal province took place under uniform conditions, no federal law was introduced to regulate these conditions. The provisional Constitution of 1945 and the Citizenship Law of 1949 declared that, subject to further constitutional amendments, this subdivision of Austrian citizenship into provincial and federal citizenship was suspended (Mussger et al. 2001: 20). It was only in 1988 that the principle of a 'uniform' Austrian citizenship was laid down in the Constitution. Although the citizenship of the federal provinces was maintained, the amended art. 6(2) of the Constitution reversed the relationship between *Staatsbürgerschaft* and *Landesbürgerschaft*. Persons holding Austrian citizenship are henceforth considered citizens of the federal province where they have their main residence.[30] In fact provincial citizenship never gained any autonomous legal or political relevance and was of purely symbolic meaning (Öhlinger 1997: 105, Brugger & Unterweger 1999: 11f).

As mentioned above, survivors of the Holocaust and political emigrants were granted the right to reacquire citizenship by notification (*Anzeige*) in 1973, but they had to re-establish their habitual residence in Austria and to meet, with some exceptions, the general conditions for naturalisation. The amendment of 1993 finally liberalised somewhat the conditions for the reacquisition of citizenship by persons who had to leave the country before 1945 but still proved inaccessible for many of the concerned persons and their children (Kolonovits 2004: 183ff; Burger & Wendelin 2004: 389ff).

[28] Citizenship Law of 1985, *Staatsbürgerschaftsgesetz* 1985, BGBl. 311/1985.
[29] Constitutional Law, *Bundes-Verfassungsgesetz (B-VG)*, BGBl. 1/1930.
[30] Constitutional Law Amendment 1988, *Bundes-Verfassungsgesetz-Novelle 1988*, BGBl. 685/1988.

In the two decades following 1985, naturalisations changed significantly in numbers as well as in structure. In the 1980s, the yearly average of naturalisations amounted to 8,700; one decade later, between 1990 and 1999, naturalisation reached on average 15,400 every year and in 2003, numbers reached an all-time high with 45,000 new citizens. In 1985, 37 per cent of all naturalisations concerned nationals of the fourteen other pre-2004 EU countries. In the twenty years that followed, however, not only did the share of naturalised EU nationals decrease dramatically to 0.5 per cent or less in 2002-2004, but their absolute number also shrank to about one-fifteenth of the 1985 numbers. Nationals of the two most important source countries of immigration to Austria, Yugoslavia and Turkey, accounted for only 17 per cent and 3 per cent of all naturalisations in 1985, whereas two decades later their combined percentage was 76 per cent (45 per cent for nationals of Yugoslav successor states and 31 per cent for Turkey in 2004). In absolute numbers this corresponds to an increase by a factor of 13 and 44 respectively.

There are several reasons that explain why the share of third country nationals in naturalisations increased drastically from the mid-1990s until 2005. First, more and more foreign nationals, such as Bosnian war refugees and their family members, who immigrated to Austria in the early 1990s gradually became eligible to apply for naturalisation. Second, Turkish nationals, who represent one of the major immigrant groups in Austria, no longer suffered serious disadvantages when they renounced their Turkish citizenship. Since June 1995, Turkish emigrants who naturalise abroad can keep their citizenship rights in Turkey (apart from their political rights). In addition, the amendment of 1995 abolished a provision according to which voluntary expatriation required compliance with military obligations.[31] Both amendments had a significant impact on the naturalisation patterns of immigrants with Turkish citizenship and, consequently, the naturalisation of immigrants with Turkish citizenship has increased significantly over the last decade. Finally, the introduction of an annual immigration quota and restrictive conditions concerning the prolongation of residence permits in Austria in the early 1990s raised the demand for naturalisation among long-term resident foreign nationals aiming to secure their status (Bauböck & Çınar 2001: 268).

[31] See art. 2 of Law no. 4112 and Doğan 2002: 127-130.

The continuous growth of the number of persons granted Austrian citizenship has not only met resistance from the right-wing populist Freedom Party (*FPÖ*), but also from the conservative Christian Democratic People's Party (*ÖVP*), then the coalition partner of the Social Democrats (*SPÖ*). In 1998, the coalition government reached agreement on amending the conditions for facilitated naturalisation. The official aim of the reform of 1998[32] was to 'harmonise' the administration of citizenship legislation across the country and to restrict the possibility of facilitated naturalisation. Before 1998 the law allowed for facilitated naturalisation after four years of residence if there was a 'reason warranting particular consideration' (*besonders berücksichtigungswürdiger Grund*) but did not indicate the reasons that might serve for this mode of naturalisation (art. 10(3) as amended 1985). The reform of 1998 introduced a list of possible reasons warranting particular consideration and extended the residence requirement in some cases to six years. If the applicant was able to proof 'sustainable integration' she or he qualified for naturalisation after six years. The same applied for former Austrian nationals and people born in Austria. Recognised refugees, EEA-nationals and minors were granted the possibility of naturalisation after four years of residence (art. 10(4) as amended 1998).

Acquisition of Austrian citizenship was generally made conditional upon sufficient knowledge of German. When this condition was introduced in Austria the law did not specify on the required level of proficiency. Whether an applicant's knowledge of German was sufficient was up to the authority to judge and depending on the applicant's 'circumstances of life'. It was only in 2006 that formal test certificates from certified institutions became mandatory and the level was specified as A2 CEFR[33]; in 2011 the level was raised to B1 CEFR.

Contrary to the government's expectation that the reform of 1998 would lead to a decrease in the number of naturalisations, roughly 25,000 persons acquired Austrian citizenship in 1999 and 2000. In 2003 and 2004, more than 40,000 persons were granted Austrian citizenship each year. The surge of naturalisations was mainly due to the increase – in absolute and relative terms – of naturalisations of foreign nationals after ten years of residence and of extensions of naturalisation grants to their family members: the share of grants after ten years (art. 10(1)) was only thirteen per cent in 1985 but reached 35 per cent in 2003. Simultaneously, the proportion of spouses to whom the grant was extended (art. 16) rose from 7 per cent in 1985 to a high of 13.5 per cent in 1999/2000, and the grant extensions to children (art. 17) from 17 per cent in 1985 to almost 38 per cent in 2003. Grants to spouses of Austrian nationals (art. 11a), in contrast, made up a steady twelve to seventeen per cent of all naturalisations between 1987 and 1998, but dropped to less than seven per cent in 2003. Thus, in order to effectively restrict the number of naturalisations, the general conditions for naturalisation and, in particular, family-based modes of acquisition, had to be made more difficult.

[32] Citizenship Law Amendment 1998, *Staatsbürgerschaftsgesetznovelle 1998,* BGBl. 124/1998.
[33] Common European Framework of Reference for Languages (CEFR).

In 2005/06 another amendment of the Citizenship Law was adopted, this time with major changes and substantial impact on the rate of naturalisations and the aim to further harmonise naturalisation policies at the sub-national level by limiting the provincial authorities' discretion in implementing the law (Reichel 2012: 18).[34]

Facilitated naturalisation in cases of 'sustainable integration' was abolished and residence requirements in any other case of facilitated naturalisation extended to six years. Also the residence requirement for standard naturalisation was modified: since 2006 out of the ten years required applicants have to hold a permanent resident permit for at least five years. Since some groups of foreigners, such as beneficiaries of subsidiary protection, artists and students, cannot obtain such permits, they can only be naturalised after thirty years, or after fifteen if exceptionally well integrated (Stern 2006: 7-11). The reform also raised the hurdles for naturalisation for spouses of Austrian nationals by increasing the waiting period in terms of residence in the country as well as the duration of the marriage. Prior to 2006, spouses of Austrian nationals could apply for naturalisation after one year of marriage and four years of residence, or after two years of marriage and three years of residence; if the marriage lasted for at least five years and the Austrian spouse had held Austrian citizenship for at least ten years there was no residence requirement at all, which implied that spouses of Austrian citizens residing permanently abroad could be naturalised after five years of marriage. With the reform of 2006 the residence requirement for spouses was raised to six years and the marriage had to be maintained for at least five years to qualify for facilitated naturalisation.

Combined with these new time thresholds, severe restrictions concerning the material conditions for naturalisation were introduced:

Besides the aforementioned new regulations concerning German knowledge the reform introduced a multiple-choice citizenship test. The requirements concerning a clean criminal record were extended to very minor offences and administrative penalties. And more importantly, the exemption clause for persons who are not able to financially support themselves was abolished completely.

[34] Citizenship Law Amendment 2005, *Staatsbürgerschaftsrechts-Novelle 2005*, BGBl. I 37/2006.

The amendment was adopted in parliament by a majority of votes from the People's Party and the populist right-wing Alliance for the Future of Austria (*Bündnis Zukunft Österreich, BZÖ*), a breakaway faction of the FPÖ who formed the coalition government then, and rejected by the Social Democrats who were only successful in postponing the entry into force of the law with a suspending veto in the Federal Council (*Bundesrat*), the second chamber of the Austrian parliament. Another three minor amendments of the Citizenship Law followed in the years 2009 and 2011. In two cases major reforms of various migration laws were used by the government coalition, now formed by Social Democrats and the People's Party, for further amendments of the Citizenship Law. The amendment of 2009 introduced the possibility of age assessment and DNA analysis if an applicant's claim to be underage or in a kinship relation was doubtful.[35] It provided for some exceptions from the citizenship test for people who had undergone education in Austrian schools; increased the income requirement once again; and made it an administrative infraction to knowingly make false statements for the purpose of fraudulently obtaining nationality and a criminal offense of up to three years imprisonment to claim social benefits on the grounds of fraudulently obtained nationality. Another amendment in 2009 was due to the legal introduction of a registered same sex partnership in Austria: registered homosexual couples were formally put on an equal footing with married heterosexual couples concerning facilitated naturalisation.[36]

The amendment of 2011 raised the level of German knowledge required for naturalisation to B1 CEFR and increased the relevance of administrative fines for the denial of naturalisation.[37] Loss of citizenship as a consequence of having served in foreign armed forces became conditional upon a procedure following the objection of UNHCR against the automatic loss foreseen until then.

The amendment of 2013 mainly focused on the attempt to implement rulings of the Constitutional Court with regard to income requirements and children born out of wedlock. A possibility to acquire citizenship after six years for people considered to be exceptionally well integrated was reintroduced, as well as a very narrow possibility to acquire citizenship by declaration for people who had been officially treated as Austrians for a long time.

[35] Amendment of the Laws on Aliens 2009, *Fremdenrechtsänderungsgesetz 2009*, BGBl. I 122/2009.
[36] Federal Law on Establishment of Registrated Same Sex Partnerships, *Eingetragene Partnerschaft-Gesetz* , BGBl. I 135/2009.
[37] Amendment of the Laws on Aliens 2011*, Fremdenrechtsänderungsgesetz 2011*, BGBl. I 38/2011.

3 The Current Citizenship Regime

3.1 Main modes of acquisition and loss

This section of the report analyses the Austrian citizenship law as of July 2013. In that month, an amendment was adopted in Parliament that has come into force on 1 August 2013 and that is extensively described in section 4. The main changes concern ius sanguinis ex patre in case of birth out of wedlock, a waiving of the income requirement for naturalisation in cases of severe disability, access to citizenship for persons treated by authorities as presumptive citizens and naturalisation after six years for foreign residents who can demonstrate 'sustainable personal integration' according to a list of criteria. Articles of the law that have been amended in 2013 are marked as 'new'.

As analysed above, Austrian citizenship law is historically grown, incoherent and rather unstructured. Until August 2013, the Citizenship Law of 1985 has been amended 12 times; four times have provisions of the Law been declared in violation of the constitution by the Constitutional Court.[38] Apart from the Citizenship Law, the main other legal sources regulating acquisition and loss of Austrian citizenship are the Decree on Citizenship[39], as well as a separate Decree on the Citizenship Test[40].

Academics have identified five underlying principles on which the Austrian Citizenship Law of 1985 is supposedly based (Thienel 1990: 123ff): ius sanguinis; the avoidance of statelessness; the ban on multiple citizenship; the principle of individual autonomy; and family unity. These principles have served to interpret provisions of the law and are used as arguments at the political level to avoid changes to the status quo, but are – from a technical perspective – not stronger than any single provision of the law. Much to the contrary, the law circumvents these 'principles' in many respects: the principle of ius sanguinis still does not fully include children to Austrian fathers born out of wedlock; the principle of avoidance of statelessness is subverted by the fact that the procedure for the acquisition foreseen in the law itself creates statelessness in some instances and refers stateless persons in general to the normal acquisition conditions; the ban on multiple citizenship has been diluted by tolerating dual citizenship in certain cases; furthermore the principle of family unity can no longer be considered a dominating idea since family members have to fulfil all conditions individually to be able to apply together, can individually apply for or lose citizenship, or even be granted various citizenships by birth.

Austrian citizenship is acquired either at birth through descent (art. 7, 7a, 8), or after birth by granting of citizenship (or extension of the grant, art. 10-24), or by notification (art. 57, 58c, 59).

[38] VfGH, VfSlg 18.465/2008; VfGH, VfSlg. 19.516/2011; VfGH 29 November 2012, G 66/12-7, G 67/12-7; VfGH 1 March 2013, G 106/12-7.
[39] Decree on Citizenship 1985, *Staatsbürgerschaftsverordnung 1985*, BGBl. 329/1985, as amended by BGBl. II 184/2011.
[40] Decree on the Citizenship Test, *Staatsbürgerschaftsprüfungs-Verordnung*, BGBl. II 138/2006.

Acquisition at birth

Children born in wedlock acquire Austrian citizenship by birth if one of the parents is, or was until his or her death, an Austrian national (art. 7(1), (3)). Until August 2013, children born out of wedlock only acquired the citizenship of their Austrian mother. If the father of a child born out of wedlock was an Austrian national, the child received the citizenship of the father only upon legitimation (i.e. through the subsequent marriage of the parents and following declaration of the child as legitimate by the Federal President (art. 7a(1)). Since 1985, acquisition by legitimation requires the consent of a child above the age of fourteen and of his or her legal representative since the Constitutional Court declared automatic naturalisation by legitimation to be a violation of the principle of equality.

If born out of wedlock, the formal recognition of paternity by the father, not even if established by a Court ruling, was not deemed sufficient because such recognition did not establish a marital father-child bond (Thienel 1990: 142ff). It was only in 2012 that the Austrian Constitutional Court annulled this denial of citizenship iure sanguinis to children of Austrian fathers born out of wedlock by stating that the provisions requiring bi-national parents to be married at the time of birth were discriminatory under art. 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Court largely followed the European Court of Human Rights' (ECtHR) legal opinion in the Case of *Genovese v Malta* but set a timeframe until 1 Jan 2014 for the judgment to take effect in order to allow the legislator to amend the law.[41]

Inconsistently, however, it argued that there was an important difference between 'legitimate' and 'illegitimate fathers' which would provide a valuable reason to justify that children born out of wedlock did not acquire citizenship at birth automatically but that in certain cases children could be required to ask for naturalisation, especially if the declaration or recognition of paternity did not take place immediately after birth (para. 40, 41 of the judgment). This alleged difference could be taken into consideration by the legislator. Subsequently, the amendment of 2013 upheld a differentiation between 'legitimate' and 'illegitimate' children. If born out of wedlock, the child will only be Austrian if the Austrian father recognises the child before birth or within eight weeks thereafter (art. 7a new).

[41] VfGH 29 November 2012, G 66/12-7, G 67/12-7.

Moreover, the provision only applies to children born after entry into force of the amendment. In all other cases such children will have to apply for citizenship, under less restrictive conditions as before if younger than 14, but even then still obliged to pay the entire fees and, moreover, only if residing in Austria, unless the father is living abroad as well (art. 12(2) new). The finding of the Constitutional Court as well as the subsequent amendment are clearly at odds with the finding of the ECtHR not only in the Case of *Genovese* but with the permanent jurisprudence of the Strasbourg Court that 'very weighty reasons would have to be advanced before a difference of treatment on the ground of birth out of wedlock could be regarded as compatible with the Convention'.[42]

When it comes to the recognition of links between parents and children another judgment of the Constitutional Court deserves to be highlighted. In December 2011 the Constitutional Court ruled on the citizenship of two children whose genetic parents were Austrian citizens residing in Vienna but who had been born by a US-American surrogate mother in the USA.[43] The children became American citizens iure soli and were recognised as the Austrian parents' children by American courts. They were subsequently raised by their Austrian parents and registered as Austrian citizens by the city of Vienna. When the mother claimed child benefits, the Ministry of Interior asked the city of Vienna to withdraw or nullify the Austrian nationality of the children arguing that surrogate motherhood was illegal under Austrian law and that the American Court's decision according to which the Austrian mother was the legal parent of the child could therefore not be recognised by Austria, under whose law the mother is the person giving birth to the child.

The Constitutional Court rejected this argument on four grounds. First, it pointed out that the American decision determining legal motherhood of the Austrian genetic mother was taken without reference to Austrian law and was valid under norms of international private law. Secondly, it rejected the argument that the Austrian law prohibiting surrogate motherhood was part of Austria's public order (*ordre publique*), which could have allowed overriding the American decision. The Court pointed out that this law neither had constitutional status nor protected fundamental rights. Thirdly, the Court stated that the American surrogate mother could not be forced into the position of the legal mother against her will by Austrian law. Finally, it pointed out that the Ministry of Interior had decided arbitrarily by neglecting scholarly opinion and case law on *ordre publique* and by completely ignoring the best interest of the children as a relevant concern in determining their nationality.

Birth in Austria does not entail Austrian citizenship but only gives right to faster naturalisation after six years of residence (see below). Children under the age of six months found on the territory of the Republic are considered Austrian nationals by descent, although only until proof to the contrary (art. 8).

[42] ECtHR Inze v. Austria, 28 October 1987, § 41, Series A no. 126.
[43] VfGH 14 December 2011, B 13/10-11.

With respect to iure sanguinis acquisition by children born abroad, Austrian citizenship legislation does not contain any restrictions so that citizenship may be indefinitely attributed to descendants of Austrian emigrants. This intergenerational transmission will only be prevented if parents of Austrian origin have renounced their Austrian citizenship before the birth of the child in order to acquire the citizenship of another country. With the reforms of 1998 and 2005, retaining Austrian citizenship in spite of naturalisation abroad has been made easier, thus more iure sanguinis acquisitions abroad can be expected as a consequence.

General conditions for acquisition after birth

Foreign nationals may acquire Austrian citizenship either by discretionary naturalisation or by naturalisation through legal entitlement. As a general rule, foreign nationals seeking naturalisation must have had their principal residence in Austria without interruption for at least ten years (art. 10(1)). The 2005 amendment introduced a stricter definition of the condition of uninterrupted and legal residence. Since then, naturalisation is dependent on an applicant being legally 'settled' according to the provisions of the 2005 Law on Residence and Settlement, i.e. applicants must have been permanent residents for at least five out of the ten years preceding the application for naturalisation.[44] The new condition of 'settlement' narrows down the pool of potential applicants for naturalisation because foreign nationals with temporary residence permits, such as students or persons entitled to residence for reasons of temporary protection, can no longer submit an application for naturalisation. Previously, the condition of uninterrupted residence had meant that applicants had to prove that they had registered with the police for at least ten years preceding the naturalisation application. However, time spent abroad was irrelevant.

Under the current provisions, the condition of uninterrupted residence entails that applicants must not have been abroad for more than twenty per cent of the required waiting period (art. 15(1)(3)). However, the Administrative Court found that this tolerated interruption only related to time de facto spent outside of Austria and did not apply to time spent within Austria but without a legal status. Thus, the Court concluded that even one day spent in Austria without a residence permit invalidates all of the time before that day. Citizenship authorities now regularly demand a so-called 'uninterrupted chain of residence permits' (*ununterbrochene Titelkette*).

This view is very controversial since there is an explicit clause in the Citizenship Law that only entry bans automatically lead to an interruption of the waiting period. Moreover, interruptions might be the fault of authorities not having accepted a request for extension of a residence permit on time or having issued the new permit too late.

[44] Law on Residence and Settlement 2005, *Niederlassungs- und Aufenthaltsgesetz 2005*, BGBl I 100/2005, as amended.

In addition to residence, the following requirements have to be met:

- The applicant must not have been convicted and imprisoned for an intentional crime by an Austrian or foreign court, nor may the applicant have been convicted by an Austrian court and imprisoned for a fiscal offence (art. 10(2), (3)). Having a criminal record was not necessarily a criterion for exclusion from naturalisation until the amendments of 1998 and 2005. Prior to 1998 only a term of imprisonment of more than six months was an obstacle to naturalisation; thereafter, the extent of permissible imprisonment was reduced to three months. Since the 2005 reform, any conviction other than for an offence committed out of negligence rules out the granting of Austrian citizenship (art. 10(1a)). Also, the relevance of administrative infractions as an obstacle for naturalisation has been further increased in 2011; since then multiple 'serious' administrative infractions, including provisions of the Road Traffic Regulation, have to be regarded as an obstacle for naturalisation (Stern 2012b).
- There must be no pending criminal proceedings for an intentional crime or fiscal offence that may be punished with imprisonment (art. 10(1)(4)).
- There must be no pending proceedings to terminate the residence of the applicant and no entry ban (*Aufenthaltsverbot*) in Austria or in another EEA country (art. 10(2)(3)).
- The granting of citizenship to a foreign citizen must not have an adverse impact on the international relations of the Republic of Austria (art. 10(1)(5)).
- The applicant must have an 'affirmative attitude towards the Republic of Austria', which is to be judged on the basis of his or her past behaviour, and he or she must not represent a danger to public law, order and security including any other public interest that is covered by art. 8(2) ECHR (art. 10(1)(6)).
- The applicant must have a regular income and must not have received social assistance benefits for three years within the last six years preceding the application for naturalisation (art. 10(1)(7)). The required income level must correspond to the reference rates for the minimum pension (art. 10(5)). For 2013 the relevant reference rate for a single person is € 837.63 and € 1,385.13 per month for a couple with one child. Since 2010, regular expenditures, in particular rental, credit and mortgage disbursements or alimony payments, have to be deducted when calculating an applicant's income level. Thus, the amendment raised the level of personal income necessary for naturalisation up to at least € 1,000 per month after taxes for a single person (Stern 2012a). It was not until 2013, after 7 years of application of the rule without any exceptions even for the old, for children, for people with disabilities or single mothers, that the Constitutional Court declared the provision to be discriminatory and thus unconstitutional.[45] The case concerned a woman who had been living in

[45] VfGH 1 March 2013, G 106/12-7.

Austria as a recognised refugee for a long time and who had depended on social welfare benefits due to a disability. Since 2006, she had no possibility to be naturalised whatsoever. The Constitutional Court pointed out that the law thus violated the constitutional provision on equal treatment of people with disabilities (art. 7(1)(3) Federal Constitution) as well as the constitutional provision on the 'prohibition of racial discrimination', i.e. the general equality clause for foreigners and the proportionality test contained therein, since it subjected all foreigners who applied for naturalisation to the same conditions without providing for any exception for cases in which the person was not to blame for a lack of financial means (*unverschuldete Notlage*), thus making a clear reference to the exception clause that had been in place from 1965 to 2005 (see above). The judgment has to be considered a long awaited landmark decision, even though the Court set a wide time frame until 30 June 2014 for its verdict to take effect in order to provide the legislator with enough time for the required changes. The 2013 amendment finally introduced an exception for people 'who are permanently unable to sufficiently provide for their income for reasons beyond their responsibility', which is 'especially the case if this is due to a disability or a chronic and severe disease, which has to be certified by a medical expertise' (art. 10(1)(7), 10(1b) new). It remains unclear which cases that do not reach the threshold of disability and chronic and severe disease might be covered. Even though additionally a more flexible approach is stipulated with regard to the mode of calculation of the required income, doubts prevail as to the impact of the changes (see below).

- The applicant must not have relations to a foreign state which could damage the interests or the reputation of Austria (art. 10(1)(8)).
- The applicant must not have close connections (*Naheverhältnis*) to an extremist or a terrorist group (art. 10(2)(7)).
- Unless the applicant is stateless, he or she must undertake steps to be released from his or her previous citizenship(s) if this is possible and can be reasonably required (art. 10 (3)). This requirement applies also to recognised refugees who are, since the 1998 reform, no longer exempted from the ban on dual nationality. In order to facilitate renunciation of the previous citizenship, Austrian authorities issue a guarantee (*Zusicherung*) stating that Austrian citizenship will be granted if the applicant can prove the renunciation of his or her previous citizenship within two years. If, however, a person cannot give up his or her previous citizenship without having first acquired another citizenship, Austrian citizenship is granted under the condition that the renunciation of the previous citizenship must be proven within two years following acquisition of Austrian citizenship. Dual nationality may be tolerated if the applicant can either prove that renunciation of original citizenship is not possible, e.g. because the country of origin refuses expatriation, or (since 1998) because renunciation of the original citizenship would require payments that are out of proportion (art. 20 (4)). In practice, an applicant can reasonably be expected to lose immovable property, whereas the loss of retirement benefits cannot be 'reasonably' required (Waldrauch & Çınar 2003: 264). More generally, according to the Administrative Court, the crucial question

is whether efforts to be released from original citizenship can be 'reasonably required'. If the latter is the case, according to the Court's argument it is then irrelevant whether an applicant can be reasonably required to bear the consequences of the loss of original citizenship.

- In October 2011 the Austrian Constitutional Court annulled art. 20(2) allowing authorities to revoke a previously issued guarantee if the applicant no longer fulfils any one of the requirements for naturalisation.[46] The case concerned a woman who had received a naturalisation guarantee and who subsequently renounced her former citizenship but thereafter lost her job and thus no longer fulfilled the sustainable income requirement. She thus became stateless. The Constitutional Court found that statelessness was an inadequate result considering that she was not to blame for having lost her job. In January 2013, three months after the judgment took effect, the legislator reintroduced the provision previously annulled by the Constitutional Court, allowing the revoking of a guarantee if an applicant no longer fulfils any one of the requirements for naturalisation, except for the income requirement.[47]
- The applicant must prove knowledge of German at the level of B1 according to the Common European Framework of Reference for Languages (CEFR) (art. 10a(1)). The required level of German has been raised from level A2 to level B1 in 2011 and can be proven in different ways. Applicants for naturalisation can either provide an officially recognised language diploma or have completed module 2 of the so called 'integration agreement' referred to in the Law on Residence and Settlement and regulated by a special decree.[48]
- Since 2005, acquisition of Austrian citizenship by naturalisation depends also on passing a test on basic knowledge of the democratic system, the history of Austria and of the federal province concerned. The naturalisation test is scheduled for two hours and contains eighteen multiple-choice questions. The test has three parts, each consisting of six questions. The first part is about the history of Austria. The second part includes questions about the democratic political order of Austria. The third part contains questions about the federal province that is administering the applicant's request for naturalisation. Candidates must achieve either half of the scores in each part of the test or two thirds of the total test score. A 53-page booklet in German, published by the Ministry of the Interior, provides sample questions for the first two parts of the test as well as brief information about the political system and history of Austria. After having been criticised as faulty, incorrect and partially copied from Wikipedia (Stangl 2012: 68ff) this preparation material has been removed from the official websites and handed over to applicants in hardcopy only (Strik, Böcker, Luiten & van Oers 2010: 83). The provincial study guides of six of the nine provinces are currently available on the website of the

[46] VfGH, VfSlg. 19.516/2011.
[47] BGBl. I 16/2013.
[48] Decree on the integration agreement, *Integrationsvereinbarungs-Verordnung*, BGBl. II 449/2005 as amended by BGBl. II 205/2011.

Ministry of the Interior; sample questions are provided by one province only.

Analyses of the sample questions and of the study guides show that the citizenship test not only combines questions on history and the political institutions of Austria and its provinces but also on geography, culture and tradition and that the third part of the test is subject to great variation across the provinces (Perchinig 2010; Stangl 2012). In April 2013 the Ministry of the Interior presented a revised version of Austria's naturalisation test and the official preparation material. Although the State Secretary in charge announced that in the future fewer 'historical facts and details' will be asked for, the new test again includes an equal number of questions on the country's history (going back until early Roman settlement) and its present constitutional principles and democratic order. The competence to regulate the test's third part containing questions about the federal provinces lies with the governments of the respective provinces and has not been changed at all (Valchars 2013a). The new federal study guide, an 86-page booklet in German, is available online again and can be found on a new homepage run by the Ministry providing also detailed information on the conditions for applying for Austrian citizenship and on the naturalisation procedure (in German only) as well as sample questions of the naturalisation test.[49]

The citizenship test has been repeatedly criticised for asking not only questions on Austrian history and political institutions and its provinces but also questions on geography, culture and tradition and therefore covering knowledge in no way useful or necessary for political engagement and active citizenship (see above). While the Ministry of the Interior had also announced it would revise the citizenship test, the 'new approach' in the 2013 amendment only lays down that people wanting to be naturalised will have to prove basic knowledge not only 'of the democratic order' as before but also 'of the general principles deducted thereof' (art. 10a(1)(2); 10a(6) new). Only the *travaux préparatoires* clarify that this is supposed to refer to 'the general principles of the constitution' – these principles being a subject of fierce debate among legal scholars for decades and far from common knowledge. From this perspective it is to no surprise that a new guide which supposedly reflects this new approach has already been criticised as unscientific and rather portraying the personal opinion of the author.

[49] For the official homepage see: http://www.staatsbuergerschaft.gv.at/ (consulted 15 July 2013).

Some groups of foreign nationals are exempted from the citizenship test such as survivors of the Holocaust and Austrian political emigrants, minor children below the age of compulsory schooling and those attending a primary school, elderly persons and persons who cannot fulfil the language proficiency and citizenship test requirements for health reasons or due to lack of legal capacity (art. 10a(2)). Minor children attending a secondary school fulfil the condition of language proficiency if their school report contains a positive grade in the subject of German; in this case, they are exempted from the citizenship test, too. Foreign nationals whose mother tongue is German are exempted from the language proficiency requirement, but need to take the citizenship test. It is important to note that EEA-nationals must in principle comply with the citizenship test requirement. Hence, when a 23-year-old German citizen born and raised in the Austrian federal province of Vorarlberg applied for naturalisation in 2009, she had to take the citizenship test. The fact that she had successfully completed primary and secondary education in Vorarlberg was not helpful, as until recently only minors were exempted from the citizenship test under certain conditions. The 2010 amendment remedied this situation with a further exemption: Foreign nationals with an Austrian school leaving certificate that includes the subject history and civics (*Geschichte und Sozialkunde*) at least at the level of grade four of secondary school (*Hauptschul*e) do not need to take the citizenship test. Thus, adults who have an Austrian school-leaving certificate are no longer subject to the citizenship test (art. 10a(4a)).

Since January 2010, obtaining or attempting to obtain Austrian citizenship by fraud can entail a fine in the range of € 1,000 to € 5,000 or imprisonment for up to three weeks (in case of recurrence up to € 15,000 or imprisonment for up to six weeks (art. 63c)). Additionally, collecting social benefits based on a fraudulently obtained citizenship shall be punished by imprisonment for up to one year, or up to three years if the benefits amounted to more than € 3,000 (art. 64).

Legal entitlement

The Austrian Citizenship Law differentiates between a so-called ‘entitlement to naturalisation’ (*Rechtsanspruch*) and a ‘discretionary decision’ (*Ermessensentscheidung*). Foreigners *entitled* to naturalisation include people born in Austria, EEA citizens, spouses and minor children of Austrians or of applicants for Austrian citizenship, recognised refugees, stateless persons born in Austria, former Austrian nationals and long-term residents after 30 years. In contrast, the ‘ordinary’ naturalisation procedure for resident non-nationals after ten years is considered as discretionary – they *can be* naturalised.

For a long time, these discretionary decisions could not be challenged, giving the authorities a wide margin of discretion. However, since the 1960s it has been established jurisprudence that discretion has to be exercised in accordance with the purpose of the law and that any decision has to be reasoned; it must not be taken arbitrarily and can be challenged before the Administrative Court. As a result, even in cases of discretionary decisions some legal protection was made accessible. However, this tendency has lately been undermined by introducing many vague provisions which apply even to people with an entitlement to naturalisation, e.g. by introducing the overall obligation to take into account 'the general conduct of the alien, having regard to the common good, the public interests and the extent of his or her integration' in 2006. In this perspective, the classical distinction between entitlement and discretionary decision has been blurred: in both situations there is a right to judicial oversight but the outcome of the decision is somewhat less predictable (Stern 2007: 91). In the case of discretionary naturalisation, discretion is general and extends to all requirements; this means, on the one hand, that all requirements have to be met, but citizenship can still be refused; on the other hand, discretion cannot be used to waive certain requirements, with the only exception if the Federal Government declares the naturalisation to be in the national interest (Stern & Valchars 2013: 7).

The most important group of foreign nationals who enjoy the right to acquisition of Austrian citizenship consists of family members of Austrian citizens or of a family member who is about to be granted Austrian citizenship. Prior to 2005, a foreign national married to an Austrian citizen could apply for naturalisation after four years of marriage if they had lived in Austria for at least one year or, alternatively, after three years of marriage and residence in the country for at least two years. The residency requirement could be waived if the marriage had been maintained for at least five years and the Austrian spouse had held Austrian citizenship for at least ten years. Since the 2005 reform, naturalisation of foreign spouses requires six years of marriage and at least five years of uninterrupted residence in Austria. The couple must live in the same household (art. 11a). The 2005 reform of the Citizenship Law raised the hurdle for naturalisation for foreign spouses of Austrian citizens by increasing the waiting period in terms of residence in the country as well as the duration of the marriage. Following the general introduction of a registered same-sex partnership in Austria in 2009, homosexual couples have been formally put on an equal footing with married heterosexual couples.

A foreign child of an Austrian national has a legal entitlement to be granted Austrian citizenship (deriving from the mother's or the father's Austrian citizenship), if the child is a minor, unmarried and was born in wedlock (art. 12(1)(3), formerly art. 12 (3)). If the child was born out of wedlock, the legal entitlement is dependent on the mother holding Austrian citizenship. If the Austrian parent is the father, the transfer of citizenship by legal entitlement presupposed proof of paternity and custody of the child by the father. This possibility for children born out of wedlock was abolished with the 2013 amendment: the child born out of wedlock and recognised too late by the father either has to be naturalised under the age of 14 or is left to the regular residency requirements. Except for the residency requirement of ten years, foreign family members of Austrian nationals must fulfil the general conditions of ordinary naturalisation listed above in order to enjoy this legal entitlement.

The acquisition of Austrian citizenship by a foreign national is to be extended to his or her spouse (art. 16) and children (art. 17) upon application if they fulfil the same requirements as foreign family members of Austrian nationals. However, in contrast to family members of Austrian citizens, since 2005 spouses and children of a naturalisation candidate must have a permanent residence permit at the time of application (art. 16(1)(2) and 17(1)). The same rule applies to foreign children adopted by Austrian citizens (art. 17(3)). In June 2008, the Constitutional Court decided that the condition of settlement in Austria violated the principle of equal treatment as it excluded foreign children adopted by Austrian citizens living abroad. The Court emphasized that such unequal treatment could not be justified given the 'considerable numbers of Austrian emigrants' and increasing professional mobility of Austrian citizens.[50] The 2010 amendment responded to the Court's verdict by providing for an exemption from the settlement requirement: If the parent(s) can prove a legal and permanent residence abroad for at least one year, the adopted foreign child does not need to have a residence permit in Austria. Since 2013, children adopted by Austrian parents under the age of fourteen can now apply for citizenship under the condition that they do not pose a threat to the international relations of the republic or to public security (sic!) (art. 11b new). Only in this case do authorities have to decide within six weeks.

[50] VfGH, VfSlg 18.465, 16 June 2008.

Birth in Austria

Until the reform of 1998, children born in Austria to foreign nationals could acquire Austrian citizenship only by discretionary naturalisation if they fulfilled the general conditions for acquisition of Austrian citizenship apart from the residency requirement of ten years. However, it was not the fact of birth in Austria that opened up the possibility of facilitated naturalisation but the fact of being a minor. The 1998 amendment of citizenship legislation for the first time recognised birth in Austria as a special reason for facilitated naturalisation. With the 2005 reform of Austrian Citizenship Law, foreign children born in Austria were granted a legal entitlement to citizenship acquisition (art. 10(4)(1)). Since then, native-born children of foreign nationals have to be granted Austrian citizenship upon application after six years of uninterrupted legal residence as long as they comply with the general conditions of discretionary naturalisation (art. 11a(4)(3)).

In other Western European countries with ius soli provisions, a large part of this group is not included in naturalisation statistics. Turkish nationals have the highest share of foreign nationals born in the country (26.4 per cent), followed by nationals of Croatia (20.7 per cent), Serbia and Montenegro (18.2 per cent) and Bosnia-Herzegovina (16.4 per cent) (Waldrauch 2003: 2). While the percentage of native-born children who acquired Austrian citizenship by naturalisation reached 23 to 28 per cent in the late 1980s and early 1990s, by the late 1990s native-born persons accounted for 29 to 33 per cent of all persons naturalised. In 2008, roughly 37 per cent of all persons granted Austrian citizenship had been born in Austria.

The reform of 2005 reduced the naturalisations of Austrian-born persons even more drastically than those of first generation immigrants. In 2004, 12,278 of the 41,645 foreign nationals granted Austrian citizenship had been born in the country, while in 2008 fewer than 4,000 out of 10,258 persons granted citizenship were native-born. At first sight, this development appears paradoxical as the reform of 2005 introduced for the first time an individual legal entitlement to naturalisation after six years of residence for persons born in Austria. Does the drastic decline in numbers of native-born persons granted Austrian citizenship indicate a lack of language proficiency among the so-called second and third generation? A more plausible explanation is that prior to the reform most persons born in Austria had been naturalised by way of extension of a grant to a parent rather than by individual naturalisation (Çınar & Waldrauch 2006). Although individual naturalisation of minor children had been possible since the mid-1970s without having to fulfil the general residence requirement of ten years, minor children still had to fulfil all other requirements for discretionary naturalisation, such as having to give up their original citizenship. The changes of 1998 and 2005 granted native-born persons a legal entitlement but did not amend the long list of general conditions for discretionary naturalisation that still needed to be fulfilled. In addition, the costs of naturalisation by legal entitlement amount to at least € 840. In contrast, if a minor child is naturalised together with his or her parent(s) by way of extension of naturalisation, the fee is reduced to € 300.

'Exceptionally well-integrated' foreigners

The 2013 amendment has reintroduced a provision allowing for naturalisation of foreigners after six years if they can provide evidence of 'sustainable personal integration'. As discussed in section 2, a similar provision had been introduced in 1998 and abolished in 2005. In contrast to the previous formula that had provided authorities with a wide margin of interpretation, the new art. 11(6) defines precise criteria. Fast-track naturalisation is accessible to applicants with certified German skills at level B2 CEFR (instead of level B1 required for ordinary naturalisation after ten years as well as to those who have been engaged for at least three years in professional or voluntary activities that are considered as evidence of 'sustainable personal integration'. These include voluntary activity in an association that serves the common good, professional activity in education, social and health services and being a functionary of an officially recognised interest organisation. The new provision further specifies that such activities have to provide an 'integration specific added value concerning their integration in Austria (sic!)' which must be argued in a written submission.

Long-term residents

While people who qualify for naturalisation after ten years can easily be considered 'long-term residents', Austrian citizenship may be obtained by legal entitlement if a foreign national has had his or her principal residence in Austria for at least 30 years (art. 12(1)(a)). Foreign nationals who have had their principal residence in Austria for at least fifteen years also have a legal entitlement to acquisition of Austrian citizenship if they can prove their sustainable personal and professional integration (art. 12(1)(b)). There is no definition of 'sustainable integration' in the Citizenship Law. According to the explanatory notes of the draft government bill of 1998, the applicant must have the right to permanent residence and a work permit valid for at least two years. In addition, the applicant must live together with his or her family in Austria (Mussger et al. 2001: 77). According to the Administrative Court, particularly good knowledge of the German language may also be considered an indicator of sufficient integration and may justify facilitated naturalisation by reducing the requirement of fifteen years of residence. In both cases applicants have to meet the general requirements for discretionary naturalisation as described above.

Other foreign nationals

Since the 2005 reform, recognised refugees, EEA-nationals and persons whose naturalisation serves the interests of the Republic because of special achievements in the arts, economy, science or sports enjoy a legal entitlement to naturalisation after six years of legal and uninterrupted residence.

When deciding about an application for citizenship acquisition, the authorities are obliged to consider the applicant's 'general conduct' with respect to the common good and public interest as well as the extent of his or her integration, i.e. the applicant's 'orientation towards societal, economic and cultural life in Austria and the basic norms of a European democratic state and society' (art. 11). In this context, authorities may base their decision on additional criteria such as 'work ethics' or compliance with legal requirements concerning road safety (Mussger et al. 2001: 80; Thienel 1990: 204). This requirement also applies in cases where applicants have a legal claim to citizenship acquisition. However authorities are obliged to justify the way they make use of their discretion.

Fees, Costs and Oath

Naturalisation fees in Austria comprise federal and provincial fees and differ from province to province and according to their legal basis. In some provinces the height of the fees is further linked to the applicant's income but there are no exemptions or reductions of fees for people who cannot afford them.

While citizenship acquisition by discretionary naturalisation after ten years of residence costs € 1,090 federal fees and additionally between € 104 and € 1,360 provincial fees, applicants who enjoy a legal entitlement to facilitated naturalisation after six years of residence have to pay € 870 federal and between € 54 and € 1,360 provincial fees. The same fees also apply to foreign nationals married to Austrian citizens or to a person who is the principal applicant for naturalisation. Fees for the naturalisation of a minor child amount to € 280 to € 490 (Çınar & Waldrauch 2006: 49; Stern & Valchars 2013: 8).

Table 1: Naturalisation Fees Austria

	Federal Fees[51]	Additional Provincial Fees								
		Vienna[52]	Carinthia[53]	Vorarlberg[54]	Tyrol[55]	Salzburg[56]	Upper Austria[57]	Burgenland[58]	Lower Austria[59]	Styria[60]
Right to Naturalisation (art. 11a -14)										
Single Person	759,70	76,00	296,40	54,40 – 545,00	300,00/400,00*	126,50 – 517,50**	104,00 – 864,00	254,40	120,00 – 930,00	118,50 – 1.357,00
Couple	1.519,40	152,00	444,60	108,80 – 1.090,00	480,00/580,00*	253,00 – 1.035,00	208,00 – 1.728,00	421,50	240,00 – 1.860,00	237,00 – 2.714,00
Discretionary Naturalisation (art. 10 (1))										
Single Person	976,80	150,00	610,40	108,80 – 1.090,00	500,00	126,50 – 1.150,00**	104,00 – 864,00	508,00	120,00 – 930,00	118,50 – 1.357,00
Couple	1.736,00	226,00	915,60	217,60 – 2.180,00	680,00	253,00 – 1.667,50	208,00 – 1.728,00	675,10	240,00 – 1.860,00	237,00 – 2.714,00
Extension on minors (per child)	217,10	76,00	43,60	–	–	36,20	–	–	0,00 – 210,00	–
Additional fees (per adult/child)	110,00/60,00	–	–	–	40,00***	138,00****	52,00***	–	–	–
Naturalisation guarantee	–	40,00	43,60	25,40	50,00	–	52,00	72,70	42,00 – 93,00	11,80 – 135,70

* art. 12: 300,00; art. 11a, 13, 14: 400,00
** Minus 53,50 per child living in the same household
*** Citizenship Test Certificate: art. 10a(1)(2) ("*demokratische Grundordnung und Geschichte*")
**** Per attempt: art. 10a(1)(2)

Ranges indicate fees linked to income. Additional legalisation and translation costs of documents are not included. In Euro, as of October 2012. Own Research

[51] *§ 14 Gebührengesetz 1957*, BGBl. 267/1957 idF 191/2011.
[52] *Art. I Verordnung der Wiener Landesregierung, mit der die Verordnung über Verwaltungsabgaben und Kommissionsgebühren geändert wird*, [W]-LGBl. 20/2007.
[53] *B. Besonderer Teil, TP I.1ff Landesverwaltungsabgabenverordnung 2006*,[K]-LGBl. 3/2006.
[54] *Besonderer Teil, TP 82ff Verwaltungsabgabenverordnung*, [V]-LGBl. 66/2011.
[55] *Besonderer Teil TP 6ff Landes-Verwaltungsabgabenverordnung 2007*, [T]-LGBl. 30/2007.
[56] *Besonderer Teil, TP 8ff Landes- und Gemeinde-Verwaltungsabgabenverordnung 2012*, [S]-LGBl. 91/2011.
[57] *Besonderer Teil, TP 5ff, Oö. Landesverwaltungsabgabenverordnung 2011*, [Oö]-LGBl. 118/2011.
[58] *Besonderer Teil, TP 126ff Landes-Verwaltungsabgabenverordnung 2002*, [B]-LGBl. 1/2002.
[59] *TP 8aff NÖ Landes-Verwaltungsabgabenverordnung 2001*, [Nö]-LGBl. 123/2011.
[60] *B. Besonderer Teil, TP 8ff Landes-Verwaltungsabgabenverordnung 2011*, [St]-LGBl. 51/2011.

Foreign nationals who are granted Austrian citizenship have to take the following oath:

> *'I swear that I will be a loyal citizen of the Republic of Austria, that I will always conscientiously abide by the laws and that I will avoid everything that might harm the interests and the reputation of the Republic and that I commit myself to the core values of a European democratic state and society.'*

The 2013 amendment has introduced a new provision that naturalisations will have to be held 'in an appropriate, festive frame, as expressed through a common recital of the federal anthem and the visible display of the flags of the Republic, the respective province and the European Union' (art. 21(1) new). An almost identical obligation had already been stipulated in the Citizenship Decree since 2006, but has mostly been ignored by the authorities (Stern & Valchars 2013).

Loss of citizenship

The main modes of loss of citizenship are enumerated in the Citizenship Law (art. 26-38). First, the acquisition of a foreign citizenship provokes the loss of Austrian citizenship if an Austrian national expresses his or her 'positive intent' (positive Willenserklärung) to obtain the citizenship of another state (art. 27). Submitting an application, making a declaration or explicitly giving one's consent in order to receive a foreign citizenship is considered an expression of such positive intent. Austrian citizenship is not lost, however, if a foreign citizenship is acquired because the Austrian national did not object to an automatic acquisition even if the foreign law provides for a right to object (Mussger et al. 2001: 117). Neither does a declaration of intent that does not primarily aim at the acquisition of a foreign citizenship (e.g. marrying a foreign national) lead to the loss of Austrian citizenship, even if the Austrian citizen was aware that he or she would acquire the foreign citizenship automatically. The loss of citizenship is extended to the reference person's minor children unless the other parent retains Austrian citizenship.

Second, citizens who voluntarily enter the military service of a foreign country have to be deprived of their Austrian nationality (art. 32). The formerly automatic loss (*ex lege*) was turned into a procedure for denationalisation in 2011 after repeated recommendations by UNHCR to provide for more legal certainty for the persons concerned. Furthermore, if a national in the services of a foreign country 'through his behaviour severely damages the interests or the reputation of the Republic', he or she shall be deprived of Austrian nationality (art. 33). In neither of these cases does the possible consequence of statelessness have to be taken into account.

Third, the law also provides for loss of Austrian citizenship by renunciation (art. 37). An Austrian national may renounce citizenship if he or she also holds the citizenship of another country. Dual nationals who have their principal residence in Austria or have resided abroad for less than five years must fulfil further conditions:

1) Renunciation of citizenship is not possible if there are pending criminal proceedings based on a crime carrying a sentence of more than six months imprisonment, or if the execution of such a sentence is pending.
2) A male national between the ages of sixteen and thirty-six may renounce Austrian citizenship only if he has served his military service or alternative civilian service or has been declared unfit to do so. Renunciation of Austrian citizenship is also possible if the dual national has performed military or alternative service in another country the citizenship of which he holds. However, in this case the person needs to be released from military or alternative service in Austria on the basis of a bilateral or international agreement.

In all circumstances, a written declaration of renunciation must be filed with the responsible authority.

3.2 Special rules

Former nationals

Reacquisition of Austrian citizenship is possible for different groups of former nationals. Persons who lost Austrian citizenship at a time when they did not yet have full legal capacity have the right to be granted Austrian citizenship if the application is filed within two years after gaining full legal capacity unless loss of citizenship was based on withdrawal (art. 12(2)). Persons who have lost Austrian citizenship because of automatic or voluntary acquisition of a foreign citizenship following marriage are also entitled to reacquire Austrian citizenship if the application is filed within five years after the dissolution of the marriage (art. 13). Persons who have been Austrian nationals for at least ten years and who have not lost Austrian citizenship by withdrawal or renunciation may apply for reacquisition of Austrian citizenship if they are resident in Austria (art. 10(4)(1)). In all cases, apart from the residency requirement of ten years, applicants must fulfil the general conditions for naturalisation.

Stateless persons

Persons born in Austria who have been stateless since birth have a legal entitlement to acquisition of Austrian citizenship if they have resided in Austria for a total of ten years and continuously for the five years preceding the filing of the application (art. 14). The application must be submitted within two years after reaching the age of eighteen. The applicant must not have been convicted by an Austrian court for a violation of 'national security' as defined by the UN Convention on the Reduction of Statelessness of 1961 or for a crime carrying a sentence to imprisonment of five years or more. The 'lack of protection by the country of origin' was declared a 'special reason' for facilitated naturalisation after less than ten years of residence in a report of the Constitutional Committee. However, the Administrative Court argued in several decisions that even if statelessness entails the lack of protection by the country of origin, statelessness alone is not a sufficient condition for facilitated naturalisation; furthermore, the Court found that statelessness is not an indicator of 'advanced assimilation' that would justify the reduction of the general residence requirement of ten years. In this context, it is important to note that Austria has made the granting of citizenship to stateless persons dependent upon all of the conditions permissible according to art. 1(2) of the 1961 Convention on the Reduction of Statelessness. The aim of the legislation was to make use of permissible restrictions to the greatest extent possible (Thienel 1990: 242). Similarly, with respect to art. 6(4) of the European Convention on Nationality, Austria declared that it would retain the right not to facilitate the acquisition of Austrian citizenship for stateless persons (and recognised refugees) for this reason alone. Official statistics for the last ten years show that not one single person has been naturalised on the basis of art. 14 of the citizenship law.

A more than restrictive approach can also be diagnosed with regard to the 1954 Convention relating to the Status of Stateless Persons which Austria finally ratified in 2008. Even though only minor reservations were made not one single paragraph in any law has been amended thus far in order to make the Convention a 'living instrument'. With regard to its art. 32, which obliges the Contracting States to facilitate the assimilation and naturalisation of stateless persons as far as possible, and in particular to make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings, it has to be remarked that stateless persons are still subject to regular naturalisation requirements. Unlike refugees who can at least benefit from a shorter waiting period of six years and a legal entitlement (see above), which is argued to be necessary through the parallel provision in art. 34 of the 1951 Refugee Convention, stateless persons have to wait at least ten years and must also pay the entire fees.

Facilitated naturalisation

Besides the group of people who can acquire citizenship after six years (see above) certain groups of foreign nationals do not need to fulfil the general residency requirement of ten years. First, a person may be granted Austrian citizenship without fulfilling any residency requirement if the government confirms that granting of citizenship is of special interest to the Republic because of extraordinary achievements (art. 10(6), which is a constitutional provision). In this case, other conditions such as the language and integration requirement, sufficient income and renunciation of original citizenship are waived, too. A series of scandals has been linked to this provision and led to the conviction of a politician who had offered to push for a Russian investor's naturalisation in exchange for party donations.

Second, the residency requirement of ten years may be waived in the case of a person who, prior to 1945, had the nationality of one of the successor states of the Austro-Hungarian Monarchy or was stateless, had his or her principal residence in the federal territory and had to leave the country because of political persecution (art. 10(4)(2)). Third, foreign spouses of Holocaust survivors or political emigrants may be granted Austrian citizenship without being resident in Austria and without having to give up their other citizenship (art. 11a(2)).

Acquisition by notification

Since the amendment of 1993, survivors of the Holocaust and political emigrants reacquire Austrian citizenship by simple notification (*Anzeige*) addressed to the authorities about having left the country before 1945 due to political persecution (art. 58c). There are no other conditions attached to reacquisition of Austrian citizenship by notification. For these persons, granting of citizenship is free of charge and renunciation of the previous citizenship is no longer required. The reacquisition of Austrian citizenship by political emigrants is numerically not significant but has, above all, symbolic and political importance. Still, it is noteworthy that between 1993 and 2001 approximately 1,800 political emigrants regained Austrian citizenship whereas the number of political emigrants who reacquired Austrian citizenship between 1965 and 1992 amounted to only about 350 (Burger & Wendelin 2004b: 6).

In 2009 a further mode of acquisition was introduced for persons who had mistakenly been treated as Austrians by descent because a determination of paternity had subsequently shown that none of the reasons for ius sanguinis applied (art. 59). The acquisition is supposed to have retroactive effect from the date of birth. However, as the provision refered to only one particular case of determination of paternity it was apparently a dead letter. The 2013 amendment finally extended the provision to all kinds of determination of paternity (art. 59 new).

While this might extend the significance of the provision a very narrow legal base was introduced for the acquisition by notification for presumptive citizens mistakenly treated as Austrians by public authorities in 2013 (art. 57 new). The new provision requires a period of fifteen years of erroneous treatment as citizen – having served in the armed forces or the alternative civic service is the only exception to the fifteen years condition – with many conditions of regular naturalisation to be fulfilled and a time limit of only six months after discovery of the 'erroneous treatment' to apply for citizenship.

Dual nationality for citizens by descent

To prevent the loss of Austrian citizenship when acquiring the citizenship of another state, Austrian nationals must apply for permission to retain their Austrian citizenship (art. 28). If the conditions laid down by the law are fulfilled, authorities must approve the retention of Austrian citizenship. However, authorities have almost unlimited leeway, as the requirements to be met are very vaguely defined (Thienel 1990: 302). The law merely states that retention of Austrian citizenship has to be approved if the applicant has performed 'special achievements' in the past and is expected to do so in the future or if there is another reason that deserves 'special consideration'. In both cases, retention of Austrian citizenship has to benefit the interests of the Republic. In addition, the foreign state must not object to the retention of Austrian citizenship and the Austrian national must fulfil some of the general conditions for acquisition of Austrian citizenship such as the absence of criminal convictions.

With the amendment of the Citizenship Law in 1998, a new provision was introduced to allow for retention of Austrian citizenship in cases of a special reason related to the applicant's private or family life (art. 28(1)(1)). According to the explanatory notes on the draft government bill, the easing of the rather demanding conditions with regard to retention of Austrian citizenship was aimed at avoiding severe 'adverse effects' that a person would suffer from the loss of Austrian citizenship. According to information given by some provincial authorities, such adverse effects include severe financial disadvantages, loss of inheritance rights in another state or loss of employment opportunities in both countries. Yet, the new possibility of retention is restricted to persons who have acquired Austrian citizenship by descent (art. 28(1)(2)). The amendment of 2005 added a further ground justifying the acceptance of dual citizenship: retention of Austrian citizenship shall be permitted if this is in the child's best interests. Also in this case, the asymmetrical treatment of Austrians by descent and Austrians by naturalisation raises concerns regarding the constitutional right to equality of citizens.

Revocation of citizenship after naturalisation

Austrian citizenship will be revoked if a person who has acquired Austrian citizenship by grant (or extension of a grant to a spouse or child) has retained his or her prior citizenship for more than two years since acquisition (art. 34). Deliberate non-compliance with this obligation is a reason for deprivation of Austrian citizenship, of which the authorities have to notify the relevant person six months in advance. However, revocation of citizenship because of retention of a previous citizenship is no longer permissible if six years have passed since the acquisition of Austrian citizenship.

3.3 Special institutional arrangements

Whereas citizenship legislation is a federal matter, the federal provinces are vested with the power to administer the law (art. 11(1)(1) Federal Constitution). The (Federal) Ministry of the Interior has the power to issue decrees on the administration of the law as well as on the administration of the citizenship tests, whereas the government of the respective federal province is the highest executive authority (art. 39) and takes individual decisions on naturalisation as the last and only instance. These decisions can be appealed to the (federal) Constitutional Court as well as to the (federal) Administrative Court, which both serve as courts of cassation. The Ministry of the Interior may also lodge an appeal with the Administrative Court if it considers the decision of a provincial government to contradict the law and it may request the reopening of procedures in case of fraud as well as request the loss of citizenship (art. 35; see also section above). A criminal law debate on the responsibility for naturalisations in the 'special interest to the Republic because of extraordinary achievements' has recently been sparked by allegations about fraud in attempts to speedily naturalise investors, since it is upon the federal government to declare that the special conditions are met and upon the provincial government to carry out the actual naturalisation.

Authorities enjoy a wide margin of interpretation not only in discretionary naturalisations, but also with regard to the many vague terms and conditions to be fulfilled by any person applying for naturalisation (Stern & Valchars 2013). There are numerous decisions by the Administrative Court that address the implementation of the discretion as well as the many indeterminate legal provisions contained in Austria's citizenship legislation. This applies particularly to questions as to whether an applicant represents a danger to public order and security, whether the applicant qualifies for facilitated naturalisation, and whether the applicant's professional and personal integration is sufficient and 'sustainable'. The administration of citizenship legislation by the federal provinces was a major source of anomalies in the past, especially with respect to facilitated naturalisations, i.e. the reduction of the general waiting period of ten years to six years for 'special reasons' such as sustainable integration between 1998 and 2005 (see Çınar & Waldrauch 2006). For example, in Lower Austria authorities also take into account whether the applicant makes an effort to adapt to the 'Austrian way of life' and participates in the activities of local associations that benefit the common interest of the municipality.[61] However, the Administrative Court argued that the responsible authorities might consider additional factors to judge the extent of integration of an applicant.

[61] The new provision for fast-track naturalisation introduced by the 2013 amendment lays down rather precise conditions, but is for the same reason also more restricted in scope and thus unlikely to result in significant numbers of naturalisations.

More recently, the Constitutional Court made an important decision about the meaning of 'personal integration'. A religious education teacher from Sudan who had been resident in Austria since 1990, had no criminal record, and was the holder of a permanent residence permit, was, along with his family members, denied citizenship by the federal province of Carinthia in 2006. The authorities argued that there were more than well-founded doubts about the 'personal integration' of the naturalisation candidate because he did not shake hands with women and therefore disrespected a European custom. The Constitutional Court annulled the decision of Carinthia's federal government due to lack of a comprehensive investigation into the extent of the applicant's personal integration. When the applicant was denied naturalisation a second time based on the argument that he did not shake hands with women, the Constitutional Court declared again that such a decision violated the right to equal treatment among foreign nationals. Moreover, the Court argued that not only was the applicant's personal and professional integration in Austria comprehensive and sustainable, but also that shaking hands in general was not a legal obligation.

Since the Carinthian government still refused to naturalise the applicant, he consequently applied to the Administrative Court which, due to the inactivity of the authorities, was in the rare position to become competent to decide on the merits of the case (Giendl 2011).

The role of the Constitutional Court in citizenship matters recently gained importance as it stepped in to correct some of the severe restrictions in force since 2006 concerning the impossibility of children adopted by Austrians living abroad; the refusal of authorities to consider children of a (legal) Austrian mother born by a foreign surrogate mother as Austrian; the withdrawal of preliminary decisions on naturalisation even if the person was not to blame for no longer fulfilling all of the criteria; the exclusion of children to Austrian fathers born out of wedlock from obtaining citizenship iure sanguinis; the *de facto* exclusion of people with disabilities from naturalisation through strict income criteria.

Not only the procedures for naturalisation but also the procedures before the Administrative and the Constitutional Court are costly and long and can only offer limited redress (Stern & Valchars 2013: 11). Improvements might be on the way with a general reform of the Administrative Court organisation which will enter into force in 2014 and install a two-tier administrative court system with administrative courts of first instance also deciding on the merits of the case and with possible further appeal to the Administrative Court and the Constitutional Court.

4 Current political debates and reform plans

Since the late 1980s the political debate on citizenship in Austria has mainly revolved around naturalisation requirements and raising barriers. The amendments of the Citizenship Law in 1998, 2006, 2009 and 2011 overall aimed at making acquisition of Austrian citizenship by immigrants and their descendants more difficult. Although in 2006, when in opposition, the Social Democrats voted against the amendment arguing that there was no good reason for further toughening naturalisation requirements, only three years later the Social Democrats, now leading a government coalition with the People's party, adopted another amendment and further raised the barriers. The discourse on citizenship and the recurring claim for tightening naturalisation requirements is based on the idea that Austrian citizenship ought to be a 'precious good' that 'needs to be earned' and naturalisation has to be 'the last step of a successful integration'. The latter phrase has an especially paradoxical connotation: after 2006 it emerged that Austrian citizenship became inaccessible for a large number of persons who were perfectly integrated by whichever definition.

In 2012 a series of individual cases of denied citizenship problematized by the Austrian Ombudsman Board and presented in the media as well as rising pressure from the Constitutional Court initiated a lengthy but rather static debate on yet another major amendment to the Citizenship Law. In October 2012 the State Secretary for Integration presented the first plans covering minor repairs and a modified reintroduction of facilitated naturalisation for 'especially well-integrated' migrants, stating that 'from now on citizenship can be obtained by earning it, not just by waiting'. Contrary to original schedules, the amendment was only introduced into parliament in mid-April 2013 as there was apparently no full consensus between the governing Social Democrats and the People's Party. The right-wing Freedom Party and the BZÖ both criticised the reform plans and argued Austrian citizenship must not be put on 'sale'; the Greens, some NGOs and experts on the other side criticised the amendment for failing to address the 'real problems' such as the ban on double citizenship, the lack of inclusive ius soli provisions or the still very high income barrier. The amendment described above was finally adopted by parliament in July 2013 and entered into force partially in August and in November 2013.[62]

[62] Federal Law amending the Citizenship Law of 1985, *Bundesgesetz, mit dem das Staatsbürgerschaftsgesetz 1985 geändert wird,* BGBl. I 136/2013.

The new amendment deals with access to citizenship at birth for children born out of wedlock. Forced to change Austria's discriminatory denial of citizenship iure sanguinis to children of Austrian fathers born out of wedlock after judgments by the ECtHR and the Austrian Constitutional Court (see above) the amendment still upholds a differentiation between 'legitimate' and 'illegitimate' children. If born out of wedlock, the child will only be Austrian if the Austrian father recognises the child before birth or within eight weeks thereafter (art. 7a new). Moreover, the provision only applies to children born after entry into force of the amendment. In all other cases such children will have to apply for citizenship, under less restrictive conditions as before if younger than 14, but even then still obliged to pay the entire fees and, moreover, only if residing in Austria, unless the father is living abroad as well (art. 12(2) new). These differentiations are clearly at odds with the findings of the ECtHR in the case of *Genovese* (see above). A step forward can be seen in the fact that similar access to Austrian citizenship will now be available for children adopted by Austrians though (art. 11b new).

Another change concerns the very high and unconditional income requirements for naturalisation. Here again the Ministry was forced to react to a judgment by the Constitutional Court (see above). The amendment introduces an exception for people 'who are permanently unable to sufficiently provide for their income for reasons beyond their responsibility' which is 'especially the case if this is due to a disability or a chronic and severe disease, which has to be certified by a medical expertise' (art. 10(1)(7), 10(1b) new). It remains unclear which cases that do not reach the threshold of disability and chronic and severe disease might be covered. Even though additionally a more flexible approach is stipulated with regard to the mode of calculation of the required income, doubts prevail as to the impact of the changes, which will presumably continue to leave a big share of the population without a chance to be naturalised – including single mothers and in general the working poor. The limited scope of the amendment can also be illustrated through a case brought up and scandalised even in the mainstream media: a 21-year-old apprentice who had been living in Austria since his early childhood with his family had too low an income to apply for Austrian citizenship. Since it was clear that he would still not be able to fulfil the new conditions in the future, the government did not reconsider its approach on the income requirements in general, but rather introduced a *lex specialis* for persons who had arrived in Austria during their childhood and since then lived there for more than fifteen years and whose family had already been naturalised (as had been the case with the apprentice). They will have to fulfil all other conditions for regular naturalisation except the income requirement (art. 25 new). In general, no reduction of fees or an exception to pay them if not able to do so can be granted even in the future.

Further changes concern persons erroneously treated as Austrian citizens by public authorities. The amendment foresees that these 'presumptive citizens' can acquire Austrian citizenship more easily than others, although only after a minimum period of 15 years of such 'erroneous treatment' or after having served in the Austrian army or the alternative civilian service, which is notably not an option for women (art. 57, 64a(19) new). Moreover, the provision can only be invoked within six months after being aware of the erroneous character of the treatment as Austrian citizen.

Presented by the Ministry of the Interior as a major innovation, an alternative track towards citizenship will be opened for those considered to be 'sustainably personally integrated' (*nachhaltige persönliche Integration* – art. 11a (6) new). In order to qualify for this reduced waiting period of six (instead of the regular ten) years, applicants have to prove a higher level of German skills than required for ordinary naturalisation (B2 instead of B1 CEFR) or at least three years of voluntary work in an association serving the common good. Reportedly lobbied for by social democrats, educational, social or health work or a function within a union during three years can also be invoked to prove fulfilment of sustainable personal integration. Like those having committed themselves to voluntary work, this only is the case 'if their deeds served the common good in a special manner and represent an integration specific added value concerning their integration in Austria (sic!)' (*muss dem Allgemeinwohl in besonderer Weise dienen und einen integrationsrelevanten Mehrwert für seine Integration in Österreich darstellen*). This 'has to be extensively reasoned by the alien and the concerned institution in a written statement' (art. 11a(6) new). Initial plans to further toughen the income requirements for this group have been dropped. It might be added that a similar clause of facilitated naturalisation for 'well-integrated' persons after six years already had been in force until 2006 but was abolished in the last major reform of Austrian citizenship (see above).

Long overdue reforms such as the toleration of double citizenship for people naturalising, ius soli provisions, changes in the restrictive way of calculating the long waiting periods, a reduction of the prohibitive fees or an effective approach regarding the reduction of statelessness are not addressed by the amendment. The same applies to the very problematic and corruption-fostering constitutional provision for fast track discretionary naturalisation of investors, athletes, prominent artists and others. Its application had lately become the subject of several court trials and of a parliamentary committee installed to investigate various cases of suspected political corruption. The amendment now only provides that the government might lay down further regulations regarding the procedures for determining if such a naturalisation is in the interest of the Republic (art. 10(7) new) – something that would also have been possible before.

Symbolism in a twofold sense can also be seen in yet another new provision: naturalisations will have to be held 'in an appropriate, festive frame, as expressed through a common recital of the federal anthem and the visible display of the flags of the Republic, the respective province and the European Union' (art. 21(1) new). An almost identical obligation has been stipulated in the Citizenship Decree since 2006, but has mostly been ignored by the authorities (Stern & Valchars 2013).

5 Conclusions

Austrian citizenship can be characterised as the result of a historically grown compromise in which restrictive tendencies prevail. Its casuistic lack of structure reflects the almost complete absence of a comprehensive political debate on principles and meaning of Austrian citizenship since establishment of the Republic in 1919, not to speak of the consecutive interpretative problems.

After 1945, Austria could not afford to reconstruct its political self-image on the basis of traditional German nationalism. Yet, the construction of the 'First Republic' after the First World War or the reconstruction of the 'Second Republic' after the Second World War was neither connected to the multiethnic and multilingual composition of the Habsburg Monarchy, nor did it build upon a republican understanding of political belonging and membership (Bauböck & Çınar 2001). Injustices of the Austro-Fascist period and of the Nazi-era have been subject to only half-hearted attempts of repair, and discussions around the restrictive application of provisions introduced to benefit those persecuted or their children as well as short transition periods for persons to reapply for their citizenship still accompany today's reforms, even though with fading voices.

From the early 1960s until 1985, the adoption of international conventions made changes to the law necessary.[63] The most important driving factor with respect to legislative reforms in this period was the elimination of gender inequalities where the acquisition and loss of Austrian citizenship was concerned. Conditions relevant to the acquisition of citizenship by immigrants and their descendants however, remained basically the same until the late 1990s. The amendments of the Citizenship Law since 1998 and 2005 aimed at making acquisition of Austrian citizenship by immigrants more difficult. The ratification of international conventions since then hardly had any impact on the law – obligations were either avoided by reservations as in the case of the European Convention on Nationality ratified in 2000 (Valchars 2006: 6), or by simply disregarding the provisions, such as the obligations under the 1954 Statelessness Convention which Austria ratified in 2008 (UNHCR 2013) or under the Convention on the Rights of Persons with Disabilities, considering that it had become clearly impossible for people with severe disabilities to obtain Austrian citizenship since 2006. Once again, it was not until a ruling of the Constitutional Court that some of the conclusions were finally reflected in the 2013 amendment.

[63] Austria is party to the UN Convention on the Status of Married Women (BGBl. 238/1968), the Convention on the Elimination of all Forms of Discrimination against Women (BGBl. 443/1982), the UN Convention on the Reduction of Statelessness (BGBl. 538/1974), the Convention of the Council of Europe on the Reduction of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (BGBl. 471/1976), the Protocol on Military Services in cases of Multiple Citizenship (BGBl. 214/1958); the European Convention on Nationality (BGBl. III 39/2000); the 1954 Convention Relating to the Status of Stateless Persons (BGBl. III 81/2008); the Convention on the Rights of Persons with Disabilities (BGBl. III 155/2008).

Austria's persistently reluctant approach towards the integration of immigrants and their descendants as citizens has often been explained by emphasizing that Austria has not developed an understanding of itself as a country of immigration. It is true that despite the permanent settlement of post-war migrants (in which, also from a citizenship law perspective, there was a clear preference for 'ethnic Germans'), Austria retained the 'guest worker' approach for a long time. Yet other European countries with more inclusive citizenship policies do not regard themselves as countries of immigration either. In addition, Austria officially no longer pursues 'guest worker' policies. On the contrary, together with Italy, Austria was among the first European countries that adopted an immigration policy based on a quota system in the early 1990s. However, this shift in immigration policy, i.e. the establishment of strict immigration controls, did not entail a shift in 'immigrant policies' (Hammar 1985) in terms of an active policy of integration, which would have included facilitating the acquisition of citizenship by immigrants and their descendants. Much to the contrary, it appears that the citizenship law has been and is still being instrumentalised to uphold the idea of a citizenship that ought to be a 'precious good' and 'needs to be earned'. Following this idea a strict naturalisation policy and high naturalisation requirements are needed to evoke an aura of exclusivity surrounding Austrian citizenship status (Valchars 2013b: 19). This approach is supposed to create the impression of compensating for the loss of control in immigration matters and in respect to access to social rights and benefits. For example, in 2006 the entry into force of the 2003 EU Long Term Residence Directive[64] entitled those enjoying the new status to equal treatment with regard to social welfare benefits. In the same year, the citizenship law amendment excluded people who were dependent on social welfare benefits from access to citizenship. This reinforces the theory that denizenship generally does not lead to more equality in the long term (Bauböck 1992), especially not in respect of rights of democratic participation.

In spite of this, the importance of being naturalised or not has considerably declined in Austria within the last twenty years. While EEA membership in 1993 started the end of a monopoly of rights reserved to Austrians, this process has gained importance with the EU accession in 1995, the consecutive EU enlargements of 2004 and 2008 and, just recently, with the accession of Croatia in July 2013, moving major groups of third country nationals residing in Austria into the category of Union Citizens. With the European Court of Justice having found clear words on the rights of Turkish nationals and their family members under the Association Agreement[65] and with the EU's Family Reunification[66] and the Long Term Resident Directives of 2003 having entered into force the status of foreigners in Austria underwent major changes and has seen a patchy, but nonetheless important, equalisation of rights for broad groups.

[64] Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.
[65] Cf. the judgment in the case of *Dereci and others v Austria*, CJEU 8 December 2011, C-256/11.
[66] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

While one could assume that the decline of relevance of citizenship law could entail that states would care less about naturalisation, this is only true to the extent that the 'denationalisation' of citizenship rights (Soysal 1994) extends to most residents the rights connected with it. With democratic rights most notably excluded (Valchars 2006: 71ff), the symbolic significance of belonging is still highlighted in various ways by legal categories distinguishing residents according to their origins and mechanisms of exclusion. The growing supranational dynamics of migration law and the loss of sovereignty in this regard are juxtaposed by the relentlessly exclusive power of states to grant or deny citizenship. While a comprehensive approach to the underlying problems is likely to be found only at the European level, this cannot serve as an excuse for not taking the necessary steps, as a more inclusive approach in most of the citizenship laws of other European countries illustrates and as even the few international obligations in this context would suggest. The continuous discrimination of children born out of wedlock even after the clear judgement of the ECtHR and – eventually even against public opinion – demonstrates a defensive and sometimes clearly ignorant approach. Innovation is reduced to reintroducing now even stronger meritocratic elements to an ethnically and culturally defined conception of national identity in which, contrary to expectations about new-to-be citizens in the test, the quality and scope of democratic representation is clearly no relevant consideration in a country with an increasing number of now more than 11.9 per cent non-nationals. While officials of the Ministry of Interior have defended the 2013 amendment by declaring that 'nothing will get worse', this announcement will still have to be put to the test.

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