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# EUDO CITIZENSHIP OBSERVATORY

## *COUNTRY REPORT: AUSTRIA*

Dilek Çınar

November 2009  
Revised April 2010



European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

***Report on Austria***

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EUDO Citizenship Observatory  
**Robert Schuman Centre for Advanced Studies**  
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## Austria

*Dilek Çınar*

### 1 Introduction

According to the latest Austrian census, in 2001, roughly 710,000 foreign nationals make up 8.9 per cent of Austria's population (8,032,926). Nationals of former Yugoslavia (322,261) and Turkey (127,226) are the two biggest groups, together accounting for 63 per cent of the total foreign population. It should be noted that these figures include foreign nationals born in Austria. The number of persons born abroad, who live in Austria, is much higher than the number of foreign nationals. Roughly 12.5 per cent of the population is foreign-born. Thus, the share of the foreign-born population in Austria is higher than in the USA (Jandl & Kraler 2003). However, like many other European countries, Austria's self-image is not that of an immigration country.

Austrian citizenship legislation is based on the principle of *ius sanguinis*, a ban on dual nationality and the belief that naturalisation has to be the last step of 'successful integration'. 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 no impact on domestic legislation. Thus, Austria remained among the few Western European countries that maintained the exclusivity of *ius sanguinis* or enforced the ban on dual citizenship in a strict manner.

Austrian citizenship law is a federal matter, whereas provincial governments are responsible for the implementation of 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, especially in cases where local authorities have a wide margin of administrative discretion. The two most recent reforms of citizenship legislation were carried out 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 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, the most recent reforms of citizenship legislation brought Austria closer to the 'mainstream' of European countries that now adhere to the principle of 'civic integration' as a precondition for naturalisation.

In the Austrian context, the term *Staatsbürgerschaft* refers both to the legal bond between the individual and the state (nationality) as well as 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 will be 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 Section 28 of the Civil Code of 1811, which broadly followed the model of the Code Napoléon, 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 irrespective of the citizenship of the father or the child's place of birth 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. 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 or after ten years of uninterrupted residence. As the automatic naturalisation of foreign nationals after ten years of residence gave rise to diplomatic disputes, this provision was amended in 1833 to allow for discretionary naturalisation by application (Heinl 1950: 33). 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 application was not required, but in this case naturalisation was ultimately an act of 'grace' (Thienel 1989: 41).

The relevant legal source concerning the loss of Austrian citizenship was the 1832 *Auswanderungspatent* (Emigration Law). 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 Section 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 Section 19 of the Emigration Law, Austrian women lost their status as 'female subjects' upon marriage to a foreigner (Goldemund et al. 1969: 474).

Although Austrian citizenship 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 the *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 certain professions or by legal entitlement after ten years of residence in the respective municipality. The naturalisation of foreigners was dependent on a municipality's willingness to grant a foreigner *Heimatrecht*.

After the end of 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, 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 state (Brandl 1996: 63; Thienel 1989: 49-60).

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 of 1925, 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*. Foreigners could already acquire provincial citizenship after four years of residence in Austria (de Groot 1989: 150) if they could prove that a municipality would grant them *Heimatrecht* and if they gave up their previous citizenship. 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. However, after 1933, the naturalisation of foreigners was possible only in individual cases if granting Austrian citizenship served the interests of the government (Goldemund et al. 1969: 409).

Following the annexation of Austria to Nazi Germany in 1938, all persons holding Austrian citizenship were declared nationals of the Third Reich. The provisions of the German Citizenship Law of 1913 became effective in Austria in July 1939 simultaneously with the abrogation of the Citizenship Law of 1925 (Heinl 1950: 48f).

## 2.2 Developments 1945-1985

The German Citizenship Law of 1913 was abrogated in April 1945 after the reestablishment of Austria as an independent state. A few months later, the Law on the Transition to Austrian Citizenship (*Staatsbürgerschaftsüberleitungsgesetz*) and the Citizenship Law of 1945 came into force. All persons who held Austrian citizenship on 13 March 1938 and those who would have been able to acquire it 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. According to Section 7 of the Citizenship Law of 1925, persons who acquired a foreign citizenship as well as women marrying foreign nationals lost Austrian citizenship. Thus the Austrian citizenship of persons who had to leave the country during the Nazi regime was restored automatically only if they did not hold another citizenship (Burger & Wendelin 2004: 2). Persons who had acquired a foreign citizenship could regain Austrian citizenship by declaration until July 1950 if they could prove that they had had their habitual residence in Austria since January 1919. In these cases, applicants did not have to renounce a foreign citizenship acquired abroad.

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 between 1945 and 1949, the Citizenship Law of 1945 was republished in 1949. Although the Citizenship Law of 1949 was basically in

line with the legal provisions in force since 1925, the law also contained some changes.

First, according to Section 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. Section 5 of the Citizenship Law of 1949 provided that foreign nationals could acquire Austrian citizenship after four years of residence only if the naturalisation of the applicant would benefit the interest of the federal state. After ten years of residence naturalisation by discretion was possible if the applicant fulfilled the general conditions. Foreign nationals who had resided in Austria for 30 years and fulfilled the general conditions had a legal entitlement to naturalisation. This latter provision was a reformulation of the legal entitlement to naturalisation of persons who could prove to have had their habitual residence in Austria since January 1919 (Heinl 1950: 125). The general conditions to be fulfilled were, among other things, the renunciation of a previous citizenship, absence of a relationship with the home country that could damage the interests of Austria, and absence of a criminal record. The different waiting periods introduced in 1949, including the rather unique provision for a naturalisation entitlement after 30 years, are still part of the current law that regulates the naturalisation of foreign nationals.

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 (Fassmann & Münz 1995: 34). While many displaced persons stayed in Austria temporarily, about 530,000 settled permanently. 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.<sup>1</sup> By 1958, roughly 230,000 ethnic Germans had acquired Austrian citizenship by declaration. In contrast, displaced persons who were not ethnic Germans had to apply for discretionary naturalisation (Stieber 1995: 149).

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.<sup>2</sup> 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 [Section 7].
- Automatic loss of Austrian citizenship by marriage to a foreign national was abolished [Section 26].

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<sup>1</sup> Law 142/1954, *Bundesgesetz betreffend den Erwerb der Staatsbürgerschaft durch Volksdeutsche*, BGBl. 142/1954, entry into force: 6 August 1954.

<sup>2</sup> New codification and re-announcement of the Federal Law on Austrian Citizenship 1965, *Staatsbürgerschaftsgesetz* 1965, BGBl. 250/1965, entry into force 1 July 1966.

- Automatic acquisition of citizenship by marriage to an Austrian national was transformed into a right to naturalisation by declaration [Section 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 [Section 16].

Two further changes were introduced with respect to the ban on multiple citizenships and the loss of Austrian citizenship. First, according to Section 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 in Section 37 of the 1965 Citizenship Law (Thienel 1989: 95).

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 remaining inequalities between men and women, (Novak 1974: 589).

Until the early 1960s, Austria was an emigration country. Germany and Switzerland were the main destination countries for many 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 agreed to recruit workers from Mediterranean countries. Recruitment agreements concluded with Spain (1962), Turkey (1964) and former 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, Section 10 (4) of the Citizenship Law of 1965, which is a constitutional provision<sup>3</sup>, 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, in the preliminary stages of the parliamentary procedure the government was accused of just 'fishing for voters' (Novak 1974: 590). In addition, the proposed amendment would have required a two-thirds majority vote by the parliament to amend a constitutional provision, which may explain the reluctance of the Constitutional

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<sup>3</sup> In Austria, a two-thirds majority in parliament can pass constitutional laws or protect specific provisions in ordinary laws against easy amendment by declaring them 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 Section 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.

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 [Section 58 in the version of 1973]. The same group of people 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 [§ 58c]. Finally, permission to retain Austrian citizenship when acquiring a foreign citizenship was made conditional on ‘future achievements’ for the benefit of the Republic instead of ‘extraordinary’ achievements [Section 28].

A profound change of citizenship legislation in the mid-1980s brought about full equality between men and women.<sup>4</sup> 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.<sup>5</sup>

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.

### 2.3 From the 1990s to today: efforts to restrict access to naturalisation

The Citizenship Law of 1965 was reissued in 1985<sup>6</sup> and has been amended several times since. The most important amendments between 1985 and 2005 concerned (1) the relationship between citizenship of the Federal Republic (*Bundesbürgerschaft*) and citizenship of the federal provinces (*Landesbürgerschaft*), (2) the reacquisition of Austrian citizenship, and (3) the naturalisation of foreign nationals.

According to art. 6 (1) of the Constitution of 1929, each federal province had its own ‘provincial citizenship’ (*Landesbürgerschaft*) which was declared a prerequisite for the acquisition of ‘federal citizenship’ (*Bundesbürgerschaft*). Although art. 6 (1) also

<sup>4</sup> Federal Law Amending the Citizenship Law 1965, BGBl. 170/1983, entry into force 1 September 1983.

<sup>5</sup> BGBl. 170/1983, art. I/II; Federal Law amending the Citizenship Law 1985, BGBl. 386/1986, entry into force 1 September 1986, art. I/II.

<sup>6</sup> Federal Law on Austrian Citizenship 1985, *Staatsbürgerschaftsgesetz* 1985, BGBl. 311/ 1985, entry into force 31 July 1985.

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 state 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 the *Bundesbürgerschaft* and *Landesbürgerschaft*. Persons holding Austrian citizenship were henceforth considered citizens of the federal province where they have their main residence.<sup>7</sup>

Another important development with respect to rights of Austrian citizens occurred in 1990, when a number of laws regulating the eligibility of voters in national elections and referenda were amended (see BGBl. 148/90). Since then, Austrian nationals living abroad enjoy full voting rights in parliamentary and presidential elections as well as in national referenda if they are included in the register of voters in a municipality.<sup>8</sup> The registration requires an application by Austrian expatriates and needs to be renewed every ten years. 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 the conditions for the reacquisition of citizenship by persons who had to leave the country before 1945.

In 1985, 37 per cent of all naturalisations concerned nationals of the fourteen countries that were members of the EU before the latest round of accessions in 2004. 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 countries sending migrant workers 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 factors 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 suffer serious disadvantages when they renounce their Turkish citizenship. Since June 1995, Turkish emigrants who naturalise abroad can keep their citizenship rights in Turkey (apart from their political rights). To this end, a so-called 'pink card' (now 'blue card') has been introduced and can be obtained by persons who acquired Turkish nationality by birth and who have been given permission by the

<sup>7</sup> Law 685/1988, BGBl. 685/1988, entry into force 1 January 1989.

<sup>14</sup> See BGBl. 311/1985 in the version of BGBl. I Nr. 124/1998 (Citizenship Law 1985) and BGBl. 329/1985 in the version of BGBl. 660/1993 and 982/1994 (Decree on Citizenship).

<sup>8</sup> The franchise of Austrian expatriates was introduced after the Constitutional Court had struck down an electoral law that had required ordinary residence in Austria as a precondition for voting in federal parliamentary and presidential elections (*Verfassungsgerichtshof* [VfGH] [Constitutional Court] Mar. 16, 1989, G218/88).

Council of Ministers to be released from Turkish citizenship.<sup>9</sup> The ‘blue card’ provides former Turkish nationals with the rights of residence, employment, acquisition of real estate and inheritance in Turkey. In addition, the amendment of 1995 abolished a provision according to which voluntary expatriation required compliance with military obligations. In other words, male Turkish citizens at the age when they can be drafted may ‘opt out’ of Turkish citizenship in order to naturalise abroad without having to first serve in the Turkish army. 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 the early 1990s raised the demand for naturalisation among long-term resident foreign nationals (Bauböck & Çınar 2001:268).

The continuous growth of the number of persons granted Austrian citizenship has met resistance from the right-wing Freedom Party (*FPÖ*) and the Christian Democratic People’s Party (*ÖVP*), when 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 was to ‘harmonise’ the administration of citizenship legislation across the country and to restrict the possibility of facilitated naturalisation. The reform made this mode of acquisition dependent on at least six years of residence and proof of the applicant’s ‘sustainable integration’. Former Austrian nationals, recognised refugees and EEA-nationals were, however, granted the possibility of discretionary naturalisation after four years of residence. Acquisition of Austrian citizenship by discretionary naturalisation or by legal entitlement was made conditional upon sufficient knowledge of the German language. Since the introduction of sufficient knowledge of German as a condition for naturalisation, the Administrative Court has repeatedly dealt with the required level of language proficiency. The Court argued that applicants should have basic or minimum knowledge of German to master everyday life and that it is not necessary to have ‘easy communication’ with the applicant.<sup>10</sup> The Court also decided that lack of German language skills by family members of the applicant or communication within the family in another language are not sufficient reasons to conclude that the applicant is not integrated (Feik 2003: 4).

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 grants to their family members: the share of grants after ten years (Section 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 (Section 16) rose from seven per cent in 1985 to a high of thirteen and a half per cent in 1999/2000, and the grant extensions to children (Section 17) from seventeen per cent in 1985 to almost 38 per cent in 2003. Grants to spouses of Austrian nationals (Section 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

<sup>9</sup> See art. 2 of Law no. 4112 and Doğan (2002: 127-130).

<sup>10</sup> See VwGH 2002/01/0147 and VwGH 2002/01/0186.

particular family-based modes of acquisition, had to be made more difficult.

A new coalition government formed by *ÖVP* and *BZÖ*<sup>11</sup> expressed in its 2003 government programme the intention to further restrict the possibility of naturalisation of immigrants after less than ten years of residence and to make naturalisation of former Austrian citizens easier.<sup>12</sup> Accordingly, in September 2005, the Ministry of the Interior proposed a bill with the aim of further restricting access to Austrian citizenship. The ministerial draft bill gave rise to manifold critiques by legal scholars, the bar association, the UNHCR and other stakeholders. Upon revision of some of the contested provisions, the Council of Ministers approved the bill on 15 November 2005. However, the bill could not pass the Federal Council, the second chamber of the Austrian Parliament, as the *SPÖ* and Green majority in this chamber made use of their right to a suspensive veto. Thus, the first chamber had to override the veto so that the bill could enter into force in March 2006. Nationality legislation was amended once again in 2009 as part of a comprehensive reform of the Asylum Law, Aliens Police Law and the Law on Settlement and Residence.<sup>13</sup> The new regulations entered into force on January 1, 2010.

### 3 The Current Citizenship Regime

#### 3.1 Main modes of acquisition and loss

The Austrian Citizenship Law of 1985 is based on five principles (Mussger, Fessler, Szymanski & Keller 2001: 26ff). First, according to the principle of *ius sanguinis*, a child born in wedlock acquires Austrian citizenship by birth if one of the parents is an Austrian national. According to the same principle, children born abroad to Austrian expatriates acquire Austrian citizenship by birth. Second, the Citizenship Law of 1985 contains certain provisions to avoid statelessness. The third principle characteristic of Austrian Citizenship Law is the ban on dual/multiple citizenship. The fourth principle of individual autonomy provides for equality between men and women, for example, in cases of acquisition of citizenship through marriage. Finally, the law contains several provisions to ensure that members of a family share the same citizenship. Although these principles have been characteristic of Austrian citizenship legislation for many decades, their ranking in case of conflict has changed over time. In particular, the principle that members of a family should have a common citizenship has become less important because of legislative reforms to achieve gender equality with respect to the acquisition and loss of Austrian citizenship (Mussger et al. 2001: 28).

The Citizenship Law of 1985 provides, together with the Decree on Citizenship and the Decree on the Citizenship Test, the main source of legal provisions currently regulating acquisition and loss of Austrian citizenship.<sup>14</sup> Austrian citizenship is acquired either by (1) descent at birth [§§ 7, 7a, 8], or after birth by (2) the granting of citizenship (or extension of the grant) [§§ 10-24], or (3) by notification [§ 58c].

<sup>11</sup> The Freedom Party, who joined the *ÖVP*-led government in 2000, split in spring 2005. The *FPÖ* ministers and members of Parliament then formed the *BZÖ* (Alliance for the Future of Austria).

<sup>12</sup> See Chapter 4 of the '*Regierungsprogramm der österreichischen Bundesregierung für die XXII. Gesetzgebungsperiode*' (government programme of 2003).

<sup>13</sup> See Draft proposal of the Ministry of Interior, 65/ME XXIV. GP  
[http://www.parlament.gv.at/PG/DE/XXIV/ME/ME\\_00065/imfname\\_160945.pdf](http://www.parlament.gv.at/PG/DE/XXIV/ME/ME_00065/imfname_160945.pdf)

<sup>14</sup> See BGBl. 311/1985 in the version of BGBl. I Nr. 135/2009 (Nationality Law 1985) and BGBl. 329/1985 in the version of BGBl. II Nr. 3/2010 (Decree on Nationality).

*Acquisition at birth*

As Austrian citizenship legislation is based on the principle of *ius sanguinis*, 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 (Section 7 (b)). Children born out of wedlock acquire the citizenship of their Austrian mother. If the father of a child born out of wedlock is an Austrian national, the child receives the citizenship of the father upon legitimation (i.e. through the marriage of the parents or by declaration of a child as legitimate by the Federal President) (Section 7a (1)). The formal recognition of paternity by the father is not sufficient because such recognition does not establish a marital father-child bond (Thienel 1990: 150). Since 1985, automatic acquisition by legitimation requires the consent of a child above the age of fourteen and of his or her legal agent because the Constitutional Court declared automatic naturalisation by legitimation to be a violation of the principle of equality (Thienel 1989: 146). The Court argued that this automatic and compulsory mode of acquisition amounts to unequal treatment of children who acquire Austrian citizenship after birth by extension of their parents' naturalisation and by legitimation, respectively. In the first case, the child of a person who acquires Austrian citizenship does not become an Austrian citizen automatically, as the extension of the granting of Austrian citizenship to a child requires an application filed on a voluntary basis. In contrast, the Citizenship Law of 1965 (Section 7 (4)) provided for the automatic acquisition of Austrian citizenship by an illegitimate child of an Austrian father upon marriage of the parents. Neither the child nor the parents could object to acquisition of Austrian citizenship. Against this background, the Court argued that children who acquire Austrian citizenship after birth and sometimes against their will are being treated unequally compared to children who also acquire it after birth, but only on the basis of a voluntary act. Foundlings up to the age of six months are considered Austrian nationals by descent (Section 8).

While birth in Austria does not constitute a claim to the immediate acquisition of citizenship by descendants of immigrants, Austrian citizenship is attributed to children of Austrian nationals living abroad by virtue of descent. With respect to the attribution of citizenship *iure sanguinis* to children born abroad, Austrian citizenship legislation does not contain any restrictions so that Austrian 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 their (foreign) country of residence. 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 as a consequence can be expected.

### *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 ten years (Section 10 (1)). The 2005 amendment introduced a stricter definition of the condition of uninterrupted and legal residence. Naturalisation is now dependent on an applicant's being legally 'settled' according to the provisions of the Law on Residence and Settlement 2005, i.e. applicants must have been permanent residents for at least five out of the ten years preceding the application for naturalisation. 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. Henceforth, the condition of uninterrupted residence means that applicants must not have been abroad for more than two years during the waiting period of ten years or generally for not more than twenty per cent of the required waiting period.

In addition, 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 and imprisoned, by an Austrian court for a fiscal offence (Sections 10 (2) and (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 that must be incorporated in criminal records information rules out the granting of Austrian citizenship (Section 10 (1a)).
- There must be no criminal proceedings pending for an intentional crime or fiscal offence that may be punished with imprisonment (Section 10 (1) 4).
- There must be no proceedings pending to terminate the residence of the applicant and no ban on the applicant's residence (*Aufenthaltsverbot*) in Austria or in another EEA country (Section 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 (Section 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) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Section 10 (1) 6).
- The applicant must have a regular income and must not have drawn social benefits for the last three years preceding the application for naturalisation (Section 10 (1) 7). The required income level must correspond to the social assistance standard rate (*Sozialhilferichtssatz*) determined annually by the Law on Social Security. For the year

2009, the relevant standard rate for a couple with a child is Euro 2,011 per month.<sup>15</sup> From 2010, regular expenditures for rent, loan repayment, garnishment or alimony payment have to be taken into account when calculating an applicant's income level. Thus, the amendment raises the level of disposable personal income necessary for naturalisation.

- The applicant must not have relations to a foreign state which could damage the interests or the reputation of Austria (Section 10 (1) 8).
  - The applicant must not have close connections (*Naheverhältnis*) to an extremist or a terrorist group (Section 10 (2) 7).
  - The applicant must undertake steps to be released from his or her previous citizenship if this is possible and can be reasonably required, unless the applicant is stateless (Section 10 (3)). This requirement applies also to recognized 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 an assurance (*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 original citizenship would require payments that are out of proportion (Section 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.<sup>16</sup>
  - The applicant must prove knowledge of German at the level of A2 according to the Common European Framework of Reference for languages and, also basic knowledge of the democratic order and history of Austria as well as of the federal province that administers the application for naturalisation (Section 10a (1)). The required level of German knowledge can be proven in different ways. Applicants for naturalisation can either provide an officially recognised language diploma at the A2 proficiency level or demonstrate that they have fulfilled the conditions of the 'integration agreement' according to Section 14 of the Law on Settlement and Residence, which entered into force in January 2006. Compliance with the 'integration agreement' requires the successful completion of a combined German and integration course that encompasses 300 instruction units of 45 minutes each (Perchinig 2009).
- Since 2005, acquisition of Austrian citizenship by naturalisation depends also on

<sup>15</sup> See *Informationsbroschüre über die Unterhaltsberechnung im Niederlassungs- und Aufenthaltsgesetz*, (Information brochure on the calculation of the income requirement according to the law on settlement and residence) Ministry of Interior, May 2009.

[www.bmi.gv.at/.../Informationsbroschüre\\_ber\\_die\\_Unterhaltsberechnung\\_im\\_NAG2008.pdf](http://www.bmi.gv.at/.../Informationsbroschüre_ber_die_Unterhaltsberechnung_im_NAG2008.pdf).

<sup>16</sup> See VwGH 95/01/0038.

passing a test on the history of Austria and Austria's political system. In addition, naturalisation candidates have to be knowledgeable about the history of the federal province where they have submitted their application for naturalisation. The latter will usually be the province where they have their principal residence (*Hauptwohnsitz*). The naturalisation test is scheduled for two hours and contains eighteen multiple-choice questions. The test has three parts with 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 (Section 5 Decree on Citizenship Test). 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. Sample questions about the history of the federal provinces are available for eight of the nine provinces on the website of the Ministry of the Interior.<sup>17</sup> A recent comparative study of the sample questions shows that this part of the test is subject to great variety across the country, as it covers not only the history but also contains questions about geography, economy, traditional local food and social rights and services in the different federal provinces (Perchinig 2009).

Several 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 to act [§ 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 naturalization 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.<sup>18</sup>

The 2010 amendment added a further exemption to remedy this situation: 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 (*Hauptschule*) 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.

Since January 2010, obtaining nationality by fraud can entail a fine in the range of 1,000-5,000.- Euros or imprisonment for up to three weeks. In such cases, making use of health, accident or retirement insurance benefits or receiving social welfare assistance shall be punished by imprisonment for up to one year. If the benefits amount to more than 3,000.- Euros, the person shall be subject to imprisonment for up to three years.

### *Legal entitlement*

<sup>17</sup> [http://www.bmi.gv.at/cms/bmi\\_staatsbuergerschaft/](http://www.bmi.gv.at/cms/bmi_staatsbuergerschaft/).

<sup>18</sup> See 'Trotz Matura zum Staats-Test', *Vorarlberger Nachrichten*, July 8, 2009 (Lokal A6), <http://ludesch.vol.at/news/tp:meinegemeinde:ludesch/artikel/trotz-matura-zum-staatstest/cn/news-20090708-06300167>

Certain groups of foreign nationals have a legal entitlement to acquire Austrian citizenship. Privileged groups of foreign nationals include family members of Austrian citizens or of a reference person who is about to be granted Austrian citizenship, long-term residents, stateless persons and former Austrian nationals.

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 reference person 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 (Section 11a). The 2005 reform of the Citizenship Law raised the hurdle for naturalisation particularly for foreign spouses of Austrian nationals by increasing the waiting period in terms of residence in the country as well as the duration of the marriage.

The 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 (Section 12 (3)). If the child was born out of wedlock, the legal entitlement is dependent on the mother holding Austrian citizenship. If the relevant Austrian parent is the father, the transfer of citizenship by legal entitlement presupposes proof of paternity and the father must have custody of the child. Except for the residency requirement of ten years, foreign family members of Austrian nationals must fulfil the general conditions of naturalisation in order to enjoy this legal entitlement.

The acquisition of Austrian citizenship by a foreign national has to be extended to his or her spouse (Section 16) and children (Section 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 settlement permit at the time of application (Sections 16 (1) 2 and 17 (1)). The same rule applies to foreign children adopted by Austrian citizens (Section 17 (3)). In June 2008, the Constitutional Court decided that the condition of settlement in Austria violated the principle of equal treatment as it applied to foreign children adopted by Austrian citizens living abroad.<sup>19</sup> The Court emphasized that such unequal treatment cannot be justified given the 'considerable numbers of Austrian emigrants' and increasing professional mobility of Austrian citizens. 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.

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<sup>19</sup> See VfGH 16.06.2008, G16/08.

*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 most recent 2005 reform of Austrian Citizenship Law, foreign children born in Austria were for the first time granted a legal entitlement to citizenship acquisition (Section 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 (Section 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 23-28 per cent in the late 1980s and early 1990s, by the late 1990s native-born persons accounted for 29-33 per cent of all persons naturalised. In 2008, roughly 37 per cent of persons granted Austrian citizenship were 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 were 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 (Çinar & 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 reforms of 1998 and 2005 granted native-born persons a legal entitlement but did not amend the requirement that the long list of general conditions for discretionary naturalisation still needed to be fulfilled. In addition, the costs of naturalisation by legal entitlement amount to at least Euro 700. 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 Euro 200. Hence, immigrant families may continue the well established pattern of collective naturalisation by applying for the extension of naturalisation of the mother or father to minor children.

*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 (Section 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 (Section 12 (1) b). There is no definition of ‘sustainable integration’ in the Citizenship Law of 1985. 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 ten years of residence.<sup>20</sup> In both cases applicants have to meet the 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 on 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’ (Section 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.

According to art. 3 of the Law on Fees, federal government charges for citizenship acquisition vary with the mode of acquisition. While citizenship acquisition by discretionary naturalisation after ten years of residence costs Euro 900, applicants who enjoy a legal entitlement to facilitated naturalisation after six years of residence pay Euro 700.<sup>21</sup> The latter fee also applies to foreign nationals married to Austrian citizens or to a person who is the principal applicant for naturalisation. The fees for the naturalisation of a minor child amount to Euro 200. In addition to fees charged at the federal level, applicants have also to pay varying amounts of provincial fees specified by local governments. To give an example, in the federal province of Vienna the costs for discretionary naturalisation of an individual applicant amount to Euro 1,050, while a foreign couple with a minor child must pay roughly Euro 2,000. The same family would have to pay

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<sup>20</sup> See VwGH 2000/01/0081.

<sup>21</sup> See BGBl I 37/2006.

more than Euro 3,000 in Upper Austria, Styria or Vorarlberg (see Çınar & Waldrauch 2006: 49).

Foreign nationals who acquire Austrian citizenship by grant (*Verleihung*) (or extension of grant) 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..’

### *Loss of citizenship*

The main modes of loss of citizenship are enumerated in the Citizenship Law of 1985 (Sections 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 (Section 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 targeted not primarily at the acquisition of a foreign citizenship (e.g. marriage to a foreign national) lead to the loss of Austrian citizenship even if the Austrian national 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.

The law also provides for loss of Austrian citizenship by renunciation (Section 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 been declared unfit for military service or alternative civilian service. Renunciation of Austrian citizenship is also possible, if the dual national has performed military or alternative service in another country in which he holds the citizenship. 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 (Section 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 (Section 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 (Section 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 (Section 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 in a report of the Constitutional Committee a ‘special reason’ for facilitated naturalisation after less than ten years of residence. 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, para. 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.

*Facilitated naturalisation*

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 (Section 10 (6); constitutional provision). In this case, the conditions of sufficient income and renunciation of original citizenship are waived, too. 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 (Section 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 original citizenship (Section 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 (Section 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 2004: 6).

*Dual nationality for citizens by descent*

In order 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 (Section 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 where a special reason

related to the applicant's private or family life justifies dual citizenship (Section 28 (1) 1). Yet, this new possibility of naturalising abroad without having to lose Austrian citizenship applies only to those citizens who are Austrians by descent (Section 28 (1) 2). According to the explanatory notes on the draft government bill, the easing of the rather demanding conditions with regard to retention of Austrian citizenship is 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. The new possibility of retention is, however, restricted to persons who have acquired Austrian citizenship by descent.<sup>22</sup> The reform of 2005 added a further ground justifying the acceptance of dual citizenship; retention of Austrian citizenship shall be permitted if this would benefit the interests of a minor child.

### *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 (Section 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, deprivation 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. The government of the respective federal province is the highest executive authority (Section 39). However, the Ministry of the Interior may lodge an appeal with the Administrative Court if it considers the decision of a provincial government unconstitutional (Mussger et al. 2001: 138). Applicants may appeal either to the Administrative Court or to the Constitutional Court.

Authorities enjoy a wide margin of interpretation in discretionary naturalisations. While citizenship legislation is seldom subject to judicial review by the Constitutional Court, there are numerous decisions by the Administrative Court that address the implementation of the 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'. Thus, the administration of citizenship legislation by the

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<sup>22</sup> In this context, it is noteworthy that according to Chapter II art. 5 (2) of the European Convention on Nationality 1997, to which Austria is a Contracting State, each State Party should be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently. However, the explanatory notes on the draft proposal of the Austrian government state that the principle of non-discrimination between nationals is not a binding provision, but contains a declaration of intent to eliminate such discriminatory provisions in matters of nationality law. See *Regierungsvorlage* 1089, AB 1319 B1gNR, [XX. GP](#) (draft governmental bill with explanatory notes).

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 for ‘special reasons’ such as sustainable integration (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.<sup>23</sup> Neither the adaptation to the Austrian way of life nor participation in local associations is mentioned in the explanatory notes to the draft bill. However, the Administrative Court argued that the responsible authorities might consider additional factors to judge the extent of integration of an applicant.<sup>24</sup>

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 settlement 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 disrespects 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 violates 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 with women is not a legal obligation.

#### **4 Current political debates and reform plans**

While the introduction of German language proficiency (1998) as well as of a citizenship test (2005) as new requirements for naturalisation triggered heated public debates, the amendment of nationality legislation in 2009 received little attention in the media. Organisations such as the Austrian Ombudsman Board, the Austrian Trade Union Federation, the Austrian Chamber of Labour, Caritas and other relevant NGOs have criticized in their written expert opinions particularly the proposal of the government to further tighten the income requirement to be fulfilled by naturalisation candidates. Yet, critical voices on the 2009 amendment of the nationality law remained part of an insider debate without reaching a broader public audience.

However, the implementation of the citizenship test occasionally attracts the attention of the media. According to the Ministry of Interior statistics about the numbers of candidates and success or failure rates are not available.<sup>25</sup> The Social Democratic city councillor of Vienna responsible for the integration of immigrants announced in an interview that only 56 out of 1,678 candidates failed the test in 2007.<sup>26</sup> Indeed, newspaper reports repeatedly

<sup>23</sup> Information provided by the Citizenship Department of the Federal Government of Upper Austria, 29 April, 2005.

<sup>24</sup> See VwGH 2000/01/0277.

<sup>25</sup> Personal information provided by Bernhard Perchinig based on an inquiry with the Ministry of Interior; see also Perchinig (2009).

<sup>26</sup> See ‘Eine Barriere für die Zuwanderer sind die erhöhten Gebühren’, Der Standard, July 31, 2007 <http://derstandard.at/fs/2979108/Eine-Barriere-fuer-die-Zuwanderer-sind-die-erhoehten->

emphasize that countrywide 90 per cent of applicants for naturalisation succeed in the test and that those who fail seem to pass the test the next time (see Perchinig 2009).<sup>27</sup> Regular press releases by Statistics Austria, which contain detailed information on the number of persons granted citizenship according to different modes of acquisition, also attract public attention. Over the last couple of years, newspapers devoted considerable space to details of naturalisation statistics underlining that the most recent restrictive reform of citizenship legislation had the impact of drastically reducing the number of persons granted Austrian citizenship.

This is not, however, the only effect of the comprehensive reform of 2005. Equally important is the impact of increasingly restrictive immigration policies vis-à-vis third country nationals, which were put into practice beginning in the early 1990s and which have gradually reduced the number of potential applicants for naturalisation after ten years of residence (Statistik Austria 2009). Therefore, only future empirical research could clarify in a reliable way which kinds of restrictions have been more or less effective in reducing the number of successful candidates for naturalisation. The citizenship test does not seem to be the most important factor in this respect, though it may have deterred potential candidates from submitting an application in the first place. The fact that fees for naturalisation were raised with the 2005 reform is probably more relevant. Since then applicants also have had to comply with stricter requirements to prove that they have sufficient and regular income for the three years preceding the application without having had to make recourse to social assistance. The 2009 amendment raised the income barrier once again, which may also contribute to reducing the number of potential applicants for naturalisation.

## 5 Conclusions

Austrian Citizenship Law has been amended repeatedly since 1945. From the early 1960s until 1985, the adoption of international conventions made changes to the law necessary.<sup>28</sup> 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 descendents however, remained basically the same until the late 1990s. The amendments of the Citizenship Law in 1998 and 2005 aimed at making acquisition of Austrian citizenship by immigrants more difficult.

Austria's persistently reluctant approach towards the integration of immigrants and their descendents as citizens has often been explained by emphasizing that Austria has not developed an understanding of itself as an immigration country. It is true that despite the

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<sup>27</sup> See also 'Erste Staatsbürgerschaftstests in Wien und Salzburg durchgeführt: 45 Personen geprüft!', September 9, 2006, <http://www.news.at/articles/0638/10/151499/erste-staatsbuergerschaftstests-wien-salzburg-45-personen> and 'Hohe Erfolgsquote beim Österreich-Test', Der Standard, July 9, 2008.

[http://derstandard.at/fs/3409415/Hohe-Erfolgsquote-beim-OesterreichTest?sap=2&\\_pid=10038605](http://derstandard.at/fs/3409415/Hohe-Erfolgsquote-beim-OesterreichTest?sap=2&_pid=10038605)

<sup>28</sup> 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), and the European Convention on Nationality (BGBl. III 39/2000).

permanent settlement of post-war migrants and their family members, Austria retained the 'guest worker' approach until at least the early 1990s. Yet other European countries with more inclusive citizenship policies also do not regard themselves as countries of immigration. In addition, Austria no longer pursues 'guest worker' policies. On the contrary, Austria was the first European country 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, such as by facilitating the acquisition of citizenship by immigrants and their descendents. Restrictions with respect to immigrants' access to social rights and benefits, as well as to political rights, were maintained and the conditions for naturalisation became much more demanding with several restrictive amendments implemented between 1998 and 2009.

A second hypothesis is that the history of Austrian citizenship policy reflects the perception of the Austrian nation as a 'community of descent'. The conception of the nation in terms of descent and ethnicity does not allow immigrants or their descendents to easily become members of the national community unless they share an ethnic or cultural background with the native majority population. The exclusivity of the principle of *ius sanguinis* in Austrian citizenship law since the nineteenth century seems to support this hypothesis. However, despite the predominance of the principle of *ius sanguinis*, Austrian citizenship legislation, until recently, was not characterised by sweeping requirements for assimilation as one might have expected from a society whose self-image is based on common descent and ethnicity. For example, until the reform of 1998, Austrian citizenship law did not include proficiency in the German language as a condition for naturalisation. This does not mean that in practice knowledge of German was irrelevant with respect to the acquisition of Austrian citizenship. In a few traditionally conservative federal provinces, like Vorarlberg and Tyrol, the granting of Austrian citizenship was always dependent on proof of language proficiency. However, this practice had no legal basis.

It is noteworthy that until the mid-1990s there were no major political debates about Austrian national identity and Austrian citizenship law. After 1945, Austria could not afford to reconstruct its political self-image on the basis of traditional German nationalism. Yet, the reconstruction of the 'Second Republic' 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). In the post-war period, the vacuum of national identity was filled mainly by referral to music, arts and landscape rather than common descent, ethnicity and language. With respect to citizenship legislation, the political 'emptiness' of Austrian national identity produced a peculiar framework: the principle of *ius sanguinis* was reaffirmed after 1945, but requirements of cultural assimilation were not part of citizenship legislation.

From the mid-1980s, however, Austria's political landscape – traditionally dominated by Conservatives and Social Democrats – underwent a major transformation due to the rapid rise of the right-wing Freedom Party as well as increasing support for the Greens. The impact of this reconfiguration was, among other things, the politicisation of questions related to immigration, identity and citizenship. The steady growth of voters opting for the Freedom Party combined with the federal structure of the Austrian political system eventually triggered a political competition between the federal provinces to be more restrictive with respect to the naturalisation of immigrants (Bauböck & Çınar 2001). While the Social Democratic Party failed to confidently

participate in the debate on the meaning of citizenship and the conditions for membership in the Austrian polity, their then coalition partner, the Conservatives, successfully enforced the claim for a more restrictive naturalisation policy.

The most important factor, however, that led to calls for a restrictive administration of citizenship legislation was the surge in naturalisations beginning in the early 1990s. Despite demanding conditions for naturalisation, a steadily increasing number of immigrants acquired Austrian citizenship as they fulfilled the general residency requirement of ten years. Thus, more and more immigrants and their family members could escape the legal restrictions imposed on third-country nationals with respect to access to the labour market, social rights and benefits, and political participation. In the province of Vienna, where access to municipal housing was for a long time exclusively reserved for Austrian nationals, this development led to growing resentment about the allocation of municipal housing to (naturalised) 'foreigners'. Even before the amendment of the citizenship legislation in 1998, the Viennese authorities responded to this resentment by making facilitated naturalisations dependent on more restrictive conditions.

The example of Vienna shows that a restrictive naturalisation policy is not necessarily the expression of an assimilationist approach. Rather, it can be argued that restrictions in citizenship legislation have more to do with the wish to restrain immigrants' access to social benefits, political rights and, in particular, the right to family reunion and less with an ethnic conception of national identity. In the case of Austria, this latter point is of particular importance. Contrary to the well-known arguments about the 'denationalisation' of citizenship rights (Soysal 1994), acquisition of Austrian citizenship still matters significantly with respect to immigrants' security of residence, access to the labour market and social and political rights. Moreover, national citizenship, and its acquisition, matters in terms of immigration control and it does so increasingly because of the close link between naturalisation and family reunification.

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