

EUDO CITIZENSHIP OBSERVATORY

NATURALISATION PROCEDURES FOR IMMIGRANTS AUSTRIA

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European University Institute, Florence
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EUDO Citizenship Observatory

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Austria***

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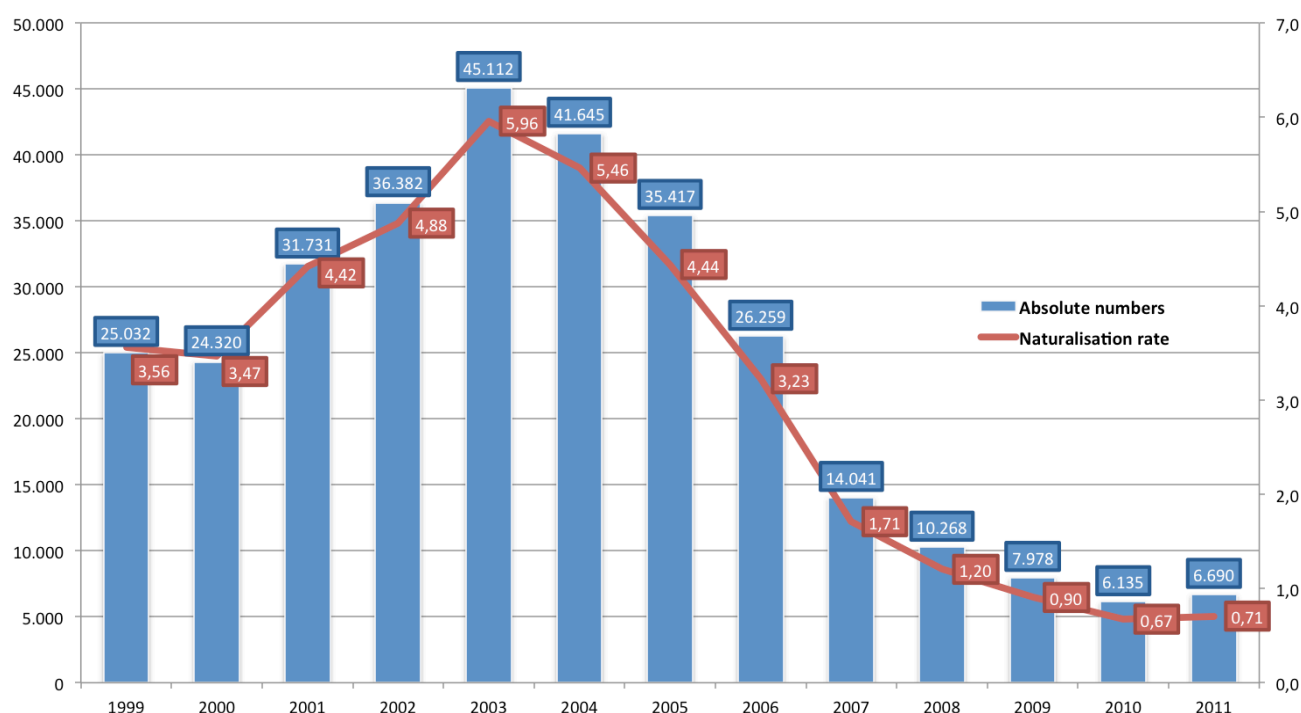
Naturalisation Procedures for Immigrants Austria

Joachim Stern, Gerd Valchars

1. Introduction

Since 1999, naturalisation numbers in Austria have undergone intensive fluctuations. In 2003, naturalisation reached an all-time high, both by 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 2005/06 had come into force.¹ The number of naturalisations reached its low point in 2010. Not since 1973 have figures been as low as they are now. Between 2003 and 2011 the absolute number of naturalisations dropped by 85%. An almost identical picture can be observed by looking at naturalisation *rates* over the last years.² Like the absolute numbers, they steadily decreased from the late 1990s, peaked in 2003 and decreased sharply over the following years by a massive 88% (figure 1).

Figure 1: Naturalisation in Austria. Absolute numbers and naturalisation rate



Source: Statistik Austria;

http://www.statistik.at/web_de/statistiken/bevoelkerung/einbuengerungen/index.html [November 28, 2012].

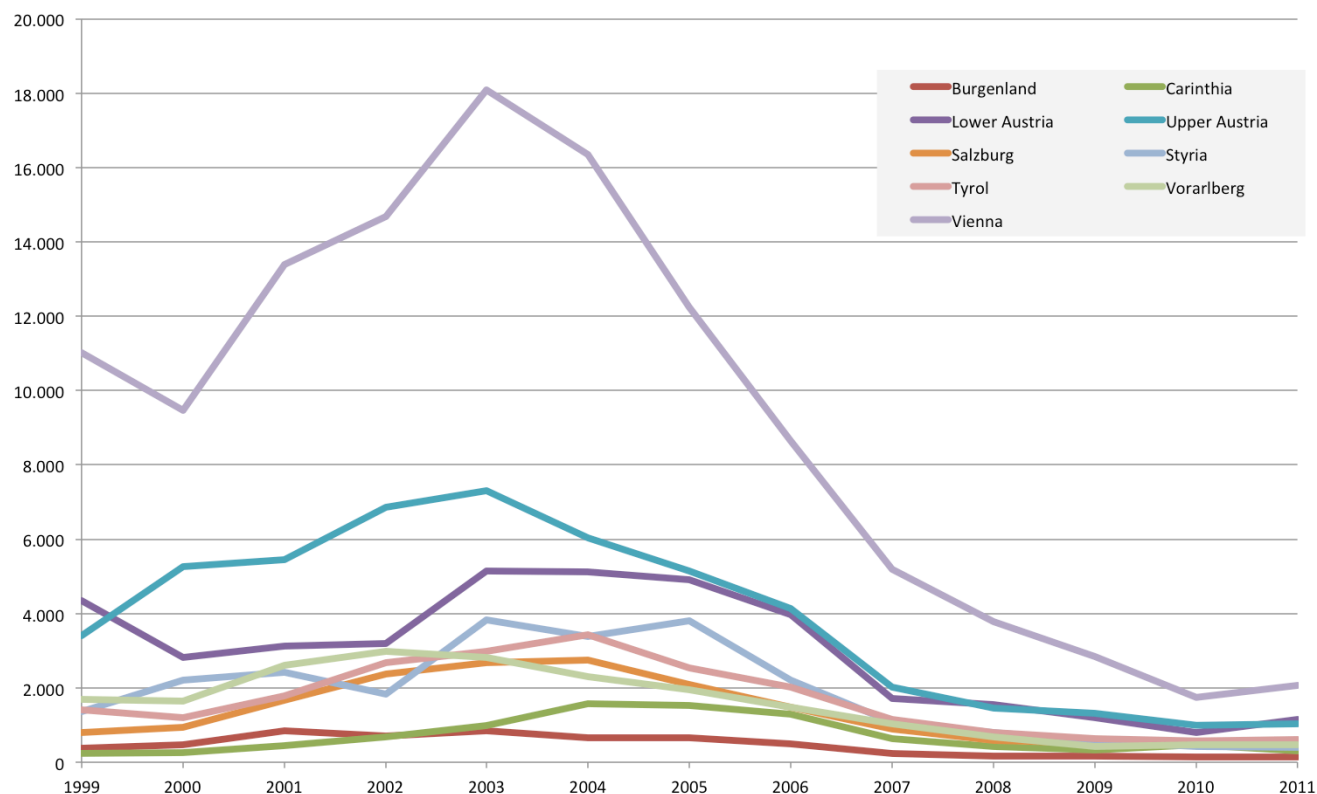
Own compilation.

¹ See for example *Stern*, Grenzen zur Demokratie. Die Staatsbürgerschaftsrechts-Novelle 2005 in *juridikum* 2006, pp. 6-11.

² Naturalisation rate: the number of naturalisations during a given year as the percentage of the total number of resident non-nationals at the beginning of that year.

Austrian Citizenship *legislation* lies with the competence of the federation but is executed by the provinces. This makes it worthwhile to take a closer look at the composition of the naturalisation figures at the provincial level in order to see how the same law works out in different parts of the country.

Figure 2: Naturalisation in Austrian provinces by absolute numbers

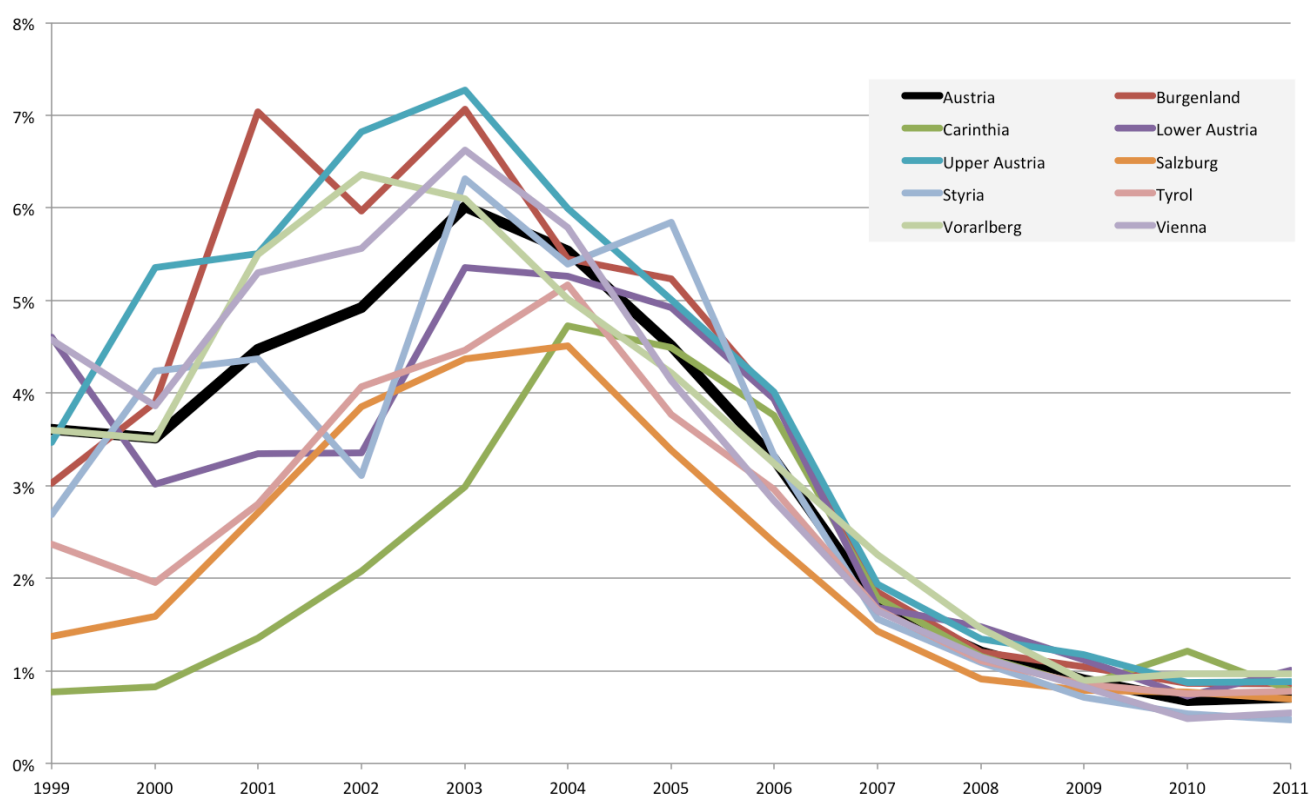


Source: Statistik Austria;
http://www.statistik.at/web_de/statistiken/bevoelkerung/einbuengerungen/index.html [November 28, 2012].
 Own compilation.

One can see that the province (and capital city) of Vienna has always had the highest absolute number of naturalisations. In 1999, 44% of all naturalisations in Austria took place in Vienna; in 2003, its share dropped to 40% of all naturalisations countrywide, and by 2011 had fallen to 30.7%. In 1999, the highest and lowest naturalisation numbers at provincial level differed widely by a factor of 46; in 2003 this factor was reduced to 21.6 and, in 2011, Vienna was still the province with the highest number of naturalisations even though it only issued 14.4 times more citizenship certificates than Burgenland, the smallest province with the lowest number of naturalisations (figure 2)

When it comes to the more relevant naturalisation *rates* at the provincial level (figure 3) one can clearly see that figures used to vary widely across the different entities. In 1999, the difference between the province with the lowest naturalisation rate and the one with the highest naturalisation rate was 3.83 percentage points, or a factor of 5.97 (Carinthia: 0.77% vs. Lower Austria: 4.6%). In 2001, the difference between the regional minimum and the regional maximum rose to 5.68 percentage points or a factor of 5.2 (Carinthia: 1.35% vs. Burgenland: 7.04%). After 2007, the naturalisation rates in the provinces converged: from 2007 to 2011 the range between the highest and the lowest rate narrowed to between 0.46 and 0.83 percentage points difference or a factor of 1.58 in 2007 (Salzburg 1.43% vs. Vorarlberg 2.26%) and to 2.5 in 2010 (Vienna: 0.49% vs. Carinthia: 1.21%). These numbers not only question the reputation of Vienna as the easiest province to be naturalised in, as it never took the lead in the naturalisation quota and was even the most restrictive province in 2010, but also show that the margin of appreciation has decreased significantly since the 2005/06 amendment.

Figure 3: Naturalisation rate in Austrian provinces



Source: Statistik Austria;

http://www.statistik.at/web_de/statistiken/bevoelkerung/einbuengerungen/index.html [November 28, 2012].

Own Compilation.

In the following we argue that this does not, however, mean that the outcome of the procedure is more predictable in a positive sense, but quite the opposite: it has become more predictable that naturalisation will be denied. This is not only illustrated by the low quota but also by very weak promotion (Section 2), lengthy, expensive and risky procedures (Sections 3, 6 and 7), vast requirements concerning documentation (Section 4), discretion that cannot be used to the applicant's benefit but mostly to deny naturalisation for vaguely defined reasons (Section 5), and a theoretically rather strong but practically weak right to judicial review (Section 8).

2. Promotion and Citizenship Ceremonies

Within the last ten years there have not been any official naturalisation campaigns, neither on the national nor on the regional level. Although the so called “Integration Report” for 2011 and again for 2012, published by the Ministry of Interior, mentions the importance of “efforts to raise the interest of those persons complying with all the significant prerequisites for Austrian citizenship to actually obtain such citizenship”,³ no such measures have yet been taken. Moreover, there are no official information or counselling services specifically for applicants for naturalisation. However, administrative authorities are generally obliged to guide applicants through procedures.⁴

There are furthermore no specific webpages promoting naturalisation. Nonetheless, as e-government is well developed in Austria, there is general information available in German and English on the conditions and the documents needed for naturalisation on the government’s homepage <http://www.help.gv.at>.⁵ The website of the Ministry of the Interior provides links to the respective provincial governments’ websites and the legal text of the Federal Law on Austrian Citizenship, in German only.⁶ The information provided by the provincial governments on their respective websites differs widely. Some of them only state contact details of the responsible authorities, others also provide details on naturalisation procedures, conditions for application and documents needed. In some cases the provincial study guide for the citizenship test⁷ can also be found online. The federal study guide for the citizenship test by contrast cannot be found online: after having been criticised as faulty, incorrect and partially copied from Wikipedia⁸ the official preparation material has been removed from the official websites and is now handed over to applicants in print only.⁹

Specific printed brochures informing applicants on the conditions for naturalisation do not exist. Written leaflets largely correspond to the information available online on the regional websites. The official application form used to differ from province to province but has been standardised lately. It is now available online at the federal government’s homepage as well as on

³ *State Secretary for Integration* (2012), *Integration Report: Conclusions Of The Expert Council For Integration 2012*, p. 33: http://www.integration.at/fileadmin/Staatssekretariat/4-Download/Integrationsbericht_2012/Integration_Report_english_WEB.pdf [September 20, 2012]; cf also *Staatssekretariat für Integration im Bundesministerium für Inneres* (2011): *Integrationsbericht. Vorschläge des Expertenrates für Integration. Das 20-Punkte-Programm*: http://www.integration.at/fileadmin/Staatssekretariat/4-Download/Vorschl%C3%A4ge_Langfassung.pdf [July 27, 2012].

⁴ § 13a *Allgemeines Verwaltungsgesetz – AVG*.

⁵ In German: <https://www.help.gv.at/Portal.Node/hlpd/public/content/136/Seite.1360001.html> [July 27, 2012]; in English: <https://www.help.gv.at/Portal.Node/hlpd/public/content/136/Seite.1360000.html> [July 27, 2012].

⁶ http://www.bmi.gv.at/cms/bmi_staatsbuergerschaft/ [July 27, 2012].

⁷ The citizenship test combines questions on history, geography, polity, culture and tradition regarding the respective province where the test has to be taken as well as concerning the federal level. Cf *Perchinig*, *All You Need to Know to Become an Austrian: Naturalisation Policy and Citizenship Testing in Austria*, 2010, in: *Ersbøll/Kostakopoulou/van Oers (eds.)*, *A Redefinition of Belonging? Language and Integration Tests for Newcomers and Future Citizens*.

⁸ E.g. *Die Presse*, June 5, 2012: *Peinliche Fehler im Staatsbürgerschaftstest*, <http://diepresse.com/home/panorama/integration/763515/Peinliche-Fehler-im-Staatsbuergerschaftstest> [July 27, 2012]. See also: <http://eudo-citizenship.eu/news/citizenship-news/632-austrian-naturalisation-test-incorrect#.UBpqv-S8y9M> [July 27, 2012].

⁹ Cf *Strik/Böcker/Luiten/van Oers*, *The INTEC Project: Draft Synthesis Report. Integration and Naturalisation tests: the new way to European Citizenship*, 2010, p. 83.

some of the provincial governments' websites.¹⁰ Additionally, it is available as a printed document when applying for citizenship at the provincial government's offices.

Since 2010, Art. 4 (2) of the Federal Ordinance on Citizenship states that handing over of the legal certificate of naturalisation has to take place within "a ceremonial and dignified frame which is adequate to this event" ("*in feierlich würdigem Rahmen, der diesem Anlass angemessen ist*").¹¹ However, the practice varies from province to province. In Vienna, the certificates are generally handed over at the citizenship authorities' office, with an optional ceremony to be held annually.¹² For celebrities, such as Academy Award Winner Christoph Waltz, a special ceremony might be held.¹³

3. Authorities and Procedure

While the constitution provides for a federal competence to pass and amend the Citizenship Law, the enactment thereof is within the competence of the provinces. The provincial government, seated in the provincial capital, is the authority that receives the application, checks whether the application is complete and correct and is responsible for making a decision. Decisions can be appealed against to the Constitutional Court (*Verfassungsgerichtshof – VfGH*) and the Supreme Administrative Court (*Verwaltungsgerichtshof – VwGH*), by the applicant as well as by the (Federal) Ministry of the Interior (see below Section 8).

The documentation is checked upon receipt of the application, and again before the decision is taken. Since relinquishing any former nationality is a general requirement for obtaining Austrian citizenship (see also below Section 6) at first a "preliminary decision" or "provisional guarantee" (*Zusicherungsbescheid*) is issued to enable the applicant to relinquish his/her former citizenship(s).¹⁴ After renunciation, all criteria are checked again before citizenship is finally granted. Even if only one of the criteria for naturalization is no longer met the person will be rendered stateless. The Austrian Constitutional Court (*VfGH*) recently decided that this double check was unconstitutional since it did not differentiate between cases where the applicant could be held responsible for not fulfilling all of the criteria anymore and when they could not.¹⁵ On Nov 1, 2012, the judgment took effect so that the relevant moment to fulfil the criteria should only be the moment the "provisional guarantee" is issued. However, the legislator reintroduced a similar regulation soon after the entry into force of the judgment. From now on, only the applicant's economic situation will not be reconsidered again after the renunciation of other citizenships.¹⁶

¹⁰ <https://www.help.gv.at/linkaufloesung/applikation-flow?leistung=LA-HP-RL-AntragVerleihungStaatsbuergerschaft&quelle=HELP&flow=FO&gemeinde=90101&formularlinkid=1093> [July 27, 2012].

¹¹ *Staatsbürgerschaftsverordnung 1985*, BGBl. Nr. 329/1985 idF BGBl. II Nr. 3/2010.

¹² *Wiener Zeitung*, March 12, 2012: Ein Formalakt ohne Würde, http://www.wienerzeitung.at/themen_channel/wzwien/stadtpolitik/443015_Ein-Formalakt-ohne-Wuerde.html [July 27, 2012].

¹³ *Österreich*, August 23, 2010, Endlich: Ösi-Pass für Waltz: <http://www.oe24.at/leute/oesterreich/Endlich-Oesi-Pass-fuer-Waltz/1598514> [July 27, 2012].

¹⁴ § 20 (2) StbG.

¹⁵ VfGH 29.9.2011, G154/10, http://www.vfgh.gv.at/cms/vfgh-site/attachments/8/8/9/CH0006/CMS1327050409430/staatsbuergerschaftsgesetz_g154-10.pdf [July 27, 2012].

¹⁶ At the time of writing the official promulgation in the federal gazette is still pending, cf. http://www.parlament.gv.at/PAKT/VHG/XXIV/I/I_02042/fname_277491.pdf [Dec 12, 2012].

Legally, citizenship is obtained the moment the certificate of naturalisation (*Verleihungsbescheid*) is issued and handed over to the applicant, which is generally immediately after the oath has been taken.¹⁷

4. Documentation

According to § 19 (2) StbG, as in force since 2010, applicants are obliged to actively cooperate in the proceedings and furnish all necessary documents and means of proof as well as a photograph. The provision gives the Ministry of the Interior the right to define by ordinance which documents have to be produced in any case. According to this ordinance,¹⁸ applicants have to include the following documents and documentation: a valid travel document, a birth certificate, a recent photo, and, if necessary, a marriage certificate, divorce certificate, adoption papers, or certificate on name changes. Obligations concerning identity documents can be waived if the applicant demonstrates that it is impossible to acquire these documents and his or her identity can be established through other “unobjectionable” (*unbedenkliche*) means. For these cases the law provides for fingerprint checks, DNA fingerprinting and, in order to prove their age, a so called “medical age assessment” by X-ray analysis (§ 5 StbG, as in force since 2010).

Furthermore, proof of sufficient economic resources has to be furnished through pay slips, employment contracts, pension or insurance certificates or bank statements for the last three years, as well as documentation concerning all regular recurrent expenses during these three years.¹⁹

There is also a legal obligation to prove sufficient knowledge of German (before 2011: A2 CEFR²⁰, since 2011: Level B1 CEFR), and to pass the authority’s citizenship test. This can also be proven by certain Austrian school leaving certificates (see also below Section 5). Furthermore, proof of having renounced previous citizenship(s) has to be established.

The provincial government can obtain all kinds of information from any authority. However, the applicant is generally obliged to hand in evidence him-/herself. Since from that perspective the burden of proof is on the applicant, the following additional documents are regularly demanded: uninterrupted visas and residence permits, proof of residence (each for the relevant period, i.e. ten years in case of ordinary naturalisation procedure), a clean criminal record from any country where the applicant has lived for more than six months within the last 20 years. Concerning translation requirements, please see below Section 7.

¹⁷ § 23 StbG.

¹⁸ § 2 (1) *Staatsbürgerschaftsverordnung 1985*, BGBl. Nr. 329/1985 idF BGBl. II Nr. 184/2011.

¹⁹ Cf *Stern*, *Ius Pecuniae – Staatsbürgerschaft zwischen ausreichendem Lebensunterhalt, Mindestsicherung und Menschenwürde*, 2011, in: *Dahlvik/Fassmann/Sievers (eds.)*, *Migration und Integration – wissenschaftliche Perspektiven aus Österreich*, Jahrbuch 1/2011.

²⁰ Common European Framework of Reference for Languages (CEFR).

5. Discretion and Exemptions

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 of Austrians and recognised refugees after six years (§§ 11a StbG). If not within one of these categories, an entitlement to be naturalised is only provided after 30 years of permanent residence in Austria, or after 15 years in the case of “sustained personal and occupational integration” (§ 12 StbG).

Foreigners holding a permanent residence permit *can* be naturalised after 10 years (§ 10 StbG).

For a long time, 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, must not be taken arbitrarily and can be challenged before the Supreme Administrative Court. As a result, even in cases of discretionary decision some legal protection was made accessible. 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 2006.²¹ In this manner 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.²² In the case of discretionary naturalisation, discretion is general and extends to all requirements; this means 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 that the Federal Government can declare the naturalisation to be in the national interest (§ 10 (6) StbG).

Exemptions from language and citizenship tests may apply for applicants under-age and not yet subject to the compulsory general education, applicants in a chronically poor state of health if substantiated by an official medical report, applicants incompetent to act not solely by reason of their age; further exemptions are provided for diplomats’ spouses and certain victims of the National Socialists regime.²³

There is no explicit right to an exemption from the criminal record requirement but in practice, recognised refugees are exempted if they are liable to additional persecution from their home state.²⁴

6. Fees and Costs

The fees comprise federal and provincial fees and differ from province to province and according to the legal basis (Table 1). There are no exemptions or reductions of fees.

²¹ § 11 StbG idF BGBl. I Nr. 37/2006.

²² Cf *Stern*, Zwischen permanentem Aufenthaltsrecht und Staatsbürgerschaft, *MigraLex* 2007, 91.

²³ § 10a (2), (3), (4) and (4a) *Staatsbürgerschaftsgesetz 1985*, BGBl. Nr. 311/1985 idF BGBl. I Nr. 111/2011. Cf *Perchinig*, Country Report Austria. The INTEC Project: Integration and Naturalisation tests: the new way to European Citizenship, 2010, p. 51.

²⁴ See: <http://www.wien.gv.at/verwaltung/personenwesen/ahs-info/unterlag.html> [July 27, 2012].

Table 1: Naturalisation Fees in Austria

	Federal Fees ²⁵	Additional Provincial Fees								
		Vienna ²⁶	Carinthia ²⁷	Vorarlberg ²⁸	Tyrol ²⁹	Salzburg ³⁰	Upper Austria ³¹	Burgenland ³²	Lower Austria ³³	Styria ³⁴
Right to Naturalisation (§§ 11a -14)										
Single Person	759.70	76.00	296.40	54.40 – 545.00	300.00/400.00*	126.50 – 586.50**	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 – 1,173.00	208.00 – 1,728.00	421.50	240.00 – 1,860.00	237.00 – 2,714.00
Discretionary Naturalisation (§ 10)										
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 – 1,173.00		675.10	240.00 – 1,860.00	237.00 – 2,714.00
Extension on minor children (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***	–	–	–
Preliminary decision	–	40.00	43.60	25.40	50.00	–	52.00	72.70	42.00 – 93.00	11.80 – 135.70

* § 12: 300,00; §§11a, 13, 14: 400,00

** Minus 53,50 per child living in the same household

Ranges indicate fees linked to income. In Euro. As of October 2012. Own Research.

*** Citizenship Test Certificate: § 10a (1) Z. 2 ("demokratische Grundordnung und Geschichte")

**** Per trial: § 10a (1) Z. 2

²⁵ § 14 *Gebührengesetz 1957*, BGBl. 267/1957 idF 191/2011.²⁶ Art. I *Verordnung der Wiener Landesregierung, mit der die Verordnung über Verwaltungsabgaben und Kommissionsgebühren geändert wird*, [W]-LGBL 20/2007.²⁷ B. Besonderer Teil, TP 1.1ff *Landesverwaltungsabgabenverordnung 2006*, [K]-LGBL 3/2006.²⁸ Besonderer Teil, TP 82ff *Verwaltungsabgabenverordnung*, [V]-LGBL 66/2011.²⁹ Besonderer Teil, TP 6ff *Landes-Verwaltungsabgabenverordnung 2007*, [T]-LGBL 30/2007.³⁰ Besonderer Teil, TP 8ff *Landes- und Gemeinde-Verwaltungsabgabenverordnung 2012*, [S]-LGBL 91/2011.³¹ Besonderer Teil, TP 5ff, *Oö. Landesverwaltungsabgabenverordnung 2011*, [Oö]-LGBL 118/2011.³² Besonderer Teil, TP 126ff *Landes-Verwaltungsabgabenverordnung 2002*, [B]-LGBL 1/2002.³³ TP 8aff NÖ *Landes-Verwaltungsabgabenverordnung 2001*, [Nö]-LGBL 123/2011.³⁴ B. Besonderer Teil, TP 8ff *Landes-Verwaltungsabgabenverordnung 2011*, [St]-LGBL 51/2011.

Additional costs may be incurred for the following:

- Language certificates: language skills can be proven by certificates from certified testing institutions which are private and regularly involve fees. Public school leaving certificates are the only exemption; there used to be very limited funding for language courses for people who are obliged to pass the so called “integration agreement” (*Integrationsvereinbarung*). This funding has further been reduced: there is no financial support for A1 any more, very limited support for A2 (max 50% of the costs), and no support at all for B1, which is now the official requirement for naturalisations. Moreover, EU citizens and their family members as well as Turkish citizens under the Association Agreement are not obliged to fulfil the “integration agreement” and thus have no right to funding for any language courses. In practice some funding might be available nonetheless, depending on the province. The prices for courses vary widely: there is a small number of subsidized courses for EUR 1.- per hour. The literacy module normally costs EUR 350.-, one German language module EUR 750.- to EUR 2,500.-,³⁵ plus another EUR 100.- to EUR 130.- for the exam at the end. Especially migrants with a weaker educational background might need more than one course and more than one try at the exam so the costs range from a minimum of EUR 2,500.- to EUR 5,000.- for all the levels up to B1.
- Course costs for citizenship test: in most provinces the test itself is free of cost (see table above), but applicants might need special teaching in order to pass the test; there is no public funding for such courses; private providers only recently entered the market.³⁶
- Criminal record: EUR 16.40 for the Austrian record plus the costs for foreign records.
- Record of financial obligations from a credit reference agency (*Kreditschutzverband*): even though not officially needed, this certificate is demanded in practice, and costs EUR 29.70.
- Legalisation and translation of documents: formally, authorities have discretion to demand legalisation by officials of the country of residence (e.g. embassies or consulates abroad) and/or a translation of these documents. In practice, they tend to demand both automatically but it might be possible to convince them to accept just a translation, depending on the country of origin. There are some international agreements with certain states and there seems to be an unofficial list of countries from which 1) a certified translation is sufficient, 2) a certified translation and legalisation by the translator is accepted and 3) a certified translation and legalisation will still not suffice: in these cases people have to pay for so called “attorneys of confidence” nominated by the Austrian embassy in the country of origin who will then make local inquiries on the validity of the documents. This can involve tremendous costs for the applicants.
- Renunciation of former citizenship(s): as a general rule, applicants have to renounce their former citizenship(s), which in the case of most countries involves fees. There is an exemption if the applicant gives proof that he or she was unable or could not reasonably be expected to take the necessary steps to relinquish the nationality of his or her previous home

³⁵ Cf *Strik/Böcker/Luiten/van Oers*, The INTEC Project: Draft Synthesis Report. Integration and Naturalisation tests: the new way to European Citizenship, 2010, p. 52.

³⁶ E.g. <http://www.staatsbuergerschaftstest.com/> [July 27, 2012]. This training program costs EUR 12,- for the basic version and EUR 18,- for the advanced version.

country. This condition is considered to be met if the fees for renunciation exceed several thousand euros.

7. Length of Procedure

As a general rule in Austrian administrative law, all authorities have to make a decision as soon as possible, and at the latest within six months of the application being submitted.³⁷ If this time limit has passed, the Supreme Administrative Court can be applied to. If the Court decides that the delay was predominantly caused by the authority, the Court itself becomes the deciding authority (so called “complaint of delay” – *Säumnisbeschwerde*). In practice, this procedure is very ineffective, since it is generally uncertain whether the delay is caused by the authority or by the applicant and since the decision of the Court regularly takes a long time (see below Section 8). There is one documented case in which the Carinthian government refused the applicant – a Muslim religious education teacher – to be naturalised because of alleged poor integration. The Supreme Administrative Court decided that this was unlawful and scrapped the decision. Since the authorities still refused to grant citizenship the Court was applied to once again, became competent and granted citizenship.³⁸ It took four years from the original *rejection* of the application until the granting of citizenship by the Court. In Vienna for example, the authorities state that the procedure takes about 18 months. Since the possible remedies against negative decisions and against non-compliance with time limits are rather costly and ineffective (see below), in most cases the authorities tend to persuade the applicants not to demand a formal negative decision but to freeze the case until there is a chance that the conditions will be met.

Substantial delays during the application process may occur in the following situations:

- Public security: information requests from the citizenship authority to the immigration police whether naturalisation has to be denied for public security reasons. The answer may take several months and is considered valid only for three to six months. If further documents are missing or expired by then, this procedure has to be repeated.
- Criminal record: While the criminal record from Austria can regularly be issued on the spot, it can take much longer for foreign authorities to issue the record.
- Financial subsistence: although not obligatory, authorities prefer that the proof of financial subsistence is provided through an income tax assessment by the tax authority. Especially in the first half of the year this can lead to delays since tax declarations only have to be made before the end of June and tax authorities have six months to issue the assessment.
- Citizenship test: depending on the province, it takes from a couple of weeks to up to several months to be given an appointment for the test.
- Translation of documents and confirmation of authenticity: depending on the country of origin, this can take from several weeks to months until certified and approved translations and confirmations of authenticity can be obtained.
- Renunciation of former citizenship(s): time limits depend on the practice of the country of origin. Austrian law officially provides for a time frame of two years.

³⁷ § 73 *Allgemeines Verwaltungsgesetz – AVG*.

³⁸ VwGH E vom 15.03.2010, Zl. 2008/01/0552, cf *Giendl*, Händeschütteln ist kein Grundprinzip (2011), http://www.jusportal.at/handeschutteln-ist-kein-grundprinzip_susanne-giendl/ (31.7.2012).

8. Review

The provincial authority is the sole authority in naturalisation procedures. The only possibility for appeal against a naturalisation decision is an extraordinary remedy (*außerordentliches Rechtsmittel*): a complaint (*Beschwerde*) to the Supreme Administrative Court (*Verwaltungsgerichtshof, VwGH*) or to the Constitutional Court (*Verfassungsgerichtshof, VfGH*). The relationship between the Courts is complicated, but since citizenship in Austria is not itself guaranteed by the constitution, the Constitutional Court only plays a minor role in citizenship matters, i.e. when a provision of the Citizenship Act itself is challenged for its constitutionality.³⁹ Fees and proceedings for both of the courts are very similar. In the following, the more relevant procedure before the Supreme Administrative Court is dealt with, which took around 70 decisions in citizenship matters in 2011.⁴⁰

The complaint invokes a fee of EUR 220.- and has to be filed within six weeks of the issuing of the decision through an attorney which regularly involves costs of around EUR 1,000.- to 2,000.-. Legal aid can be granted, subject to a means and merits test. The naturalisation decision can be challenged on the grounds of being in violation of the citizenship act (“*rechtswidrig*” – contrary to law).

Language requirements generally have to be proven by certificates from private institutions so no appeal is possible. Even though integration tests are taken by the authorities, there are no separate appeal procedures. If the candidate is considered to have failed the test the only course for appeal is to demand that the authority issue a negative naturalisation decision and appeal against this decision.

The Supreme Administrative Court decides as a Court of Cassation, thus it can scrap or affirm the original decision but does not have the power to grant citizenship. If the decision is scrapped, the administrative authority has to decide again and is bound by the view of the Court. However, decisions of the Supreme Administrative Court take an average of 23 months⁴¹ and some of the decisions on citizenship matters taken by the Court in 2011 had been pending since 2007. Taking into account that the Administrative Court decides *ex-post* and that the Administrative Authority then has to reconsider all the facts at the moment of reissuing its decision many aspects might have changed in the meantime, i.e. the applicant might have lost his or her job or committed a minor offence and thus render the decision of the Court meaningless. Besides this, there are more reasons not to take a case to the Court: even when having been granted legal aid, the plaintiff bears the risk of paying the costs of the authority of EUR 610.60 when the Court does not scrap the authority’s decision. Without legal aid, when winning the case only EUR 1,106.40 plus the fee of EUR 220.00 will be reimbursed – this regularly does not cover the actual fees for the attorney. Moreover, all the fees paid in the original citizenship procedure are forfeit even when the case is won.

³⁹ The only constitutional basis for this is a potential violation of the provision of equal treatment and the prohibition of arbitrariness (*Gleichbehandlung von Fremden untereinander – Verletzung des Sachlichkeitsgebots*).

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<https://www.ris.bka.gv.at/Ergebnis.wxe?Abfrage=Vwgh&Entscheidungsart=Undefined&Sammlungsnummer=&Index=&AenderungenSeit=Undefined&SucheNachRechtssatz=True&SucheNachText=False&GZ=&VonDatum=01.01.2011&BisDatum=31.12.2011&Norm=stbg&ImRisSeit=Undefined&ResultPageSize=50&Suchworte=&Position=1> [July 27, 2012].

⁴¹ <http://www.format.at/articles/1228/930/334685/verwaltungsgerichtshof-das-warten> [July 27, 2012].

