

PATHWAYS TO CITIZENSHIP FOR FOREIGNERS IN AUSTRIA



Martin Stiller

Funded by
the European Union's AMF



 **Federal Ministry
Republic of Austria**
Interior

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Translation: Robert Schlarb

Print: kollegger.pro

This book has been printed on environmentally friendly paper.

Publisher: National Contact Point Austria in the
European Migration Network
International Organization for Migration,
Country Office for Austria
Nibelungengasse 13/4, 1010 Vienna
Tel.: +43 1 585 33 22 0
Email: iomvienna@iom.int, emnaustria@iom.int
Internet: www.austria.iom.int, www.emn.at

ISBN 978-3-9504765-6-9 (paperback)

ISBN 978-3-9504765-7-6 (PDF), German edition

ISBN 978-3-9504765-8-3 (PDF), English edition

© December 2019, International Organization for Migration (IOM)

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PUB2020/018/R

EUROPEAN MIGRATION NETWORK

The European Migration Network (EMN) was launched in 2003, by the European Commission and by order of the European Council, in order to satisfy the need for a regular exchange of reliable information in the field of migration and asylum at European level. Since 2008 Council Decision 2008/381/EC has constituted the legal basis of the EMN, and National Contact Points (NCPs) have been established in the EU Member States (with the exception of Denmark, which has observer status) and in Norway.

The EMN's role is to provide up-to-date, objective, reliable and comparable information on migration and asylum to European Union (EU) institutions and Member States' authorities and institutions with a view to supporting policymaking in the EU in these areas. The EMN is also tasked with providing such information to the general public.

The NCP Austria – based on an agreement with the Federal Ministry of the Interior – is located in the Research and Migration Law Department of the country office for Austria of the International Organization for Migration (IOM). The IOM office was established in 1952 when Austria became one of the first Member States of the Organization. The main responsibility of the IOM country office is to analyse national migration issues and emerging trends and to develop and implement corresponding national projects and programmes.

The main tasks of the NCPs in implementing the work programme of the EMN include drafting the annual policy reports and studies covering specific topics, responding to Ad-Hoc Queries launched by other NCPs or the European Commission, carrying out activities to increase the EMN visibility, and networking within several fora. In addition, the NCPs in each country also set up national networks of organizations, institutions and individuals working in the field of migration and asylum.

In general, the NCPs do not conduct primary research but collect and analyse existing data and information, which are supplemented where necessary through additional information collected directly. EMN studies are prepared in accordance with common study templates in order to achieve comparable results within the EU and Norway. Since comparing results frequently proves challenging, the EMN has produced a Glossary, which ensures that similar definitions and terminology are used in all national reports.

On completion of national reports, the European Commission with the support of a service provider drafts a synthesis report, which summarizes the most significant results from the individual national reports. In addition, topic-based policy briefs, referred to as EMN Informs, are prepared as succinct summaries and comparisons of national findings on key selected topics. All national studies, synthesis reports, Informs and the Glossary are available on the website of the European Commission Directorate-General for Migration and Home Affairs.

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SUMMARY

The Austrian regular naturalization procedure is considered as one of the strictest in the world. In particular since 1998, naturalization regulations have been steadily tightened (Reichel, 2011:94). In 1998, for instance, parts of the requirements were raised and the prerequisite of German proficiency was introduced. In 2006, amongst other things, proofing a secured livelihood was made considerably more difficult (Stadt Wien, 2017:49) and, in 2011, the proof of language proficiency was further tightened. In 2018, the waiting period for asylum seekers to be conferred citizenship was increased from 6 years to 10 years. Similarly, in July 2018, the federal fees associated with an application for and the issuance of citizenship were increased by 14 per cent (Heilemann, 2019:41).

The value of Austrian citizenship should not be underestimated and the Austrian passport has an “excellent reputation”, according to an international law firm specialized in the acquisition of citizenship, and is thus one of the “best travel documents in the world”. However, restrictive naturalization requirements seem to lead to Austrian citizenship being applied for less frequently. In general, the likelihood of naturalization is lower in those States that provide for restrictive legal requirements (Huddleston and Falcke, 2019). Accordingly, the naturalization rate in Austria was 0.7 per cent below the European average of 2.4 per cent in 2017. This ranked Austria only in twenty-sixth place within the EU-28.

Although the number of people who acquired Austrian citizenship has steadily increased between 2014 and 2018, the naturalization rate remained constant. While 7 693 people naturalized in 2014, 9 450 people naturalized in 2018 (+23%). However, the naturalization rate, i.e. the ratio of naturalizations to the number of foreigners living in Austria, remained constant at 0.7 per cent over the years 2014 to 2018, in contrast to the absolute number of naturalizations. It can be inferred from this that the increased number of naturalizations is not related to an increasing interest in obtaining Austrian citizenship but to an increase of the foreign resident population.

A closer look at the nationality of those who naturalized between 2014 and 2018 reveals a stable development: Among third-country nationals, Bosnia and Herzegovina, Turkey and Serbia ranked first to third. The only

exception is 2017, when Kosovo¹ came in third place. Among EU nationals, leading nationalities were Romania and Germany followed by either Croatia or Hungary. In terms of gender and age, it appears that between 2014 and 2018, those who were naturalized in Austria were predominantly female and of working age. While the proportion of girls/women being EU citizens was higher, the proportion of persons of prime working age was lower compared to third-country nationals. In fact, on average 52 per cent of third-country nationals who naturalized and 61 per cent of EU nationals who naturalized were female. Moreover, 60 per cent of third-country nationals who naturalized and 58 per cent of EU nationals who naturalized were between 20 and 64 years old.

In most cases, conferral of Austrian citizenship requires the fulfilment of a whole range of general requirements. These general requirements usually include prerequisites such as a *lawful* and *uninterrupted* minimum stay in Austria or a proof of sufficient knowledge of German. In addition, basic knowledge of the democratic system of the Republic of Austria and underlying principles; basic knowledge of Austrian history; and a basic knowledge of the history of the province of residence. Furthermore, foreigners seeking Austrian citizenship must prove that they have behaved appropriately until they submitted their application and have not attracted negative attention. Another decisive criterion for granting citizenship is the financial situation of the applicant. Austrian citizenship may only be conferred either if the livelihood of the foreign national is sufficiently secured or if the livelihood is not – or not sufficiently – secured but on grounds for which the person concerned cannot be held accountable for. Based on the average rental costs per dwelling per month in 2017 and taking into account the exemption allowed, a necessary annual net amount of at least EUR 13 200 was necessary in 2017 in order to comply with the legal requirement of a “secured livelihood”. Statistical data show that a substantial proportion of dependently employed persons in Austria (over 30%) is not able to reach the amount necessary to meet these financial requirements of a secured livelihood solely on the basis of their gainful employment.

According to Austrian law, the obtention of citizenship constitutes the “end point in a comprehensive integration process”. According to this policy “integration before citizenship”, persons willing to naturalize should first

1 References to Kosovo shall be understood to be in the context of United Nations Security Council resolution 1244 (1999).

take action to integrate during the minimum stay in Austria that is necessary for the acquisition of citizenship, the length of which depends on the naturalization pathway used. There are also corresponding offers, such as value courses. Persons seeking citizenship must therefore make appropriate efforts to integrate and naturalize. Accordingly, recently naturalized citizens should already have solid knowledge of their role as (EU) citizens. Correspondingly, the Federal Ministry of the Interior is not aware of any programmes to provide special information concerning this new role.

Comparing the legal situations of Austrian citizens and foreign nationals residing long-dated or permanently in Austria, the right to vote appears as a significant difference. Acquiring citizenship will, among other things, allow individuals to have a substantial voice in policymaking decisions in Austria. Another important difference between foreigners and Austrian citizens is that Austrian citizens cannot be denied access to the Austrian territory. On the contrary, foreign nationals who only have a residence permit may under certain circumstances be deprived of that permit, and thus of the right to re-enter the Austrian territory. The acquisition of Austrian citizenship, however, does not only confer rights, but also duties. These obligations include, for example, compulsory military service and participation in the judicial system.

In Austria, the provincial government is responsible for issuing decisions in citizenship matters – it is accordingly also before a provincial government that applications have to be submitted. Statistical records for 2018 show that a total of 9 450 persons were naturalized in Austria. With a total of 4 216 persons and almost 45 per cent of all naturalizations in Austria, Vienna stands out by far as the province where the most persons were naturalized. In 2018, Burgenland naturalized the least amount of people, totalling 184. The federal fees incurred in connection with the application for and conferral of citizenship are uniform throughout Austria. The fee associated with the application amounts to EUR 125.60. In addition, a federal fee of EUR 247.90 up to EUR 1 115.30 applies for the issuance of citizenship, depending on the legal basis on which the citizenship is conferred. Furthermore, the conferral of citizenship is linked to a provincial administration fee, which varies from province to province. In international comparison, the fees and charges associated with acquisition of citizenship in Austria are extremely high and among the highest in Europe (Stadlmair, 2017:73). A 2010 study found that Austria ranked second behind Switzerland in terms of the highest fees.

1. INTRODUCTION

1.1 Study aims

This study was carried out in the framework of the EMN and aims to examine and compare the different approaches by EU Member States to the acquisition of citizenship by third-country nationals. The focus lies on the naturalization of “new migrants”, i.e. the third-country nationals that have no pre-existing ties (e.g. ethnic, family or historical) to the country associated with the new nationality. The study looks at the naturalization requirements in the EU Member States and the procedures for determining whether these requirements are met. It further examines the concept of dual or multiple nationality as well as the extent to which there is a link between naturalization and the integration policies of EU Member States. Lastly, it will be clarified whether naturalization represents the endpoint of the integration process or whether naturalization is the starting point for integration. The scope of the study is limited to the acquisition of citizenship by first-generation third-country nationals, thus, the naturalization of second- and third-generation migrants is not dealt with. Temporally, the study focuses on the present, although political and legal developments in the past five years should also be considered. The statistical analyses are limited to the time period 2014–2018. This national report for Austria is part of the EMN study. The acquisition of Austrian citizenship is not dependent on previous nationality, which means that the same legal regulations – with the possible exception of the minimum length of stay – that apply to EU citizens count for third-country nationals as well. For this reason, the explanations in the national report for Austria are not limited to the acquisition of citizenship by third-country nationals, but more generally refer to the acquisition of citizenship by foreign persons.

1.2 Citizenship in a historical and legal context

Citizenship in its present form has a long history, its origins dating back to Greek antiquity (Kind, 2017a: Introduction, margin number 21). The French Revolution and its idea of the fundamental equality of all human beings before the law were particularly decisive for the modern concept of citizenship. This concept

subsequently spread to more and more States (Stiller 2011:18f). In Austria, uniform citizenship was first provided for in the General Civil Code² of 1811.³ A discrete law “on the acquisition and loss of provincial and federal citizenship” was not enacted until 1925 (Kind, 2017a: Introduction, margin number 35).⁴

The terms nationality and citizenship are often used synonymously, although they refer to different groups of persons. While nationality merely describes the formal affiliation of a person to a State in accordance with international law (Slominski, 2001:38), citizenship refers to national, domestic aspects (Weis, 1956:5), in many cases, political rights. Under international law, the determination of the conditions for the acquisition and loss of citizenship is the responsibility of individual States (Weis, 1956:65).⁵ Despite this freedom of the respective State, however, international agreements and principles must be observed. In the European context, community law must also be observed,⁶ especially since the conferral of citizenship of an EU Member States is also associated with European citizenship. Naturalization in one EU Member State therefore inevitably has an impact on the other EU Member States.

Nowadays, for most people, affiliation with a State as nationals or citizens is mostly a given. Accordingly, this affiliation is likely only actively recognized if, based on the affiliation to the country of origin, there is an inequality in comparison to the native population in the country of residence or if there is no affiliation to any country in the world. In the latter case, the person concerned is confronted with the often insurmountable hurdles of statelessness.⁷ Such situations make the necessity and the advantages of citizenship painfully obvious:

- Regarding the necessity of nationality, the status accompanying nationality under international law must be pointed out. On the international level, nationality constitutes the most essential link between the individual and the benefits of international law (Oppenheim, 1912:367). Nationality results in the individual's ability to appear under international law, since legal personality and individual legal claims, for instance, depend largely on the “legal connection” (nationality) with one or more States (Batchelor, 2006:8). Accordingly, nationality

2 JGS No. 946/1811.

3 Art. 28 General Civil Code. See also Bauböck and Cinar, 2001:255.

4 FLG 285/1925.

5 Court of Justice of the European Union, 2 March 2010, *Janko Rottman v Freistaat Bayern*, C-135/08, margin number 39.

6 Court of Justice of the European Union, 7 July 1992, *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria*, C-369/90, margin number 10.

7 For further information see Stiller, 2011. UNHCR estimates that currently 10 million people are affected. *UNHCR Österreich, Staatenlosigkeit*, available at www.unhcr.org/dach/at/was-wir-tun/staatenlosigkeit (accessed 29 October 2019).

is also an essential prerequisite for diplomatic or consular protection by a State. The State whose nationals are treated in a manner contrary to international law in a foreign country of residence is entitled to intervene on their behalf in said country of residence (Weis, 1956:35). For stateless persons, this is only permissible under certain circumstances, meaning that this diplomatic or consular protection is by no means a given. Against this background, stateless persons have therefore been described as “outlaws under international law” (Engländer, 1932:5).

- At the national level, citizenship plays an important role as it often provides the opportunity for political participation. This right does not necessarily coincide with nationality, since legal systems sometimes provide a further distinction between nationals with political rights – the citizens – and nationals without political rights.⁸ While “mere” nationals may take advantage of the aforementioned benefits under international law, political participation is not intended.
- Finally, citizenship has a unifying function. It gives the feeling of belonging to a community of equals (Osler and Starkey, 2005:11). Due to its unifying character, citizenship can be used not only to unite, but also to divide. It is thus not surprising that the past has seen the withdrawal or denial of citizenship being used as a means of excluding unwelcome persons from States. This is particularly evident in the conditions after the First World War, when the successor States of the former Austro-Hungarian Empire refused to recognize persons as their citizens.⁹ It became just as clear in the 1920s and 1930s, when several European States passed laws enabling the denaturalization of certain persons. (Stiller, 2011: 83). In Austria, for example, the “Act on the Acquisition and Loss of Provincial and Federal Citizenship” was amended by decree on 16 August 1933.¹⁰ According to this law, denaturalization occurred when, among other things, a person “supports, in whichever manner, hostile acts towards Austria in a foreign country.”

Switching from an existing nationality to another nationality is in principle not impossible, although both the renouncement of the former as well as the acquisition of a new nationality are subject to the respective national laws. Accordingly, naturalization

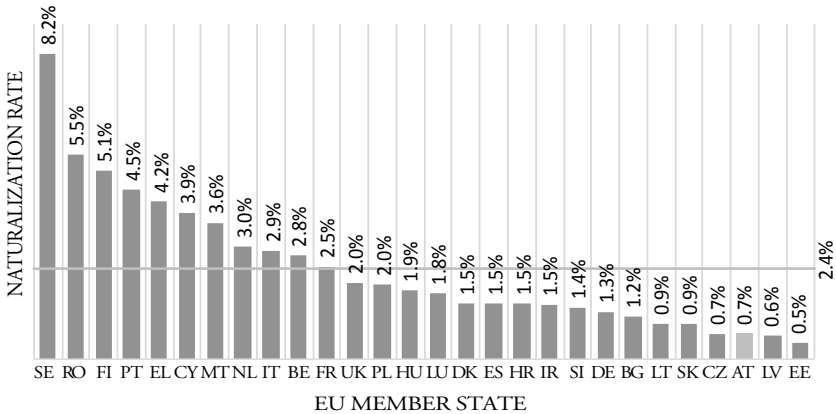
8 This distinction exists, for example, in the United States of America. According to U.S. Code § 1408 in conjunction with U.S. Code § 1101, persons born in certain territories belonging to the United States of America acquire nationality only, but not citizenship. See also Weis, 1956:5.

9 Siehe dazu, sowie zu den Bestimmungen im Friedensvertrag von Saint Germain-en-Laye, Stiller, 2011:70ff. Vgl. weiters Bauböck und Cinar, 2001:257.

10 FLG No. 369/1933.

is relatively easy in some States, whereas other States have restrictive naturalization laws. Austria's regular naturalization procedure is considered one of the strictest in the world.¹¹ Regulations on naturalization have steadily tightened, especially since 1998 (Reichel, 2011: 94). In 1998,¹² for example, the obstacles to naturalization were partly made stricter and proof of language skills was introduced. In 2006,¹³ proving a secured means of subsistence was made considerably more difficult (City of Vienna, 2017:49). In 2011, means of proving language skills were further tightened.¹⁴ Although the value of Austrian citizenship should not be underestimated¹⁵ and although the Austrian passport has an "excellent reputation" and is therefore one of the "best travel documents in the world",¹⁶ according to an international law firm specializing in the acquisition of citizenship, the restrictive naturalization requirements seem to lead to Austrian citizenship being applied for less frequently. The naturalization rate in Austria was 0.7 per cent in 2017, well below the European average of 2.4 per cent (see Figure 1).

Figure 1: Naturalization rate in EU Member States in 2017



Source: Eurostat 2019a, exported on 17 October 2019, representation by author.

This national report examines the requirements for naturalization in Austria in detail.

- 11 *Die Presse*, *Kann man die österreichische Staatsbürgerschaft kaufen?*, 31 July 2018, available at www.diepresse.com/5472886/kann-man-die-osterreichische-staatsburgerschaft-kaufen (accessed 4 November 2019).
- 12 Act Amending the Citizenship Act 1998, FLG I No. 124/1998.
- 13 Act Amending the Citizenship Law 2005, FLG I No. 37/2006.
- 14 Act Amending the Aliens Law 2011, FLG I No. 38/2011.
- 15 Interview with a representative of the Austrian Integration Fund, 11 September 2019.
- 16 Henley & Partners, *Austrian Citizenship*, available at www.henleyglobal.com/citizenship-austria/ (accessed 30 October 2019).

1.3 Definitions

The study uses the following definitions, which – unless otherwise stated – are based on the Asylum and Migration Glossary¹⁷ of the European Migration Network:

Third-country nationals: Any person who is not a citizen of the European Union within the meaning of Art. 20(1) of TFEU¹⁸ and who is not a person enjoying the European Union right to free movement, as defined in Art. 2(5) of the Regulation (EU) 2016/399 (Schengen Borders Code).¹⁹

Foreign person: According to Art. 2(4) of the Citizenship Act 1985,²⁰ any person who does not possess the Austrian citizenship, without distinction based on gender.

Ius sanguinis: The determination of a person's nationality on the basis of the nationality of their parents (or one parent or one particular parent) at the time of the target person's birth and at the time of acquisition of nationality by the target person (the two points in time are different in cases of acquisition after birth).

Ius soli: The principle that the nationality of a person is determined on the basis of their country of birth.

Nationality and citizenship: These terms are often used synonymously, although they refer to two different groups of persons. The legal distinction is further discussed in chapter 1.2. In the EU context, the terms are defined as follows:

- **Nationality:** According to the European Convention on Nationality, nationality is the legal bond between a person and a State and does not refer to the ethnicity of a person.²¹ In a case decided by the Court of Justice of the EU, nationality was defined more broadly as the “existing relationship

17 For further information see European Migration Network, *Asylum and Migration Glossary 6.0* (European Commission, Brussels, 2018a). Available at https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary/a_en (accessed 30 October 2019); European Migration Network, *Asylum and Migration Glossary 5.0* (European Commission, Brussels, 2018b). Available at www.emn.at/wp-content/uploads/2018/07/emn-glossar-5-0_de.pdf (accessed 30 October 2019).

18 Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (2012/C 326/01).

19 Official Journal of the European Union: Information and Notices (2019/C34), 28 January 2019, available at <https://eur-lex.europa.eu/legal-content/EN/TX-T/?uri=OJ%3AC%3A2019%3A034%3AFULL> (accessed 13 November 2019).

20 FLG No. 311/1985, in the version of federal law FLG I No. 96/2019.

21 Art. 2(a) European Convention on Nationality, European Treaty Series - No. 166, Strasbourg, 6 November 1997. Available at www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f2c8 (accessed 29 October 2019).

of particular bonds and loyalty and reciprocity of rights and obligations” between a Member State and its citizens.²²

- Citizenship: The particular legal bond between an individual and their State, acquired by birth or naturalization, whether by declaration, choice, marriage or other means according to national legislation.

1.4 Methodology

The present study was carried out by the National Contact Point (NCP) for Austria in the EMN in the framework of the EMN Work Programme 2019–2020. The study follows a common study template²³ with a predefined set of questions developed by the EMN, in order to facilitate comparability of the findings across all Member States.

The sources used were legal texts, national and international publications, press releases and internet sources. In addition, information was obtained from a continuous media monitoring exercise carried out by the Country Office for Austria of the International Organization for Migration (IOM). The statistical data presented here were provided by Eurostat and Statistics Austria and appropriately structured by the IOM Country Office for Austria.

To supplement the information obtained from secondary research, qualitative semi-structured face-to-face interviews were conducted with experts in the field of citizenship and legal advice. In some cases, written input was obtained. Personal interviews were conducted with the following experts:

- Dietmar Hudsky, Head of Department V/2 (Residence and Citizenship) of the Federal Ministry of the Interior and Eva Pfleger, Deputy Head of Department V/2 (Residence and Citizenship) of the Federal Ministry of the Interior;
- DI Peter Marhold, MBA, co-founder and project manager of the NGO Helping Hands;
- A representative²⁴ of the Austrian Integration Fund.

22 Court of Justice of the European Union, 2 March 2010, *Janko Rottman v Freistaat Bayern*, C-135/08.

23 For further information see EMN, *Pathways to citizenship for third-country nationals in the EU Member States Common Template for EMN Study 2019* (European Commission, Brussels, 2019). Available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_eu_pathways_to_citizenship_common_template_en.pdf (accessed 29 October 2019).

24 The interviewee asked not to be mentioned by name.

In addition, a written questionnaire was developed to survey the practice of citizenship procedures in Austrian provincial governments. The questionnaire covered the areas of application and evidence, citizenship test, citizenship procedures and conferral. The questionnaire was answered in writing by all provincial governments by the following departments, divisions or units:

- Provincial government of Burgenland, Regional Planning, Public Safety, Municipalities and Economic Affairs;
- Provincial government of Carinthia, Voting Rights, Citizenship and Residence;
- Provincial government of Lower Austria, Department for Citizenship and Elections;
- Provincial government of Salzburg, Elections and Citizenship Unit;
- Provincial government of Styria, Citizenship Unit;
- Provincial government of Tyrol, Department Citizenship;
- Provincial government of Upper Austria, Citizenship, Migration, Elections Group;
- Provincial government of Vienna, Municipal Department 35;
- Provincial government of Vorarlberg, Department for Citizenship, Foreign and Civil Law.

The study was prepared by Martin Stiller (Legal Associate, IOM Country Office for Austria). Saskia Heilemann (Research Associate, IOM Country Office for Austria) provided substantial input during the development of the study and also prepared the statistical sections of the study.

Special thanks are due to the aforementioned interview partners and provincial governments for sharing their knowledge and experience during the expert interviews and the written questionnaires, as well as to Julia Lendorfer, MA, for her valuable comments. The author would also like to thank Melisa Kovacevic, Evelyn Shi, Achille Versaevl and Helena Hahn (Interns, IOM Country Office for Austria) for providing support at various stages of the study.

The study was prepared in close cooperation with the Federal Ministry of the Interior.

2. CITIZENSHIP IN THE AUSTRIAN CONTEXT

This chapter places the general observations on citizenship, found above in section 1.2 of the introduction, in the Austrian context. First, the Austrian legislation serving as the legal basis for citizenship is outlined. Following this, statistics as well as recent developments in Austria's legal policy for citizenship are then presented.

2.1 National legislation

The main legal source governing matters relating to citizenship in Austria is the Citizenship Act 1985.²⁵ With reference to the terminology used in the Citizenship Act 1985, while both “citizenship” (*Staatsbürgerschaft*) and “nationality” (*Staatsangehörigkeit*) are found in this legislation,²⁶ the term “nationality” is used exclusively to refer to the legal bond between persons and States other than Austria.²⁷ The term “citizenship” is used overwhelmingly to refer to the legal bond between persons and the Austrian State. The Austrian legal system nonetheless makes no legally relevant distinction between nationals and citizens that would be associated with differing rights and duties for these two categories.

In addition to this specifically Austrian perspective, the Citizenship Act 1985 has been influenced in its design and detail by international agreements (Kind 2017a: *Einleitung* margin number 46 et seq.). Examples of such include the 1961 UN Convention on the Reduction of Statelessness and the European Convention on Nationality:

- Austria has been a Contracting State²⁸ of the UN Convention on the Reduction of Statelessness since 1972.²⁹ Although it took 11 years for Austria to accede to the Convention after its adoption by the United Nations, Austria

25 FLG No. 311/1985, in the version of federal law FLG I No. 96/2019.

26 Regarding this distinction see Stiller, 2011:9–11 and Reichel, 2011:17–19.

27 See, for example, Art. 3 Citizenship Act 1985.

28 FLG No. 538/1974.

29 This Convention, which was ratified by 74 States at the time of writing, aims at avoiding the emergence of new cases of statelessness and reducing statelessness in the longer term. See also the Convention on the Reduction of Statelessness, 30 August 1961, United Nations Treaty Series vol. 989.

was among the first countries to ratify the Convention³⁰ and thus to ensure its entry into force (Art. 18).³¹ Several years before ratifying the Convention, Austria had enacted the Citizenship Act 1965,³² which preempted the intentions pursued by the Convention (Stiller, 2011:180). The Federal Government of the time resolved to adapt Austrian citizenship law to the Convention in anticipation of accession, so as to prepare Austria for accession to the Convention at an opportune time, and thereby enabling Austria to support the duty of all civilized nations to combat statelessness.³³ When the Convention entered into force in Austria in 1972, Austrian legislation relating to citizenship law was already fully compliant with the treaty obligations accepted under the Convention and no additional statutory changes were therefore necessary.³⁴

- Austria is also a Contracting State of the 1997 European Convention on Nationality,³⁵ having signed the Convention in 1997 and ratified it the following year, in 1998.³⁶ Even though the then applicable version of the Citizenship Act 1985 did not conform to the Convention, the

30 A ratification should be understood as the binding approval by the Federal President under international public law.

31 In contrast to the ratification of the 1954 Convention relating to the Status of Stateless Persons, which was ratified by Austria due to constitutional considerations only after more than 50 years, Austria took a pioneering role in the field of reducing statelessness (see also Stiller, 2011:165, 179). In the course of ratification, however, Austria declared two reservations which are still valid today. Reservations to Art. 8 para 3 subpara a item (i) and (ii) of the Convention include the right to withdraw the citizenship of a person who enters voluntarily the military service of a foreign State (Art. 32 Citizenship Act 1985) or who serves a foreign State, if this conduct causes substantial damage to the interests or reputation of the Republic of Austria (Art. 33 para 1 Citizenship Act 1985).

32 FLG No. 250/1965. After numerous amendments, the Citizenship Act 1965 was re-announced as Citizenship Act 1985 in the same year (Kind, 2017a: *Einleitung* margin number 48).

33 Citizenship Act 1964, Government Proposal, p. 12, available at www.parlament.gv.at/PAKT/VHG/X/I/I_00497/imfname_328450.pdf (accessed 7 October 2019).

34 Convention on the Reduction of Statelessness, Government Proposal, p. 17, available at www.parlament.gv.at/PAKT/VHG/XIII/I/I_00118/imfname_317883.pdf (accessed 7 October 2019).

35 FLG III No. 39/2000. In accordance with Art. 1, this Convention establishes, amongst others, principles and rules concerning the nationality of natural persons.

36 Council of Europe, Chart of signatures and ratifications of Treaty 166, available at www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p_auth=LH-6GgiD9 (accessed 7 October 2019). Some reservations were expressed at the time of ratification. These reservations concern, for example, the handling of foundlings in Austria under the Citizenship Law (Art. 8 para 1 Citizenship Act 1985) or the fulfilment of military service obligation in the case of multiple citizenship. See also FLG III No. 39/2000.

Act was not amended following Austria's accession to the Convention. Instead, Austria declared reservations concerning various provisions of the Convention, so that any amendments to the Citizenship Act 1985 appeared "unnecessary" (*entbehrlich*).³⁷

The Federal Constitutional Act,³⁸ although having no direct relevance for acquiring citizenship due to a lack of any specific legal context allowing its application, does offer some fundamental provisions relating to citizenship. Art. 6 of the Federal Constitutional Act sets out uniform citizenship for the Republic of Austria, notwithstanding the country's federal structure (Ennöckl, 2014:Art. 5 margin number 2). With regard to enforcement, Art. 11 para 1 subpara 1 of the Federal Constitutional Act defines the legislative power for regulating citizenship affairs as a federal matter. Enforcement, in contrast, is a provincial matter, which explains the provincial governments' responsibility for granting citizenship, a power defined in legislation including the Citizenship Act 1985 (Art. 39 Citizenship Act 1985). The various provincial governments accordingly exercise a certain amount of discretion when conducting procedures for conferring citizenship (in relation to the types of evidence required or recognized, for example; see Table 4).

2.2 Statistics on naturalization in Austria

The following section will provide a quantitative overview of the acquisition of Austrian citizenship in the period 2014–2018. The data presented here are drawn from the statistics on naturalization compiled by Statistics Austria. These statistics are based on the information contained in the legally binding decisions on the conferral of citizenship by the offices of the provincial governments of Austria and document all types of acquisition of citizenship through declarations of intent and subsequent official action under the Citizenship Act. Automatic types of acquisition such as birth are not included.

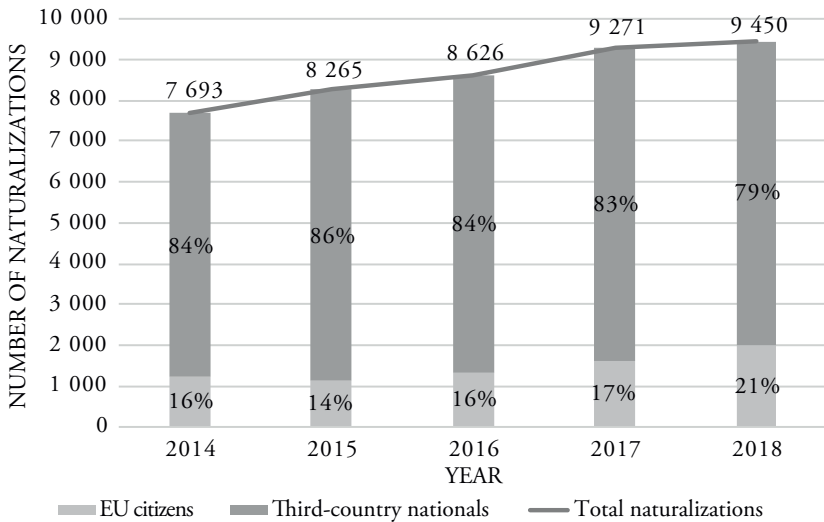
37 European Convention on Nationality with reservations and declarations by the Republic of Austria, Government Proposal, p. 34, available at www.parlament.gv.at/PAKT/VHG/XX/I/I_01089/fname_139982.pdf (accessed 7 October 2019).

38 FLG No. 1/1930, in the version of federal law FLG I No. 57/2019.

Overview of naturalizations in Austria in absolute and relative numbers

The number of persons who acquired Austrian citizenship between 2014 and 2018 has risen continuously. While in 2014, 7,693 persons became citizens, in 2018, 9,450 persons were naturalized (+23%). In contrast to the absolute number of naturalizations, however, the naturalization rate, i.e. the ratio of naturalizations and the number of persons with the same nationality living in Austria, remained constant in the period between 2014 and 2018 (0.7%). This suggests that the increased number of naturalizations is related to the increase in the foreign resident population and not to an increased interest in the acquisition of Austrian citizenship.

Figure 2: Naturalizations in Austria between 2014 and 2018, disaggregated by nationality (absolute)

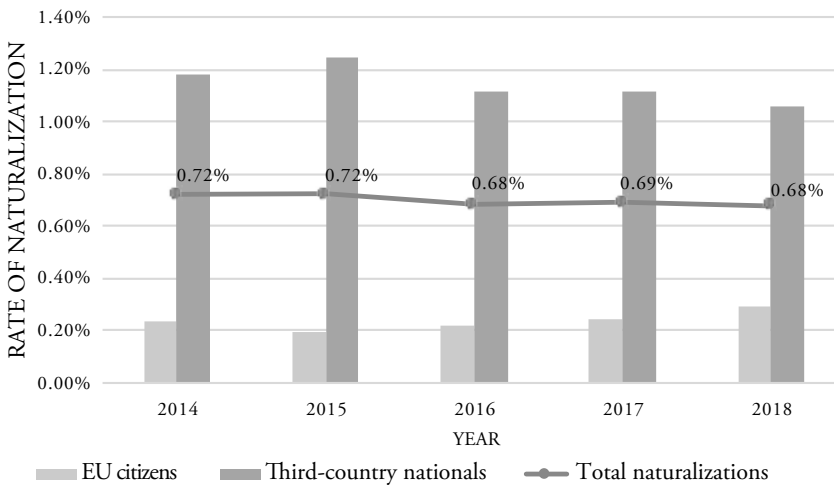


Source: Statistics Austria, 2019a, exported on 2 October 2019, representation by author.

During the time period under review, mostly third-country nationals were naturalized. Their share of all naturalizations was relatively stable and averaged 83 per cent between 2014 and 2018. EU citizens are much less likely to be naturalized – the reason being related to EU citizenship, and in particular the associated right to free movement and residence in all EU Member States. Thus, EU nationals would forego acquiring another EU citizenship because the relative value of their citizenship is equal to that of

another Member State (Alarian, 2017:2151). More recently, the proportion of naturalized EU citizens accounted for 21 per cent of all naturalizations in Austria (see Figure 2; all data can be found in the Annex in Table A.1).

Figure 3: Naturalization rate between 2014 and 2018, disaggregated by nationality (relative to the number of persons with the same nationality living in Austria at that time)



Source: Statistics Austria, 2019b, exported on 2 October 2019, representation by author; Statistics Austria, 2019a.

Similar to the absolute number of naturalizations, the naturalization rate also shows a marked difference for different groups, depending on their nationality. For instance, the proportion of third-country nationals who are naturalized averaged 1.14 per cent between 2014 and 2018 and is thus significantly higher than that of EU nationals (0.24% on average) (see Figure 3; all data can be found in the Annex in Table A.1).

Sociodemographic characteristics

Nationality:

A brief review of the nationalities of persons from third countries who were naturalized between 2014 and 2018 shows that Bosnia and Herzegovina, Turkey and Serbia are the top 3 countries of origin. 2017 is the only exception with Kosovo¹ ranking third. The nationalities ranked fourth and fifth remained similarly stable, with the Russian Federation and Kosovo¹

alternating ranks. Only during two years did other nationalities constitute the fifth-largest group of third-country nationals, this being the case for Afghan nationals in 2017 and for North Macedonian nationals in 2018 (see Table 1). The largest groups of naturalized third-country nationals reflect the largest groups of immigrants, historically speaking. Labour migration from former Yugoslavia and Turkey in the 1960s and 1970s as well as forced migration from crisis zones in Kosovo¹ and Serbia in the late 1990s (Marik-Lebeck, 2009:67) played a major role.

When looking at the nationalities of naturalized EU nationals, a significant increase in the naturalization rate of British nationals was noticeable between 2014 and 2018 (2014: 0.06%, 2018: 0.41%).³⁹ This development ought to be considered within the context of the planned withdrawal of the United Kingdom from the EU.⁴⁰ Overall, however, the forty-four British nationals who were naturalized in 2018 account for an insignificant share of all naturalized EU nationals. The majority of EU nationals who were naturalized between 2014 and 2018 were from Romania, followed by Germany and Croatia or Hungary (see Table 2). This can be linked to immigration: Romania, Germany and Hungary also represented the top three immigrant groups in the same time period (Statistics Austria, 2019a).

39 Statistics Austria, *STATcube – Einbürgerungen*, available at <https://statcube.at/statistik.at/ext/statcube/jsf/dataCatalogueExplorer.xhtml> (exported 2 October 2019).

40 Foreign Policy, *The Great British Race to Get a Second Passport*, 29 January 2019, available at <https://foreignpolicy.com/2019/01/29/britains-great-race-to-get-a-second-passport/> (accessed 13 November 2019).

Table 1: Naturalizations of third-country nationals in Austria between 2014 and 2018, disaggregated by top 5 nationalities

	2014		2015		2016		2017		2018	
	Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number
Top-1	Bosnia and Herzegovina	1 120	Bosnia and Herzegovina	1 218	Bosnia and Herzegovina	1 262	Bosnia and Herzegovina	1 288	Bosnia and Herzegovina	1 033
Top-2	Turkey	885	Turkey	998	Turkey	820	Turkey	779	Turkey	828
Top-3	Serbia	671	Serbia	636	Serbia	752	Kosovo*	664	Serbia	625
Top-4	Russian Federation	433	Kosovo*	542	Kosovo*	456	Serbia	557	Kosovo*	586
Top-5	Kosovo*	381	Russian Federation	299	Russian Federation	337	Afghanistan	424	North Macedonia	453

Note: * References to Kosovo shall be understood to be in the context of United Nations Security Council resolution 1244 (1999).

Source: Statistics Austria, 2019a, representation by author.

Table 2: Naturalizations of EU citizens in Austria between 2014 and 2018, disaggregated by top 5 nationalities

	2014		2015		2016		2017		2018	
	Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number	Nationality	Number
Top-1	Romania	244	Romania	221	Romania	258	Romania	291	Romania	456
Top-2	Germany	196	Germany	160	Germany	195	Germany	244	Germany	274
Top-3	Croatia	184	Croatia	143	Croatia	160	Hungary	227	Hungary	258
Top-4	Poland	114	Hungary	120	Hungary	155	Croatia	168	Croatia	251
Top-5	Hungary	112	Slovakia	102	Slovakia	148	Poland	165	Slovakia	197

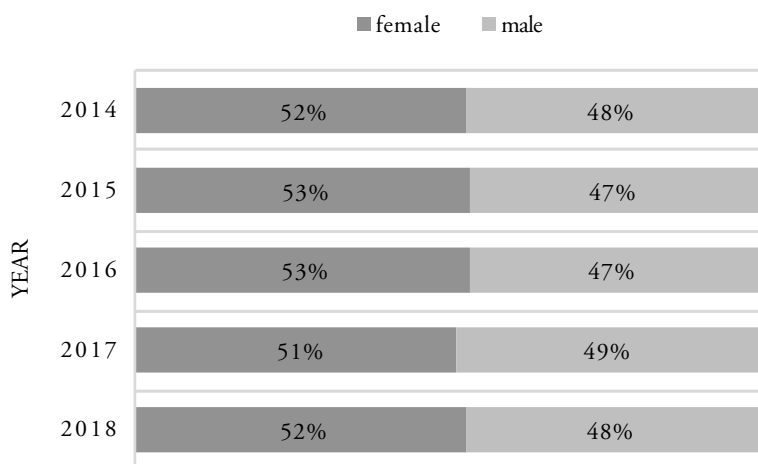
Source: Statistics Austria, 2019a, representation by author.

Gender and age:

With regard to the gender and age of third-country nationals naturalized in Austria, it can be seen that more girls/women and persons of working age (20–64 years) were naturalized between 2014 and 2018: on average, 52 per cent of the naturalized third-country nationals were female and 60 per cent were between 20 and 64 years old. This percentage has remained relatively stable over the four years measured (see Figures 4 and 5; all data can be found in Tables A.2 and A.4 in the Annex).

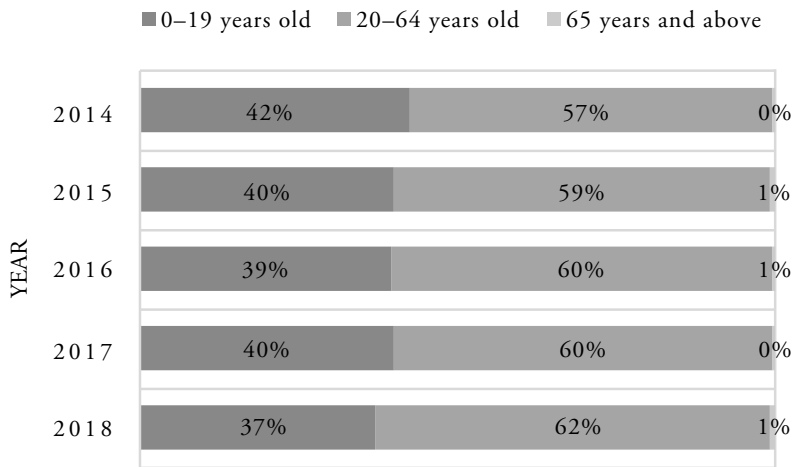
Within the group of naturalized third-country nationals of working age (20–64 years) – represented in 5-year groups – persons aged 35–39 years made up the largest group with an average of 14 per cent. Among the children and teenagers under the age of twenty, 0–4 year-olds made up the largest group with an average of 11 per cent (see Table A.6 in the Annex).

Figure 4: Naturalizations of third-country nationals in Austria between 2014 and 2018, disaggregated by gender



Source: Statistics Austria, 2019a, representation by author.

Figure 5: Naturalizations of third-country nationals in Austria between 2014 and 2018, disaggregated by relevant age groups

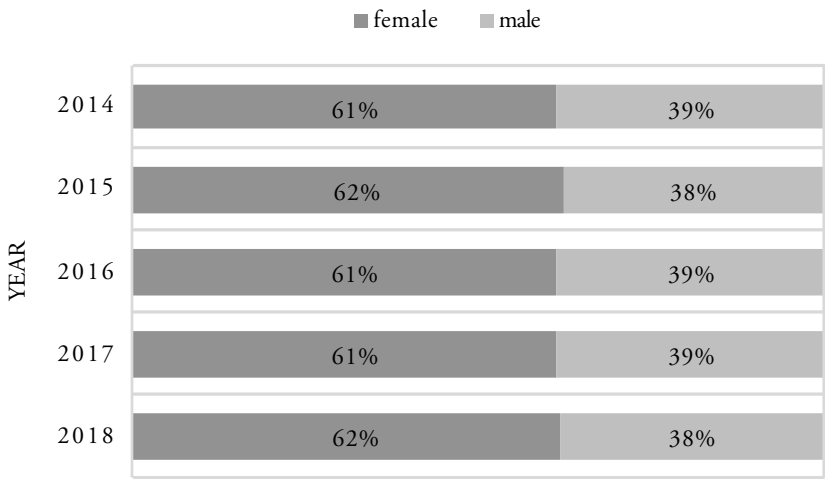


Source: Statistics Austria, 2019a, representation by author.

Among the naturalized EU nationals, the share of girls/women was slightly higher. Between 2014 and 2018, it averaged 61 per cent. In terms of age, naturalized EU nationals were primarily of working age (20–64 years), although their share was lower than that of third-country nationals with an average of 58 per cent. There was also comparatively greater variability in the time period analysed (see Figures 6 and 7; all data can be found in Tables A.3 and A.5 in the Annex).

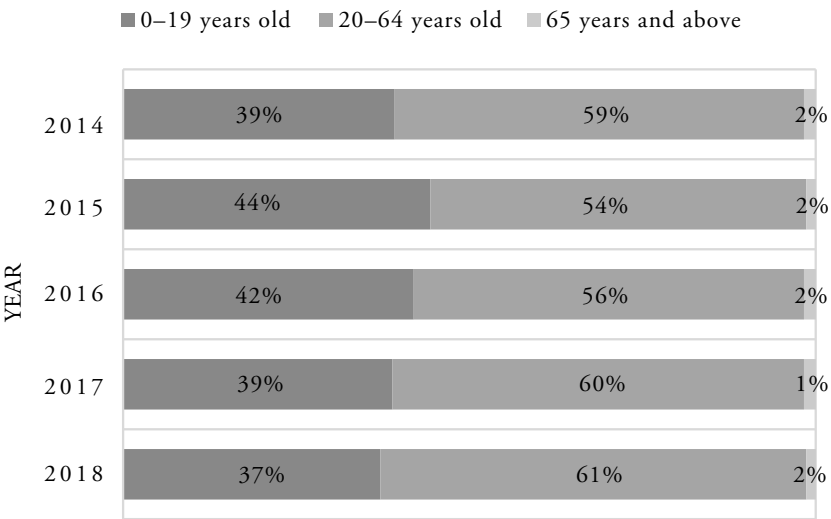
As in the case of third-country nationals, the largest group of EU nationals within the group of naturalized persons of working age (20–64 years old) were between 35 and 39 years old (15% on average). Among children and teenagers under the age of twenty, 0–4 year-olds constituted the largest group in 2014 and 2015 (15% on average). However, between 2016 and 2018, naturalized EU nationals aged 5–9 years represented the largest group (13% on average) (see Table A.7 in the Annex).

Figure 6: Naturalizations of EU citizens in Austria between 2014 and 2018, disaggregated by gender



Source: Statistics Austria, 2019a, representation by author.

Figure 7: Naturalizations of EU citizens in Austria between 2014 and 2018, disaggregated by relevant age groups



Source: Statistics Austria, 2019a, representation by author.

In summary, it can be said that persons naturalized in Austria are predominantly female and within the working age group, although the proportion of girls/women is higher among EU nationals and the proportion of persons of working age lower than that among third-country nationals.

2.3 Recent changes in Austria

An eminently political significance is attached to legal provisions governing citizenship, among other things, due to the consequences of acquiring citizenship, including political rights. This political significance has been the reason for changes in citizenship law in the past and up to the present (Kind, 2017a: Einleitung margin number 48), so that Austria's Citizenship Act 1985 has consequently been the subject of many amendments. These amendments resulted either from the Constitutional Court revoking passages of the Act or from modifications introduced by legislators. While not all of these modifications introduced legal changes relevant to acquiring citizenship, several authors interpret the amendments as proof of the erratic nature of the course pursued by legislators in defining provisions governing the acquisition and loss of citizenship (Ecker et al., 2017a: Einleitung, p. V).

Most of the substantive amendments have been made in the recent past, in some cases just shortly before this study was published. One example is an amendment adopted in late 2019,⁴¹ which facilitates the acquisition of citizenship by descendants of individuals persecuted under "Austrofascism" or by the NSDAP (see chapter 3.5). This amendment, long since planned (Austrian Federal Government, 2017:33) and also supported by opposition parties in the National Council,⁴² had nonetheless been postponed repeatedly.⁴³

41 Der Standard, *Doppelpass für Nachfahren von NS-Opfern kommt doch*, 4 September 2019, available at www.derstandard.at/story/2000108198775/doppelpass-fuer-nachfahren-von-ns-opfern-kommt-doch (accessed 4 October 2019).

42 Proposal by Member of Parliament Dr. Stephanie Krisper, colleagues, "regarding a Federal law, which amends the Citizenship Act 1985" of 25 October 2018, 438/A (XXVI. legislative term), available at www.parlament.gv.at/PAKT/VHG/XXVI/A/A_00438/imfname_716096.pdf (accessed 7 October 2019) and Proposal by Member of Parliament Dr. Pamela Rendi-Wagner, MSc, Dr. Hannes Jarolim, Angela Lueger, Comrades, regarding a „Federal Law, which amends the Citizenship Act 1985" of 13 December 2018, 536/A (XXVI. legislative term), available at www.parlament.gv.at/PAKT/VHG/XXVI/A/A_00536/imfname_726669.pdf (accessed 7 October 2019).

43 Der Standard, *Doppelpass für Nachfahren von NS-Opfern kommt doch*, 4 September 2019, available at www.derstandard.at/story/2000108198775/doppelpass-fuer-nachfahren-von-ns-opfern-kommt-doch (accessed 4 October 2019).

The Citizenship Act 1985 had previously been amended as part of the Act Amending the Aliens Law 2018,⁴⁴ which extended the waiting period for the conferral of citizenship from 6 years to 10 years in the case of persons granted asylum, while at the same time eliminating the settlement requirement (see chapter 3.2). The specific reasons for extending the waiting period are not given in the explanatory notes on the draft legislation⁴⁵ (Heilemann, 2019:40). While the Government as the initiator of the legislation characterized this amendment as conforming to the requirements of international law,⁴⁶ other groups, including the opposition in the National Council⁴⁷ and UNHCR, criticized the change. In its statement commenting on the draft bill, UNHCR opposed the extension of the period, claiming the move contradicted the spirit of the Geneva Refugee Convention, based on which Austria had committed to facilitating as far as possible the naturalization of refugees and specifically to making every effort to accelerate naturalization procedures (UNHCR, 2018b:4). The Ludwig Boltzmann Institute for Human Rights presented similar arguments.^{48,49}

In addition, as a result of a regulation issued by the then Minister of Finance,⁵⁰ the federal fees levied for citizenship applications and conferral were increased by 14 per cent in July 2018 (Heilemann, 2019:41). Democracy expert Gerd Valchars characterized the fees charged before the increase as being much higher than in other countries and accordingly criticized the additional rise in fees as leading to social exclusion (see also SOS Mitmensch, 2019:23 and chapter 6.3).

44 FLG I No. 56/2018.

45 Act Amending the Aliens Law 2018, Government Proposal – Explanatory Notes, available at www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00189/imfname_698465.pdf (accessed 7 October 2019). It is possible that this amendment was based on the formulation contained in the government programme of the former government regarding the Citizenship Act, namely “Adaption of the requirements (...) and duration of residence for acquisition (10/20/30 years)”. See also Österreichische Bundesregierung, 2017:33.

46 Ibid, p. 40.

47 See also Stenographic Record, Assembly of the National Council on 5 July 2018 (2018), Member of Parliament Yilmaz, p. 1, available at www.parlament.gv.at/PAKT/VHG/XXVI/NRSITZ/NRSITZ_00036/A_-_16_15_46_Abgeordnete_Nurten_Yilmaz__SPO_.pdf (accessed 20 October 2019).

48 Ludwig Boltzmann Institut für Menschenrechte, *Stellungnahme zum Entwurf betreffend das Fremdenrechtsänderungsgesetz 2018*, p. 4, available at www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_00905/imfname_693777.pdf (accessed 30 September 2019).

49 In connection with overall facilitated naturalization of refugees, the Federal Ministry of the Interior pointed out that any such facilitations must not lead to the creation of further pull factors in order to avoid increased migration pressure and a concomitant increase in illegal migration. Written input by the Federal Ministry of the Interior, 19 December 2019.

50 Regulation of the Minister of Finance on the Valorisation of Certain Fixed Fee Rates of Art. 14 of the Fee Act, FLG II No. 140/2018.

3. ACQUISITION OF CITIZENSHIP

The Austrian Citizenship Act 1985 lists various pathways to citizenship (Art. 6 Citizenship Act 1985). In the normal case, citizenship is acquired through descent from an Austrian citizen (Art. 7 et seqq. Citizenship Act 1985; see section 3.1). This basis for acquiring citizenship has little relevance for the naturalization of foreign nationals and is therefore only briefly summarized here.

Foreign nationals are able to acquire Austrian citizenship through conferral (Art. 10 et seqq. Citizenship Act 1985; see section 3.2 et seq.) or through notification⁵¹ (Art. 57 et seqq. Citizenship Act 1985; see section 3.6), although acquisition through notification accounts for only a small minority of cases (see Table A.9 in Annex A.1).

Special topic: Acquisition of citizenship through descent

Acquiring Austrian citizenship through descent is the basis for acquisition in Austria most frequently applied in practice and by a wide margin (Kind, 2017b: Art. 7 margin number 2). Austrian citizenship law can accordingly be seen as generally following the *ius sanguinis* principle. The decisive factor here is thus not whether a child is born within Austrian territory but whether at least one of the child's parents⁵² possessed Austrian citizenship when the child was born (Art. 7 para 1 Citizenship Act 1985). Since it is the child's descent from at least one Austrian citizen that is relevant, acquisition of citizenship in this context is also referred to as "citizenship by descent" (*Abstammungsprinzip*).⁵³ From a historical perspective, citizenship by descent developed mostly in emigration countries, as a means of maintaining the bond between the state, an individual and that person's descendants

- 51 Acquisition of citizenship by notification means that the relevant conditions for acquiring citizenship are brought to the authority's attention. If the requirements – which are significantly reduced in comparison to regular naturalization – are met the person concerned acquires citizenship without the authority having to award it. The acquisition of citizenship is established with an administrative decision.
- 52 Regarding the father, the act also includes the acknowledgement or determination of paternity in accordance with Art. 144 General Civil Code.
- 53 Oesterreich.gv.at, *Begrifflexikon: Abstammungsprinzip*, available at www.help.gv.at/Portal.Node/hlpd/public/content/99/Seite.991520.html (accessed 10 September 2019).

(Stiller, 2011:55). Consequently, Austrian law continues to represent the legal system of an emigration country and does not reflect the changed patterns of migration that have since transformed Austria into an immigration country (Bauböck and Cinar, 2001:259).

Austria does not apply the *ius soli* principle, whereby birth within the territory of a State is the deciding factor for citizenship.

3.1 Conferral of citizenship

In cases where Austrian citizenship is not acquired at birth, it can be acquired by other means including conferral. The overview below (Table 3) provides a summary of the legal provisions serving as the basis for granting citizenship to individuals.

Table 3: Grounds for conferring citizenship pursuant to the Citizenship Act 1985

Citizenship Act 1985	General criteria to be met		Minimum stay in Austria	Target group
	All	Some		
Art. 10 para 1	x		10 years	All foreigners in principle
Art. 10 para 4 subpara 1		x	n/a	Former citizens
Art. 10 para 4 subpara 2		x	n/a	Foreigners who, as citizens of one of the successor States of the former Austro-Hungarian Monarchy, left Austria due to persecution by the NSDAP or for the purpose of defending the democratic Republic of Austria
Art. 10 para 6		x	n/a	Foreigners who have contributed and are expected to contribute outstanding achievements in the interests of the Republic of Austria
Art. 11a para 1	x*		6 years	Spouses of Austrian citizens
Art. 11a para 2	x*		n/a	Under certain circumstances, spouses of Austrian citizens not residing within the territory of Austria
Art. 11a para 4	x*		6 years	Citizens of an EEA Member State who were born within Austrian territory or contribute outstanding achievements in the interests of the Republic of Austria

Citizenship Act 1985	General criteria to be met		Minimum stay in Austria	Target group
	All	Some		
Art. 11a para 6	x*		6 years	Foreigners with B2-level proficiency in German or evidence of long-term integration
Art. 11a para 7	x*		10 years	Persons granted asylum
Art. 11b		x	n/a	Minors who were adopted by an Austrian citizen before the age of 14
Art. 12 para 1 subpara 1 (a)	x*		30 years	Foreigners who have had their principal place of residence within Austrian territory for at least 30 successive years
Art. 12 para 1 subpara 1 (b)	x*		15 years	Foreigners with evidence of personal and occupational integration
Art. 12 para 1 subpara 2	x*		n/a	Former citizens, when applying for citizenship within two years of achieving full legal capacity
Art. 12 para 1 subpara 3	x*		n/a	Foreigners to whom conferral cannot be extended because their primary parent is already a citizen
Art. 12 para 2		x	n/a	Foreigners under the age of 14 with an Austrian parent who are unable to acquire citizenship based on descent
Art. 13	x*		n/a	Former citizens who relinquished citizenship in the context of marrying a foreign citizen
Art. 14			10 years	Stateless persons born in Austria under certain additional circumstances
Art. 16	x*		6 years	Extension of conferral to spouses of foreigners being granted citizenship (see section 3.3)
Art. 17	x*		n/a	Extension of conferral to minor unmarried children of foreigners being granted citizenship (see section 3.3)
Art. 25 subpara 1 and subpara 2	x*		15 years	Foreigners who are no longer minors and have never held citizenship but were still minors when first residing in Austria

Source: Citizenship Act 1985.

Note: * Art. 10 para 1 subpara 1 Citizenship Act 1985, requiring foreigners to have lawfully resided in Austria for an uninterrupted period of at least 10 years and have had settlement status for at least five of those years, is not applicable in such cases.

When acquiring citizenship through conferral, numerous general requirements must be met (Art. 10 Citizenship Act 1985; Ecker et al., 2017b:Art. 10 margin number 1), while special requirements may also need to be met, depending on the specific basis of conferral (see section 3.4).

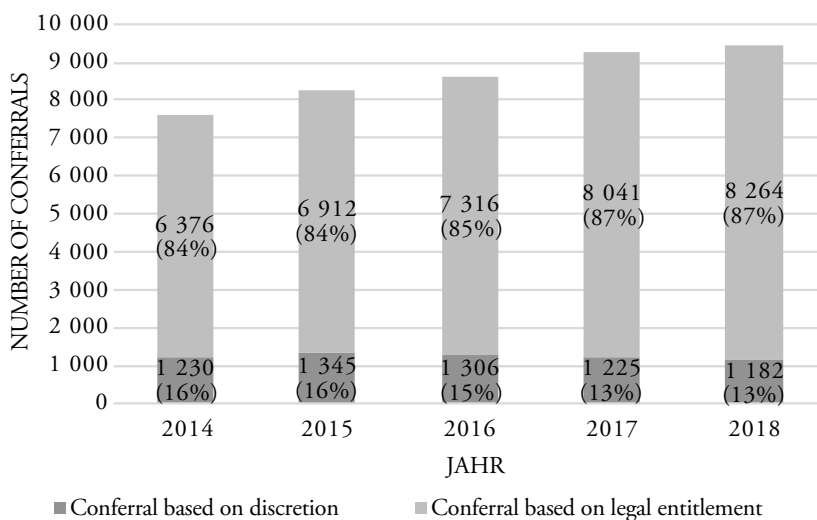
Conferral based on legal entitlement or authorities' discretion

The Citizenship Act 1985 distinguishes between two types of conferral when granting citizenship:

- Conferral of citizenship in cases where the conditions for legal entitlement are met;⁵⁴
- Conferral of citizenship in other cases that are consequently subject to the discretion of the authorities.⁵⁵

The majority of individuals who were granted citizenship between 2014 and 2018 had a legal entitlement to conferral. The number of individuals in this category increased over the period, both in absolute terms (1.888 or 30% more individuals) as well as in relation to the number granted citizenship based on discretion (an increase of three percentage points; see Figure 8; all data are given in Table A.8 in the Annex).

Figure 8: Conferral of citizenship in Austria between 2014 and 2018 according to the type of conferral



Source: Statistics Austria, 2019a, representation by author.

54 This includes, for example, the granting of citizenship in accordance with Art. 11a Citizenship Act 1985.

55 This is, for example, the granting of citizenship in the particular interest of the Republic of Austria according to Art. 10 para 6 Citizenship Act 1985.

While most of the extant reasons for granting citizenship entail a legal entitlement to conferral, these reasons refer to conditions in very specific types of cases. Consequently, the conferral of citizenship based on a legal entitlement can be considered in an individual case only if it qualifies as one of the specific types of cases described in the Citizenship Act 1985. As examples of such types of cases, one could mention the conferral of citizenship on spouses of Austrian citizens (Art. 11a para 1 Citizenship Act 1985) or to persons granted asylum (Art. 11a para 7 Citizenship Act 1985). In contrast, the legal provision governing conferral of citizenship to “ordinary” foreigners, under Art. 10 para 1 Citizenship Act 1985, is not attached to legal entitlement (Ecker et al., 2017b: Art. 10 margin number 6). A decision here is thus made by the competent authorities at their discretion. “Discretion” refers to an instance where legislation omits binding rules governing the actions of administrative authorities and leaves it up to the particular authority to decide how to act (Plunger, 2017a: Art. 11 margin number 1); authorities therefore have a choice of various responses (Mayer et al., 2015: 296, 297). Authorities are not authorized to make a discretionary decision in cases where individuals are legally entitled to conferral (Plunger, 2017a: Art. 11 margin number 1) or where citizenship is obtained through notification.

There are also limits to any discretionary decision by authorities. For example, authorities may not exercise discretion when determining whether the required conditions for naturalization have been met.⁵⁶ Only after it is clear that these compulsory conditions for conferral have been met may authorities then make a discretionary decision under Art. 11 of the Citizenship Act 1985 (Ecker et al. 2017b: Art. 10 margin number 6, Plunger et al. 2017: Art. 10 margin number 1). Art. 11 of the Citizenship Act 1985 requires the overall conduct of the person seeking citizenship to be considered when deciding whether to grant citizenship, in view of the common good and of public interests, and based on the extent of the person’s integration.⁵⁷ The main considerations and circumstances serving as the authority’s basis for exercising discretion are to be disclosed in the decision: this enables re-examination at a later date and allows the parties to pursue the case in further legal proceedings, if necessary⁵⁸ (Plunger, 2017a: Art. 11 margin number 1).

56 Supreme Administrative Court, 7 May 1989, 85/01/0337.

57 This includes, in particular, the orientation of foreigners toward social, economic and cultural life in Austria as well as the commitment to the fundamental values of a European democratic State and its society. See Art. 11 Citizenship Act 1985.

58 The person concerned and the Federal Minister of the Interior may lodge a complaint in the citizenship proceedings (Art. 132 para 1 subpara 1 and 2 Federal Constitutional Act; Pichler M. and K. Senft, 2017: Art. 39 margin number 2).

3.2 General conditions for conferral

In most cases, individuals are required to meet numerous general conditions in order to be granted citizenship. These general requirements usually include a minimum period of residence in Austria or evidence of adequate proficiency in the German language. Depending on the specific basis for acquiring citizenship, these general requirements for conferral can nonetheless be (greatly) reduced, so that not all conditions must necessarily be met in every case. The general conditions for conferral are described in detail below.

Minimum stay in Austria and corresponding evidence

To acquire Austrian citizenship, applicants usually have to demonstrate a minimum period of both uninterrupted and lawful residence in Austria. Exceptions to this rule do exist, however, so that some applicants are not required to have resided within Austrian territory (see Tables 3 and 5). Examples to be mentioned in this context include conferral of citizenship on the spouse of an Austrian citizen who is employed with a government authority and who works in another country (Art. 11a para 2 subpara 1 Citizenship Act 1985), or acquisition of citizenship through notification (see section 3.5). Another example is conferral of citizenship in the special interests of the Republic of Austria under Art. 10 para 6 of the Citizenship Act 1985 (see section 3.4).

Uninterrupted residence

In the majority of cases, acquiring citizenship requires a period of several years of uninterrupted residence in Austria (see Tables 3 and 5). The minimum residence period required depends on the specific basis for acquisition:

- **Six years:** this period applies, for example, to individuals whose spouses are Austrian citizens and who meet other requirements (Art. 11 para 1 Citizenship Act 1985).
- **10 years:** Art. 10 para 1 subpara 1 of the Citizenship Act 1985 requires foreigners to have had a period of lawful and uninterrupted residence in Austria of this length, and to have had settlement status for at least five of these years.⁵⁹ Art. 10 is the main provision of the Citizenship Act 1985

59 According to Art. 2 para 2 Settlement and Residence Act (FLG I. No. 100/2005, in the version of federal law FLG I No. 25/2019), settlement is the actual or intended future stay in the federal territory for specific purposes pursuant to the more detailed definitions in the act.

(Ecker et al., 2017b: Art. 10 margin number 1) and serves as the basis for acquiring citizenship in cases where no special provisions apply. In terms of the minimum residence requirement for naturalization based on discretion (see section 3.1), Austria thus requires a rather long period in comparison with other European countries (Reichel, 2011:51);

- **15 years:** this period applies, for example, to individuals who have not become foreigners due to giving up their citizenship or having had it revoked, who have resided lawfully and continuously within the territory of Austria for the required period, and who are able to provide evidence of sustained integration in their personal and professional lives (Art. 12 para 1 subpara 1 (b) Citizenship Act 1985).
- **30 years:** this period applies to individuals who have not become foreigners due to giving up their citizenship or having had it revoked, and who have been principally and continuously resident within the territory of Austria for the required period (Art. 12 para 1 subpara 1 (a) Citizenship Act 1985).

These minimum periods of uninterrupted residence or principal residence are to be assessed as of the date of the competent authority's decision⁶⁰ and thus must immediately precede the decision. The individual seeking to acquire Austrian citizenship must have been physically resident in Austria for the minimum period required by law. The mere presentation of a residence permit covering the period of time required is not sufficient. Apart from the specific details of the individual's residence (see immediately below) a physical presence in Austria is also a key criterion (Ecker et al., 2017b: Art. 10 margin number 4).

While the Citizenship Act 1985 requires "uninterrupted" residence in Austria, continuous residence in Austria without any interruption whatsoever is not actually necessary. An individual is permitted to have been absent from Austrian territory for limited periods. Specifically, a person may be absent from Austria during the minimum residence period required for acquiring Austrian citizenship for no more than 20 per cent of this time.⁶¹ Consequently, "uninterrupted residence" refers to an actual physical presence within Austrian territory for only 80 per cent of the specified period (Ecker et al., 2017b: Art. 10 margin number 4). Exceeding this 20 per cent threshold results in an interruption as defined

60 Supreme Administrative Court, 18 June 2014, 2013/01/0128 and Supreme Administrative Court, 18 December 2014, Ro 2014/01/0016.

61 For the required ten-year stay, a maximum absence of 24 months is permitted.

in Art. 15 para 1 subpara 3 of the Citizenship Act 1985. The individual then begins a new residence period once the reason for the interruption no longer holds true⁶² (Ecker, 2017b:Art. 15 margin number 5; Esztegar 2017:Art. 15 margin number 1) and previous residence periods no longer count towards citizenship. Experts from the Federal Ministry of the Interior noted that the trend towards ever-increasing personal mobility often leads to conflicts with the law as it currently stands, with discussions ensuing over how applicants are ultimately able to provide evidence of physical residence in Austria. They note further that the strict adherence to such conferral requirements by provincial governments can make it very difficult to provide corresponding evidence.⁶³

Lawful residence

The Citizenship Act 1985 requires residence in Austria to have certain characteristics depending on the specific basis of conferral. These characteristics of residence are: lawful residence,⁶⁴ settlement status⁶⁵ or a principal place of residence⁶⁶ in Austria.

- The lawful residence⁶⁷ of a foreign national in Austria results from an ability to demonstrate a legal basis for residing within Austrian territory (Plunger et al. 2017:Art. 10 margin number 2), meaning that periods of visa-free residence or residence as holder of a visa or residence permit as defined in Art. 8 of the Settlement and Residence Act⁶⁸ (Ecker et al., 2017b:Art 10 margin number 19) are to be counted towards the requirement. This means that lawful residence can be demonstrated based on either a permanent residence permit⁶⁹ or a fixed-term residence permit.⁷⁰ A

62 Act Amending the Citizenship Law 2005, Government Proposal – Materials, p. 8, available at www.parlament.gv.at/PAKT/VHG/XXII/I/I_01189/fname_051960.pdf (accessed 4 October 2019).

63 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

64 See also Art. 10 para 1 subpara 1 or Art. 11a para 1 Citizenship Act 1985.

65 See also Art. 10 para 1 subpara 1 Citizenship Act 1985.

66 See also Art. 12 para 1 subpara 1 (a) or Art. 14 para 1 subpara 2 Citizenship Act 1985.

67 Regarding the criteria in detail, see Art. 31 Aliens Police Act (FLG I No. 100/2005, in the version of federal law FLG. I No. 56/2018).

68 FLG I No. 100/2005, in the version of federal law FLG I No. 25/2019.

69 To be mentioned is “Long-term Resident - EU” pursuant to Art. 45 Settlement and Residence Act.

70 To be mentioned is, for example, the Red-White-Red Card pursuant to Art. 41 Settlement and Residence Act.

permanent residence permit can be issued in Austria only after an individual has actually resided under settlement status in Austria for five years.⁷¹ However, the fact of an individual holding a permanent or a fixed-term residence permit has no bearing on determining whether the person has fulfilled the minimum residence period required for acquiring Austrian citizenship, because the minimum period depends on the specific basis for acquisition and the specific requirements that the person concerned is expected to meet. Subsidiary protection status and other residence titles⁷² granted based on the Asylum Act 2005⁷³ serve (in addition to refugee status) as a basis for lawful residence in Austria (Ecker et al., 2017b:Art. 10 margin number 26; Plunger et al. 2017:Art. 10 margin number 2).

- Art. 2 para 2 of the Settlement and Residence Act defines settlement as “actual or future residence within Austrian territory” for certain purposes enumerated in the Act.⁷⁴
- The term “principle place of residence” is defined in the Registration Act 1991,⁷⁵ which additionally sets out obligations to be met towards the registration authorities.⁷⁶

According to Austrian law, the decisive factor is whether a person’s residence in Austria exhibits the specific characteristics as required by law and described above. A “mere” residence in Austria that does not exhibit the right characteristics – for example, not residing lawfully, not having settlement status and not having one’s principal place of residence in Austria – does not count towards fulfilling the residence requirement (Ecker et al., 2017b:Art. 10 margin number 19; Ecker, 2017a:Art. 12 margin number 14). Even the briefest of interruptions to lawful residence, of even a single day, mean that only the residence period following

71 This is the residence permit “Long-term Resident - EU” pursuant to Art. 45 Settlement and Residence Act.

72 For example, the “Residence title for particularly exceptional circumstances” pursuant to Art. 56 Asylum Act 2005.

73 FLG I No. 100/2005, in the version of federal law FLG I No. 53/2019.

74 This includes, for instance, the establishment of residence for actually more than six months per year or the establishment of the center of interests (Art. 2 para 1 Settlement and Residence Act).

75 According to Art. 1 para 7 Registration Act 1991 (FLG No. 9/1992, in the version of federal law FLG I No. 104/2018), the principal residence of a person is established at the accommodation, at which the person has settled with the demonstrated intention or intention resulting from the circumstances to make this the center of his life relations.

76 According to Art. 2 para 1 Registration Act 1991, the following applies: “Anyone who takes accommodation in an apartment (...) or gives up such an accommodation, must be reported.”

the interruption is counted towards the requirement (Ecker et al., 2017b:Art. 10 margin number 60; Plunger et al., 2017:Art. 10 margin number 2).

Asylum seekers and beneficiaries of subsidiary protection

The rules outlined above also apply in general to individuals granted asylum in Austria. Under Art. 11a para 7 of the Citizenship Act 1985, individuals granted asylum status must have resided in Austria for at least 10 years. Such individuals do not require to have had the settlement status that Art. 10 para 1 subpara 1 of the Citizenship Act 1985 generally requires for those seeking Austrian citizenship.⁷⁷ This means that persons granted asylum as referred to in Art. 11a para 7 of the Citizenship Act 1985 have to provide evidence only of 10 years of uninterrupted and lawful residence but not settlement in Austria.

Individuals granted a form of international protection other than asylum must meet the conferral requirements described above; this applies, for example, to those enjoying subsidiary protection or holding a “residence permit for particularly exceptional circumstances” under Art. 56 of the Asylum Act 2005. Foreigners, including former asylum seekers and ultimately beneficiaries of subsidiary protection, can alternatively base their citizenship application on Art. 12 para 1 subpara 1 (b) of the Citizenship Act 1985, as pointed out in the explanatory notes⁷⁸ accompanying the 2005 amendment to citizenship law⁷⁹ (Ecker, 2017a:Art. 12 margin number 24, 25).⁸⁰ The provision cited above gives individuals meeting the requirements a legal entitlement to naturalization, which is not the case when citizenship is granted under Art. 10 para 1 of the Citizenship Act 1985 (Ecker, 2017a:Art. 12 margin number 25). To obtain this legal entitlement, individuals seeking citizenship must have lawfully resided within Austrian territory for an uninterrupted period of at least 15 years and demonstrate long-term integration in their personal and professional lives.

Proof of minimum residence

The procedure for granting citizenship is conducted in accordance with the

77 Act Amending the Aliens Law 2018, Government Proposal – Explanatory Notes, p. 40, available at www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00189/imfname_698465.pdf (accessed 7 October 2019).

78 Act Amending the Citizenship Law 2005, Government Proposal – Materials, p. 8, available at www.parlament.gv.at/PAKT/VHG/XXII/I/I_01189/fname_051960.pdf (accessed 4 October 2019).

79 FLG I No. 37/2006.

80 Supreme Administrative Court, 12 March 2002, 2001/01/0228.

General Administrative Procedures Act 1991⁸¹ and the principle of unlimited admissibility of evidence (Walter and Mayer, 2003:181 margin number 335). As a result, anything can be considered as evidence that is suitable for establishing the relevant facts of the case and is judged appropriate to the case at hand (Art. 46 General Administrative Procedures Act). The provincial governments, which are responsible for making decisions on citizenship cases, therefore require and accept many different types of proof and evidence of residence in Austria.

One survey showed that all provincial governments rely on information and decisions as well as other evidence from Austrian authorities and public institutions when assessing whether individuals meet minimum residence requirements. As examples, minimum residence is thus determined by consulting the Central Register of Residents (*Zentrale Melderegister*),⁸² excerpts from insurance data⁸³ or administrative decisions issued by the Federal Office for Immigration and Asylum.⁸⁴ Similarly, a person's current and previous residence permits are examined, with corresponding enquiries made with the authorities responsible for the particular case under aliens law.⁸⁵ Other forms of evidence are accepted in some cases, including rental agreements,⁸⁶ details of the individual's activities (such as school certificates and university record transcripts) or course attendance records.⁸⁷

81 FLG No. 51/1991, in the version of federal law FLG I No. 58/2018.

82 Questionnaire answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Salzburg (Elections and Citizenship Unit, 18 September 2019), Styria (Citizenship Unit, 24 September 2019), Burgenland (Regional Planning, Security, Municipalities and Economics, 30 September 2019) and Carinthia (Election Law, Citizenship and Residency, 7 October 2019).

83 Questionnaire answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Styria (Citizenship Unit, 24 September 2019) and Vienna (Municipal Department 35, 24 September 2019).

84 Questionnaire answered by the provincial government of Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019).

85 Questionnaire answered by the provincial governments of Lower Austria (Citizenship and Elections Unit, 11 September 2019), Styria (Citizenship Unit, 24 September 2019), Vienna (Municipal Department 35, 24 September 2019) and Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019) as well as written input of the provincial government of Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019).

86 Questionnaire answered by the provincial government of Styria (Citizenship Unit, 24 September 2019).

87 Questionnaire answered by the provincial government of Vienna (Municipal Department 35, 24 September 2019).

Assessing and demonstrating proficiency in German

When an assessment of candidates' proficiency in German was introduced as a prerequisite for granting citizenship in 1998,⁸⁸ legislators held the view that conferral of citizenship represented the end point and goal of successful integration, for which language proficiency was an important benchmark, although not exclusively so.⁸⁹ In this regard, the Supreme Administrative Court declared that legislators had established proficiency in German as a "milestone" for integration.⁹⁰ Art. 10a para 1 of the Citizenship Act 1985 correspondingly requires evidence of adequate proficiency in German in accordance with Art. 7 para 2 subpara 2 of the Integration Act⁹¹ as a prerequisite for granting citizenship in all cases.⁹² Specifically, a level of proficiency in the German language is required that allows independent use of the language at the B1 level of the Common European Framework of Reference for Languages. In 2011, the level of language proficiency required by the Citizenship Act 1985 was raised to the current B1 level⁹³ to ensure a uniform standard, as previously only "proficiency in the German language"⁹⁴ had needed to be demonstrated. An evaluation of whether the actual level of German proficiency among individuals seeking citizenship has in fact improved has not been completed to date. According to experts from the Federal Ministry of the Interior, the absence of such an evaluation is due to the fact that, pursuant to statutory provisions, individuals can only acquire citizenship when they demonstrate a corresponding level of German proficiency. To provide an acceptable level of evidence, individuals seeking citizenship must complete and pass B1-level language courses and examinations. On the experts' view, the mere fact that legal provisions now require a level of language proficiency to be demonstrated that is higher than before must imply an improvement in German proficiency among citizenship candidates.⁹⁵

88 Act Amending the Citizenship Law 1998, FLG I No. 124/1998.

89 Act Amending the Citizenship Law 1998, Government Proposal, p. 8, available at www.parlament.gv.at/PAKT/VHG/XX/I/I_01283/fname_140172.pdf (accessed 27 August 2019).

90 Supreme Administrative Court, 11 October 2010, 2000/01/0277.

91 FLG I No. 68/2017, in the version of federal law FLG I No. 41/2019.

92 According to the act, this proof is therefore not necessary when acquiring citizenship by notification. See also Plunger and Troger 2017: Art. 10a margin number 1.

93 Act Amending the Aliens Law 2011, FLG I No. 38/2011.

94 Citizenship Act 1985, FLG No. 311/1985, in the version of federal law FLG I No. 37/2006.

95 Interview with Dietmar Hudsky and Eva Pfleger, Ministry of the Interior, 1 October 2019.

If citizenship is being sought in accordance with Art. 11a para 6 of the Citizenship Act 1985, a higher level of language proficiency is required (see section 3.4). B2-level German proficiency is required in such cases: in return, the minimum residence period is then reduced to six years. Stronger language proficiency indicates an individual's degree of integration and thus warrants a shorter minimum residence period, it is claimed (Kind, 2017c:Art. 11a, margin number 51).

Notwithstanding the above, some grounds for acquiring citizenship also exist for which evidence of adequate proficiency in German is not a prerequisite. This category includes naturalization in the special interests of the Republic of Austria under Art. 10 para 6 (Art. 10a para 2 subpara 1) of the Citizenship Act 1985 or acquisition of citizenship through notification.

Evidence

Evidence of proficiency in German as required by Art. 10a para 1 subpara 1 of the Citizenship Act 1985 can be provided in various ways, depending on the applicant's age. Minors are considered to have met the evidence requirement if they attend primary or secondary school as defined in the School Organization Act⁹⁶ or show good performance in German as a subject (Art. 10a para 3 Citizenship Act 1985). This provision applies in only a limited number of cases, however, because minors who are under the age of 14 when applying for citizenship are generally exempt from the requirement (Art. 10a para 2 subpara 2 Citizenship Act 1985; Plunger and Troger, 2017:Art. 10a margin number 5). In addition, evidence is also considered provided if the individual seeking citizenship completes module 2 of the Integration Agreement as referred to in Art. 10 para 2 of the Integration Act, even if this is not required under this Act (Art. 10 para 4 Citizenship Act 1985). Completion of module 2 of the Integration Agreement can be proven by presenting a certificate issued by the Austrian Integration Fund showing that the individual has passed an integration test (Art. 10 para 2 subpara 1 Integration Act).

Foreign nationals whose first language is German are exempt from the requirement to provide evidence of language proficiency (Art. 10a para 4 subpara 1 Citizenship Act 1985). A decision as to whether German is a particular foreign national's first language is at the authorities' discretion.⁹⁷ This is the only case

96 FLG No. 242/1962, in the version of federal law FLG I No. 86/2019.

97 Act Amending the Citizenship Law 2005, Government Proposal – Materials, p. 6, available at www.parlament.gv.at/PAKT/VHG/XXII/I/I_01189/fname_051960.pdf (accessed 4 October 2019).

in which the authorities evaluate the level of German proficiency of individuals seeking citizenship. In all other cases, authorities merely determine whether corresponding evidence has been provided that certifies the applicant's German proficiency.

Basic knowledge of the democratic system and related historical aspects

To be conferred citizenship on any grounds, individuals have to demonstrate a basic knowledge of Austria's democratic system, including its underlying principles, as well as of the history of Austria and of the province of residence (Art. 10a para 1 subpara 2 Citizenship Act 1985). This obligation was introduced in 2006.⁹⁸ In certain exceptional cases, citizenship can be acquired without demonstrating such knowledge. These include naturalization in the special interests of the Republic of Austria under Art. 10 para 6 (Art. 10a para 2 subpara 1) of the Citizenship Act 1985 or acquisition of citizenship through notification.

Evidence

The Citizenship Act 1985 sets out various options for providing evidence of this basic knowledge. One such option is set out in Art. 10a para 3 of the Citizenship Act 1985, namely: a minor applicant attending a primary or secondary school as defined in the School Organization Act as part of meeting general school attendance requirements. This provision applies in only a limited number of cases, however, because minors who are under the age of 14 when applying for citizenship are generally exempt from the requirement (Art. 10a para 2 subpara 2 Citizenship Act 1985; Plunger and Troger, 2017: Art. 10a margin number 5). The knowledge requirement is also considered met if the applicant submits a school certificate showing successful completion of the subject of "History and Social Studies" at a minimum of year four level in accordance with the curriculum for lower secondary schools (Hauptschule; Art. 10a para 4a Citizenship Act 1985).

Applicants not providing evidence in accordance with the provisions cited above are required to sit a test set by the provincial government (Art. 10a para 5 Citizenship Act 1985). The citizenship test was rewritten in full several years ago, as the previous version of the test had become outdated.⁹⁹ The original version of the citizenship test had received criticism in a number of areas that included

98 Act amending the Citizenship Law 2005, FLG I No. 37/2006.

99 Interview with Dietmar Hudsky and Eva Pfleger, Ministry of the Interior, 1 October 2019.

the errors present in the preparatory and practice materials¹⁰⁰ for the test, which consisted of an incoherent miscellany of historical detail and often trivial legal matters.¹⁰¹ The specific questions asked in the test were also regarded as dubious.¹⁰² The citizenship test is now less of a topic of debate since its redesign: the revision was completed in cooperation with the Department of Education at the University of Vienna and other experts in the field. Applicants preparing for the citizenship test are assured of receiving an adequate level of basic knowledge.¹⁰³ While individuals seeking citizenship prepare for the citizenship test independently, they can make use of the practice materials and mock tests provided by the website www.staatsbuegerschaft.gv.at. Given the high pass rate, experts at the Federal Ministry of the Interior consider the current version of the citizenship exam to be reliable.¹⁰⁴

The current version of the test uses a written multiple-choice question format.¹⁰⁵ Applicants who fail to achieve the pass mark can retake the test until they pass (Art. 10a para 5 Citizenship Act 1985; Art. 6 Citizenship Examination Regulation).¹⁰⁶ The test involves answering a total of 18 questions, with 6 questions taken from each of the following subject areas: basic knowledge of the democratic system of the Republic of Austria and underlying principles; basic knowledge of Austrian history; and basic knowledge of the history of the province of residence (Art. 3 Citizenship Examination Regulation). Questions on the democratic system and history of Austria are prepared by a central committee and

100 *Orf.at*, Ministerium gesteht Fehler ein, 26 April 2012, available at <https://orf.at/v2/stories/2117294/2117285/> (accessed 15 October 2019).

101 Parliamentary Inquiry regarding “Staatsbürgerschaftsprüfung” of 25 April 2012, 11462/J (XXIV. legislative term), available at www.parlament.gv.at/PAKT/VHG/XXIV/J/J_11462/fnameorig_251335.html (accessed 15 October 2019).

102 *Orf.at*, Einwanderung: Grüne Kritik an Staatsbürgerschaftstest, 5 February 2010, available at <https://stmv1.orf.at/stories/421081> (accessed 15 October 2019).

103 Interview with Dietmar Hudsky and Eva Pfleger, Ministry of the Interior, 1 October 2019.

104 Ibid.

105 The test is mainly carried out in paper form. See also Questionnaire answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections Unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Salzburg (Elections and Citizenship Unit, 18 September 2019), Styria (Citizenship Unit, 24 September 2019), Upper Austria (Group on Citizenship, Migration and Elections, 30 September 2019). Only in Vienna and Carinthia, the test is carried out on a PC, although in Vienna the test can also be carried out in paper form for exceptional cases. See also Questionnaire answered by the provincial governments of Vienna (Municipal Department 35, 24 September 2019) and Carinthia (Election Law, Citizenship and Residency, 7 October 2019).

106 FLG II No. 138/2006, in the version of federal law FLG II No. 260/2013.

are the same throughout Austria. Questions covering specific provinces are prepared by each of the provincial governments.¹⁰⁷ The tests are held by the provincial governments at least once every six months and more often as required by demand. Individuals seeking citizenship are officially informed of the time and place of the test, and the specific focus of test topics (Art. 1 para 1 Citizenship Examination Regulation), at least eight weeks in advance of the test. Candidates have two hours to answer the questions (Art. 4 para 2 Citizen Examination Regulation). A pass is defined as achieving at least half of the available points for each part of the test or at least two thirds of the maximum number of points overall (Art. 5 Citizen Examination Regulation). Successful candidates are presented with a personal certificate.

In 2018, around 4,160 individuals passed citizenship tests held in one of Austria's nine provinces. The pass rate for Austria overall was considerably higher than 90 per cent.¹⁰⁸

Oath

Austrian law requires candidates to take the following oath before citizenship is conferred upon them (Art. 21 para 2 Citizenship Act 1985):

„I swear to be a faithful citizen of the Republic of Austria, to conscientiously observe the laws of the country at all times, to refrain from any and all actions that might be detrimental to the interests or reputation of the Republic, and to honour and uphold the basic values of a democratic European State and its society.”

107 Questionnaire answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections Unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Salzburg (Elections and Citizenship Unit, 18 September 2019), Styria (Citizenship Unit, 24 September 2019), Vienna (Municipal Department 35, 24 September 2019), Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019), Burgenland (Regional Planning, Security, Municipalities and Economics, 30 September 2019) and Carinthia (Election Law, Citizenship and Residency, 7 October 2019).

108 Questionnaire answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections Unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Salzburg (Elections and Citizenship Unit, 18 September 2019), Styria (Citizenship Unit, 24 September 2019), Vienna (Municipal Department 35, 24 September 2019), Upper Austria (Group Citizenship, Migration, Elections, 26 September 2019), Burgenland (Regional Planning, Security, Municipalities and Economics (30 September 2019) and Carinthia (Election law, citizenship and residency, 7 October 2019).

This oath, which is usually the final requirement to be met before citizenship is granted, is a necessary condition for conferring citizenship (Kind, 2017e:Art. 21 margin number 3). All foreigners to be granted citizenship are generally subject to the obligation to take the oath. The only exceptions are foreigners under the age of 18 as well as individuals unable to exercise full legal capacity due to a mental illness (Kind, 2017e:Art. 21 margin number 8; Art. 21 para 2 Citizenship Act 1985).

As detailed above, compliance with the Austrian system of values is a fundamental condition for naturalization. An individual's values are also examined in greater detail as part of testing language proficiency. In the naturalization procedure, special consideration is accordingly given to the relevant values (see above).¹⁰⁹

Good conduct and barriers to conferral

Foreigners seeking Austrian citizenship must demonstrate appropriate conduct and avoid any negative behaviour prior to applying. The related provisions, scattered throughout the Citizenship Act 1985, are phrased in terms of both “positive” and “negative” conditions for conferral. That is: they not only describe conditions to be met but also circumstances to be avoided – with the latter effectively representing barriers to the conferral of citizenship.

The main positive conditions for conferral are those enumerated in Art. 10 para 1 subpara 2 to 4 and 6 of the Citizenship Act 1985. According to these, Austrian citizenship may only be granted to foreign persons in circumstances including the following:

- No final judgement and prison sentence has been handed down to such persons by an Austrian or foreign court of law on account of specified criminal offences (Art. 10 para 1 subpara 2 and 3 Citizenship Act 1985);
- No criminal proceedings on account of specified criminal offences¹¹⁰ are pending against such persons before an Austrian court (Art. 10 para 1 subpara 4 Citizenship Act 1985);
- The previous conduct of such persons provides assurance of an affirmative attitude towards the Republic of Austria and does not represent a threat either to the public peace, order or security, or to any other public

109 Interview with Dietmar Hudsky and Eva Pfleger, Ministry of the Interior, 1 October 2019.

110 According to Art. 10 para 1 subpara 4 Citizenship Act 1985, this includes intentional wrongdoings or financial offences punishable by a term of imprisonment.

interest enumerated in Art. 8 para 2 of the European Convention on Human Rights¹¹¹ (Art. 10 para 1 subpara 6 Citizenship Act 1985);

- The international relations of the Republic of Austria will not be substantially impaired as a result of conferring citizenship (Art. 10 para 1 subpara 5 Citizenship Act 1985);
- Such persons do not have relationships with other countries of such a nature that would harm the interests of the Republic of Austria were citizenship to be conferred (Art. 10 para 1 subpara 8 Citizenship Act 1985).

Art. 11 of the Citizenship Act 1985 is additionally applied to cases where citizenship is granted based on authorities' discretion (see section 3.1). This article requires the overall conduct of the foreign nationals to be considered when granting citizenship, both in view of the common good and of public interests and based on the extent of the person's integration. Integration as defined here specifically includes the foreigner's orientation on social, economic and cultural life in Austria, as well as the person's commitment to the basic values of a democratic European State and its society.

As noted above, the procedure for granting citizenship is conducted in accordance with the General Administrative Procedures Act 1991 and the principle of unlimited admissibility of evidence. Correspondingly, what is recognized as evidence of good conduct varies greatly among the Austrian provinces. As indicated in the table below (Table 4), information is gathered, or accepted, from Austrian authorities. In addition, applicants are sometimes requested to present certificates of good conduct issued by other countries.

111 These include, for example, the economic activity of Austria and the rights and freedoms of others.

Table 4: Evidence accepted or requested as proof of previous good conduct

	Perusal of police records or administrative penal records	Request made to the police administration of the province	Request made to the administrative penal authority	Submission of certificate of good character/excerpt from police records from other countries or affidavit	Request made to the aliens police	Request made to the provincial office for protection of the constitution and counterterrorism	Request made to the district administrative authority	Request made to the financial police	Request made to the Federal Office for Immigration and Asylum	Querying of Austria's internal platform (IAP) and/or European Criminal Records Information System (ECRIS)	Request made to municipality of residence
Burgenland		X		X			X		X		
Carinthia	X	X									X
Lower Austria		X	X	X							
Salzburg	X	X	X	X	X	X	X	X	X		
Styria	X	X		X		X	X	X	X	X	
Tyrol		X	X	X*		X	X	X			
Upper Austria	X	X	X	X	X		X	X		X	
Vienna	X	X	X	X				X			
Vorarlberg	X	X	X	X			X	X	X	X	X

Note: * Tyrol has no provision for affidavits.

Source: Questionnaire answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections Unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Salzburg (Elections and Citizenship Unit, 18 September 2019), Styria (Citizenship Unit, 24 September 2019), Vienna (Municipal Department 35, 24 September 2019), Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019), Burgenland (Regional planning, Security, Municipalities and Economics, 30 October 2019) and Carinthia (Election Law, Citizenship and Residency, 7 October 2019), as well as written input by the provincial governments of Tyrol (Department for Citizenship, 15 October 2019), Upper Austria (Group on Citizenship, Migration and Elections, 15 October 2019), Salzburg (Department for Elections and Citizenship, 17 October 2019) and Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 17 October 2019).

As the counterpart to the positive conditions for conferral, the negative conditions opposing or preventing conferral are set out in Art. 10 para 2 of the Citizenship Act 1985 (Ecker et al., 2017b:Art. 10 margin number 1).

According to this provision, citizenship cannot be granted in the following cases:

- The person has committed specified offences under aliens police law;¹¹²
- The person has a close relationship with an extremist or terrorist group and this group is not above suspicion of having committed terrorist acts;
- A final judgement has been handed down against the person on multiple occasions concerning a serious administrative offence of particular gravity.¹¹³ Successive administrative offences can also be interpreted as an indication that the person seeking citizenship does not identify sufficiently with Austria's basic values and legal system.¹¹⁴

As an additional barrier to conferral, Art. 10 para 3 of the Citizenship Act 1985 cites a case where a person seeking citizenship, despite reasonable and possible actions, fails to relinquish previous citizenship or takes action to maintain that citizenship.¹¹⁵

Adequately secure means of subsistence and related evidence

Another decisive factor to be considered when deciding whether to grant citizenship is the applicant's financial situation. This is because Art. 10 para 1 subpara 7 of the Citizenship Act 1985 states that Austrian citizenship may be conferred only on foreigners who either have an adequately secure means of subsistence or have a means of subsistence that is not secure (or is inadequately secure) but the individual cannot be held responsible for this state of affairs.¹¹⁶ Art. 10 para 5 of the Citizenship Act 1985 classifies a person's means of subsistence as being secure when that person has their own fixed and regular income, such as from employment or maintenance claims under law,

112 These include, amongst others, an enforceable return decision pursuant to Art. 52 Aliens Police Act 2005 or a valid exclusion order pursuant to Art. 67 Alien Police Act 2005.

113 The act refers, for example, to violations of the Road Traffic Act 1960 (FLG No. 159/1960, in the version of federal law FLG I No. 77/2019), such as driving a vehicle under the influence of alcohol (Art. 99 para 1 (a) Road Traffic Act 1960). Likewise, reference is made to driving a vehicle without a driving licence (Art. 37 para 3 subpara 1 Driving Licence Act, FLG I No. 120/1997, in the version of federal law FLG I No. 76/2019).

114 Interview with Dietmar Hudsky and Eva Pfleger, Ministry of the Interior, 1 October 2019.

115 However, this necessity does not apply when the citizenship is granted in the particular interest of the Republic of Austria pursuant to Art. 10 para 6 Citizenship Act 1985.

116 Art. 10 para 1b Citizenship Act 1985: the foreigner should not be held accountable for not securing his/her livelihood, especially if this results from a disability or a chronic serious illness, which needs to be certified by a medical opinion.

and that income allows the person to lead a life without requiring social assistance during the reference period specified under law. The exact level of monthly income required is calculated based on Art. 293 of the General Social Insurance Act.¹¹⁷ After deducting regular expenses – such as rent or alimony to third parties not living in the common household, whereby a one-off amount up to the amount specified in Art. 292 para 3 General Social Insurance Act (in 2019: EUR 294.65) is disregarded as a so-called “*freie Station*”, so that there is no increase in necessary income with regard to this amount – the applicants must have a disposable monthly income of roughly EUR 900 when applying in 2019. The lack of an adequately secure means of subsistence in Austria is cited by provincial governments as one of the most common reasons for refusing naturalization applications (see Table 6).

In 2017, for a single person applying for citizenship a minimum annual net amount – comprised of, for example, income, regular insurance benefits, unemployment benefits or emergency unemployment assistance (Garzon 2017a:Section 10 Rz 39) – of approximately EUR 13 200 was necessary to meet the statutory requirement for an adequate secure means of subsistence. This figure is based on the average monthly rental fee for a flat in 2017¹¹⁸ and takes into account the exemption allowed by Art. 292 para 3 of the General Social Insurance Act. The statistical data show¹¹⁹ that a substantial percentage of individuals dependently employed in Austria, specifically over 30 per cent, is not able to reach the amount required to prove a secure means of subsistence solely on the basis of their gainful employment.¹²⁰ Although other income is taken into account in addition to income, various studies have criticized this fact. These studies concluded by stating that the excessive income requirements cannot even be met by a large portion of the overall population (Stern, 2011:61). This means that foreign nationals are

117 FLG No. 189/1955 in the version of FLG 18/1956, in the version of federal law FLG. I No. 84/2019.

118 Due to lacking present data, information from 2017 was used for the calculation; Statistics Austria (2019d), *Durchschnittliche Miete (inkl. Betriebskosten) von Hauptmietwohnungen nach Bundesland (Zeitreihe)*, available at www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/wohnen/wohnenkosten/079261.html (accessed 6 November 2019).

119 These purely statistical data on income do not take account of the fact that, in terms of secure means of subsistence, household income is important on the one hand and that insurance benefits are also counted towards income on the other. Written input by the Federal Ministry of the Interior, 14 February 2020.

120 Due to lacking present data, information from 2017 was used for the calculation; Statistics Austria (2018), *Statistischer Annex zum ‘Allgemeinen Einkommensbericht 2018’*, available at www.statistik.at/wcm/idc/idcplg?IdcService=GET_PDF_FILE&dDocName=034776 (accessed 6 November 2019), p. 11.

excluded from naturalization in certain circumstances (Stadt Wien, 2017:51).

Applicants granted citizenship based on Art. 10 para 6 of the Citizenship Act 1985 (conferral of citizenship in the special interests of the Republic of Austria) or acquiring citizenship through notification are not required to demonstrate an adequately secure means of subsistence.

Evidence

The following documents are typically used as evidence of a secure means of subsistence: payslips, pay confirmation letters, employment agreements, preliminary agreements relating to employment matters, confirmations of pension or other insurance payments, evidence of childcare benefit receipts, or evidence that the applicant has sufficient assets (Art. 2 para 1 subpara 5 Citizenship Regulation).¹²¹ Evidence of a secure means of subsistence must be submitted with the application (Art. 19 para 2 Citizenship Act 1985 in conjunction with Art. 2 Citizenship Regulation).

The evidence requirement has repeatedly been the subject of criticism due to the calculation method used (Ecker et al., 2017b:Art. 10 margin number 95 et seqq.). While experts at the Federal Ministry of the Interior identified no difficulties in meeting this requirement in the case of applicants who are in long-term, stable employment,¹²² challenges admittedly do arise in cases where workers have seasonal jobs and are temporarily unemployed, or often change employers.¹²³ According to a spokesperson for Helping Hands, a non-governmental organization, self-employed persons who have to provide such evidence are faced with a practically insoluble dilemma if not assisted by a tax accountant, for reasons that include the authorities' hesitancy to trust private records to the same degree as data provided by authorized and certified tax accountants.¹²⁴ Providing proof of disposable income therefore presents major challenges both for the authorities as well as the individuals seeking citizenship.¹²⁵

121 FLG No. 329/1985, in the version of federal law FLG II No. 87/2017.

122 A representative of the NGO Helping Hands also explained that the existing system is easier to implement in case of stable employment. Interview with Peter Marhold, Helping Hands, 24 September 2019.

123 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

124 Interview with Peter Marhold, Helping Hands, 24 September 2019.

125 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

Accommodation

An applicant's living situation is not a factor in naturalization. However, it should be noted that an individual's living situation is one of the criteria verified when granting a residence permit under the Settlement and Residence Act. As described above, individuals are required to have had several years of prior lawful residence – or settlement status or principal place of residence – in Austria. A corresponding residence permit is required for such a term of stay. Art. 11 para 2 subpara 2 of the Settlement and Residence Act specifies proof of accommodation as one of the prerequisites for granting a residence permit.

3.3 Conferral of citizenship based on general rules and extension of conferral

The general conditions for naturalization described in section 3.2 apply to all cases not falling under any special provisions governing the conferral of citizenship. In this sense, such requirements apply to “ordinary” conferral of citizenship. Exceptions to these general requirements do exist for certain categories of individuals, however—while others may benefit from the extension of conferral.

Persons with disabilities

In principle, the general rules also apply to individuals with disabilities. However, an exception can be made with regard to demonstrating a secure means of subsistence, as set out in Art. 10 para 1b of the Citizenship Act 1985. In cases where a disability or a permanent and serious illness means that the individual is unable to secure a means of subsistence, the law does not hold the person accountable for these circumstances and therefore exempts them from the need to provide such evidence (Ecker et al., 2017b:Art. 10 margin number 149). A medical certificate is nonetheless required in such cases.

Similarly, individuals with disabilities such as a speech impediment or hearing impairment are exempted from the need to demonstrate a basic knowledge of Austria's democratic system, including its underlying principles, as well as of the history of Austria and of the province of residence. Exemptions also exist for persons under 14 years of age or who have a physical or mental impairment (Art. 10a para 2 subpara 3 Citizenship Act 1985).

Special rules also apply to the naturalization of children with serious disabilities. The conditions specified in Art. 17 para 3 of the Citizenship Act 1985

do not require such children to be minors. Conferral of citizenship onto a parent is thus to be extended to cover a majority-age child with a serious disability, provided the other prerequisites are also met.

Stateless persons

The Austrian Citizenship Act 1985 has a separate Article (14) dedicated to rules covering stateless persons born in Austria. This article states that Austrian citizenship is to be granted to individuals who meet specified criteria, including: birth within the territory of the Republic of Austria; statelessness since birth; and not having had a final judgment handed down against them by an Austrian court on account of specified crimes. Art. 14 para 1 subpara 2 of the Citizenship Act 1985 nonetheless also requires a principal place of residence within the territory of the Republic of Austria for at least 10 years. The Supreme Administrative Court has ruled that such individuals must also demonstrate proficiency in German and pass the citizenship test.¹²⁶ Criticizing this decision, UNHCR called for an amendment to the Citizenship Act to allow children who are born in Austria as stateless persons and cannot acquire any other nationality to be granted Austrian citizenship as part of a swift and straightforward procedure (UNHCR, 2019:10).

The Citizenship Act 1985 has no special provisions to facilitate the naturalization of stateless individuals who do not meet the requirements of Art. 14 (such as stateless persons born outside Austria; UNHCR, 2017a:93). While subject to the general rules for naturalization, stateless individuals frequently lack travel documents or birth certificates and may consequently be exempted from a requirement to present such documents (see section 6.2 and UNHCR, 2017a:93). In contrast to other European countries (UNHCR, 2018a:13),¹²⁷ Austrian law does not provide for a specific procedure to determine an individual's status as a stateless person (UNHCR, 2017b:4).¹²⁸ This lack of such a procedure would suggest that practices in the various provinces vary, so that exemptions from the requirement to submit a travel document, to name just one example, are determined very much on a case-by-case basis.

126 Supreme Administrative Court, 3 May 2000, 99/01/0272.

127 Such determination mechanisms exist in France and in Greece, but also in the immediate neighbourhood to Austria, in Hungary and Italy. For more details, see also UNHCR, n.d., *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, available at www.refworld.org/pdfid/57836cff4.pdf (accessed 23 October 2019).

128 For details on the implementation of such a procedure, see OSCE and UNHCR (2017:47 et seq.).

Former citizens

Special rules similarly apply to foreign nationals who held Austrian citizenship for at least 10 consecutive years and then lost this status for reasons other than revocation (Art. 10 para 4 subpara 1 Citizenship Act 1985). If these individuals wish to acquire citizenship, the requirement for 10 years of lawful and uninterrupted residence is waived, as is the stipulated settlement status requirement (Art. 10 para 4 subpara 1 Citizenship Act 1985).

Art. 10 para 4 subpara 2 of the Citizenship Act 1985 specifies a basis for conferring citizenship similar to the case defined in Art. 58c of that Act (i.e. acquisition of citizenship through notification; see section 3.5), here specifically applying to persons who left Austria prior to 9 May 1945 due to persecution (or the verified threat thereof) by representatives of the NSDAP or by authorities of the Third Reich, or on account of engagement on behalf of the democratic Republic of Austria and resulting persecution. However, this provision has apparently been obsoleted by the current version of Art. 58c, which was amended in late 2019.

Extension

Alongside the conferral of citizenship on the applicant, the Citizenship Act 1985 also provides for an extension or expansion of this scope to include the applicant's spouse (Art. 16) and children (Art. 17). One effect of this extension of conferral is to curtail the minimum period of residence in Austria, for example. Family members benefitting from the extension must still comply with the other general conferral conditions, however (see section 3.2). Family members who satisfy all of the conditions have a legal entitlement to an extension of conferral (Kvasina, 2017a: Art. 16 margin number 2, Art. 17 margin number 4), which Art. 18 states may be granted only simultaneously with the conferral of citizenship on the applicant and only as of the same acquisition date.

In order for an extension of citizenship conferral to be considered in the first place, specified formal criteria need to be met:

- The applicant's spouse must have been married to the applicant for at least five years, for example, and also still living with the applicant in the matrimonial home (Art. 16 para 1 subpara 3 and 5 Citizenship Act 1985). The applicant's spouse must also be lawfully settled in Austria (see section 3.2; Art. 16 para 1 subpara 2 (a)). As already mentioned above, however, the normal minimum residence period of 10 years is curtailed to six years for spouses (Art. 16 para 1 subpara 1 Citizenship Act 1985).

- The children of applicants are not automatically granted citizenship in Austria. Instead, conferral on a child is conditional on a separate request being made by the child's legal representative. The parent's application for conferral can nonetheless be attached to an application for extension of conferral onto the applicant's children (Plunger, 2017b:Art. 17 margin number 1). However, it should be emphasized that extension of conferral is only possible for minor-age,¹²⁹ unmarried children whose status as foreign nationals is not the result of a revocation of their Austrian citizenship.¹³⁰ General conditions for conferral also apply: accordingly, individuals wishing to benefit from extension may have to pass the citizenship test or submit proof of the required language proficiency and knowledge. In addition, the requirements set out in Art. 16 para 1 subpara 2 of the Citizenship Act 1985 also have to be observed.¹³¹

3.4 Conferral of citizenship based on special rules

In cases where citizenship is to be granted for specified reasons, applicants may have to fulfil special conditions, in addition to the general requirements. While Austria has no provision for granting citizenship based on historical or ethno-cultural considerations (see section 5.1 on the special case of South Tyrol), other specified circumstances may facilitate naturalization. Examples here include the case popularly known as “citizenship for celebrities”,¹³² which is defined in Art. 10 para 6 of the Citizenship Act 1985, and the conferral of citizenship on especially well-integrated individuals, referred to in Art. 11a para. 6 of the Act (Ecker et al., 2017b:Art. 10 margin number 270). These two reasons for granting citizenship are described in detail below.

129 Art. 17 para 3 Citizenship Act 1985, however, provides exceptions for this rule in case the child is disabled.

130 In this respect, the act refers to Art. 33 and 34 Citizenship Act 1985.

131 These prerequisites include a valid residence, the entitlement to asylum at the time of the submission of the request or the enjoyment of privileges or immunities. See also Kvasina, 2017b:§ 17 margin number 4.

132 Famous people who acquired the Austrian citizenship under this procedure include the opera singer Anna Netrebko or the Academy Award winner Christoph Waltz. See Die Presse, Staatsbürgerschaft: Wie Promis einen Pass bekommen, 4 February 2014, available at www.diepresse.com/1558413/staatsbuergerschaft-wie-promis-einen-pass-bekommen (accessed 12 September 2019) and *Der Standard*, *Einbürgerung von Christoph Waltz genehmigt*, 24 August 2010, available at www.derstandard.at/story/1282273472457/einbuergierung-von-christoph-waltz-genehmigt (accessed 4 October 2019).

Granting citizenship according to Art. 10 para 6 Citizenship Act 1985

Facilitated access to citizenship in accordance with Art. 10 para 6 of the Citizenship Act 1985 can be granted to foreign nationals due to exceptional merit achieved or expected to be achieved on behalf of the Republic of Austria.¹³³ Such exceptional achievements must fall into one of the categories of science and research, economics, sports, or fine arts.¹³⁴ This ground for naturalization is also subject to confirmation from the Austrian Federal Government that conferral of citizenship is in the special interests of Austria on account of exceptional achievements that the foreign national has either made or is expected to make. Citizenship is to be conferred for such a reason only “in highly exceptional cases”,¹³⁵ however, which is indeed confirmed by the most recent statistics. A mere 139 foreign nationals were naturalized on these grounds between 2014 and 2018. While the figure for such persons was 54 in 2014, only 10 were naturalized on these grounds in 2018.¹³⁶

The rules are defined in detail in the Federal Government Regulation on the Procedure for Obtaining Confirmation as Provided for by Art. 10 para 6 of the Citizenship Act 1985.¹³⁷ Specifically, in order for the Federal Government to provide confirmation in a specific case, the responsible minister must issue a statement presenting the main grounds supporting the judgement on the case¹³⁸ as well as a recommendation for or against conferral of citizenship (Art. 2 para 4 Federal Government Regulation on the Procedure for Obtaining Confirmation as Provided for by Art. 10 para 6 of the Citizenship Act 1985). To enable the Federal Government to evaluate each case properly on its merits,¹³⁹ on 25 February 2014 the Council of Ministers has prepared a catalogue providing detailed descriptions of the criteria in the four fields of interest referred to above.¹⁴⁰ A candidate does not need to fulfil all of these criteria to qualify. The Federal

133 Federal Ministry of the Interior, *Staatsbürgerschaftswesen*. Available at www.bmi.gv.at/406/verleihung.aspx (accessed 7 October 2019).

134 Ibid.

135 Act Amending the Citizenship Law 1998, Government Proposal, p. 8. Available at www.parlament.gv.at/PAKT/VHG/XX/I/I_01283/fname_140172.pdf (accessed 27 August 2019).

136 See also table A.9 in the annex.

137 FLG II No. 39/2014.

138 In this respect the evaluation of the extraordinary services the foreigner has already performed and of those that are still to come, as well as the grounds why granting of the citizenship is in the core interest of the Republic are of particular relevance.

139 Federal Ministry of the Interior, *Staatsbürgerschaftswesen*. Available at www.bmi.gv.at/406/verleihung.aspx (accessed 7 October 2019).

140 Ibid.

Government decides periodically and at least once every six months on whether or not to issue a confirmation (Art. 4 Federal Government Regulation on the Procedure for Obtaining Confirmation as Provided for by Art. 10 para 6 of the Citizenship Act 1985). It should be emphasized that this decision by the Federal Government is only one of the factors determining the conferral of citizenship based on Art. 10 para 6 of the Citizenship Act 1985: accordingly, such a confirmation does not necessarily imply that the provincial government responsible for an individual case will in fact confer citizenship. Ultimately, the authority responsible for the case will make a discretionary decision (Eberwein and Esztegar, 2017:Art. 10 margin number 45).

If a confirmation is issued, several of the general requirements are waived. This means that citizenship could be granted to a person who has never resided in Austria, has no knowledge of German and whose income situation is unknown. Such a person is also allowed to retain their foreign nationality (Ecker et al., 2017b:Art. 10 margin number 270).

This “rather unusual and relatively opaque”¹⁴¹ basis for conferring citizenship has been the subject of a decades-long controversy¹⁴² and continues to draw criticism, not least because of a number of related political scandals and court cases (Stern and Valchars, 2013:36).¹⁴³ In March 2018, the Austrian chapter of Transparency International called for enhanced transparency when granting citizenship in such cases. The body specifically demanded improved transparency in the conferral procedure, including clear-cut accountability and integrity obligations for citizenship candidates as well as disclosure not only of the names of the persons granted citizenship but also the statements and recommendations submitted at early stages by sponsors, and full details of reviews undertaken by the responsible ministries.¹⁴⁴ Shortly thereafter, in August 2018, the Federal Government of the time announced that data protection regulations now

141 See *Profil*, Land der Pässe, 20 August 2016. Available at www.profil.at/shortlist/ausland/land-paesse-7529347 (accessed 6 August 2019).

142 OCCRP, *Visa Scandals Slammed Austria's Door Shut — or did they?*, 5 March 2018. Available at www.occrp.org/en/goldforvisas/visa-scandals-slammed-austrias-door-shut-or-did-they (accessed 11 September 2019).

143 See also Die Presse, *Staatsbürgerschaft: Wie Promis einen Pass bekommen*, 4 February 2014. Available at www.diepresse.com/1558413/staatsbuergerschaft-wie-promis-einen-pass-bekommen (accessed 12 September 2019).

144 *Transparency International*, *Goldene Pässe: Transparency International – Austrian Chapter fordert Transparenz bei der Verleihung von Staatsbürgerschaften*, 5 March 2018. Available at www.ti-austria.at/2018/03/05/goldene-paesse-transparency-international-austrian-chapter-fordert-transparenz-bei-der-verleihung-von-staatsbuergerschaften/ (accessed 11 September 2019).

prevented the disclosure of the names of individuals naturalized in such cases.¹⁴⁵ This step was criticized by the opposition parties in the National Council.¹⁴⁶

In contrast to information available from the internet perhaps suggesting otherwise,¹⁴⁷ the basis of citizenship acquisition defined in Art. 10 para 6 of the Citizenship Act 1985 is not related to an official “citizenship by investment” programme¹⁴⁸ of the sort offered by other European countries.¹⁴⁹ Rather, it is a case of matching business and economic interests with the “special interests” of the Republic of Austria.¹⁵⁰

Granting citizenship according to Art. 11a para 6 Citizenship Act 1985

Art. 11a para 6 of the Citizenship Act 1985 lays down rules for cases involving especially well integrated individuals, allowing naturalization as early as after a curtailed six-year residence term.¹⁵¹ The main condition here is that the foreign national meets the general naturalization requirements and has resided in Austria lawfully for an uninterrupted period (see section 3.2). Certain indicators are specified in the Act “that allow a successful integration process to be gauged, specifically through demonstration of a specified level of language ... or through evidence of sustained personal integration”.¹⁵²

145 *Addendum*, Promi-Staatsbürgerschaften: Regierung nennt keine Namen mehr, 31 July 2018. Available at www.addendum.org/news/promi-staatsbuergerschaften/ (accessed 11 September 2019). Other States are not notified of the granting of the citizenship: Henley & Partners, *Austrian Citizenship*, n.d., available at www.henleyglobal.com/citizenship-austria/ (accessed 30 October 2019).

146 *Der Standard*, SPÖ und Liste Pilz fordern Transparenz bei Promi-Staatsbürgerschaften, 1 August 2018, available at www.derstandard.at/story/2000084547431/spoe-und-liste-pilz-fordern-transparenz-bei-promi-staatsbuergerschaften (accessed 11 September 2019), as well as the Parliamentary inquiry regarding “Geheimniskrämeri bei der Vergabe von Staatsbürgerschaften” from 11 September 2018, 1634/J (XXVI. legislative term), available at www.parlament.gv.at/PAKT/VHG/XXVI/J/J_01634/imfname_709416.pdf (accessed 12 September 2019).

147 *Bloomberg*, Where the Super-Rich Go to Buy Their Second Passport, 20 July 2018. Available at www.bloomberg.com/graphics/2018-buying-citizenship/ (accessed 12 September 2019).

148 See also *Salzburger Nachrichten*, EU-Kommission will Vergabe “goldener Pässe” streng prüfen, 23 January 2019. Available at www.sn.at/politik/weltpolitik/eu-kommission-will-vergabe-goldener-paesse-streng-pruefen-64562170 (accessed 6 August 2019).

149 Cyprus and Malta can be cited as examples. See European Commission, Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Investor Citizenship and Residence Schemes in the European Union, COM(2019) 12 final, p. 3. Available at https://ec.europa.eu/info/sites/info/files/com_2019_12_final_report.pdf (accessed 13 September 2019).

150 *Ibid.*

151 Federal Legislative Act, by which the Citizenship Act 1985 is amended, Government Proposal – Introduction, p. 9. Available at www.parlament.gv.at/PAKT/VHG/XX-IV/I/I_02303/fname_302601.pdf (accessed 12 September 2019).

152 *Ibid.*

Accordingly, one option for acquiring citizenship based on Art. 11a para 6 of the Citizenship Act 1985 is to demonstrate proficiency in German at the B2 level (Art. 11a para 6 subpara 1 Citizenship Act 1985). Naturalization in the ordinary case requires only B1-level proficiency in German. Another option is sustained personal integration. This can be demonstrated in particular through voluntary unpaid work for at least three years within the framework of a not-for-profit organization, working in the field of education, social work or health care, or by holding office in an interest-group organization (Art. 11a para 6 subpara 2 Citizenship Act 1985).

Since this provision of law was introduced in 2014, statistics have revealed a continuous and significant rise in naturalization cases based on these grounds for granting citizenship. Whereas only 301 individuals were naturalized on this basis in 2014, by 2018 the number had risen to 1,325, reflecting an increase of over 400 per cent. This means that naturalization of especially well integrated foreign nationals, as enabled through Art. 11a para 6 of the Citizenship Act 1985, accounted for the majority of naturalization cases in 2018 and even a greater number than those based on the general naturalization requirements, as set out in Art. 10 para 1 of the Citizenship Act 1985 (see Table A. 9 in the Annex).

3.5 Acquisition of citizenship through notification

Acquisition of citizenship through notification means that applicants notify the authorities of the main circumstances serving as the basis for those individuals to acquire citizenship. Where the requirements are met, the authorities are to issue an administrative decision declaring that the individual has acquired citizenship through notification. Where citizenship is thus acquired, several of the general requirements are waived (see section 3.2), such as a minimum residence period in Austria, evidence of proficiency in German, evidence of basic knowledge of Austria's democratic system and its underlying principles, knowledge of the history of Austria and of the province of residence, as well as taking the required oath. Acquisition of citizenship through notification is possible only in a few very specific cases, however (see Table 5 for details).

Table 5: Acquisition of citizenship through notification pursuant to the Citizenship Act 1985

Citizenship Act 1985	General criteria to be met		Minimum stay in Austria	Target group
	All	Some		
Art. 57		x	n/a	Foreign nationals mistakenly treated by Austrian authorities as Austrian citizens
Art. 58c		x	n/a	Individuals persecuted by the NSDAP or on account of defending the democratic Republic of Austria
Art. 59			n/a	Foreign nationals assumed to be Austrians only based on descent
(Art. 64a para 18)		x	n/a	Transitional provisions for foreign nationals born prior to 1 September 1983 by an Austrian mother
(Art. 64 para 19)				Transitional provisions for foreign nationals mistakenly treated by Austrian authorities as Austrian citizens

Source: Citizenship Act 1985.

This case is illustrated in the following by reference to Art. 58c of the Citizenship Act 1985. According to that provision, foreign nationals acquire citizenship by notifying the competent authorities in writing that, after having had their principal residence in Austria, they left the country prior to 15 May 1955 due to special circumstances and at the time were either an Austrian citizen, a national¹⁵³ of a successor State of the former Austro-Hungarian Monarchy or a stateless person. Two main groups of individuals fall under this provision:

- People persecuted or threatened by persecution because of defending the democratic Republic of Austria during the “Austrofascist” era¹⁵⁴ between 5 March 1933 and 13 March 1938 and therefore left Austria prior to the cut-off date (Plunger, 2017c: Art. 58c margin number 3);
- People who left Austria prior to 15 May 1955 because of reasonable fear of persecution or suffering persecution by representatives of the NSDAP or by authorities of the Third Reich.

153 For the difference between citizenship and nationality, see Chapter 1.2 as well as Reichel, 2011:17–19.

154 It is contested in academia, how fascist Austria was at the time, and equally disputed is the phrase “Austrofascism”. Therefore, several other phrases are used, such as authoritarian State, imitation fascism, or concurring fascism. See Reiter (2010:33).

While such notification does not completely substitute for fulfilling all the requirements for citizenship acquisition, several of the general conditions normally required to be met for conferral in standard cases are waived.¹⁵⁵ Intended to compensate victims as widely as possible, this provision serves to greatly facilitate acquisition of citizenship.¹⁵⁶

A resolution was passed in late 2019,¹⁵⁷ expanding facilitated acquisition of citizenship through notification to include the descendants of individuals who were persecuted or threatened by persecution (Art. 58c para 1a Citizenship Act 1985). Accordingly, foreign nationals can acquire Austrian citizenship by presenting official documents or other forms of proof showing direct descent¹⁵⁸ from an individual who acquired citizenship through notification or could have done so. Experts with the Federal Ministry of the Interior see this new basis of acquisition by descendants of former Austrians as in future playing an important but challenging role in practice. Seen as more than a symbolic policy, it is expected that this new provision will result in a considerable number of individuals acquiring Austrian citizenship. Experts expect an increase in the number of individuals seeking citizenship in practice. It remains to be seen how the necessary proof can be provided and how eligibility can be assessed.¹⁵⁹ The new option for notification enters into force as of 1 September 2020 (Art. 64a para 30 Citizenship Act 1985).

155 In such cases, the proof of the lawful and uninterrupted 10-year stay (Art. 10 para 1 subpara 1 Citizenship Act 1985) or of the secured livelihood (Art. 10 para 1 subpara 7 Citizenship Act 1985) is not required (Plunger, 2017c:§ 58c margin number 6). Similarly, German proficiency as well as knowledge of the country are not required (Art. 10a Citizenship Act 1985) and the renunciation of existing ties to another State (Art. 10 para 3 Citizenship Act 1985) is not a prerequisite, see Peyrl (2017:§ 58c margin number 2).

156 Federal Legislative Act, by which the Citizenship Act 1985 is amended, Government Proposal – Explanatory Notes, p. 3. Available at www.parlament.gv.at/PAKT/VHG/XXVIII/I/I_01093/imfname_262305.pdf (accessed 1 October 2019).

157 Act Amending the Citizenship Law 2018, Decision of the National Council. Available at www.parlament.gv.at/PAKT/VHG/XXVI/BNR/BNR_00235/fname_767409.pdf (accessed 21 October 2019). No objection against this decision was raised before the Federal Council. See Act Amending the Citizenship Law 2018, Decision of the Federal Council. Available at www.parlament.gv.at/PAKT/VHG/XXVI/BNR/BNR_00235/fname_769113.pdf (accessed 21 October 2019).

158 Among these are, for instance, children, grandchildren and so forth. Relatives of the “side lines”, such as siblings, nephews and nieces, are not included.

159 Interview with Dietmar Hudsky and Eva Pfeleger, Federal Ministry of the Interior, 1 October 2019.

4. RIGHTS AND DUTIES OF NEW CITIZENS

Acquisition of citizenship entails both new rights as well as new duties. These rights and duties are detailed below.

4.1 Voting rights

The right to vote is one of the main differences in the legal status of Austrian citizens compared to foreign nationals who only reside in Austria on a long-term or permanent basis. Among other things, acquiring citizenship allows individuals to have a substantial voice in policymaking decisions in Austria.

Based on the Austrian Federal Constitutional Act, the National Council is elected by the population of the country. According to that law, women and men who have reached the age of 16 as of an election day are eligible to vote in that election (Art. 26 para 1 Federal Constitutional Act). Art. 21 para 1 of the National Council Election Order¹⁶⁰ specifically mentions the necessity of holding citizenship. To be eligible for election, individuals must hold Austrian citizenship and have reached the age of 18 on the effective date (Art. 26 para 4 Federal Constitutional Act). Eligibility to vote and to stand for election to the National Council are thus rights held exclusively by Austrian citizens.

The conditions specified in the Federal Constitutional Act apply by analogy to provincial parliamentary elections (Art. 95 para 2 Federal Constitutional Act), so that Austrian citizenship is also required in order to participate in such elections.

The coalition government of the city of Vienna under the Social Democratic Party and the Green Party launched an initiative in 2003,¹⁶¹ which would have amended the municipal election order to allow third-country nationals under certain conditions¹⁶² to vote in district representative elections (municipal elections), alongside EU citizens; after an appeal by deputies of

160 FLG No. 471/1992, in the version of federal law FLG I No. 32/2018.

161 Act by which the Constitution of the City of Vienna and the Vienna Municipal Election Act 1996 are amended, PLG for Vienna No. 22/2003.

162 One of the criteria considered was the principal residence for five uninterrupted years in the Vienna communal territory.

the Austrian People's Party and the Austrian Freedom Party,¹⁶³ in June 2004 the Constitutional Court revoked the motion as unconstitutional.¹⁶⁴ In its ruling, the Constitutional Court cited Art. 1 of the Federal Constitutional Act, according to which Austrian law is based in the people of Austria. The court found that the term "people" is linked to citizenship, so that only Austrian citizens are eligible to vote in Austria. Broadening this right to include citizens of other countries would require an amendment to the constitution, it was ruled.

More than one year after the initiative in Vienna, all of the political parties with seats in the Graz municipal assembly, with the exception of the Austrian Freedom Party (Valchars, 2006:97), adopted a resolution calling upon federal legislators to transfer to the provincial governments the constitutional power to award the right to vote in municipal elections to non-EU citizens as well.¹⁶⁵ Legislators have not yet complied with the proposal.

Among the parties sitting in the National Council after the federal election in 2019, the Austrian Freedom Party and the Austrian People's Party continue to oppose voting rights for non-Austrian citizens.¹⁶⁶ The Social Democratic Party of Austria also wishes to maintain the status quo.¹⁶⁷ Two parties, the NEOS – The New Austria and the Greens, hold the view that individuals who have their main centre of interest in Austria should also be allowed a voice in policymaking.¹⁶⁸

163 *Der Standard*, Festgefahrene Positionen bei Ausländerwahlrecht, 19 March 2013. Available at www.derstandard.at/story/1363705410636/festgefahrene-positionen-um-auslaenderwahlrecht (accessed 9 September 2019).

164 Constitutional Court, 30 June 2004, G218/03.

165 City of Graz, *Dringlichkeitsanträge - Sitzung des Gemeinderates vom 17. November 2011*, available at www.graz.at/cms/dokumente/10182378_7768145/975c9558/111117_dringliche_antraege2.pdf (accessed 2 October 2019).

166 Freiheitliche Partei Österreichs (FPÖ), *Heimat und Identität – eine österreichische Leitkultur*, 2019. Available at www.fpoe.at/wahlprogramm-nrw-2019/heimat-und-identitaet/ (accessed 5 September 2019); Heute, Auch ÖVP gegen Ausländerwahlrecht, 30 August 2019. Available at www.heute.at/s/auch-ovp-gegen-auslaenderwahlrecht-56946360 (accessed 9 September 2019).

167 *Der Standard*, Nach Ansage von Max Lercher: Rendi-Wagner nicht für Ausländerwahlrecht, 22 September 2019. Available at www.derstandard.at/story/2000108923804/nachvorstoss-von-max-lercher-oevp-und-fpoe-lehnen-wahlrecht (accessed 3 October 2019).

168 Heute, Auch ÖVP gegen Ausländerwahlrecht, 30 August 2019. Available at www.heute.at/s/auch-ovp-gegen-auslaenderwahlrecht-56946360 (accessed 9 September 2019); Wahlkabine.at, Nationalratswahl 2019 - Fragen und Standpunkte der Parteien. Available at <https://wahlkabine.at/nationalratswahl-2019/stellungnahmen> (accessed 9 October 2019); Orf.at, NEOS will Wahlrecht für alle EU-Bürger in Österreich, 4 September 2019. Available at <https://orf.at/stories/3136007/> (accessed 5 September 2019).

4.2 Rights to reenter the country and to diplomatic and consular protection

An additional major difference between foreign nationals and Austrian citizens concerns the right to reenter the country: Austrians may not be deprived of the right to reenter Austria (Art. 3 para 2 fourth supplementary protocol European Convention on Human Rights;¹⁶⁹ Hauer, 2014:Art. 11, margin number 44).¹⁷⁰ Foreign nationals, in contrast, who only hold a residence permit, may under certain conditions be deprived of that permit and thus of the right to reenter the country.¹⁷¹

Mention is also made here of diplomatic and consular protection, which Austria can exercise on behalf of its citizens (see section 1.2 and Stiller, 2011:31–35). The Consular Act¹⁷² nonetheless specifies cases where consular protection and assistance by the State can be limited.

4.3 Compulsory military service and participation in the judicial system

All male Austrian citizens between the ages of 17 and 50 are obliged to report for military service and for assessment to determine their ability to serve in the military (Art. 10 para 1 in conjunction with Art. 18 para 1 Defence Act 2001).^{173,174} Foreign nationals who are granted Austrian citizenship are also correspondingly obliged to first report for assessment and then, if found able, to complete basic military service or alternative civil service.¹⁷⁵

169 FLG No. 434/1969.

170 This privilege of “absolute residence security” is granted in the European Union only to nationals. See Perchinig and Bauböck, 2016:12.

171 See Art. 28 para 2 Settlement and Residence Act. The residence permit can also lose its validity (Art. 10 para 1 Settlement and Residence Act).

172 FLG I No. 40/2019.

173 FLG I No. 146/2001, in the version of federal law FLG I No. 100/2018.

174 Upon declaration of conscripts, who “cannot fulfil their compulsory military service because, apart from cases of personal self-defence or emergency assistance, they refuse to use armed force against people on grounds of conscience and would therefore be in distress of conscience if they did military service”, a civil service can be performed instead of a military one (Art. 1 Civil Service Act, FLG 679/1986, in the version of FLG I No. 107/2018).

175 Interview with Dietmar Hudsky and Eva Pflieger, Federal Ministry of the Interior, 1 October 2019.

The duty of participate in the judicial system is also attached to citizenship. Art. 91 para 1 of the Federal Constitutional Act declares the duty of the people to participate in the administration of justice. This obligation is detailed in provisions covering court proceedings, which vary according to the specific type of proceedings. Specifically, the Code of Criminal Procedure 1975 requires such participation in proceedings before lay judges and juries¹⁷⁶ (Art. 11 para 1 Code of Criminal Procedure 1975; Art. 1 Lay Judge and Jury Act 1990).^{177,178}

176 FLG No. 631/1975, in the version of federal law FLG I No. 70/2018.

177 FLG No. 256/1990, in the version of federal law FLG I No. 121/2016.

178 In this context, it should be noted that lay participation – irrespective of citizenship – is sometimes viewed critically. See for instance Reindl-Krauskopf, 2010.

5. DUAL CITIZENSHIP

The following chapter summarizes how Austria deals with the issue of dual citizenship. First, the current status of discussions is presented, followed by an introduction to relevant legal provisions.

5.1 Current status of discussions

One of the fundamental intentions underlying Austrian citizenship law is to avoid dual or multiple citizenship (Ecker et al., 2017b:Art. 10 margin number 258 and Kind, 2017d:Art. 20 margin number 3). Thus, the Citizenship Act 1985 does not in general permit this form of citizenship.

Nonetheless, policymakers appear in certain cases to lean towards considering or even actively espousing a loosening of current rules. The decisive factor here is apparently which other nationality is to be maintained alongside Austrian citizenship. This political position is best illustrated with reference to the examples below, taken from the recent past.

- **Dual Austrian and Turkish citizenship:** In relation to media reports of “illegal dual citizenships” in 2017, more than one party called for stronger checks to avoid such situations.¹⁷⁹ The debate was triggered on the occasion of the election campaign conducted in Europe by Turkey’s reigning AKP party. Turkish citizens who had been granted Austrian citizenship were suspected of having later reacquired Turkish citizenship – along with political rights in Turkey.¹⁸⁰ As a result of Turkey’s election campaign, the focus of domestic politics shifted to the issue of dual citizenship.^{181,182} This incited the

179 *Die Presse*, Doppelstaatsbürgerschaft: Lückenlose Kontrolle nicht möglich, 14 March 2017. Available at https://diepresse.com/home/innenpolitik/5183260/Doppelstaatsbuergerschaft_Lueckenlose-Kontrolle-nicht-moeglich (accessed 13 September 2019).

180 *Die Presse*, Breite Allianz verlangt Konsequenzen für Doppelstaatsbürger, 12 March 2017. Available at https://diepresse.com/home/innenpolitik/5182296/Breite-Allianz-verlangt-Konsequenzen-fuer-Doppelstaatsbuerger?direct=5182923&_vl_backlink=/home/innenpolitik/5182923/index.do&selChannel= (accessed 13 September 2019).

181 Ibid.

182 Parliamentary inquiry regarding “double citizenship in Austria” from 29 March 2017, 12593/J (XXV. legislative term). Available at www.parlament.gv.at/PAKT/VHG/XXV/J/J_12593/imfname_625093.pdf (accessed 23 September 2019).

competent authorities to revoke Austrian citizenship from such individuals. This move was stayed by the Constitutional Court in December 2018, however, ruling that there was insufficient proof of these persons simultaneously holding Turkish and Austrian citizenship (see Heilemann, 2019:41 for details).¹⁸³ Despite this decision, policymakers were not willed to introduce a legal exception for such cases in order to avoid “illegal dual citizenships”. Just a few weeks after the Constitutional Court ruling, in January 2019, the Austrian foreign minister at the time released an unambiguous statement ruling out any dual citizenship for Austrians of Turkish descent.¹⁸⁴

- **Dual Austrian and British citizenship:** In contrast, the response by the Austrian foreign minister at the time to the prospect of the United Kingdom leaving the EU could not have been more different. She announced that the estimated 25,000 Austrian citizens living in the United Kingdom would receive the option of dual citizenship in the event that the country left the EU without any agreement.¹⁸⁵ When this study was prepared, no corresponding amendment to the Citizenship Act 1985 had been introduced – among other things, presumably because the United Kingdom had not left the EU.
- **Dual Austrian and Italian citizenship:** The Federal Government formed by the Austrian People’s Party and the Austrian Freedom Party in December 2017 was seen to actively advocate dual citizenship in certain cases. This position was the subject of media reports and triggered a domestic policy debate.¹⁸⁶ The government programme entitled “Together. For Our Austria” (Austrian Federal Government, 2017:33) specified the option for “those belonging to ethnic groups in South Tyrol who have German or Ladin as their first language” to acquire Austrian citizenship in addition to Italian citizenship. As its rationale, this plan was based on the “spirit of European integration” as well as efforts to promote “an increasingly close union of

183 See Constitutional Court, 11 December 2018, E 3717/2018.

184 See *Salzburger Nachrichten*, Doppelstaatsbürgerschaft für Österreicher nach Brexit, 8 January 2019. Available at www.sn.at/politik/innenpolitik/doppelstaatsbuerger-schaft-fuer-oesterreicher-nach-brexite-63739507 (accessed 6 August 2019).

185 Ibid.

186 Parliamentary inquiry regarding the “selection of the members of the group of experts on dual citizenship in South-Tyrol” from 13 December 2018, 2445/J (XXVI. legislative term). Available at www.parlament.gv.at/PAKT/VHG/XXVI/J/J_02445/imfname_726874.pdf (accessed 12 September 2019), as well as Parliamentary inquiry regarding the “group of experts on dual citizenship for South-Tyrolean” from 26 September 2018, 1750/J (XXVI. legislative term). Available at www.parlament.gv.at/PAKT/VHG/XXVI/J/J_01750/imfname_711047.pdf (accessed 12 September 2019).

Member State citizens”. Reference was also made to Austria’s role in protecting these ethnic groups, a role Austria was said to exercise “based on the Paris Treaty¹⁸⁷ and subsequent later practice”. This plan envisaged in the government programme has not been implemented until the end of the legislative period, receiving only little support both from the Austrian People’s Party as well as South Tyrol and Italy.¹⁸⁸ An example here is the statement by the Governor of the Austrian province of Tyrol, like the chancellor at the time a member of the Austrian People’s Party, making implementation of the proposal contingent on a consensus between the national governments in Vienna and Rome and the provincial governors in Innsbruck and Bolzano. However, he added, an agreement was “nowhere in sight”.¹⁸⁹ Members of the Italian Government referred to the proposal as a “hostile initiative”¹⁹⁰ and cancelled a meeting with the Austrian foreign minister.¹⁹¹ Though less emphatic, the Governor of South Tyrol nonetheless showed only meagre interest in the initiative and instead called for an EU citizenship as a means of solving the issue.¹⁹² With the support of the Austrian People’s Party and the Austrian Freedom Party, on 19 September 2019, the National Council

- 187 Reference is presumably made here to the Peace Treaty of Saint Germain-en-Laye (a Parisian suburb), by which World War I officially ended in relation to Austria in 1919 (Olechowski and Gamauf, 2010:349).
- 188 See *Salzburger Nachrichten*, Doppelstaatsbürgerschaft für Österreicher nach Brexit, 8 January 2019. Available at www.sn.at/politik/innenpolitik/doppelstaatsbuergerschaft-fuer-oesterreicher-nach-brexit-63739507 (accessed 11 September 2019).
- 189 *Kurier*, Platter: “Habe kein Verständnis für Grenzkontrollen”, 6 May 2019. Available at <https://kurier.at/chronik/oesterreich/platter-habe-kein-verstaendnis-fuer-grenzkontrollen/400485256> (accessed 10 May 2019).
- 190 See *Der Standard*, Südtirols Landeschef bremst bei Doppelstaatsbürgerschaft, 14 January 2018. Available at www.derstandard.at/story/2000072264756/suedtiroler-landeshauptmann-bremst-bei-doppelstaatsbuergerschaft (accessed 6 August 2019) sowie *Die Presse*, Fünf-Sterne-Minister: Doppelpass für Südtiroler “feindliche Initiative”, 8 September 2018. Available at https://diepresse.com/home/ausland/aussenpolitik/5493251/FuenfSterneMinister_Doppelpass-fuer-Suedtiroler-feindliche-Initiative?from=rss (accessed 6 August 2019).
- 191 *Neue Zürcher Zeitung*, Italiener verärgert über Angebot des österreichischen Passes an Südtiroler, 18 September 2018. Available at www.nzz.ch/international/italiener-veraergert-ueber-oesterreichisches-pass-angebot-an-suedtiroler-ld.1420911 (accessed 12 September 2019).
- 192 Siehe dazu *Stol.it*, Weg vom Doppelpass, hin zur EU-Staatsbürgerschaft, 13 May 2019. Available at www.stol.it/Artikel/Politik-im-Ueberblick/Lokal/Weg-vom-Doppelpass-hin-zur-EU-Staatsbuergerschaft (accessed 6 August 2019).

adopted a motion for a resolution¹⁹³ mandating the responsible federal ministers to enter bilateral talks with their Italian colleagues and representatives of the people of South Tyrol to discuss the issue. The Federal Minister of the Interior was also given a mandate to submit, following the talks, draft legislation to permit dual citizenship for South Tyroleans.¹⁹⁴

5.2 Legal requirements

Unless specified by way of exception in the Citizenship Act 1985 (see section 5.3),¹⁹⁵ Austrian citizenship may not be conferred on an individual holding one or more foreign nationalities. No distinction is made here as to which other foreign nationalities are held. This is a tangible expression of the fundamental intention underlying the Citizenship Act 1985 to generally avoid any dual or multiple citizenship (Ecker et al., 2017b:Art. 10 margin number 258).

In line with this reasoning, Art. 10 para 3 of the Citizenship Act 1985 rules that Austrian citizenship may not be conferred upon an individual who has not relinquished their previous nationality even though this is reasonable and feasible. Granting of citizenship is similarly ruled out where the person seeking citizenship through a request or other means intentionally retains previous nationality. This rule makes Austria one of the few European States requiring the surrender of previous nationality as a necessary precondition for naturalization (Bauböck and Çinar 2001:263).

To allow individuals seeking citizenship to dissolve the legal bond with the previous State, and to facilitate the process while providing relative certainty of actually receiving Austrian citizenship afterwards, Art. 20 para 1 of the Citizenship Act 1985 provides for assurance of conferral. Based on court rulings,¹⁹⁶ such assurance constitutes the foreign national's legal entitlement to conferral of citizenship, dependent only on relinquishing previous nationality (Kind, 2017d: Art. 20 margin number 20). Evidence of having relinquished

193 See Close bilateral discussions on double citizenship for South-Tyroleans (287/UEA). Available at www.parlament.gv.at/PAKT/VHG/XXVI/UEA/UEA_00287/index.shtml (accessed 17 October 2019).

194 Resolution of the National Council from 19 September 2019, 121/E (XXVI. legislative term). Available at www.parlament.gv.at/PAKT/VHG/XXVI/E/E_00121/fname_767938.pdf (accessed 17 October 2019).

195 These exceptions exist for instance to Art. 10 para 4 and para 6 Citizenship Act 1985.

196 Constitutional Court, 29 September 2011, G154/10.

citizenship is to be provided within two years. The person concerned is then to be granted Austrian citizenship. Assurance of conferral of citizenship provides only relative certainty, however, as assurance is to be revoked if only one¹⁹⁷ of the necessary conditions for granting citizenship is no longer met (Art. 20 para 2 Citizenship Act 1985). The possibility of revoking assurance not only contradicts to a certain degree the court rulings referred to above (Garzon 2017b: Art. 20 margin number 5), it can also result in persons seeking citizenship becoming stateless. An example here is where, after dissolving the bond with the previous State, the candidate for citizenship commits a crime before receiving Austrian citizenship, which is then not granted in the end.¹⁹⁸

Art. 20 para 3 subpara 2 of the Citizenship Act 1985 provides for an exception to the provision described above. Based on the exception, where, after assurance of conferral is issued, an individual demonstrates that the action required in order to relinquish previous nationality cannot be (reasonably) taken, citizenship is nevertheless to be granted. Examples falling under this exception include the case where the foreign State's legal system has no provision allowing an individual to dissolve the legal bond with the State.¹⁹⁹

5.3 Exceptions to the prohibition of dual citizenship

As discussed above, the Citizenship Act 1985 does not in general permit dual or multiple citizenship. Exceptions to this rule are where an individual acquires more than one nationality at birth (Kind, 2017d: Art. 20 margin number 18) or where citizenship is acquired through notification.²⁰⁰ In addition, when in the special interests of the Republic of Austria citizenship is conferred upon an individual (Art. 10 para 6 Citizenship Act 1985), that person is not required to relinquish previous nationality.

The fact that a person who has been granted Austrian citizenship still possesses another or more than one other nationality does not limit that Austrian citizen's legal position in any regard. Unequal treatment of that individual

197 An exception to this is the secured livelihood according to Art. 10 para 1 subpara 7 Citizenship Act 1985.

198 Interview with Peter Marhold, Helping Hands, 24 September 2019.

199 This applies, for instance, to the loss of membership to the Islamic Republic of Iran. Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

200 See Art. 57 et seqq. Citizenship Act 1985.

compared with other Austrian citizens having only one citizenship is not permitted under law. Thus, citizens of multiple States are considered Austrian citizens in the fullest sense and may assert all basic rights to which they are entitled based on the Constitution, even those rights to which only Austrian citizens have access (Ennöckl, 2014: Art. 5 margin number 4).

Based on Austrian law, dual and multiple citizenships are to be avoided as far as possible. Because of this lack of experience with the issue, no particular benefits or challenges are associated with dual or multiple citizenships.²⁰¹

201 Interview with Dietmar Hudsky and Eva Pflieger, Federal Ministry of the Interior, 1 October 2019.

6. PROCEDURE FOR CONFERRING CITIZENSHIP

This chapter details the official procedure for obtaining citizenship. Detailed discussion is given to the individual steps in the procedure. First, a summary of the procedure applied in Austria is provided.

The procedure for conferring citizenship in Austria can be broken down into these stages:²⁰²

- **Application:** The application for conferral of citizenship is to be made in person²⁰³ to the provincial government with local jurisdiction (Art. 19 para 1 Citizenship Act 1985), specifically using the printed application forms (Art. 3 Citizenship Regulation). The applicant has the duty to cooperate in the subsequent procedure, in particular by providing the authorities with all documents and evidence required (see section 6.2).
- **Examination:** As detailed above in section 3.2, in order to be conferred citizenship, individuals have to demonstrate a basic knowledge of Austria's democratic system, including its underlying principles, as well as of the history of Austria and of the province of residence.
- **Assurance and conferral:** Provided all other conditions have been met once applicants pass the test, applicants often initially receive an administrative decision assuring them of conferral of Austrian citizenship (Art. 20 para 1 Citizenship Act 1985; see section 5.2). This decision providing assurance is intended to facilitate the relinquishing of previous nationality. This procedure complies with Art. 10 para 3 of the Citizenship Act 1985, which prohibits conferral of citizenship where applicants do not relinquish their previous nationality.²⁰⁴ Individuals have two

202 Mein Österreich – Vorbereitung zur Staatsbürgerschaft, available at www.staats-buergerschaft.gv.at/index.php?id=5 (accessed 6 September 2019).

203 In case the claimant does not enjoy legal capacity themselves, their legal representative needs to submit the request on their behalf (Art. 19 para 1 Citizenship Act 1985).

204 This includes cases in which necessary steps towards the withdrawal from the existing membership to another State are omitted, although these steps were possible and reasonable to undertake. Also cases in which the existing nationality is maintained purposefully are included (Art. 10 para 3 subpara 1 and 2 Citizenship Act 1985).

years to dissolve their legal bond with their countries of nationality (Art. 20 para 1 Citizenship Act 1985). Once the person concerned has relinquished previous nationality and taken the oath as prescribed in Art. 21 para 2 of the Citizenship Act 1985 (see section 3.2), that individual is to be granted citizenship during a ceremony (Art. 21 para 1 Citizenship Act 1985)²⁰⁵ and receive an administrative decision certifying conferral of citizenship.

6.1 Competent authorities and assistance during procedures

Based on Art. 39 para 1 of the Citizenship Act 1985, the provincial government is responsible for issuing administrative decisions pertaining to citizenship matters and is also the recipient of applications. Local jurisdiction (Art. 39 para 2 Citizenship Act 1985) is determined based on applicants' principle place of residence. Where applicants do not principally reside in Austria, the government of the province responsible for the citizenship register²⁰⁶ keeping records on the person concerned has local jurisdiction over the case. If no other municipality is responsible according to the legal regulations – e.g. in the case of bestowals to persons born abroad – the Vienna provincial government is competent (Art. 49 para 2 (c) Citizenship Act 1985; Kind, 2017g:Art. 39 margin number 5).²⁰⁷

Statistics for 2018 reveal a total of 9 450 naturalization cases in Austria. By far the greatest number of these individuals, specifically 4 216,²⁰⁸ were naturalized in Vienna, which accounted for almost 45 per cent of naturalizations nationwide. In 2018, Burgenland naturalized the least amount of people, totalling 184 (Figure 9).

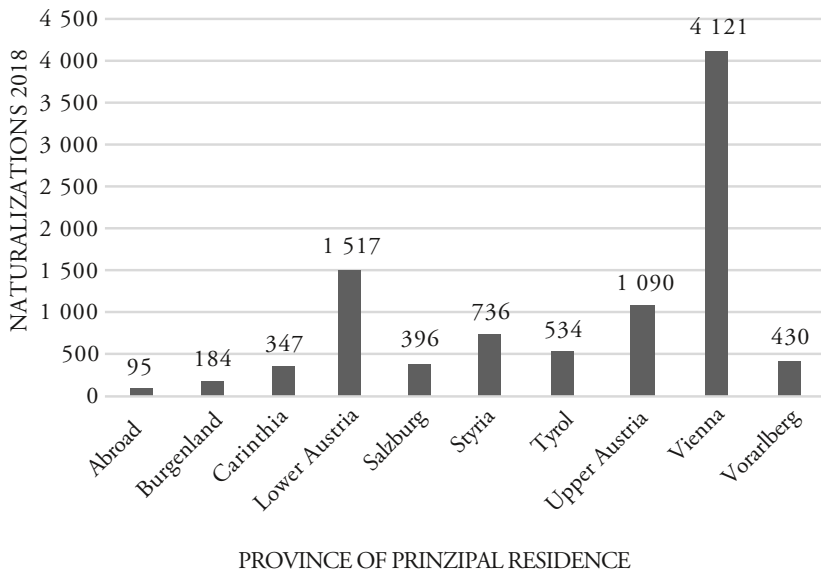
205 Mein Österreich – Vorbereitung zur Staatsbürgerschaft, available at www.staats-buergerschaft.gv.at/index.php?id=5 (accessed 6 September 2019).

206 Evidence of citizenship is recorded by the municipalities in form of a permanent register of citizens (Art. 49 para 1 Citizenship Act 1985).

207 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019

208 According to Art. 39 para 2 in conjunction with Art. 49 para 2 (c) Citizenship Act 1985, procedures initiated by individuals without principal residence in Austria are to be carried out in Vienna.

Figure 9: Persons naturalized in 2018, by province or residing in another country



Source: Statistics Austria, 2019c, accessed 13 November 2019, representation by author.

The citizenship procedure has not been digitalized. Applications for citizenship must be submitted in person²⁰⁹ and in written form (possibly in the form a transcript) to the competent authority, preferably using the application forms made available by the authorities (Art. 19 para 1 Citizenship Act 1985; Art. 3 Citizenship Regulation).

Authorities provide assistance to persons seeking citizenship in Austria, in particular through preliminary interviews to clarify whether an application has any prospect of success and whether basic requirements are met, including the main documents required, that is, the items verified during the official procedure.²¹⁰ Burgenland, Lower Austria, Styria, Tyrol, Vienna and Vorarlberg offer such

209 The main purpose of submitting a personal application is to enable the identity of the person applying for citizenship to be verified. Written input by the Federal Ministry of the Interior, 19 December 2019.

210 Interview with Dietmar Hudsky and Eva Pfeiffer, Federal Ministry of the Interior, 1 October 2019.

(preliminary) interviews to inform interested parties.²¹¹ According to the Vorarlberg provincial government, the model applied has proven useful in practice. In detail, interested parties are invited to a counselling interview prior to making any application. The interview usually lasts about 30 minutes. Interested parties receive detailed information concerning the procedures and requirements for acquiring citizenship. A special point is to calculate the individual's income to determine whether their means of subsistence would be considered adequately secure. Finally, the individual is provided with an application form along with a list of the documents to be supplied for the procedure.²¹² A similar approach to the Vorarlberg model is practised in Tyrol, where an interview is always held to clarify on an individual basis whether the documents required for the procedure are available. Whether an adequate means of subsistence actually exists is verified later, however, during the actual citizenship procedure.²¹³ In addition to such (preliminary) interviews to provide information, some of the provinces assist individuals seeking citizenship through official contact points²¹⁴ for citizenship affairs as well as by providing individual advice prior to and at the time of application.²¹⁵ Information, in rather general terms, on the steps involved in obtaining citizenship is also provided via the internet.²¹⁶

- 211 Questionnaires answered by the provincial governments of Lower Austria (Citizenship and Elections unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Styria (Citizenship unit, 24 September 2019), Vienna (Municipal Department 35, 24 September 2019) and Burgenland (Regional planning, security, municipalities and economics, 30 September 2019), as well as written input of the provincial government of Tyrol (Department for Citizenship, 15 October 2019).
- 212 Questionnaire answered by the provincial government of Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019).
- 213 Written input of the provincial government of Tyrol (Department for Citizenship, 15 October 2019).
- 214 Questionnaire answered by the provincial governments of Styria (Citizenship Unit, 24 September 2019) and of Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019).
- 215 Written input of the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Salzburg (Elections and Citizenship Unit, 18 September 2019), Styria (Citizenship Unit, 24 September 2019), Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019), Burgenland (Regional planning, security, municipalities and economics, 30 September 2019) and Carinthia (Election law, Citizenship and Residency, 7 October 2019).
- 216 Interview with a representative of the Austrian Integration Fund, 11 September 2019.

6.2 Necessary documents and identification

Art. 2 of the Citizenship Regulation enumerates the documents and certificates to be submitted, including specifically: a valid travel document, birth certificates and a current photo, as well as other documents related to the individual case (for example, certificate of marriage or partnership, certificate of divorce or dissolution of partnership, evidence of a secure means of subsistence, or evidence of adequate proficiency in German).

The applicant is required to submit to the authorities all necessary documents and evidence, including the original and a copy in each case (Art. 19 para 2 Citizenship Act 1985; Art. 1 Citizenship Regulation). Documents and certificates in another language than German are to be translated into German and submitted at the authorities' request. Authorities can also request documents and certificates to be notarized before submission (Art. 1 para 3 and 4 Citizenship Regulation).

The provincial governments provided varying responses when asked whether any challenges existed to ascertaining the identity of individuals seeking citizenship. While spokespersons of the governments of Burgenland,²¹⁷ Carinthia,²¹⁸ Styria,²¹⁹ and Vienna²²⁰ did not recognize any challenges in this regard,²²¹ the other provincial governments²²² referred to problems including a lack of, inadequate or inconsistent identity documents (especially among individuals with a refugee background), making it difficult to verify identities and to establish applicants' identities beyond doubt. Such cases

217 Questionnaire answered by the provincial government of Burgenland (Regional planning, security, municipalities and economics, 30 September 2019).

218 Questionnaire answered by the provincial government of Carinthia (Election law, Citizenship and Residency, 7 October 2019).

219 Questionnaire answered by the provincial government of Styria (Citizenship Unit, 24 September 2019).

220 Questionnaire answered by the provincial government of Vienna (Municipal Department 35, 24 September 2019).

221 The Styrian provincial government justified this with the fact that the identity has already been ascertained and checked by other authorities in Austria. Questionnaire answered by the provincial government of Styria (Citizenship Unit, 24 September 2019).

222 Questionnaires answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections Unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Salzburg (Elections and Citizenship Unit, 18 September 2019) and Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019).

have to be clarified in consultation with Austrian asylum authorities or civil status authorities.²²³

6.3 Naturalization expenses

In connection with applying for and obtaining Austrian citizenship, applicants must pay both federal fees and provincial administrative fees.

The federal fees due in such cases are uniform for all of Austria. The application fee is EUR 125.60.²²⁴ An additional federal fee is payable on conferral of citizenship, ranging between EUR 247.90 and EUR 1 115.30 depending on the basis of conferral.²²⁵ The highest fee is payable in cases where citizenship is conferred based on discretion, as defined in Art. 10 of the Citizenship Act 1985.²²⁶ The lowest fee is due where naturalization is granted based on grounds specified in the Fee Act 1957.²²⁷ Such cases include conferral of citizenship based on Art. 11a para 2 of the Citizenship Act 1985, to spouses of Austrian citizens not residing within Austrian territory. In cases not falling under a special provision of the Fee Act 1957, a fee of EUR 867.40 is payable. This was consequently the fee paid in most naturalization cases in 2018 (Art. 11a para 4 Citizenship Act 1985). Compared with other types of (fixed) fees specified in the Fee Act 1957, these federal fees are among the highest official fees charged in Austria.

Conferral of citizenship is also contingent on payment of a provincial administrative fee of varying amount depending on the province. Figure 10 compares the amounts valid when this study was prepared.

223 Questionnaire answered by the provincial government of Salzburg (Elections and Citizenship Unit, 18 September 2019).

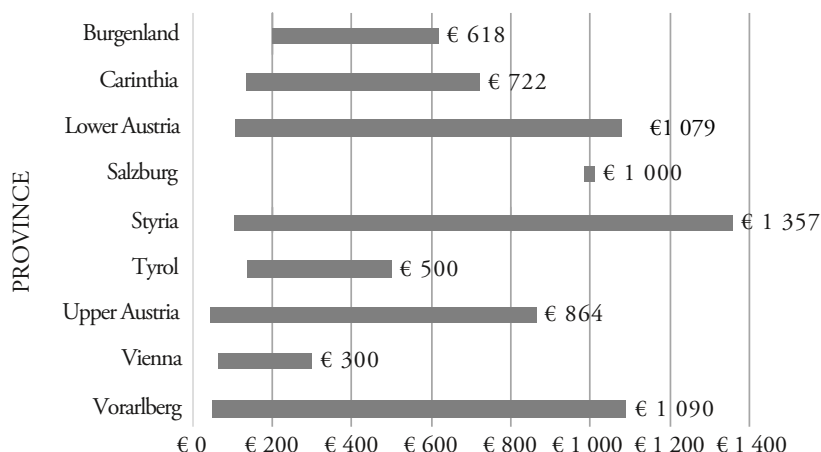
224 See Art. 14 item 6 para 3 (b) Fees Act 1957, FLG No. 267/1957, in the version of the federal law FLG I No. 62/2018.

225 See Art. 14 item 2 para 1 subpara 3 Fees Act 1957.

226 The sole exception resides in Art. 10 para 4 Citizenship Act 1985, namely for the naturalization of former citizens or foreigners, who - as nationals of one of the successor States of the former Austrian-Hungarian monarchy - have left Austria because of persecutions perpetrated by the NSDAP or because of their position in favour of the democratic Republic of Austria.

227 FLG No. 267/1957, in the version of the federal law FLG I No. 62/2018.

Figure 10: Provincial administrative fees charged in connection with the naturalization of adult foreigners



Source: Regulations of the provinces on provincial administrative fees, provincial administrative fee tariffs and commission fees.²²⁸

As seen from Figure 10, the ranges of provincial administrative fees charged for conferral of citizenship vary from province to province. The range is the narrowest in Vienna, the province with the most naturalization cases in 2018 (see Figure 9), with the maximum fee, set at EUR 300, much lower than in any other province. Burgenland, the province that conferred the fewest citizenships in 2018, shows relatively average figures both in terms of range and maximum amount (EUR 618). Styria, in fourth place in terms of naturalization cases in 2018, is the province with the widest range of fees and the highest potential fee charged, at EUR 1 357.

228 See the Regulation of the Provincial Government of Vienna on Administration Fees and Commission Charges, FLG No. 104/2001, in the version of the Regulation FLG No. 32/2014, Lower Austria Provincial Administration Fee Regulation 2019, FLG No. 83/2018, Upper Austria Provincial Administrative Fees Regulation 2011, FLG 118/2011, in the version of the Regulation FLG No. 136/2015, Styrian Provincial Administration Fees Regulation 2016, FLG No. 73/2016, in the version of Regulation FLG No 76/2018, Burgenland's Provincial Administration Fees Regulation 2012, FLG No. 47/2012, in the version of the Regulation FLG No. 8/2019, Tyrolian Provincial Administration Fees Regulation 2007, FLG No. 30/2007, in the version of the Regulation FLG 82/2014, Carinthian Provincial Administrative Fees Regulation, FLG No. 9/2019, Salzburg Administration Fees and Commission Charges 2018, FLG No. 23/2018, in the version of the Regulation FLG No. 37/2019, Vorarlberg's Administration Fees Regulation, FLG No. 78/2014, in the version of FLG No. 19/2019.

Finally, assurance of citizenship (see section 5.2) is also contingent on payment of a provincial administrative fee. Styria charges both the lowest and the highest levels of provincial administrative fees, ranging from EUR 13.72 to EUR 135.72 depending on the basis of conferral.²²⁹ Among the other provinces, administrative fees vary between EUR 28.70²³⁰ and EUR 88.50.²³¹

Compared with other countries, in Austria the fees and charges related to acquiring citizenship are considerably higher, being among the highest anywhere in Europe (Stadlmair, 2017:73). A study done in 2010 ranked Austria second behind Switzerland in terms of countries with the highest fees (Goodman, 2010:24). Other expenses, such as for translation or notarization of documents, can be incurred in addition to the fees and charges described above (Stern and Valchars, 2013:9).

6.4 Duration of the procedure

Austrian authorities responsible for citizenship matters are subject to specified periods when taking decisions:

- Art. 11b of the Citizenship Act 1985 allows a maximum of six weeks from the date of application for decisions as to whether to grant citizenship to minors below the age of 14 who are to be adopted by an Austrian citizen.
- Ordinary procedures for granting citizenship fall under the General Administrative Procedures Act 1991, which in Art. 73 obliges authorities to evaluate cases and issue administrative decisions without undue delay and by no later than six months after receipt of applications.

Where authorities exceed that period, a complaint on grounds of delay can be filed with the provincial administrative court (Art. 130 para 1 subpara 3 Federal Constitutional Act in conjunction with Art. 8 para 1 Proceedings of Administrative Courts Act).²³² The administrative court is then charged with handing down a decision within six months (Art. 24 para 1 Proceedings of Administrative Courts Act; Kind, 2017g:§ 39 Rz 12).

229 Styrian Provincial Administration Fees Regulation 2016, Annex, Specific Part, I. Citizenship, subpara 9.

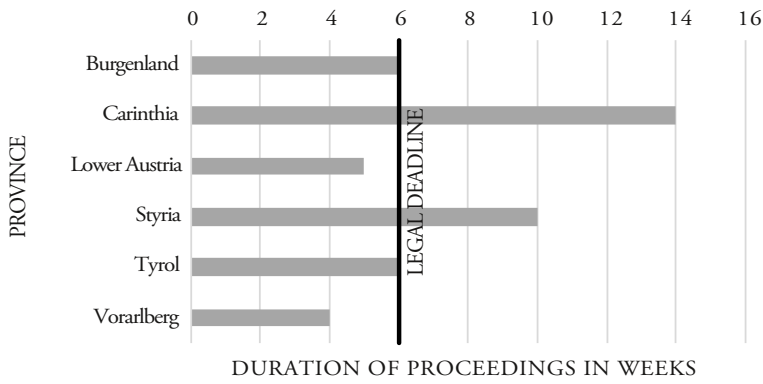
230 Vorarlberg's Administrative Fees Regulation, FLG No. 78/2014, in the version of the Regulation FLG No. 19/2019, Annex, item 94.

231 Burgenland's Provincial Administration Fees Regulation 2012, FLG No. 47/2012, in the version of the Regulation FLG No. 8/2019, item 129.

232 FLG I No. 33/2013, in the version of the federal law FLG I No. 57/2018.

The average period required for procedures by the Austrian provincial governments is listed in the figures below (Figures 11 and 12). No figures were reported for Salzburg, Upper Austria or Vienna as no data were available. Concerning the actual time required for procedures, the Salzburg provincial government reported “highly varying” periods, being dependent on “various factors”.²³³ The government of Upper Austria reported that authorities “take efforts to comply with the allowed period”.²³⁴ In Vienna the average time required for procedures to confer citizenship “cannot be evaluated due to data processing limitations”.²³⁵ Yet, based on a report by the Vienna Court of Audit in 2015, the statutory maximum period has in fact been exceeded on past occasions. Only in about half the cases were ordinary citizenship procedures completed within the maximum period (Stadtrechnungshof Wien, 2013:69). The reasons cited were a lack of personnel²³⁶ and “the increasing complexity entailed in completing procedures”. Reference was also made here to poor cooperation on the part of applicants (Stadtrechnungshof Wien, 2013:101).

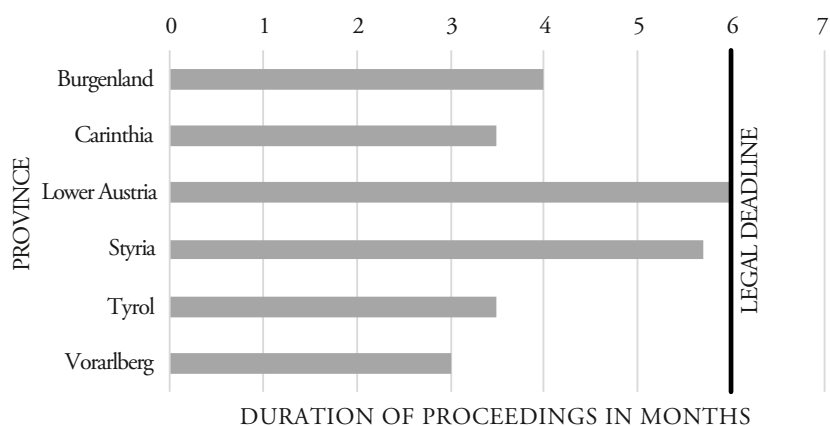
Figure 11: Average period required for citizenship procedures involving minors below the age of 14 (Art. 11b Citizenship Act 1985)



Source: Questionnaires answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Styria (Citizenship Unit, 24 September 2019), Burgenland (Regional planning, security, municipalities and economics, 30 September 2019), and Carinthia (Election law, Citizenship and Residency, 7 October 2019).

233 Questionnaire answered by the provincial government of Salzburg (Elections and Citizenship Unit, 18 September 2019).
 234 Questionnaire answered by the provincial government of Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019).
 235 Questionnaire answered by the provincial government of Vienna (Municipal Department 35, 24 September 2019).
 236 Ein Vertreter der NGO Helping Hands sprach in diesem Zusammenhang von Personalfluktuation. Interview mit Peter Marhold, Helping Hands, 24 September 2019.

Figure 12: Average period required for ordinary citizenship procedures



Source: Questionnaires answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Styria (Citizenship Unit, 24 September 2019), Burgenland (Regional planning, security, municipalities and economics, 30 September 2019), and Carinthia (Election law, Citizenship and Residency, 7 October 2019).

The numbers in Figures 11 and 12 refer to cases where applicants submit all required documents when applying and meet all conditions for conferral of citizenship.²³⁷

Of the provincial governments listed in Figures 11 and 12, only the governments of Carinthia and Styria reported not complying with the statutory period allowed for processing procedures under Art. 11b. The other provincial governments mentioned above confirmed compliance with the statutory periods. This contrasts with media reports²³⁸ as well as information from experts with the Federal Ministry of the Interior, according to which such procedures often take considerably longer, in some cases because of missing documents relating to the persons seeking citizenship. That is not only the reason preventing the authorities from taking a decision immediately: procedures can also take considerably longer due, for example, to the highly challenging task of procuring

237 Questionnaires answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019) and Lower Austria (Citizenship and Elections Unit, 11 September 2019).

238 See, for instance, *Wiener Zeitung*, *Jahrelanges Warten auf die Staatsbürgerschaft*, 3 May 2018. Available at www.wienerzeitung.at/nachrichten/politik/oesterreich/962770-Jahrelanges-Warten-auf-die-Staatsbuergerschaft.html (accessed 9 August 2019).

the required documents from other countries.²³⁹ A representative of the non-governmental organization Helping Hands cited another reason for the sometimes long duration of procedures. Based on experience in legal assistance, it was observed that the authorities presiding over such procedures struggled with challenges relating to internal organization and workflows, and specifically to making security enquiries with the administrative register, the Federal Office for Immigration and Asylum and the police administration of the particular province. Responses to enquiries are reportedly often received spread over an extended period of time, so that information received early on in procedures is often outdated by the time other information arrives. This makes it necessary to repeat enquiries and subsequently leads to delays in procedures.²⁴⁰ Procedures could also be completed more expeditiously, it is claimed, if the documents and files submitted and verified previously as part of residence permit procedures were later used in citizenship procedures. This would eliminate the need to resubmit documents.²⁴¹

Five²⁴² of Austria's nine provinces have fast-track procedures in place to handle certain types of naturalization applications. Examples are found in Carinthia and Vienna, where procedures are accelerated when applicants are threatened with loss of rights.²⁴³

6.5 Citizenship ceremony

The Citizenship Act 1985 provides for the conferral of Austrian citizenship “in a ceremonial setting that is fitting for the occasion, as expressed through the participants joining in the singing of the national anthem and through visible

239 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

240 See *Der Standard*, Staatsbürgerschaft: Austritt unmöglich, Eintritt auch, 7 August 2019. Available at www.derstandard.at/story/2000084863430/staatsbuergerschaft-aus-tritt-unmoeglich-eintritt-auch (accessed 12 September 2019).

241 Interview with Peter Marhold, Helping Hands, 24 September 2019.

242 Questionnaires answered by the provincial governments of Salzburg (Elections and Citizenship Unit, 18 September 2019), Vienna (Municipal Department 35, 24 September 2019), Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019), and Carinthia (Election law, Citizenship and Residency, 7 October 2019), as well as written input of the provincial government of Lower Austria (Citizenship and Elections Unit, 17 October 2019).

243 This is the case, for instance, when minors would come of age but as adults would not meet the requirements for naturalization. Questionnaire answered by the provincial government of Vienna (Municipal Department 35, 24 September 2019).

display of the flags of the Republic of Austria, the Austrian province where the event takes place and the European Union” (Art. 21 para 1 Citizenship Act 1985).

Attendance at this ceremony is mandatory in most of the provinces, unless grounds for an exception exist. Examples of grounds for an exception include individuals not having full legal capacity,²⁴⁴ who pursuant to Art. 21 para 2 of the Citizenship Act 1985 are also not obliged to take the oath, and bed-ridden individuals unable to travel to the competent public office.²⁴⁵ In addition, in certain provinces of Austria²⁴⁶ and under specified conditions, administrative decisions conferring citizenship can be handed out to recipients outside of the general ceremony, within the framework of “individual conferral”, which though is to take place in the form of a ceremony as well.²⁴⁷ In Upper Austria, citizenship is generally conferred at “individual conferrals” in a ceremonial setting and not at large events.²⁴⁸

6.6 Refusal grounds and appeal options

Applicants not meeting the conferral requirements must not be granted citizenship. The summary below (Table 6) is intended as an overview of the grounds most often cited by Austrian provincial governments for refusing citizenship applications.

244 Questionnaire answered by the provincial government of Lower Austria (Citizenship and Elections unit, 11 September 2019).

245 Questionnaire answered by the provincial government of Vienna (Municipal Department 35, 24 September 2019).

246 Questionnaires answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections Unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Salzburg (Elections and Citizenship Unit, 18 September 2019), Styria (Citizenship Unit, 24 September 2019), Burgenland (Regional planning, security, municipalities and economics, 30 September 2019), and Carinthia (Election law, Citizenship and Residency, 7 October 2019).

247 Questionnaires answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019) and Salzburg (Elections and Citizenship Unit, 18 September 2019).

248 Written input of the provincial government of Upper Austria (Group on Citizenship, Migration and Elections, 15 October 2019).

Table 6: Five grounds most often cited by provincial governments for refusing citizenship applications

	Court sentences or multiple serious administrative offences	Insufficient income, no secure means of subsistence, social assistance recipient	Inadequate proficiency in German or no evidence of proficiency	Insufficiently long or unlawful residence	Threat to public peace, order and security
Burgenland	✓				
Carinthia	No details				
Lower Austria	✓	✓	✓	✓	
Salzburg	No details				
Styria	✓	✓	✓	✓	✓
Tyrol	✓	✓	✓		✓
Upper Austria	✓	✓	✓	✓	
Vienna	✓	✓	✓	✓	✓
Vorarlberg	✓	✓	✓		

Source: Questionnaires answered by the provincial governments of Tyrol (Department for Citizenship, 11 September 2019), Lower Austria (Citizenship and Elections unit, 11 September 2019), Vorarlberg (Department for Citizenship, Aliens and Civil Status Law, 16 September 2019), Salzburg (Elections and Citizenship unit, 18 September 2019), Styria (Citizenship Unit, 24 September 2019), Vienna (Municipal Department 35, 24 September 2019), Upper Austria (Group on Citizenship, Migration and Elections, 26 September 2019) Burgenland (Regional planning, security, municipalities and economics, 30 September 2019), and Carinthia (Election law, Citizenship and Residency, 7 October 2019) as well as written input of the provincial governments of Tyrol (Department for Citizenship, 15 October 2019).

Under Austrian law, justification must be provided with any decision “that does not concur fully with the party’s legal position or that rules on objections or requests made by the parties involved” (Art. 58 para 2 General Administrative Procedures Act 1991). This means that refusal decisions not complying with the application of the person seeking citizenship have to include reasons. A decision must always state the statutory provision applied, in order to make clear the basis for refusal (Art. 59 para 1 General Administrative Procedures Act 1991). Administrative decisions on conferral of citizenship must be issued in writing, as required in Art. 23 of the Citizenship Act 1985.²⁴⁹

249 However, the written form does not apply to negative administrative decisions, that must be issued in accordance with the general provisions of the General Administrative Procedures Act 1991 (Kind, 2017f:Art. 23 margin number 14).

Both the individual concerned and the Federal Minister of the Interior (Art. 132 para 1 subpara 1 and subpara 2 Federal Constitutional Act) are entitled to bring before the provincial administrative court with jurisdiction in the case (Art. 130, Art. 131 para 1 Federal Constitutional Act; Kind, 2017g: Art. 39 margin number 10) a complaint to contest an administrative decision within four weeks (Art. 7 para 4 Proceedings of Administrative Courts Act). Subsequently, under certain circumstances the parties may lodge an appeal with the Supreme Administrative Court or a complaint with the Constitutional Court (Art. 133 and Art. 144 para 1 Federal Constitutional Act), in either case within six weeks (Art. 26 para 1 Supreme Administrative Court Act; Art. 82 para 1 Constitutional Court Act; Pichler and Senft, 2017: Art. 39 margin number 2).

7. CITIZENSHIP AND INTEGRATION

The following chapter examines the relationship between integration and acquisition of citizenship. The special focus here is integration in the labour market. Initial discussion is given to the Austrian model of “integration before citizenship”.

7.1 The Austrian model of integration before citizenship

Under Austrian law and in accordance with legislators’ intent, acquiring citizenship represents the “end point in a comprehensive integration process” (Art. 2 para 2 Integration Act). This notion, reflected in the Citizenship Act 1985 for at least the past 20 years,²⁵⁰ is intended to encourage integration.²⁵¹ It is thus intended for individuals to become integrated already during the minimum residence period in Austria, which is required in order to acquire citizenship and varies in length depending on the basis of acquisition. Corresponding programmes such as German and values courses are offered to help reach this goal.²⁵² Third-country nationals must also fulfil the requirements of module 1 of the Integration Agreement when first issued (Art. 9 para 1 Integration Act) or when renewing (Art. 11 para 2 subpara 6 Settlement and Residence Act) certain types of residence permit, as set out in provisions of the Settlement and Residence Act and the Integration Act. The module is intended to allow participants to achieve proficiency in German at A2 level as well as knowledge of values relating to the legal and social systems (Art. 7 para 2 subpara 1 Integration Act). Persons seeking citizenship must therefore actively strive towards integration and naturalization. They are supposed to understand that they cannot acquire Austrian citizenship unless they display corresponding progress in integration and thereby become eligible for naturalization.²⁵³ With all integration programmes for foreign nationals living in Austria aligned with the goal of later naturalization,²⁵⁴ the knowledge acquired through those

250 Act Amending the Citizenship Law 1998, Government Proposal, p. 8. Available at www.parlament.gv.at/PAKT/VHG/XX/I/I_01283/fname_140172.pdf (accessed 27 August 2019).

251 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

252 Interview with a representative of the Austrian Integration Fund, 11 September 2019.

253 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

254 Ibid.

programmes may be seen as basis for sitting the citizenship test. Integration measures specifically designed to facilitate acquisition of citizenship are not offered, however.²⁵⁵

Based on this policy of “integration before citizenship”, individuals seeking naturalization are to first show progress in integration. Only afterwards is citizenship granted, as what might be termed “a sort of reward” (Reichel, 2011:94). Criticism has been levelled at this policy by a representative of non-governmental organization Helping Hands, arguing that acquiring citizenship by no means implies a completed integration process, neither as judged by the majority society nor based on the self-perception of new citizens.²⁵⁶ Another relevant aspect in this context is that not even foreign nationals meeting the requirements for naturalization are eligible to vote in Austria until they possess Austrian citizenship (see section 4.1). This appears questionable for two reasons, as described below.

- First, awarding immigrants “equal rights for participating in society is one of the most important normative, functional and symbolic prerequisites” for ensuring that such individuals become successfully integrated, including in political affairs (Dimitrov, 2012:16). Yet, eligibility to vote, which is necessary for comprehensive integration, is acquired under current Austrian law only with citizenship. By that time, the process of comprehensive integration is supposed to already have been completed, however.
- Second, the existence of a dichotomy between a resident population (potentially eligible for naturalization) and a population eligible to vote ultimately represents a political challenge to democracy (Berger, 2011:32).²⁵⁷ such a situation deprives one segment of the population of a voice in political affairs, even though that segment is equally subject to applicable laws (Näsström, 2011:119). Such a “deficiency in representation” (Bauböck, 2002:6) affected about 13 per cent of Austria’s resident population in 2019, or roughly 1.2 million people who were ineligible to vote because they did

255 Interview with a representative of the Austrian Integration Fund, 11 September 2019.

256 Interview with Peter Marhold, Helping Hands, 24 September 2019.

257 See also Kohlenberger, J., Uns fehlen 1,2 Millionen Wähler, *Falter.at*, 2 September 2019. Available at <https://cms.falter.at/blogs/thinktank/2019/09/02/uns-fehlen-12-millionen-waehler/> (accessed 3 October 2019).

not have citizenship.²⁵⁸ This problem is not limited to Austria but affects millions of people throughout the world who are deprived of the right to vote. Excluding individuals from a voice in politics would appear to contradict the principles of democracy (Beckman, 2006:153).

The Austrian model for acquiring citizenship usually requires residence in Austria for multiple years, comprehensive integration prior to citizenship acquisition and passing a citizenship test. Because of completing the integration process prior to conferral of citizenship, recently naturalized citizens should already have solid knowledge of their role as (EU) citizens.²⁵⁹ Correspondingly, the Federal Ministry of the Interior is not aware of any programmes to provide special information concerning this new role.²⁶⁰

Even though acquiring Austrian citizenship – and associated EU citizenship – facilitates mobility to countries such as other EU Member States, it is rather unlikely that naturalized citizens will continue their migration to other (third) countries, according to experts of the Federal Ministry of the Interior. Especially considering the restrictive conditions for acquiring citizenship, individuals who become Austrian citizens make a conscious decision for the long term and consequently remain in Austria in the long term or permanently, according to the experts.²⁶¹

Based on the resources consulted in preparing this study, following naturalization, Austria does not provide any State assistance to help naturalized individuals in their new roles as Austria citizens.²⁶²

- 258 Statistics Austria, 2019, STATcube – Bevölkerung zu Jahresbeginn ab 1982. Available at <https://statcube.at/statistik.at/ext/statcube/jsf/dataCatalogueExplorer.xhtml> (exported on 12 November 2019). In this context, it is worth mentioning the election “Pass-egal-Wahl” organized by SOS Mitmensch, in which “everyone, no matter what their passport is” can vote as a symbol against democratic exclusion (SOS Mitmensch, Pass Egal Wahl, 24 September 2019, available at www.sosmitmensch.at/save-the-date-pass-egal-wahl-2019 (accessed 12 September 2019). The outcome of this election, in which more than 2 900 people participated, are hardly comparable to those of the National Council elections of 2019.
- 259 Interview with a representative of the Austrian Integration Fund, 11 September 2019.
- 260 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.
- 261 Ibid.
- 262 Written input of Franziska Wallner, IOM Country Office for Austria, 18 October 2019.

7.2 Measures to encourage acquisition of citizenship

Generally speaking, there is less chance of becoming naturalized in countries with relatively strict regulations (Huddleston and Falcke, 2019). Austria, a country with a low naturalization rate, is no exception here (Huber et al., 2017). Specifically, only 0.7 per cent of the 1.34 million foreign nationals residing in Austria became citizens in 2017. Based on these figures, Austria ranked at a mere twenty-sixth place among the 28 EU Member States.²⁶³ Encouraging naturalizations has never been a goal of the Austrian Federal Government in the past (Migration Policy Group, o.J.:15), while this topic continues to play a marginal policy role.²⁶⁴ According to experts with the Federal Ministry of the Interior, if the naturalization rate is too low, a view not shared by all, it is not necessarily on account of the criteria to be met for naturalization. Rather, many people meet the criteria in fact but have previously shown no interest in citizenship.²⁶⁵ This was also the conclusion presented in the 2015 report by the Expert Council for Integration. The Expert Council correspondingly raised the critical question as to whether enough information about acquiring citizenship and the related benefits was being circulated. Referring to the example of Germany,²⁶⁶ the Expert Council recommended a similar campaign to raise the naturalization rate in Austria (Expert Council for Integration, 2015:69). A campaign of this kind was not mentioned afterwards in any of the integration reports, however.

A related item, though, is the website at www.staatsbuergerschaft.gv.at, initiated to encourage individuals already eligible for naturalization to acquire citizenship.²⁶⁷ That website makes available all information relating to conferral of citizenship, along with materials to prepare for the citizenship test (see section 3.2) as well as a mock test. Additional assistance is provided by groups such as

263 Eurostat, *Residents who acquired citizenship as a share of resident non-citizens by former citizenship and sex*. Available at https://ec.europa.eu/eurostat/web/products-datasets/-/MIGR_ACQS (exported 21 October 2019).

264 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

265 Ibid.

266 Accordingly, examples from some German provinces have shown that establishing a direct contact with residents entitled to naturalization in the form of a letter inviting them to initiate a naturalization process, has proven successful. See Expert Council for Integration (2015:69).

267 Interview with Dietmar Hudsky and Eva Pfleger, Federal Ministry of the Interior, 1 October 2019.

State-supported platforms²⁶⁸ and religious organizations.²⁶⁹ Yet the assistance here is aimed more generally at advising foreign nationals than specifically providing advice on citizenship matters.

Additionally, a representative of non-governmental organization Helping Hands assumes that individuals already meeting the requirements are in some cases addressed personally to consider acquiring citizenship. Yet the representative is not aware of any programme by authorities to systematically raise awareness of this option.²⁷⁰

7.3 Labour market integration

Austria's plan for citizenship conferral presupposes that individuals become fully integrated, otherwise they will not be granted citizenship. Integration as understood thus usually includes labour market integration.

Statistics nonetheless show a considerably higher risk of unemployment for individuals holding a foreign nationality than for Austrian citizens (2018: 11.3% compared with 6.7%; Expert Council for Integration, 2019:48). At the same time, wage and salary levels differ, with foreign employees earning less on average. Specifically, foreigners working full-time in the private sector earned a 15 per cent lower gross hourly wage than Austrians in 2010 (Hofer et al., 2013:99). Similarly, based on data from 2008, individuals with a migration background run a 400 per cent higher risk of being employed at jobs below their level of training or education (Stadler and Wiedenhofer-Galik, 2011:397). Various studies have identified the factors underlying such disparity to include parents' nationality and country of origin as well as the country where individuals receive their education and training. Based on this research, it has been concluded that discrimination is also a factor accounting for an elevated risk of unemployment and under-skilled employment as well as wage gaps (Gächter, 2014:15–17,46–47; Stadt Wien, 2017:120f; Hofer et al., 2013:98).

268 Beratungszentrum für Migrantinnen und Migranten, available at www.migrant.at/ (accessed 12 September 2019); Migrare, Zentrum für MigrantInnen OÖ, available at <https://migrare.at/> (accessed 12 September 2019).

269 Caritas and the Diakonie deserve being cited as examples, see Caritas, Fremdenrechtsberatung, 2019, available at www.caritas-wien.at/hilfe-angebote/asyl-integration/beratung-fuer-migrantinnen/fremdenrechtsberatung/ (accessed 17 May 2019).

270 Interview with Peter Marhold, Helping Hands, 24 September 2019.

It nonetheless needs to be emphasized that citizenship is no guarantee against discrimination in the labour market. Often people are discriminated against not because of their language or citizenship but due to religious dress (ZARA, 2018:59) or “foreign-sounding” names (Federal Chancellery, 2019:37).

Austrian citizenship can be one of the criteria determining whether individuals can become public employees of the Republic of Austria. Here applicable statutory provisions refer to positions that have as a prerequisite “a special bond with Austria of a kind only to be expected from individuals holding Austrian citizenship”; such positions are to be filled exclusively by individuals actually possessing Austrian citizenship (Art. 42a Public Service Act 1979;²⁷¹ Art. 6c Contractual Public Employee Act 1948).²⁷² Positions of this kind involve tasks relating to sovereign (State) responsibilities or being responsible for general affairs of State (Art. 42a subpara 1 and 2 Public Service Act; Art. 6c subpara 1 and 2 Contractual Public Employee Act 1948), such as serving as a justice or police officer.²⁷³

271 FLG No. 333/1979, in the version of the federal law FLG I No. 58/2019.

272 FLG No. 86/1948, in the version of the federal law FLG I No. 58/2019.

273 Interview with Dietmar Hudsky and Eva Pflieger, Federal Ministry of the Interior, 1 October 2019.

8. CONCLUSIONS

Compared in terms of naturalization rate for foreign nationals, Austria ranked at only twenty-sixth place among the 28 EU Member States in 2017. Raising this naturalization rate does not appear to be a political priority in Austria. This can be seen in the fact that the recent amendment to the Citizenship Act 1985 resulted for the most part in more restrictive requirements to qualify for citizenship and hardly any regulations facilitating acquisition. Moreover, there is currently no systematic encouragement regarding individuals already meeting the naturalization requirements to apply for Austrian citizenship. This means that even individuals already fulfilling the stringent prerequisites set out in the Citizenship Act 1985 in some cases continue to live in Austria without enjoying the rights attached to citizenship. As a result, with reference to the case of political rights, some authors note an emerging dichotomy between the Austrian resident population and the portion of the population eligible to vote. Considering the relatively large number of Austrian residents without Austrian citizenship and thus not eligible to vote, it cannot be ruled out that in future a portion of the resident population will not be involved in political developments and correspondingly not represented in the democratic process. What is more, such individuals will have failed to complete an important step towards becoming fully integrated.

Initial criticism of the citizenship test was apparently the main factor leading to revision of the materials supplied for preparation and of the test questions. In the meantime, it has become less of a topic of debate. This fact, along with the low failure rates on the citizenship test, seem to indicate that learning the tested knowledge poses no great obstacle for those seeking citizenship. In addition to passing the citizenship test to demonstrate their basic knowledge, evidence of a secure means of subsistence is a prerequisite for acquiring citizenship. However, the level of financial means required appears excessively high, especially considering that over 30 per cent of those pursuing gainful dependent employment in Austria would not qualify as earning a secure means of subsistence solely on the basis of their gainful employment. The amounts of funds defined in law as necessary to cover subsistence needs can correspondingly be seen as a barrier to those seeking naturalization. While it is understandable to base requirements on the ideal

case of immigrants with strong financial means, setting a minimum that the Austrian population could also achieve would appear more reasonable. Not only the minimum amount required poses a challenge for individuals seeking citizenship but also the general requirement to have their own fixed and regular income, which is necessary as evidence of a secure means of subsistence. Individuals holding a foreign nationality have a considerably higher risk of unemployment than Austrian citizens. Studies also show that an individual's citizenship as well as their parents' country of birth and the country where they were educated are major factors determining a person's chances for employment. Finally, in connection with financial means, mention needs to be made of the fees associated with acquiring citizenship. Here it is difficult to understand in particular why in the various Austrian provinces varying levels of processing fees are charged for the processing of one and the same type of case. The uniform fees applying at federal level are also comparatively high. Not only because they rank among the costliest fees compared with other types of (fixed) fees specified in the Fee Act 1957 but also when considered at European level, they are much higher than in other countries.

Varying and partially contradictory information is available as to how long procedures for acquiring citizenship actually take. Media reports, on the one hand, claim that such procedures require considerably more time than allowed under law. This has in fact been confirmed by experts with the Federal Ministry of the Interior. This contrasts with statements by the provincial governments, claiming to comply with or not even take full advantage of the statutory periods allowed. Several of the provincial governments, including the Vienna provincial government, report not keeping any related statistics. Yet, based on a report by the Vienna Court of Audit in 2015, the statutory maximum period has in fact been exceeded on past occasions. Due to the absence of any publicly available central records on the duration of citizenship procedures, no conclusive evaluation can therefore be given of the matter. Another circumstance potentially related to the duration of procedures is the current practice of authorities presiding over citizenship procedures to request documents and evidence that applicants already submitted and had verified previously as part of application procedures for a residence permit. Potential apparently exists for expediting procedures, specifically by consulting documents and certificates previously submitted by applicants and verified by authorities.

ANNEXES

A.1 Statistics

Tables presented below constitute the basis of the statistics introduced in Chapter 2.2.

Table A.1: Naturalizations in Austria from 2014–2018, sorted by group of nationalities (in absolute numbers and in percentage of those living in Austria from the same group)

		2014	2015	2016	2017	2018
EU-citizens	absolute	1 227	1 119	1 341	1 614	2 010
	relative	0.24%	0.20%	0.22%	0.25%	0.29%
Third-country nationals	absolute	6 466	7 146	7 285	7 657	7 440
	relative	1.18%	1.24%	1.12%	1.12%	1.06%
Naturalizations (total)	absolute	7 693	8 265	8 626	9 271	9 450
	relative	0.72%	0.72%	0.68%	0.69%	0.68%

Source: Statistics Austria, 2019b, representation by author; Statistics Austria, 2019a, representation by author.

Table A.2: Naturalizations of third-country nationals in Austria from 2014–2018, sorted by sex

	2014			2015			2016			2017			2018		
	F	M	Total	F	M	Total	F	M	Total	F	M	Total	F	M	Total
absolute	3 385	3 081	6 466	3 797	3 349	7 146	3 852	3 433	7 285	3 907	3 750	7 657	3 890	3 550	7 440
relative	52%	48%	100%	53%	47%	100%	53%	47%	100%	51%	49%	100%	52%	48%	100%

Source: Statistik Austria, 2019a, representation by author.

Table A.3: Naturalization of EU-citizens in Austria from 2014–2018, sorted by sex

	2014			2015			2016			2017			2018		
	F	M	Total	F	M	Total	F	M	Total	F	M	Total	F	M	Total
absolute	753	474	1 227	696	423	1 119	822	519	1 341	991	623	1 614	1 239	771	2 010
relative	61%	39%	100%	62%	38%	100%	61%	39%	100%	61%	39%	100%	62%	38%	100%

Source: Statistics Austria, 2019a, representation by author.

Table A.4: Naturalizations of third-country nationals in Austria from 2014–2018, sorted by relevant age group

		0–19 years old	20–64 years old	65+ years old	Total
2014	absolute	2 746	3 691	29	6 466
	relative	42%	57%	0%	100%
2015	absolute	2 853	4 232	61	7 146
	relative	40%	59%	1%	100%
2016	absolute	2 872	4 373	40	7 285
	relative	39%	60%	1%	100%
2017	absolute	3 051	4 574	32	7 657
	relative	40%	60%	0%	100%
2018	absolute	2 764	4 616	60	7 440
	relative	37%	62%	1%	100%

Source: Statistics Austria, 2019a, representation by author.

Table A.5: Naturalizations of EU-citizens in Austria from 2014–2018, sorted by relevant age group

		0–19 years old	20–64 years old	65+ years old	Total
2014	absolute	481	725	21	1 227
	relative	39%	59%	2%	100%
2015	absolute	495	608	16	1 119
	relative	44%	54%	1%	100%
2016	absolute	561	756	24	1 341
	relative	42%	56%	2%	100%
2017	absolute	627	962	25	1 614
	relative	39%	60%	2%	100%
2018	absolute	747	1 235	28	2 010
	relative	37%	61%	1%	100%

Source: Statistics Austria, 2019a, representation by author.

Table A.6: Naturalizations of third-country nationals in Austria from 2014–2018, sorted by age group

	≤ 4 years old	5–9 years old	10–14 years old	15–19 years old	20–24 years old	25–29 years old	30–34 years old	35–39 years old	40–44 years old	45–49 years old	50–54 years old	55–59 years old	60–64 years old	65–69 years old	70–74 years old	75–79 years old	80–84 years old	85–89 years old	90–94 years old	≥ 95 years old	Total	
2014	absolute	836	652	619	639	492	541	851	818	474	306	120	59	30	10	10	3	1	3	2	0	6 466
	relative	13%	10%	10%	10%	8%	8%	13%	13%	7%	5%	2%	1%	0%	0%	0%	0%	0%	0%	0%	0%	100%
2015	absolute	819	726	624	684	530	555	956	958	642	290	176	83	42	24	14	4	4	0	1	7 146	
	relative	11%	10%	9%	10%	7%	8%	13%	13%	9%	4%	2%	1%	1%	0%	0%	0%	0%	0%	0%	0%	100%
2016	absolute	823	728	588	733	581	585	932	1 003	630	347	181	70	44	21	15	0	3	1	0	0	7 285
	relative	11%	10%	8%	10%	8%	8%	13%	14%	9%	5%	2%	1%	1%	0%	0%	0%	0%	0%	0%	0%	100%
2017	absolute	866	845	678	662	554	604	947	1 073	724	348	184	106	34	13	10	5	1	2	1	0	7 657
	relative	11%	11%	9%	9%	7%	8%	12%	14%	9%	5%	2%	1%	0%	0%	0%	0%	0%	0%	0%	0%	100%
2018	absolute	754	683	630	697	625	636	878	1 075	715	353	193	92	49	28	16	8	4	2	1	1	7 440
	relative	10%	9%	8%	9%	8%	9%	12%	14%	10%	5%	3%	1%	1%	0%	0%	0%	0%	0%	0%	0%	100%

Source: Statistics Austria, 2019a, representation by author.

Table A.7: Naturalizations of EU-citizens in Austria from 2014–2018, sorted by age group

	≤ 4 years old	5–9 years old	10–14 years old	15–19 years old	20–24 years old	25–29 years old	30–34 years old	35–39 years old	40–44 years old	45–49 years old	50–54 years old	55–59 years old	60–64 years old	65–69 years old	70–74 years old	75–79 years old	80–84 years old	85–89 years old	90–94 years old	≥ 95 years old	Total
2014	absolute	183	118	84	96	49	65	155	174	129	69	39	27	18	7	6	3	1	1	0	1 227
	relative	15%	10%	7%	8%	4%	5%	13%	14%	11%	6%	3%	2%	1%	1%	0%	0%	0%	0%	0%	100%
2015	absolute	161	121	109	104	44	41	113	164	115	59	31	27	14	7	5	3	0	1	0	1 119
	relative	14%	11%	10%	9%	4%	4%	10%	15%	10%	5%	3%	2%	1%	1%	0%	0%	0%	0%	0%	100%
2016	absolute	131	172	140	118	42	53	120	182	156	96	61	33	13	10	6	3	4	1	0	1 341
	relative	10%	13%	10%	9%	3%	4%	9%	14%	12%	7%	5%	2%	1%	1%	0%	0%	0%	0%	0%	100%
2017	absolute	131	207	167	122	51	72	116	251	211	129	75	33	24	11	2	9	1	0	2	1 614
	relative	8%	13%	10%	8%	3%	4%	7%	16%	13%	8%	5%	2%	1%	1%	0%	0%	0%	0%	0%	100%
2018	absolute	150	251	199	147	75	74	167	303	243	172	118	59	24	16	5	4	2	1	0	2 010
	relative	7%	12%	10%	7%	4%	4%	8%	15%	12%	9%	6%	3%	1%	1%	0%	0%	0%	0%	0%	100%

Source: Statistics Austria, 2019a, representation by author.

Table A.8: Granting of citizenship in Austria from 2014–2018, sorted by type of award

Type of award		2014	2015	2016	2017	2018
Discretion	absolute	1 230	1 345	1 306	1 225	1 182
	relative	16%	16%	15%	13%	13%
Entitlement	absolute	6 376	6 912	7 316	8 041	8 264
	relative	84%	84%	85%	87%	87%
Total	absolute	7 606	8 257	8 622	9 266	9 446
	relative	100%	100%	100%	100%	100%

Source: Statistics Austria, 2019a, representation by author.

Table A.9: Naturalizations in Austria from 2014–2018, sorted by legal basis (Citizenship Act 1985)

Legal basis according to the Citizenship Act 1985	2014	2015	2016	2017	2018
Granting	7 606	8 257	8 622	9 266	9 446
<i>of which: discretion</i>	<i>1 230</i>	<i>1 345</i>	<i>1 306</i>	<i>1 225</i>	<i>1 182</i>
Art. 10 para 1 (10-year residency)	1 153	1 292	1 244	1 179	1 138
Art. 10 para 4 subpara 1 (recovery)	23	26	34	24	34
Art. 10 para 4 in conjunction with para 5 (min. 4-year residency and born in Austria)	0	0	0	1	0
Art. 10 para 4 subpara 2 (former Austrians persecuted before 1945 and stateless persons)	0	1	0	0	0
Art. 10 para 6 (exceptional issuance in the interest of the State)	54	26	28	21	10
<i>Of which: entitlement</i>	<i>6 376</i>	<i>6 912</i>	<i>7 316</i>	<i>8 041</i>	<i>8 264</i>
Art. 11a (marriage with an Austrian)	829	860	781	800	735
Art. 11a para 4 subpara 1 (six-year residence and asylee)	599	559	676	734	661
Art. 11a para 4 subpara 2 (six-year residence and EEA nationality)	598	543	688	888	1 101
Art. 11a para 4 subpara 3 (six-year residency and born in Austria)	715	729	756	787	949
Art. 11a para 4 subpara 4 (six-year residency and exceptional contribution in the interest of the State)	6	5	5	2	1
Art. 11a para 6 (six-year residence and German proficiency and durable integration)	301	725	882	1 084	1 325

Legal basis according to the Citizenship Act 1985	2014	2015	2016	2017	2018
Art. 11a para 7 (ten-year residence and entitled to asylum)	n/a	n/a	n/a	n/a	1
Art. 11b (adopted children under 14)	85	74	68	83	57
Art. 12 para 1 subpara 1 (a) (30-year residency)	29	35	35	27	31
Art. 12 para 1 subpara 1 (b) (15-year residency and durable integration)	347	351	353	320	331
Art. 12 para 1 subpara 2 (recovery after one-year residency)	2	n/a	n/a	n/a	n/a
Art. 12 para 1 subpara 2 (recovery upon coming of age)	0	0	0	0	0
Art. 12 para 1 subpara 3 (impossibility of extension)	306	302	241	301	217
Art. 12 para 2 (extramarital children under 14)	364	359	293	281	250
Art. 13 (recovery after dissolution of marriage)	0	1	0	0	0
Art. 14 (birth of a stateless person in Austria)	0	0	0	0	0
Art. 16 (extension of the issuance to a married partner)	248	261	278	341	321
Art. 17 para 1 subpara 1 (extension to the marital underaged child)	262	238	122	134	87
Art. 17 para 1 subpara 1 (extension to the underaged child of the mother)	805	829	1 040	942	1 099
Art. 17 para 1 subpara 2 (extension to the underaged child of the father)	878	1 031	1 091	1 314	1 076
Art. 17 para 1a (extension to underaged adopted children)	0	3	0	1	0
Art. 17 para 1 subpara 4 (extension to adopted children)	0	1	n/a	n/a	n/a
Art. 17 para 2 (extension to the extramarital grandchildren in maternal line)	0	0	0	0	0
Art. 17 para 3 (extension to adult disabled children)	0	3	2	1	2
Art. 25 subpara 1 (15-year residency and if not granted according to Art. 17 para 1)	2	2	5	1	13
Art. 25 subpara 2 (15-year residency and if not granted according to Art. 12 subpara 3)	0	1	0	0	7
Notification	87	8	4	5	4
Art. 57 (retroactive citizenship for putative Austrians)	3	4	3	4	3
Art. 58c (recovery after loss on political grounds)	3	4	1	1	1
Art. 64a para 18 (transitory provisions for underaged children born before 01.09.1983)	79	n/a	n/a	n/a	n/a
Art. 64a para 19 (transitory provisions for putative Austrians)	2	n/a	n/a	n/a	n/a
Total	7 693	8 265	8 626	9 271	9 450

Note: Art. 59 Citizenship Act 1985, which also falls under “notification”, is not included in the STATcube database of Statistics Austria.

Source: Statistics Austria, 2019a, representation by author.

A.2 List of translations and abbreviations

English term	English abbreviation	German term	German abbreviation
Aliens law	–	Fremdenrecht	–
Austrian Integration Fund	–	Österreichischer Integrationsfonds	ÖIF
Citizenship Act 1985	–	Staatsbürgerschaftsgesetz 1985	StbG
European Migration Network	EMN	Europäisches Migrationsnetzwerk	EMN
Federal Constitutional Act	–	Bundes-Verfassungsgesetz	B-VG
Federal Law Gazette	FLG	Bundesgesetzblatt	BGBL
Federal Ministry of the Interior	MoI	Bundesministerium für Inneres	BMI
Federal Office for Immigration and Asylum	–	Bundesamt für Fremdenwesen und Asyl	BFA
Fees Act 1957	–	Gebührengesetz 1957	GebG
General Administrative Procedures Act 1991	–	Allgemeines Verwaltungsverfahrensgesetz 1991	AVG
International Organization for Migration	IOM	Internationale Organisation für Migration	IOM
Provincial Law Gazette	PLG	Landesgesetzblatt	LGBl.
Settlement and Residence Act	–	Niederlassungs- und Aufenthaltsgesetz	NAG
Supreme Administrative Court	–	Verwaltungsgerichtshof	VwGH
third-country nationals	–	Drittstaatsangehörige	–

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