# AUSTRIAN CITIZENSHIP LAW

## Will Austria Take the Leap From the Pre-democratic Roots of the Austro-Hungarian Monarchy to the 21st Century in Europe?

**ABSTRACT**

Austrian citizenship law was vaguely codified for the first time following the establishment of a separate Austrian Empire 1804 and the impact of the "Code Napoleon." This article shows that the accumulation of dispersed countries in the Middle Ages by the Habsburg dukes still plays a hidden role in the current law. Since joining the European Union in 1995, Austrian citizens are evolving from a partly German identity to a modern European/Austrian one and a "dual/triple identity" for immigrants.

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A closer look at Austrian citizenship law reveals that although the division into a provincial citizenship (the citizenship of one of Austria's federal provinces as they have emerged from the Middle Ages onwards) and a national citizenship (as laid down in Austria's current citizenship law in article 6 of the *Federal Constitutional Act*[1]) was suspended in 1945, the origin of the current law is still visible today. Although pursuant to article 11 of the Federal Constitution, the legislative power lies with the Federation, the execution of the *Citizenship Act* falls within the purview of the federal provinces, and hence of the provincial governments.

Figuratively speaking, the acquisition of provincial citizenship automatically includes the acquisition of Austrian citizenship, although a separate provincial citizenship no longer exists in Austria's citizenship law. The last traces of this notion can be found in the citizenship test, which explicitly examines the applicant's knowledge about the federal province that is granting citizenship.

### A brief historic overview

The development of citizenship law in Austria is more complicated than in other European countries. Historically, and as far as citizenship is concerned, the term "Austrian" referred to, on the one hand, individuals as subjects of the house of Habsburg, independent of the native language spoken in the relevant territory, and on the other, to inhabitants of the German-speaking areas of the monarchy, on the other.

From 976 onwards, these German-speaking regions had been successively added to the sovereign territory as independent conglomerates of the Roman-German Empire. This gave rise to the strange situation where Tyrol, for example, became a part of Austria in 1363, while it was not before 1805 that Salzburg was integrated into the Austrian Empire, which had been established the year before.

At this time, Mozart had already been dead for 14 years. In accordance with the aforementioned, Wolfgang Amadeus Mozart, whose real name, by the way, was Johannes Chrysostomus Wolfgangus Theophilus Mozart, was, polemically speaking, the subject of an Archbishop and hence a subject of the Roman-German Empire.

The Federal Province of Burgenland had for centuries been a part of Hungary and only in 1921 did it become a province of Austria, while the inhabitants of South Tyrol became Italians after 555 years of being citizens of Tyrol/Austria. This complex and extremely inhomogeneous accumulation of countries, provinces and territories throughout the ruling Habsburg dynasty is also reflected in the development of the population's civic consciousness over the centuries.

A genuine departure from the German Empire in its medieval conception as a successor of the *Imperium Romanum* was effected only by the establishment of a separate Austrian Empire in 1804, and as far as the population's concept of citizenship was concerned, probably as late as after World War II.

This consciousness as well as the complexity of the Habsburg Empire's state structure are reflected in the history of codified citizenship law. Despite the introduction of the *Austrian Civil Code* on January 1, 1812 further to the Napoleonic Wars, there was increased legal uncertainty among the competent authorities regarding the questions of who was or might become a citizen by law and which requirements had to be met.

Due to a lack of existing or, in many parts of the country, inappropriately published provisions, naturalization procedures were subject to unrestricted arbitrariness. An attempt at harmonizing the standards was undertaken in 1849 and 1863 with the right-of-domicile rule. From then on, citizenship could only be held by persons who had acquired the right of domicile in one municipality.

Since such acquisition was often tied to financial requirements, a large proletariat without any citizenship rights emerged in the German-speaking parts of the monarchy in the wake of industrialization. Only in 1867 did the introduction of the *Austrian Basic Law*, which today still forms part of the Constitution of the Republic of Austria, bring positive changes to the situation of immigrants. From that point onwards, everyone who was a citizen of one of the Habsburg monarchy's crown countries became an Austrian national.

Unlike the citizenship laws of numerous modern European countries, the *Austrian Basic Law* of 1867 granted all subjects the inviolable right to protect and maintain their nationality and language. This led to the establishment of official minority rights, but also to a certain measure of linguistic fairness for members of non-dominating nations. This is still reflected today in the minority rights of the modern Republic of Austria and in the recognition of particular ethnic groups.

### The current access to citizenship

The Republic of Austria's current position on this issue is very aptly described by the General Explanatory Notes to the Amendment of the 1998 *Austrian Citizenship Act* (*Federal Law Gazette* I, 1998: 124), effective January 1, 1999, which is quoted below (all emphases are the author's):

> The granting of Austrian citizenship is the last step in the successful integration of foreign nationals in Austria. This principle is to be accounted for by the present Amendment of the *Austrian Citizenship Act* to the extent that the time periods for the award of Austrian citizenship will generally remain unchanged, but may be shortened under particularly eligible – integration-relevant or integration-friendly – conditions; eligible persons include for example minor children, persons entitled to asylum, EEA citizens (four years of residence in Austria) or foreign nationals who furnish evidence of sustainable personal and professional integration (six years of residence in Austria). The length of the waiting period for the award of the Austrian citizenship by virtue of legal title will remain 30 years. However, foreign nationals who furnish evidence of sustainable personal and professional integration will also receive preferential treatment in this respect. They will already acquire the legal title to citizenship after 15 years. Any granting (or extension of the granting) of citizenship will depend on the candidate's command of German in accordance with his/her personal circumstances, in order to ensure the candidate's successful integration. Minor children aged 14 years and older will be able in most cases to apply for the granting of Austrian citizenship themselves. In the event that their legal representative does not consent, such consent may be provided by the guardianship court. Other foreign nationals who are not of full legal age and capacity are, as hitherto, granted a right to consent, which can also be exercised by the guardianship court. Furthermore, the Act provides that citizenship will be bestowed without waiting period to politically persecuted "Old Austrians,"[2] who were nationals of a successor state of the Austro-Hungarian monarchy and were legally resident in Austria before 1938.

### Changes to legislation in 2006

On March 23, 2006, another fundamental amendment to the *Austrian Citizenship Act* entered into force, the details of which are discussed in greater depth below. This change has led to a severe drop in naturalization numbers (Table 1). During the legally required consideration procedure, the Federal Province of Vienna and other federal provinces proposed numerous changes to the Act that were designed to facilitate the acquisition of citizenship, but in the end failed to assert their proposals, so that the Act was adopted by the Austrian National Assembly in its original form.

**Table 1**
**Naturalization trends in Austria and Vienna, 1946-2007**

| Number of persons who were naturalized | | |
|---|---|---|
| **Year** | **Austria** | **Vienna** |
| **1946** | 82,161 | 28,409 |
| **1989** | 8,470 | 4,580 |
| **2003** | 45,112 | 18,085 |
| **2004** | 42,174 | 16,345 |
| **2005** | 35,417 | 12,240 |
| **2006** | 26,259 | 8,654 |
| **2007** | 14,041 | 5,200 |

Source: Municipal Department 35, Vienna.

### What are the major requirements for the acquisition of Austrian citizenship?

#### Length of stay

With only a few exceptions, the acquisition of Austrian citizenship requires ten years of legal stay in Austria, including five years of legal residence. Facilitations are provided for spouses (six years of stay and five years of marriage) and minor children (immediately when citizenship is granted to one parent).

The difference between "legal residence" and "legal stay" lies in the fact that "legally resident persons" are granted a permanent residence permit (although it has to be annually re-confirmed), while "persons legally staying in Austria" are entitled to stay for a limited period of time, without the intention of permanent immigration.

In practice this means that students, artists and researchers hardly have a realistic chance of being granted Austrian citizenship. Excepted from this regulation are recognized refugees, EEA citizens, persons born in Austria and persons with outstanding achievements in the fields of science, arts or sports.

### Income

Posing another obstacle are the more stringent provisions concerning proof of secure means of subsistence, which has to be furnished for the 36 months immediately preceding the date of application and has to prove a particular income level. The receipt of social assistance constitutes an impediment to naturalization, even if such assistance was only received for a short period of time or only consisted of small amounts. The calculation of income is based on the rather complicated rules of the *Austrian General Social Insurance Act*, so that, in simplified terms, the required minimum monthly income for single persons can be assumed to amount to 747 euros, the minimum income for spouses, to 1,120 euros. Furthermore, an additional 78.29 euros is required for every child in the family.

### Language

A third important requirement for the acquisition of Austrian citizenship is knowledge of the German language in accordance with level A2 of the European Reference Framework. Exceptions to this rule may be made in the event of old age or a permanently poor state of health and for persons without legal capacity (persons under curatorship) or applicants who are not yet subject to compulsory schooling or attending elementary school. Needless to say, an exception is also made if the applicant provides proof that German is his/her native language. Students of higher secondary schools have to provide proof of a positive assessment of their German language studies.

### Knowledge of history

Another new element of the 2006 amendment is the so-called citizenship test. In this respect, Austrian citizenship law followed an international trend and introduced similar requirements. Applicants have to prove basic knowledge of Austria's democratic structure and the history of Austria and the relevant federal province in a written exam. Exceptions to this regulation are nearly identical to those applied to the proof of the applicant's knowledge of German.

## Can citizenship be renounced or revoked?

Although a few citizens – particularly artists – sometimes announce their intention to renounce their Austrian citizenship as a sign of political protest, legislation ensures that such renunciation is not possible without the simultaneous acquisition of another citizenship. Indeed, the acquisition of another citizenship automatically (by law) entails the loss of Austrian citizenship. However, the principle of avoiding a situation of statelessness is suspended in the event of a person joining another country's military service, as this entails the automatic loss of Austrian citizenship but does not necessarily involve the acquisition of another citizenship. Dual citizenship is usually not an option, but may be granted in exceptional cases and in the event of special circumstances.

## Identity and citizenship

The Austrian citizenship law, as mentioned earlier, was codified for the first time at the beginning of the 19th century; its key features always aimed at preventing dual citizenships although at different times this has been seen in more pragmatic terms. A discussion of this issue was sparked every now and then in Austria, both in the monarchy and in the interwar years, but it resulted only in a few, though important, softenings of this principle. It was not before 1983, for example, that the legal entity of women was put on an equal footing with that of men. Since then, children born in wedlock have been able to acquire their mother's citizenship by virtue of descent and hence are given (easier) access to dual citizenship. Austria could not bring itself to adopt a regulation similar to the one introduced by Germany's social-democratic government under Chancellor Gerhard Schröder in 2000, which provides for dual citizenship for children until the age of 18. Experiences in this field, including those of other countries, have shown that similar and also further-reaching regulations than that introduced by Germany would accommodate a modern understanding of plural "identities" instead of a single "identity" without affecting the feared-for loss in loyalty to the new country. Immigrants from the European Union, in particular, increasingly seem to attach greater importance to a *triple identity* (country of origin, country of immigration *and* EU citizen), despite the lack of large-scale studies on this issue. On the occasion of the 2008 UEFA EURO Football Championship, dual identities were easily detected everywhere in Austria, when immigrants with Austrian citizenship alternatively supported the football team of their original home country and that of their new home country, namely Austria.

### References


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### Notes

[1] Upon publication of the *State Law Gazette* 1945/16 of the provisional Austrian government, the legal provisions on German citizenship introduced by the German Reich were revoked on April 27, 1945. Shortly afterwards the new *Citizenship Act* was passed.

[2] The term "Old Austrians" refers to German-speaking residents of the crown countries of the Austro-Hungarian monarchy.