1 Austria

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1.1 Introduction

The acquisition and loss of Austrian nationality are regulated by the Federal Law on Austrian Nationality 1985,[1] which was last amended in 2005; the new provisions came into force in March 2006.[2] Because the period of investigation of this book ends with mid 2005, this chapter primarily covers the legal status after the amendment to the nationality law in 1998, which came into force in January 1999.[3] Nevertheless, the conclusions contain a summary of the current legal status as of March 2006. The Nationality Law of 1985 is based on five principles (Mussger, Fessler, Szymanski & Keller 2001: 26ff). First, according to the principle of ius sanguinis, a child born in wedlock acquires Austrian nationality by birth if one of the parents is an Austrian national. According to the same principle, children born abroad to Austrian expatriates acquire Austrian nationality by birth. Second, the Nationality Law of 1985 contains certain provisions to avoid statelessness. The third principle characteristic of the Austrian Nationality Law is the ban on multiple nationality. The fourth principle of individual autonomy provides for equality between men and women. Finally, the law contains several provisions to ensure that members of a family share the same nationality. Although these principles have been characteristic of the Austrian nationality legislation for many decades, the priority attached to the different principles has changed over time. In particular, the principle that members of a family should have a common nationality has become less important, because of legislative reforms to achieve gender equality with respect to the acquisition and loss of Austrian nationality (Mussger et al. 2001: 28).

Since the introduction of legal provisions concerning Austrian nationality in the nineteenth century, the principle of ius sanguinis has been predominant in Austrian nationality legislation. Although Austria has been transformed from an emigration country to an immigration country over the last decades, Austrian Nationality Law still does not contain provisions based on the principle of ius soli. Thus, birth in Austria does neither entail automatic acquisition of the Austrian na-

tionality nor does it constitute a legal entitlement to naturalisation for the children of immigrants during minority or upon reaching majority.

The main modes of acquisition *after birth* are discretionary naturalisation and legal entitlement to be granted Austrian nationality. Naturalisation by discretion requires at least ten years of residence, the absence of criminal convictions, sufficient income, sufficient knowledge of German (since 1999), an affirmative attitude toward the Republic and renunciation of the original nationality. The requirement of ten years of residence may be reduced to four or six years for 'special reasons'. This applies to recognised refugees, minor children and EEA-nationals, who may acquire Austrian nationality after four years of residence; persons born in Austria, persons who can prove their 'sustainable integration', persons who are former nationals and persons recognised for special achievements may be naturalised after six years of residence. Different groups of foreign nationals who enjoy legal entitlement to the acquisition of Austrian nationality include, among others, (1) spouses and children of Austrian nationals, (2) spouses and children of applicants for naturalisation who will be granted Austrian nationality (extension of naturalisation), (3) long-term residents, i.e., persons who have been resident in Austria for fifteen years and can prove their sustainable integration and (4) persons who have been resident in Austria for 30 years or (5) stateless persons.[4]

According to art. 11 (1) of the Constitution, nationality legislation is a federal matter, whereas the execution of the law is a matter of the nine federal provinces. The government of the respective federal province is the highest executive authority. As there are no official guidelines concerning the implementation of legal provisions, the authorities have a wide margin of interpretation in discretionary naturalisation, and decisions on matters of nationality are frequently subject to judicial review by the Administrative Courts. The administration of nationality legislation by the federal provinces was a major source of anomalies in the past, especially with respect to naturalisations after at least four years and less than ten years of residence for 'special reasons'. The law did not lay down the special reasons justifying the reduction of the residence requirement of ten years until the reform of 1998. The province of Vienna made use of this clause from the late 1980s until the mid-1990s in order to facilitate the naturalisation of immigrants and of their family members. At the same time, profound changes in the legal framework regulating the entry, residence and employment of foreign nationals made the option of naturalisation for many immigrants increasingly attractive. While during the 1980s between 8,000 and 10,000 persons were naturalised annually, in the following years the number of naturalisations increased steadily.

Until the mid-1990s the amendment of the Nationality Law was not on the political agenda. Since then the continuous growth of the number of persons granted Austrian nationality has met with resistance from the right-wing Freedoms Party (FPÖ) and the Christian Democratic People's Party (ÖVP), the then coalition partner of the Social Democrats (SPÖ). Between 1996 and 1998, the amendment of nationality legislation became a hotly debated issue. While the FPÖ and the ÖVP insisted on the introduction of further assimilation or integration requirements, the Green Party and the Liberal Party (LIF) proposed the reduction of the general residence requirement to five years, the introduction of the principle of 'double' ius soli, i.e., acquisition at birth in the territory if one parent was also born in the territory, and toleration of dual nationality.

In 1998, the two governing parties SPÖ and ÖVP reached agreement on amending the conditions for facilitated naturalisation. Except for former Austrian nationals, recognised refugees and EEA-nationals, this mode of acquisition was made dependent on at least six years of residence and proof of the applicant's 'sustainable integration'. Acquisition of Austrian nationality by discretionary naturalisation or by legal entitlement was made conditional upon sufficient knowledge of the German language. The official aim of the reform of 1998 was to 'harmonise' the administration of the nationality legislation across the country and to restrict the possibility of facilitated naturalisation.

The statistical developments since the entry into force of the new provisions in January 1999 show, however, that the restrictions did not have an impact on the total number of naturalisations. Contrary to the government's expectation that the reform of 1998 would lead to a decrease in the number of naturalisations, roughly 25,000 persons acquired Austrian nationality in 1999. In 2003 and 2004, more than 40,000 persons were granted Austrian nationality. There are two major factors that explain the surge in naturalisations since the mid-1990s. First, Turkish nationals, who represent one of the major immigrant groups in Austria, do not suffer serious disadvantages anymore when they renounce their Turkish nationality. Accordingly, the naturalisation of immigrants with Turkish nationality has been increasing significantly over the last decade. Second, more and more immigrants become eligible to apply for naturalisation after at least ten years of residence.

In September 2005, the Ministry of the interior proposed a bill in order to further restrict access to Austrian nationality. The ministerial draft bill gave rise to manifold criticism by legal scholars, the bar association, the UNHCR and other stakeholders. Upon revision of some of the contested provisions, the Council of Ministers of the governing coalition parties BZÖ[5] and ÖVP approved the governmental draft bill on

15 November 2005. The proposed amendment of the Nationality Law of 1985 will be discussed in the concluding section of this contribution.

1.2 Historical development

1.2.1 Developments 1811-1945

Legal provisions concerning the acquisition and loss of Austrian nationality were introduced in the early nineteenth century and remained effective in the Austrian part of the Habsburg Empire until the end of the First World War. According to § 28 of the Civil Code of 1811, acquisition of Austrian nationality by birth was based on the principle of ius sanguinis. Children born in wedlock acquired Austrian nationality if the father was an Austrian national; children born out of wedlock became Austrian nationals irrespective of the nationality of the father or the child's place of birth if the mother held Austrian nationality (Goldemund, Ringhofer & Theuer 1969: 473f). Children born out of wedlock to an Austrian father became Austrian nationals upon legitimation. Another automatic mode of acquisition concerned foreign women who acquired their husband's Austrian nationality upon marriage. Foreigners without familial ties to Austrian nationals became Austrian nationals *ipso iure* either upon entry into the civil service or after ten years of uninterrupted residence. As the automatic naturalisation of foreign nationals after ten years of residence gave rise to diplomatic disputes, this provision was amended in 1833 to allow for discretionary naturalisation by application (Heinl 1950: 33). Finally, foreign nationals could be naturalised by application if they could prove 'good manners' and sufficient income; a certain period of residence in the country prior to application was not required, but in this case naturalisation was ultimately an act of 'grace' (Thienel 1989: 41).

The relevant legal source concerning the loss of Austrian nationality was the *Auswanderungspatent* 1832 (Emigration Law). Emigration of Austrian nationals was subject to authorisation. Austrian nationals who intended to live abroad permanently had to apply for release from Austrian nationality prior to emigration in order not to incur a penalty. According to § 9 of the Emigration Law, the loss of the status as an Austrian 'subject' became effective after departure from Austria. Austrian nationals were granted the right to leave the country without prior authorisation in 1867, but emigration continued to provide a ground for loss of nationality (Brandl 1996: 62). The Emigration Law was not only relevant for Austrian nationals who went abroad, but also with respect to the nationality status of women. According to § 19 of the Emi-

gration Law Austrian women lost their status as 'female subjects' upon marriage to a foreigner (Goldemund et al. 1969: 474).

Although Austrian nationality granted unlimited access to civil rights, the right to unconditional residence and public assistance for the poor was dependent on having the so-called *Heimatrecht*, i.e., the right of abode in a municipality. Austrian nationals living in a municipality where they did not enjoy the *Heimatrecht* were liable to deportation if they became a public burden. The right to unconditional residence and public assistance was acquired either automatically by descent, marriage, practising of certain professions or by legal entitlement after ten years of residence in the respective municipality. The naturalisation of foreigners was, among other things, dependent on a municipality's willingness to grant a foreigner *Heimatrecht*.

After the end of First World War and the collapse of the Austro-Hungarian monarchy in 1918, the *Heimatrecht* was decisive for the reassignment of former nationals to one of the successor states. According to the Treaty of Saint-Germain-en-Laye, which came into force in July 1920, the acquisition of Austrian nationality was conditional upon having *Heimatrecht* in a municipality within the new borders of the Republic of *Deutsch-Österreich* and not holding the nationality of another state (Brandl 1996: 63; Bauböck & Çinar 2001).[6]

The new Constitution of 1920 introduced two important elements in matters of nationality. First, legislation concerning the acquisition and loss of nationality was declared a matter of the federal state (*Bund)* and administration of the legal provisions one of the federal provinces *(Länder*) (Brandl 1996: 65). Second, a separate provincial citizenship (*Landesbürgerschaft)* was created for each of the nine Austrian federal provinces. According to the Nationality Law of 1925, acquisition of Austrian nationality was henceforth conditional upon holding or acquiring the citizenship of a federal province. Persons who were Austrian nationals and had *Heimatrecht* in a municipality were declared citizens of the respective federal province (*Landesbürger*). Children of Austrian nationals acquired provincial citizenship and Austrian nationality according to the principle of ius sanguinis. Foreigners could already acquire provincial citizenship after four years of residence in Austria (de Groot 1989: 150), if they could prove that a municipality would grant them *Heimatrecht* and if they gave up their previous citizenship. Other modes of acquisition of the provincial citizenship and the Austrian nationality concerned the automatic acquisition of nationality by professors upon taking office at an Austrian university, by a foreign woman who married an Austrian national and by the children of foreign nationals who obtained the Austrian nationality. However, after 1933, the naturalisation of foreigners was possible only in individual cases if

granting Austrian nationality served the interests of the government (Goldemund et al. 1969: 409).

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

1.2.2 Developments 1945-1985

After the reestablishment of Austria as an independent state, the German Nationality Law of 1913 was abrogated in April 1945. A few months later, the Law on the Transition to Austrian Nationality (*Staatsbürgerschaftsüberleitungsgesetz*) and the Nationality Law of 1945 came into force. All persons who held Austrian nationality on 13 March 1938 or would have acquired it until 1945 on the basis of the Nationality Law of 1925 were declared Austrian nationals. However, persons who were considered to have fulfilled a condition that would have entailed the loss of Austrian nationality between 1938 and 1945 were excluded. According to § 7 of the Nationality Law of 1925, persons who acquired a foreign nationality as well as women marrying foreign nationals lost Austrian nationality. Thus the Austrian nationality of persons who had to leave the country during the Nazi regime was restored automatically only if they did not hold another nationality (Burger & Wendelin 2004: 2). Persons who had acquired a foreign nationality could regain Austrian nationality by declaration until July 1950 if they could prove that they had had their habitual residence in Austria since January 1919.[7] In this case, applicants did not have to renounce a foreign nationality acquired abroad.

The Nationality Law of 1945 was based on the Nationality Law of 1925, but provincial citizenship and *Heimatrecht* were not reintroduced. Due to numerous amendments of the transitional provisions between 1945 and 1949 the Nationality Law of 1945 was republished in 1949. Although the Nationality Law of 1949 was basically in line with the legal provisions in force since 1925, the law also contained some changes. First, according to § 9 of the Nationality Law of 1949, women who acquired a foreign nationality automatically upon marriage could henceforth apply for permission to retain their Austrian nationality. Second, naturalisation of foreign nationals was made more difficult and different waiting periods were introduced. § 5 of the Nationality Law of 1949 provided that foreign nationals could acquire Austrian nationality after four years of residence only if the naturalisation of the applicant would benefit the interest of the federal state. After ten years of residence naturalisation by discretion was possible if the applicant

fulfilled the general conditions. Foreign nationals who had resided in Austria for 30 years and fulfilled the general conditions had a legal entitlement to naturalisation. This latter provision was a reformulation of the legal entitlement to naturalisation of persons who could prove to have had their habitual residence in Austria since January 1919 (Heinl 1950: 125). The general conditions to be fulfilled were, among other things, the renunciation of the previous nationality, absence of a relationship with the home country that could damage the interests of Austria and absence of a criminal record. These different waiting periods introduced in 1949 are still part of the current law that regulates the naturalisation of foreign nationals.

Between 1945 and 1950 roughly one million 'displaced persons' from Eastern Europe and the former Soviet Union, among them more than 300,000 so-called *Volksdeutsche* (ethnic Germans), had become stranded in Austria (Fassmann & Münz 1995: 34). While many displaced persons stayed in Austria temporarily, about 530,000 settled permanently. Between 1954 and 1956, displaced persons of German descent who were either stateless or whose nationality status was unclear were granted the right to acquire Austrian nationality by declaration.[8] Until 1958, roughly 230,000 *Volksdeutsche* acquired Austrian nationality. In contrast, displaced persons who were not ethnic Germans had to apply for discretionary naturalisation (Stieber 1995: 149).

During the first half of the 1960s reform, discussions concentrated on domestic as well as international issues in nationality matters, namely the need for a register of Austrian nationals (*Staatsbürgerschaftsevidenz*) and the adoption of the UN Convention on the Status of Married Women, the UN Convention on the Reduction of Statelessness, and the Convention of the Council of Europe on the Reduction of Multiple Nationality (Thienel 1989: 95). A new nationality law was passed in 1965, which came into force in July 1966.[9] Again, the Nationality Law of 1965 maintained on the one hand the basic principles of nationality legislation as it had developed since 1925, on the other hand several changes were introduced in order to eliminate the discrimination of women in matters of nationality. The most important changes in this respect were:

- Children born in wedlock could acquire the Austrian nationality of their mother if they would otherwise be stateless (§ 7).
- Automatic loss of Austrian nationality by marriage to a foreign national was abolished (§ 26).
- Automatic acquisition of nationality by marriage to an Austrian national was transformed into a right to naturalisation by declaration (§ 9).
- Automatic granting of nationality to a foreign woman whose husband acquired the Austrian nationality was transformed into a legal

entitlement to the extension of naturalisation upon application (§ 16).

Two further changes were introduced with respect to the ban on multiple nationality and the loss of Austrian nationality. First, according to § 10 of the Nationality Law of 1965, recognised refugees were explicitly exempt from the requirement to renounce their previous nationality in order to be granted Austrian nationality. Second, with an aim to strengthening the principle of individual autonomy, § 37 of the Nationality Law of 1965 provided, for the first time, for the loss of nationality by *voluntary* renunciation (Thienel 1989: 95).

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

Until the early 1960s, Austria was an emigration country. Germany and Switzerland were the main destination countries for many Austrian labour migrants. The aggregate migration balance between 1951 and 1961 amounted to –129,000 (Waldrauch 2003). When Austria started facing labour shortages during the economic boom of the late 1950s, the Austrian Economic Chamber entered into negotiations with German and Swiss companies to stop the recruitment of Austrian workers (Münz, Zuser & Kytir 2003: 21). As these negotiations were not successful, the Social Partners reached an agreement to recruit workers from Mediterranean countries. Recruitment agreements were concluded with Spain (1962), Turkey (1964) and former Yugoslavia (1966), which led to an increase of the share of foreign workers from 1.6 per cent in 1965 to 7.2 per cent in 1975 (Waldrauch 2003). The share of foreign nationals living in Austria increased from 1.4 per cent in 1961 to 2.8 per cent in 1971 (Münz et al. 2003: 38). It is against this background that the amendment of Nationality Law 1973 was supposed to liberalise the conditions of naturalisation.

Until the reform of 1973, § 10 (4) of the Nationality Law of 1965, which is a constitutional provision, stated that foreigners could be granted Austrian nationality irrespective of some of the general conditions for naturalisation in case their 'extraordinary achievements' would serve the interests of the Republic. Thus, the draft version of the government bill allowed for 'ordinary' achievements to be a sufficient reason in order to waive the requirements of ten years of residence, sufficient income, and renunciation of the original citizenship. The intent-

ion was to remove the most important obstacles to the naturalisation of so-called 'guest workers' and their descendents. However, in the preliminary stages of the parliamentary procedure the government was accused of just 'fishing for voters' (Novak 1974: 590). In addition, the proposed amendment would have required a two-thirds majority vote by the parliament to amend a constitutional provision, which may explain the reluctance of the Constitutional Committee that eventually rejected the proposed amendment. Instead, the Constitutional Committee agreed on abolishing the requirement of a certain period of residence in the country for minors with a foreign nationality. As, according to § 17 of the Nationality Law of 1965, minor children already had a legal entitlement to be granted Austrian nationality together with their parents without having to fulfil any residence requirements, this amendment had hardly any impact in practice.

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

A profound change of nationality legislation in the mid-1980s brought about full equality between men and women.[10] Most importantly, the gender inequality with respect to the acquisition of nationality by children born in wedlock was eliminated. Since September 1983, children born in wedlock acquire Austrian nationality by birth if one of the parents is an Austrian national. Minor children born before September 1983 who could not acquire Austrian nationality because their father was not an Austrian national were given the option upon declaration to obtain the Austrian nationality from their mother until December 1988.[11]

However, the gender equality reform also eliminated a 'female privilege' (Bauböck & Çinar 2001). Until then, women married to an Austrian national could acquire their husband's nationality by simple declaration without having to fulfil any other conditions. Since the reform of 1983, persons married to Austrian nationals have to fulfil the general conditions of naturalisation.

1.3 Recent developments and current institutional arrangements

The Nationality Law of 1965 was reissued in 1985[12] and has been amended several times since then. The most important amendments between 1985 and 1998 concerned (1) the relationship between nationality of the Federal Republic (*Bundesbürgerschaft*) and 'citizenship' of the federal provinces (*Landesbürgerschaft*), (2) the reacquisition of Austrian nationality and (3) the naturalisation of foreign nationals.

According to art. 6 (1) of the Constitution of 1929, each federal province had its own 'provincial citizenship' (*Landesbürgerschaft*), which was declared a prerequisite for the acquisition of 'federal citizenship' (*Bundesbürgerschaft*). Although art. 6 (1) also provided that the acquisition and loss of the citizenship of each federal province took place under uniform conditions, no federal law was introduced to regulate these conditions. The provisional Constitution of 1945 and the Nationality Law of 1949 declared that, subject to further constitutional amendments, this subdivision of Austrian nationality into provincial and state citizenship was suspended (Mussger et al. 2001: 20). It was only in 1988 that the principle of a 'uniform' Austrian nationality was laid down in the Constitution. Although the citizenship of the federal provinces was maintained, the amended art. 6 (2) of the Constitution reversed the relationship between the *Bundesbürgerschaft* and *Landesbürgerschaft*. Persons holding Austrian nationality were henceforth considered 'citizens' of the federal province where they have their main residence.[13]

Another important development with respect to rights of Austrian nationals occurred in 1990, when a number of laws that regulate the eligibility of voters in national elections and referenda were amended (see BGBl. 148/90). Since then, Austrian nationals living abroad enjoy full voting rights in parliamentary and presidential elections as well as in national referenda, if they are included in the register of voters in a municipality. The registration requires an application by Austrian expatriates and needs to be renewed every ten years.

As mentioned above, survivors of the Holocaust and political emigrants were granted the right to reacquire nationality by notification (*Anzeige*) in 1973, but they had to re-establish their habitual residence in Austria and to meet, with some exceptions, the general conditions for naturalisation. The amendment of 1993, finally, liberalised the conditions for the reacquisition of nationality by persons who had had to leave the country before 1945.

The Nationality Law of 1985 was last amended in 1998 with the aim of eliminating differences in the administration of the law by the federal provinces with respect to the facilitated naturalisation of immigrants. The reform of 1998 also introduced for the first time language profi-

ciency as an explicit condition for naturalisation. The political background of this reform and current debates about tightening certain conditions for naturalisation will be described in sect. 1.3.2. The next section describes the current modes of acquisition and loss. Provisions amended by the reform of 1998 that came into force in January 1999 are indicated in brackets. Further changes proposed by a draft governmental bill in November 2005 will be discussed in the concluding sect. 1.4.

1.3.1 Main modes of acquisition and loss of nationality

1.3.1.1 Acquisition of Austrian nationality

The Nationality Law of 1985 provides, together with the Decree on Nationality, the main source of legal provisions currently regulating acquisition and loss of Austrian nationality.[14] Austrian nationality is either acquired by (1) descent, i.e., *by birth* (§§ 7, 7a, 8), or *after birth* by (2) the granting of nationality (or extension of the granting) (§§ 10-24), (3) *ex lege* by taking office as a professor at an Austrian university, the Academy of Arts in Vienna or an Austrian Arts College (§ 25 (1)),[15] (4) by declaration (§ 25 (2)) or (5) by notification (§ 58c).

(1) Acquisition at birth: As already mentioned, Austrian nationality legislation is based on the principle of ius sanguinis. While birth in Austria does not constitute a claim to the acquisition of citizenship at birth by descendents of immigrants,[16] Austrian nationality is attributed to children of Austrian nationals living abroad by virtue of descent. With respect to the attribution of nationality iure sanguinis to children born abroad, Austrian nationality legislation does not contain any restrictions, so that Austrian nationality may be indefinitely attributed to descendents of Austrian emigrants. This intergenerational transmission will only be prevented if parents of Austrian origin have renounced their Austrian nationality before the birth of the child in order to acquire the nationality of their (foreign) country of residence. Since 1999 retaining Austrian nationality has been made easier so that we can expect more iure sanguinis acquisitions abroad as a consequence. If the first generation retains Austrian nationality, then all subsequent generations can pass on their nationality acquired at birth to their own children.

Children born in wedlock acquire Austrian nationality by birth if one of the parents is or was until his or her death an Austrian national (§ 10 (7)). Children born out of wedlock acquire the nationality of their Austrian mother. If the father of a child born out of wedlock is an Austrian national, the child receives the nationality of the father upon legitimation (i.e., through the marriage of the parents or by declaration of a child as legitimate by the Federal President) (§ 10 (7a)).[17] Since 1985,

automatic acquisition by legitimation requires the consent of a child above the age of fourteen and of his or her legal agent, as the Constitutional Court declared automatic naturalisation by legitimation a violation of the principle of equality (Thienel 1989: 146). The Court argued that this *automatic* and *compulsory* mode of acquisition amounts to unequal treatment of children who acquire Austrian nationality *after birth* by extension of their parents' naturalisation and by legitimation, respectively. In the first case, the child of a person who acquires Austrian nationality does not become an Austrian national automatically, as the extension of the granting of Austrian nationality to a child requires an application filed on a voluntary basis. In contrast, the Nationality Law of 1965 (§7 Abs (4)) provided for the automatic acquisition of Austrian nationality by an illegitimate child of an Austrian father upon marriage of the parents. Neither the child nor the parents could object to acquisition of Austrian nationality. Against this background, the Court argued that children who acquire Austrian nationality after birth and sometimes against their will are being treated unequally compared to children who also acquire it after birth, but only on the basis of a voluntary act.

Foundlings up to the age of *six months* are considered Austrian nationals by descent (§ 10 (8) 1).

(2) General conditions for acquisition after birth: Foreign nationals may acquire Austrian nationality either by discretionary naturalisation or by naturalisation through legal entitlement based on long-term residence or familial ties. As a general rule, foreign nationals seeking naturalisation must have had their principal residence in Austria without interruption for ten years (§ 10 (1)). In addition, the following requirements have to be met:

- The applicant must not have been convicted, by an Austrian or foreign court, to imprisonment of more than three months (*before 1999:* six months) because of one or more intentional crimes including 'youth crimes', or by an Austrian court to imprisonment of more than three months (*before 1999:* six months) because of a fiscal offence (§ 10 (2) and (3)).
- There must be no criminal proceedings pending for an intentional crime or fiscal offence that may be punished with imprisonment (§ 10 (1) 4).
- There must be no ban on the applicant's residence (*Aufenthaltsverbot*) in Austria and no proceedings pending to terminate the residence of the applicant (§ 10 (5)).
- The applicant must have an 'affirmative attitude towards the Republic of Austria', which is to be judged on the basis of his or her past behaviour, and he or she must not represent a danger to public law, order and security including any other public interest that is cov-

ered by art. 8 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (§ 10 (1) 6).
– The applicant must have sufficient income unless the applicant is not responsible for his or her own financial upkeep (§ 10 (1) 7).
– The applicant must not have relations to a foreign state, which could damage the interests or the reputation of Austria (§ 10 (1) 8).
– The applicant must undertake steps to be released from his or her previous nationality if this is possible and reasonable (§ 10 (3)).
– The applicant must have knowledge of the German language at a level that corresponds to his or her social circumstances (*since 1999*) (§10a).

Fulfilment of the general conditions for naturalisation does not automatically result in the granting of Austrian nationality. In exercising their discretion authorities have to take into consideration the common good, public interests and the extent of integration of the applicant (§ 11). In this context, authorities may base their decision on additional criteria such as 'work ethics' or compliance with legal requirements concerning road safety (Mussger et al. 2001: 80; Thienel 1990: 204f). However, authorities are obliged to justify the way they make use of their discretion.

(2.1.) *Facilitated naturalisation*: Austrian nationality may be granted after four or six years of residence if the general conditions for naturalisation are fulfilled and if there is a reason deserving special consideration (*besonders berücksichtigungswürdiger Grund*) (§ 10 (4) and (5)). Since 1999, the law states that Austrian nationality may be granted after four years of residence if the applicant is an EEA-national or a recognised refugee (§ 10 (5) 4-5). Other applicants may be granted Austrian nationality after six years of residence
– if they are former Austrian nationals, unless nationality was lost by withdrawal (§ 10 (5) 1), or
– if they can prove that their personal and professional integration is 'sustainable' (§ 10 (5) 3), or
– if they were born in Austria (§ 10 (5) 6), or
– because of their special achievements in the arts, economy, science or sports (§ 10 (5) 2).

Minors who fulfil one of these conditions may be naturalised after four years of residence. As the reasons for facilitated naturalisation enumerated by the law are not exhaustive, authorities may apply additional criteria in practice.

With the reform of 1998, birth in Austria has, for the first time, been specified by law as a reason for facilitated naturalisation. However, birth in Austria still does not constitute a legal entitlement to the

acquisition of Austrian nationality, and in practice the overwhelming majority of minors acquire Austrian nationality together with their parents rather than because of birth in Austria (Waldrauch & Çinar 2003: 274). The main categories of foreign nationals who have acquired Austrian nationality according to the new provisions for facilitated naturalisation are recognised refugees after four years of residence and foreign nationals who have lived in Austria for at least six years and were able to prove their 'sustainable integration'.

Foreign nationals who have attained and are expected to attain 'extraordinary achievements' may be naturalised without having to meet any residence requirement, if the granting of Austrian nationality benefits the interests of the Republic. In this case, neither proof of sufficient income nor renunciation of the original nationality is necessary (§ 10 (6), constitutional provision).[18]

Finally, persons who acquire Austrian nationality by *grant (Verleihung)* (or extension of grant) have to take the following oath:

'I swear that I will be a loyal citizen of the Republic of Austria, that I will always conscientiously abide by the laws and that I will avoid everything that might harm the interests and the reputation of the Republic.'

Usually persons who are granted Austrian nationality have their principal residence in Austria. However, in a few cases application for acquisition of Austrian nationality may be filed abroad. This includes persons married to an Austrian national for at least five years (§ 11a (1) b), the extension of naturalisation to children and spouses (after five years of marriage) (§ 17), the naturalisation of children of Austrian nationals (§ 12 (4)) and former Austrian nationals who have lost Austrian nationality because of marriage to a foreign national within five years after divorce (§ 13).

(2.2.) *Legal entitlement*: Several provisions of the Nationality Law of 1985 confer to certain groups of foreigners legal entitlement to acquire Austrian nationality. Privileged groups of foreign nationals include family members of an Austrian national or a reference person who is about to be granted Austrian nationality, long-term residents, stateless persons and former Austrian nationals.

(2.2.1.) *Family members*: The most important group of foreign nationals who enjoy a right to acquisition of Austrian nationality consists of family members of Austrian nationals or of a reference person who is about to be granted Austrian nationality. The foreign spouse of an Austrian national has a legal entitlement to obtain Austrian nationality after four years of marriage if he or she has lived in Austria for at least one year or after three years of marriage and residence in Austria for at least two years (§ 11a). The residence requirement is dispensed with, if the marriage has been maintained for at least five years and the Aus-

trian spouse has held Austrian nationality for at least ten years. Since 1999, the couple must live in the same household.

A foreign child of an Austrian national has a legal entitlement to be granted Austrian nationality (the mother's or the father's), if the child is a minor, unmarried and born in wedlock (§ 12 (4)). If the child was born out of wedlock, the legal entitlement is dependent on the mother holding the Austrian nationality. If the relevant Austrian parent is the father, the transfer of nationality by legal entitlement presupposes the proof of paternity, and the father must have custody over the child. Except for the residence requirement of ten years, foreign family members of Austrian nationals must fulfil the general conditions of naturalisation in order to make use of legal entitlement.

The acquisition of Austrian nationality by a foreign national has to be extended to his or her spouse (§ 16) and children (§ 17) upon application if they fulfil the same requirements as foreign family members of Austrian nationals (see above 2.2.1).

(2.2.2.) *Long-term residents*: Austrian nationality may be obtained by legal entitlement if a foreign national has had his principal residence in Austria for at least 30 years (§ 12 (1) a). Since 1999, foreign nationals who have had their principal residence in Austria for at least fifteen years also have a legal entitlement to acquisition of Austrian nationality if they can prove their sustainable personal and professional integration ((§ 12 (1) b)). In both cases applicants have to meet the requirements for discretionary naturalisation as described above (see 2.1.).

(2.2.3.) *Stateless persons*: Persons born in Austria who have been stateless since birth have a legal entitlement to acquisition of Austrian nationality if they have had their principal residence for a total of ten years in the country. The applicant must not have been convicted by an Austrian court for the violation of 'national security' as defined by the UN Convention on the Reduction of Statelessness of 1961[19] or to imprisonment of five years or more. The application has to be filed within two years after reaching the age of 18 (§ 14). The 'lack of protection by the country of origin' was declared in a report of the Constitutional Committee a 'special reason' for facilitated naturalisation after less than ten years of residence. However, the Administrative Court argued in several decisions that even if statelessness entails the lack of protection by the country of origin, statelessness alone is not a sufficient condition for facilitated naturalisation; the Court found furthermore that statelessness is not an indicator of 'advanced assimilation' that would justify the reduction of the general residence requirement of ten years.[20] In this context, it is important to note that Austria has made the granting of nationality to stateless persons dependent upon all of the conditions permissible according to art. 1 (2) of the Convention on the Reduction of Statelessness 1961. The aim of the legislator was to make

use of permissible restrictions to the greatest extent possible (Thienel 1990: 242). Similarly, with respect to art. 6 (par. 4) of the European Convention on Nationality of 2000, Austria declared to retain the right not to facilitate the acquisition of its nationality for stateless persons (and recognised refugees) for this reason alone.[21]

(2.2.4.) *Former nationals*: Reacquisition of Austrian nationality by legal entitlement is possible for different groups of former nationals (§ 12 (2) and (3)). First, persons who have been Austrian nationals for at least ten years and who have not lost Austrian nationality by withdrawal or renunciation have a right to reacquire Austrian nationality after one year of residence in Austria (§ 12 (2)). Second, persons who have lost Austrian nationality at a time when they did not yet have full legal capacity have a right to be granted Austrian nationality if the application is filed within two years upon gaining full legal capacity, unless loss of nationality was based on withdrawal (§ 12 (3)). Third, persons who have lost Austrian nationality because of automatic or voluntary acquisition of a foreign nationality following marriage are entitled to reacquire Austrian nationality if the application is filed within five years after the dissolving of the marriage (§ 13). In all of these cases, apart from the residence requirement of ten years, applicants have to fulfil the general conditions for naturalisation.

While in respect of discretionary naturalisation, the authorities have to consider the common good, public interests and the extent of the applicant's integration by taking account of his or her 'general conduct' (§ 11), this provision does not apply in cases where foreign nationals have a legal entitlement to naturalisation (§ 11a-17).

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

1.3.1.2 Loss of Austrian nationality

The main modes of loss of Austrian nationality are laid down in §§ 26-38 of the Nationality Law of 1985, which enumerate different reasons

for loss of nationality. First, the acquisition of a foreign nationality provokes the loss of Austrian nationality, if an Austrian national expresses his or her 'positive intention' (*positive Willenserklärung*) to obtain the nationality of another state (§ 27). Submitting an application, making a declaration or explicitly giving one's consent in order to receive a foreign nationality is considered expression of such positive intent. Austrian nationality is not lost, however, if a foreign nationality is acquired because the Austrian national did not object to the *automatic* acquisition, even if the right to object to it is prescribed in foreign law (Mussger et al. 2001: 117). In addition, neither does a declaration of intent targeted not primarily at the acquisition of a foreign nationality (e.g., marriage with a foreign national) lead to the loss of Austrian nationality, even if the Austrian national was aware that he or she would acquire the foreign nationality automatically. The loss of nationality is extended to the reference person's minor children unless the other parent retains Austrian nationality.

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

With the amendment of the Nationality Law in 1998, a new provision was introduced to allow for retention of Austrian nationality, even if the applicants cannot prove that acceptance of dual nationality would benefit the public interest. Since 1999, retention of Austrian nationality is to be approved if the applicant can show that there is a special reason related to his or her private or family life justifying dual nationality (§ 28 (2)). According to the explanatory notes to the draft government bill, the easing of the rather demanding conditions with regard to retention of Austrian nationality aims at the avoidance of severe 'adverse effects' that a person would suffer from loss of the Austrian nationality. According to information given by some provincial authorities, such adverse effects include severe financial disadvantages, loss of inheritance rights in another state or loss of employment in both coun-

tries. The new possibility of retention is, however, restricted to persons who have acquired Austrian nationality by *descent*.[22]

The government bill of November 2005 aims to further facilitate the retention and reacquisition of Austrian nationality. Both provisions are likely to have the effect of increasing the number of Austrian expatriates who may also hold a foreign nationality and can, thus, transmit Austrian nationality iure sanguinis to children born abroad.

Second, persons who *voluntarily* enter into the military service of a foreign state lose Austrian nationality automatically (§ 32), even if they thereby become stateless.[23] However, if the person concerned is a dual national and performs military service in the country of which he or she is a national, Austrian nationality does not lapse, unless performance of military service is prolonged voluntarily or extended to include, for example, voluntary weapon drill (Mussger et al. 2001: 127).

Third, Austrian nationality has to be revoked if a person who has acquired Austrian nationality by grant (or extension of the grant) has retained his or her prior nationality for more than two years since acquisition (§ 34). As a general rule, the granting of Austrian nationality depends on the renunciation of the previous nationality where this is legally possible and reasonable. In order to facilitate renunciation of the previous nationality, Austrian authorities issue an assurance (*Zusicherung*) stating that Austrian nationality will be granted if the applicant can prove the renunciation of his or her previous nationality within two years. If, however, a person cannot give up his or her previous nationality without having acquired the nationality of another state, Austrian nationality is granted under the condition that the renunciation of the previous nationality will be proven within two years following acquisition of Austrian nationality. Deliberate non-compliance with this obligation is a reason for deprivation of Austrian nationality, of which the authorities have to notify the relevant person six months in advance. However, deprivation of Austrian nationality because of retention of the previous nationality is not permissible if the relevant person has acquired Austrian nationality more than six years previously.

Finally, the law provides for loss of Austrian nationality by *renunciation* (§ 37). An Austrian national may renounce nationality if he or she also holds the nationality of another country and has had his or her principal residence abroad for five years. Dual nationals, who have their principle residence in Austria have to fulfil further conditions: (1) Renunciation of nationality is not possible if there are criminal proceedings pending because of a crime carrying a sentence of more than six months imprisonment, or if the execution of such a sentence is pending. (2) A male national between the ages of sixteen and thirty-six can renounce Austrian nationality only if he has been either declared unfit for military service or alternative civilian service, or if he has per-

formed military or alternative service in another country of which he holds the nationality and is released from military or alternative service on the basis of a bilateral or international agreement. In all circumstances, a written declaration of renunciation has to be filed with the responsible authority.

1.3.2 Political analysis

According to the census of 2001, roughly 710,000 foreign nationals make up 8.9 per cent of Austria's population (8,032,926). Nationals of former Yugoslavia (322,261) and Turkey (127,226) are the two biggest groups who account for 63 per cent of the total foreign population. It should be noted that these figures include foreign nationals born in Austria. The share of foreign nationals born in the country is the highest among nationals of Turkey (26.4 per cent), Croatia (20.7 per cent), Serbia and Montenegro (18.2 per cent) and Bosnia-Herzegovina (16.4 per cent) (Waldrauch 2003: 2). The number of persons who were born abroad and live in Austria is much higher than the number of foreign nationals. Roughly 1,000,000 residents or 12.5 per cent of the population are foreign-born. Thus, the share of the foreign-born population in Austria is higher than in the USA (Jandl & Kraler 2003). However, unlike the USA and like many other European countries, Austria's self-image is not that of an immigration country.

The legal framework with regard to the entry, residence and employment of foreign nationals, which was based since the early 1960s on the principle of the temporary admission of 'guest workers', remained in place until the early 1990s. In this period, the Law on the Employment of Aliens of 1975 (*Ausländerbeschäftigungsgesetz*), together with the Law on the Aliens Police (*Fremdenpolizeigesetz*), was the main instrument to safeguard a tight link between the development of the economic cycle and the employment of foreign workers. In other words, migration to Austria was regulated indirectly either by exerting strict control over the employment of foreign nationals or by adopting a laissez-faire approach in times of accelerated economic growth (Davy & Gächter 1993: 159). Accordingly, the main authority responsible in the area of migration policy was the Ministry of Social Affairs. In line with the 'guest worker' approach, the integration of foreign workers and of their family members was hardly on the political agenda until the mid-1990s. In the years following the fall of the Iron Curtain, a series of legislative reforms were undertaken by the coalition government of SPÖ and ÖVP (Social Democratic Party and People's Party) to reduce the number of applications for asylum, prevent illegal migration, restrict the number of foreign workers as well as to introduce an immigration policy based on annual quotas.

According to the census of 1981, the share of foreign nationals in Austria's population was 3.9 per cent (291,448 persons). Ten years later, this ratio has increased to 6.6 per cent (517,690 persons). The growth of the foreign population occurred mainly between 1989 and 1993 (+ 338,050 persons). Although the public and political discourse focused almost exclusively on the growing number of applications for asylum (1988: 6,718; 1992: 24,361) and the accommodation of asylum seekers, the rapid increase in the foreign population was primarily triggered by the economic boom of the late 1980s and early 1990s (Bauböck 1996: 20; Davy & Gächter 1993: 173; Zuser 1996:18). The share of foreign workers employed in Austria increased from 5.4 per cent in 1988 to 9.0 per cent in 1992. The two traditional sending countries, i.e., (former) Yugoslavia and Turkey, played an important role in satisfying the demand for foreign workers during this economic growth. Migrant workers from both countries accounted for 60 per cent of the increase in the number of foreign employees between 1988 and 1992. In response to this development, a quota was introduced in 1990 to restrict the share of foreign workers to 10 per cent of the workforce. In 1993, this quota was reduced to 8 per cent of the workforce (Davy & Çinar 2001: 594, FN 228).

More radical steps were taken with regard to the entry and residence of foreign nationals in 1992/93. The new *Residence Law*, which came into force in July 1993, introduced annual immigration quotas for the first time (it was in force until mid-1995 and also applied to foreign children born in Austria!). Although the Residence Law was designed to regulate the admission of *new* immigrants, it had a profound impact on the status of legally admitted immigrants, particularly of those who did not hold an unlimited residence permit. Due to new and rigid provisions concerning the renewal and withdrawal of residence permits, legally resident immigrants were faced with the risk of losing their right to residence. In fact, after the Residence Law came into force, several immigrants and/or family members became illegal residents and had to reapply for admission from abroad under the new quota system (Waldrauch 2003: 6; Bauböck 1996: 22).

The harshness of the new provisions gave rise to widespread and sustained criticism. The appointment of a new Minister of the Interior by the SPÖ, Caspar Einem, led to an amendment of the Residence Law in 1995, which removed some of the most contested provisions. In the same year, the Ministry of the Interior announced a profound reform under the slogan 'integration before new immigration' (*Integration vor Neuzuwanderung*). The most important change implemented by the Aliens Act of 1997 was the principle of 'consolidated residence' (*Aufenthaltsverfestigung*), which provided for increased security of residence and protection against expulsion after five, eight and ten years of resi-

dence. The expulsion of the so-called 'second generation' was declared unlawful altogether. However, as called for by the Federation of Trade Unions and the Chamber of Labour, access to legal employment for family members was made conditional upon four to eight years of residence in Austria. The Aliens Act of 1997 also made it possible to expel foreign nationals if they had spent less than eight years in Austria and faced unemployment lasting for one year. The so-called 'integration package', which came into force in January 1998, was based on a compromise between the coalition parties SPÖ, ÖVP and the social partners. Part of this compromise was an agreement on what the next reform step would be, namely amendment of the Nationality Law of 1985.

Between 1980 and 1990, the number of persons granted Austrian nationality remained more or less stable at between 8,000 and 10,000. The naturalisation rates of nationals of former Yugoslavia (1990: 1.7 per cent) and Turkey (1990: 1.1 per cent) were particularly low. Starting in 1991, the number of persons granted Austrian nationality increased steadily. This applies particularly to nationals of Turkey: While in 1989, roughly 700 applicants with Turkish nationality were naturalised, the number of former Turkish nationals who acquired Austrian nationality amounted to 3,200 in 1995 and 7,500 in 1996.

This rapid growth of the number of persons applying for Austrian nationality is due to different factors. The rise of an anti-immigrant discourse in the early 1990s triggered by the FPÖ as well as by the SPÖ (Zuser 1996: 64-70), which was followed by a rigid legislation in the early 1990s that gravely impaired the legal resident status of even long-term immigrants and of their family members, transformed the option of naturalisation into an 'escape route' (Bauböck & Çinar 1999). In addition, in the province of Vienna, where acquisition of nationality has always been easier than in other Austrian provinces the naturalisation of immigrant families was encouraged and facilitated particularly between 1989 and 1994. The Viennese authorities made use of the possibility of granting Austrian nationality after four years and less than ten years of residence due to 'special reasons'.

Until the reform of 1998, the Nationality Law did not stipulate the special reasons. In practice, authorities could take into account an applicant's status as a (1) recognised refugee or (2) a stateless person as well as (3) birth in Austria, (4) 'complete' linguistic and cultural assimilation or (5) employment in a 'shortage occupation'. In 1989, the following special reasons were added to the list by the Viennese authorities: (6) the applicant has a close family member who is an Austrian national, (7) the applicant has a satisfactory record of employment of four years and (8) the applicant lives with his or her spouse in Vienna where the children attend school (Çinar 1999: 147). Between 1989 and

1994, the number of persons granted Austrian nationality by Viennese authorities for special reasons rose from 735 to 2,028. In the same period, roughly 63 to 80 per cent of all facilitated naturalisations took place in Vienna. A major side effect of this practice was that under certain conditions the granting of Austrian nationality had to be extended to family members upon application (§§ 16 and 17 of the Nationality Law of 1985). Therefore, the total number of acquisitions of Austrian nationality increased considerably between 1989 and 1994.

Although the Viennese practice became more restrictive in the following years, as the minimum residence requirement was raised from four to six years and facilitated naturalisation was made dependent on sufficient knowledge of German, this had no impact on the upward trend in naturalisations. Two factors explain the continuous surge in naturalisations since the early 1990s. First, each year more and more immigrants become eligible to acquire Austrian nationality on the basis of at least ten years of residence. Second, since June 1995, Turkish emigrants who naturalise abroad can keep their citizenship rights in Turkey (aside from their political rights). To this end, a so-called 'pink card' has been introduced which can be obtained by persons who acquired Turkish nationality by birth and who have been given permission by the Council of Ministers to be released from Turkish citizenship. The 'pink card' provides former Turkish nationals with the rights to residence, employment, acquisition of real estate, inheritance, etc.[24] In addition, the amendment of 1995 abolished a provision according to which voluntary expatriation required compliance with military obligations. In other words, male Turkish citizens at the age when they can be drafted may 'opt out' of Turkish citizenship in order to naturalise abroad without having to first serve in the Turkish army. Both amendments had a significant impact on the naturalisation patterns of immigrants with Turkish citizenship.

Against this background, the FPÖ, followed by the ÖVP, started campaigning against the 'premature' granting of Austrian nationality. In 1996 and 1997, all of the parties apart from the SPÖ repeatedly introduced draft bills to amend the 1985 Nationality Law. While the SPÖ remained silent for a long time, the ÖVP rapidly became the key player in the political debate. The ÖVP argued that Austrian nationality is a 'valuable good', which should not be given away to foreign nationals who lack the 'will to integrate'.[25] According to the proposal of the ÖVP presented in autumn 1996, the authorities responsible for naturalisation should, in exercising their discretion, consider whether the applicant meets the following requirements: (1) fifteen years of residence, (2) sufficient integration, (3) German language skills and (4) participation in integration courses to be offered by the federal provinces on the political and legal system of Austria and the history and culture of Aus-

tria and Europe. In addition, the ÖVP proposed that persons married to an Austrian national as well as family members of a person who is about to acquire Austrian nationality should be naturalised by discretion instead of by legal entitlement.

According to the FPÖ proposal, a new constitutional provision should be introduced into the Nationality Law stating that Austria is not an immigration country. Austrian nationality should be granted only if this would benefit the interests of the Republic. The annual number of naturalisations in each federal province should not exceed 0.5 per cent of the local population. The integration of foreign nationals (i.e., knowledge of German and of the legal system of Austria) applying for naturalisation should be ascertained by an official decree by the respective federal government. Finally, each Austrian national should be given the right to raise objections regarding the required integration of the applicant.

The proposals of the Greens and the Liberal Party, which was founded by a former member of the FPÖ in the early 1990s, went in the opposite direction. Both parties proposed the introduction of the principle of 'double ius soli', the reduction of the general residence requirement from ten to five years and the abolishment of the requirement to renounce the original nationality (Greens) or tolerance of dual nationality with respect to applicants from countries that did not have a ban on dual nationality (Liberals). While the proposal of the Liberals included basic knowledge of the German language to be taken into account in discretionary naturalisations, the proposal of the Greens did not make naturalisation conditional upon language proficiency.

As mentioned above, the SPÖ did not introduce a draft bill. However, the city councillor of Vienna in charge of integration matters, Renate Brauner (SPÖ), argued in favour of tolerating dual nationality for the so-called 'second generation' until the age of majority. The ÖVP vehemently objected to the toleration of dual nationality and argued that there could not be 'dual loyalties'. The then Minister of the Interior, Karl Schlögl (SPÖ), declared that the reduction of the general waiting period to eight years might be a reasonable amendment, but that dual nationality should only be tolerated in exceptional cases. The Minister of the Interior also rejected the introduction of comprehensive assimilation requirements (Bauböck & Çinar 2001).

The SPÖ-ÖVP coalition government eventually reached an agreement in May 1998 and presented a joint draft bill, which left the traditional cornerstones of Austrian nationality legislation untouched, i.e., the predominance of the principle of ius sanguinis, the avoidance of multiple nationality and the principle that acquisition of Austrian nationality is the final step of a 'successful' integration process.[26] The compromise between the two ruling parties was to 'harmonise' the ad-

ministration of the law by the authorities of the federal provinces, especially with regard to facilitated naturalisations because of special reasons, and to make the granting of Austrian nationality dependent on knowledge of the German language.

The statistical developments since the entry into force of the new provisions in January 1999 show that the restrictions did not have an impact on the increasing number of naturalisations. In 1999, roughly 25,000 persons acquired Austrian nationality. In 2003, roughly 45,000 persons were naturalised. This development has again provoked claims by representatives of the two ruling parties BZÖ and ÖVP that the conditions for naturalisation should be further tightened. The proposed amendments will be discussed later (see sect. 1.4 below).

1.3.3 Statistical developments

Austrian naturalisation statistics cover three different ways of acquisition, namely acquisition by grant (§§ 10-14) or extension of grant (§§ 16-17), by declaration (§ 25 (2); Art. I/II from 1983-88) and by notification (§ 58c). In other words, acquisitions by descent (§ 7, § 8) and legitimation (§ 7a) and automatic acquisitions upon taking office as a professor at an Austrian university (§ 25 (1)) are not covered.

Absolute numbers: From 1946 until the end of 2004, 1,031,456 persons were naturalised in Austria; 25,785 (2.5 per cent) of them had their residence abroad. However, roughly 48 per cent of all naturalisations already occurred in the 1940s and 1950s, when a large number of ethnic Germans ('Volksdeutsche') and other refugees from Central and Eastern Europe were granted nationality. In the three decades that followed the absolute number of naturalisations was considerably lower than in the 1940s and 1950s: in the 1960s a total of 50,984 persons was naturalised, in the 1970s 66,719 and in the 1980s 87,431. Since 1990, however, the immigration of the past decades has left its mark on the naturalisation statistics: in the 1990s a total of 154,363 persons was naturalised, and in the five years since then already 180,393.

From 1985 to 1990 between 8,000 and 10,000 persons were naturalised each year. In the following years the number of naturalisations rose, almost without exception, from about 11,500 in 1991 to 18,500 in 1998. After that, the number of naturalisations surged steeply from around 25,000 in 1999 to over 45,000 in 2003, only to drop slightly to about 42,000 in 2004.

Legal basis: The surge of naturalisations over the last twenty years was mainly due to the increase – in absolute and relative terms – of naturalisations of foreign nationals after ten years of residence and of extensions of grants to their family members: the share of grants after ten years (§ 10 (1)) was only 13 per cent in 1985, but reached 35 per cent

in 2003 (for absolute numbers, see Table 1.1). Parallel to that the proportion of spouses to whom the grant was extended (§ 16) rose from 7 per cent in 1985 to a high of 13.5 per cent in 1999/2000, and the one of grant extensions to children (§ 17) from 17 per cent in 1985 to almost 38 per cent in 2003. Grants to spouses of Austrian nationals (§ 11a), in contrast, made up a steady 12-17 per cent of all naturalisations between 1987 and 1998, but dropped to less than 7 per cent in 2003. The same development can be observed with respect to naturalisations on the basis of 'reasons deserving special consideration' (§ 10 (4) 1 in combination with § 10 (5); until 1998: § 10 (3))[27] or achievements for Austria (§ 10 (6); until 1998: § 10 (4)) (the latter being much less important): whereas until 1998 12-17 per cent of all naturalisations were due to special reasons or achievements, their share dropped below 4 per cent in 2004!

All other naturalisations combined were only significant numerically in the 1980s, which was mainly due to naturalisations on the basis of the transitional Art. I/II: This regulation allowed for acquisition of nationality by declaration of children born to Austrian mothers before September 1983, who did not acquire Austrian nationality by descent due to the law in force at that time. Between 1985 and 1989, naturalisations of children of Austrian parents amounted to a minimum of 16 per cent and a maximum of 36 per cent of all naturalisations. This contrasts starkly with the picture since 1990, where the proportion of all naturalisations, besides the ones mentioned in the previous paragraph, never exceeded 8 per cent.

One of the main motives for the reform of Austria's nationality law in 1998 was to lay down clearer rules for the naturalisation of persons with special reasons after less than ten years of residence. Before 1999, the different Austrian provinces made use of the respective regulations in very different ways and to very diverging extents. Naturalisations on the basis of the old § 10 (3) and (4) were especially frequent in the province of Vienna: 16 to 26 per cent of all naturalisations in Austria's capital between 1985 and 1998 occurred because of special reasons or achievements. This is in stark contrast to the rest of Austria, where the percentage of these early naturalisations only ranged between 9 and 17 per cent. The 1998 reform had a strong impact on naturalisations because of special reasons or achievements: in Vienna they now account for only between 13 per cent (2000) and 4 per cent (2003) of all naturalisations, and even in absolute numbers they fell way below the average for the years 1985-98. In all other provinces combined, the percentage range of these kinds of naturalisations in 1999-2004 was about the same (13-3 per cent); however, their absolute number increased considerably in 1999-2001, only then to drop to a level which is below the one for the years immediately before 1999.

Table 1.1: Naturalisations by legal basis of acquisition in Austria

	10 years residence	*Special reasons / achievements*	*15 or 30 years residence*	*Extension of grant to spouses*	*Extension of grant to children*	*Spouses of Austrian nationals*	*Former Austrian nationals*	*Children of Austrian nationals*	*Other*	**Total**
1985	1139	1192	130	585	1468	870	85	2987	32	**8488**
1986	1156	1504	120	742	1740	1067	96	3581	9	**10015**
1987	1070	1270	97	659	1670	1042	77	2209	18	**8112**
1988	1265	1391	107	717	1963	1132	75	1565	17	**8232**
1989	1622	1191	81	698	2201	1222	59	1390	6	**8470**
1990	1983	1535	85	845	2764	1530	78	368	10	**9198**
1991	2707	1913	91	1036	3426	1745	103	360	13	**11394**
1992	2719	1989	64	1102	3934	1671	100	325	16	**11920**
1993	3254	2389	79	1414	4648	2100	109	398	11	**14402**
1994	3234	2694	72	1763	5245	2039	874	343	6	**16270**
1995	3276	2322	76	1636	4535	2382	504	556	22	**15309**
1996	3717	1998	56	1811	5748	2141	384	378	10	**16243**
1997	3283	2650	66	1844	5203	2594	198	434	2	**16274**
1998	3825	2714	77	2245	5905	2919	143	483	10	**18321**
1999	5456	3083	955	3358	8922	2825	111	303	19	**25032**
2000	6021	3067	692	3276	8532	2547	99	389	22	**24645**
2001	9336	2703	856	4042	11856	2715	92	470	10	**32080**
2002	12017	1879	1041	4313	13747	2610	71	692	12	**36382**
2003	15835	1666	1549	4868	17008	2964	84	1124	14	**45112**
2004	13961	1610	1529	4145	15674	3646	73	1523	13	**42174**

Source: Statistics Austria, own calculations. ***Legal basis of modes of acquisition***: * Ten years residence: § 10 (1); * Special reasons / achievements: § 10 (6), § 10 (4) 1 in combination with § 10 (5), except former Austrians, i.e., § 10 (5) 1; * Fifteen or 30 years residence: § 12 (1) b+a (before 1999: only § 12 a = 30 years of residence); * Extension of grant to spouses: § 16; * Extension of grant to children: § 17; * Former Austrian nationals: § 10 (4) 1 in combination with § 10 (5) (before 1999: § 10 (3)+(4)) 1 (since 1999), § 12 (2)+(3) (before 1999: § 12 b+c), § 13, § 58c (since 1993); * Children of Austrian nationals: art. I/II (1983-1988), § 12 (4) (before 1999: § 12 d); * Other: § 10 (4) 2 (since 1999), § 14, § 25 (2) 1+2.

With the reform of 1998, the 'reasons deserving special consideration' were spelt out explicitly in § 10 (4) 1 and § 10 (5) of the law for the first time, although not exhaustively. From 1999 to 2004, 42 per cent of all naturalisations on the basis of these sections in the law occurred because of 'effective personal and professional integration' (§ 10 (5) 3). The only other explicitly mentioned special reason with a significant share (22 per cent) in this period is being an accepted refugee (§ 10 (5) 4). All other exemplarily listed reasons (former Austrian nationals; birth in Austria; past and future achievements besides those of § 10 (6); EEA-nationality) together account for only 7 per cent of all grants on the basis of § 10 (4) 1 and (5). The remaining 28 per cent are naturalisations based on unspecified special reasons.

Former nationality: In 1985, 37 per cent of all naturalisations concerned nationals of the fourteen countries that were members of the EU before the latest round of accessions in 2004. In the twenty years that followed, however, not only the share of naturalised EU nationals decreased dramatically to 0.5 per cent or less in 2002-2004, but also their absolute number shrank to about one-fifteenth of the 1985 numbers (see Table 1.2). Nationals of the two most important sending countries of migrant workers to Austria, (the former) Yugoslavia and Turkey, accounted for only 17 per cent and 3 per cent of all naturalisations in

Table 1.2: Naturalisations by former nationality in Austria

	Ex-YU	*Turkey*	*EU15*	*Ex-com. CEE*	*Other Europe*	*Africa*	*America*	*Asia*	*Austral., Oceania*	**Total**
1985	1449	296	3103	1368	141	269	345	1252	23	**8488**
1986	1463	334	3519	2192	197	256	416	1389	39	**10015**
1987	1416	392	2179	1847	103	274	379	1307	20	**8112**
1988	1731	509	1633	1986	120	260	248	1501	19	**8232**
1989	2323	723	1387	1665	116	262	354	1437	31	**8470**
1990	2641	1106	712	2121	62	436	206	1732	7	**9198**
1991	3221	1809	692	2416	96	555	207	2247	15	**11394**
1992	4337	1994	589	1852	115	559	220	2090	8	**11920**
1993	5791	2688	638	1933	171	720	255	2054	8	**14402**
1994	5623	3379	508	2657	140	735	344	2677	17	**16270**
1995	4538	3209	360	2588	430	841	471	2654	18	**15309**
1996	3133	7499	294	2086	171	628	411	1847	14	**16243**
1997	3671	5068	282	2896	190	957	441	2544	13	**16274**
1998	4151	5683	245	3872	211	1209	453	2356	14	**18321**
1999	6745	10350	151	3590	93	1078	366	2499	11	**25032**
2000	7576	6732	144	4924	82	1400	357	3267	11	**24645**
2001	10760	10068	165	5156	63	1822	374	3521	6	**32080**
2002	14018	12649	149	4202	50	1555	364	3298	5	**36382**
2003	21615	13680	154	4253	24	1807	376	3032	22	**45112**
2004	19068	13024	209	3498	51	2077	507	3563	16	**42174**

Source: Statistics Austria, own calculations.

1985, whereas in 2004, their combined percentage was 76 per cent (45 per cent and 31 per cent). In absolute numbers this corresponds to an increase by a factor of 13 and 44 respectively! Over the same period, the number of naturalisations of nationals from (ex-)communist countries in Central and Eastern Europe more than doubled, and those of Africans increased by a factor of almost 8, those of Asians nearly tripled, and those of Americans 'only' increased by a factor of 1.5.

Province and country of residence: In the early 1990s, roughly 70 per cent of all naturalisations took place in Vienna. However, since the year 2000, the percentage of naturalisations in Austria's capital dropped to about 40 per cent. Lower and Upper Austria alone accounted for more than 10 per cent each of all Austrian naturalisations at any time since 1985, but hardly ever for more than 15 per cent. From 1985-89, the percentage of naturalisations of persons with residence abroad ranged between 11 and 20 per cent, which was mainly due to naturalisations based on the transitional art. I/II mentioned above. From 1990-1998, between 2 to 6 per cent of all naturalised persons had residence abroad, with peaks in 1994 and 1995 (6 per cent) caused by a surge of applications based on § 58c, which was introduced in 1993. Since 1999, the share of persons naturalised abroad hovers around the 1 per cent mark.

Country of birth: A large number of persons are naturalised every year who were already born in Austria and who (in most cases) do not have to go through naturalisation procedures in other countries with ius soli regulations in place. While their percentage reached 23-28 per cent in the late 1980s and early 1990s, native-born persons account for 29-33 per cent of all naturalised since 1999. Most persons born in Austria are naturalised by way of extension of a grant to a parent.

Sex and age: For a number of years now, almost exactly the same number of men and women have been naturalised in Austria. The proportion of persons naturalised who were below and above the age of majority has also been uniform: since 2001 the proportion is 41 per cent to 59 per cent.

1.3.4 Institutional arrangements

1.3.4.1 The legislative process

According to art. 11 (1) of the Constitution, nationality legislation is a federal matter. Parliament is vested with federal legislative powers. The National Council (*Nationalrat*) and the Federal Council (*Bundesrat*) form the two chambers of Parliament. The Federal Council represents the interests of the nine federal provinces. A draft bill may be introduced to the National Council by the federal government, members of

the National Council and the Federal Council or by popular referendum (*Volksbegehren*).[28]

Most frequently, a draft bill is prepared by the legislative department of the Ministry in charge of the respective area of law, i.e., the Ministry of the Interior in the case of nationality legislation. Usually the Social Partners (Chamber of Commerce, Chamber of Labour, Federation of the Trade Unions, etc.) as well as other interest groups are asked to give their expert opinion on the ministerial draft bill (*Ministerialentwurf*). The round of consultations may lead to the revision of some provisions. The draft bill is then introduced to the Council of Ministers for approval as a draft government bill (*Regierungsvorlage*). A draft government bill will be 'read' three times in the National Council, which means that the draft bill will be assigned to a parliamentary committee at the first reading. After the deliberations and possible changes proposed by the parliamentary committee the draft bill will be 'read' a second time in the National Council in a general debate, followed by a special debate in which amendments may be requested. At the second reading the National Council may decide either to re-assign the bill to the parliamentary committee or to vote on the bill.

Decisions require a simple majority of votes unless the amendment includes constitutional provisions, in which case participation of 50 per cent of the members of the National Council and a majority of two-thirds of the votes in favour of the bill are required. If the bill gets approved at the third and final 'reading' by the National Council, it will be sent to the Federal Council for approval. Except for constitutional provisions that affect the competence of the federal provinces, the Federal Council has only a 'suspensive' veto right in matters of nationality, i.e., the National Council can vote a second time and approve the bill by a simple majority.

Although the role of the Federal Council as the representative body of the federal provinces is restricted in the legislative process, civil servants responsible for the execution of nationality legislation in the different provinces do have an impact on the preparation of legislative reforms. For example, the last amendment of the Nationality Law was based to a great extent on a draft bill by the ÖVP. The draft bill by the ÖVP was in turn in accordance with several provisions of a proposal, which was prepared by the responsible authorities of the federal provinces.

1.3.4.2 The process of implementation

Whereas nationality legislation is a federal matter, the federal provinces are vested with the power to administer the law. The government of the respective federal provinces is the highest executive authority (§ 39). However, the Ministry of the Interior may lodge an appeal with

the Administrative Court if it considers the decision of a provincial government unconstitutional (Mussger et al. 2001: 138). Applicants can either appeal to the Administrative Court or to the Constitutional Court.

Representatives of the federal government and federal provinces meet regularly to exchange experiences and address administrative problems, but there are no common guidelines for the implementation of legal provisions[29] allowing the authorities a wide margin of interpretation in *discretionary* naturalisations. While nationality legislation is seldom subject to judicial review by the Constitutional Court, administrative acts in matters of nationality are frequently subject to review by the Administrative Court. There are numerous decisions by the Administrative Court that address the implementation of the indeterminate legal provisions contained in nationality legislation. This applies particularly to questions as to whether an applicant represents a danger to public order and security or whether the applicant qualifies for facilitated naturalisation or whether the applicant's professional and personal integration is sufficient and 'sustainable'.

There is no definition of 'sustainable integration' in the Nationality Law of 1985. According to the explanatory notes of the draft government bill of 1998, the applicant must have the right to permanent residence and a work permit valid for at least two years. In addition, the applicant must live together with his or her family in Austria (Mussger et al. 2001:77).[30] According to the Administrative Court, particularly good knowledge of the German language may also be considered an indicator of sufficient integration and may justify facilitated naturalisation by reducing the requirement of ten years of residence.[31]

The indeterminacy of the integration requirement is certainly a source of diverging implementation practices across the country. For example, in Lower Austria authorities also take into account whether the applicant makes an effort to adapt to the 'Austrian way of life' and participates in the activities of local associations that benefit the common interest of the municipality.[32] Neither the adaptation to the Austrian way of life nor participation in local associations is mentioned in the explanatory notes to the draft bill. However, the Administrative Court argued that the responsible authorities might consider additional factors to judge the extent of integration of an applicant.[33]

Since the introduction of sufficient knowledge of German as a condition for naturalisation, the Administrative Court repeatedly dealt with the required level of language proficiency. The Court argued that applicants should have basic or minimum knowledge of German to master everyday life and that it is not necessary to have an 'easy' communication with the applicant.[34] The Court also decided that lack of German language skills by family members of the applicant or communication

within the family in another language are not sufficient reasons to conclude that the applicant is not integrated (Feik 2003: 4).

Another difference between the federal provinces concerns the fees for acquisition of Austrian nationality. Applicants have to pay a federal fee, which amounts to 768 euros for discretionary naturalisation, and provincial fees that differ widely across the federal provinces. The acquisition of Austrian nationality by a family with one child may cost roughly 1,400 euros in the province of Vienna, whereas the same family would have to pay up to 3,000 euros in Upper Austria, Styria or Vorarlberg (Waldrauch & Çinar 2003: 275f). The reform of the nationality legislation that came into force in early 2006 raised the fees even further by € 175.

There are no public outreach programs to encourage immigrants to naturalise.

1.4 Conclusions

Austrian Nationality Law was amended repeatedly since 1945. From the early 1960s until 1985, the adoption of international conventions made changes to the law necessary.[35] The most important driving factor with respect to legislative reforms in this period, was the elimination of gender inequalities where the acquisition and loss of Austrian nationality was concerned. Conditions relevant to the acquisition of nationality by immigrants and their descendents, however, remained basically the same until the late 1990s. The last amendment of the Nationality Law in 1998 aimed at making acquisition of Austrian nationality by immigrants more difficult. This is in stark contrast to developments in several other Western European countries that have become more tolerant towards the incidence of dual nationality and have granted a legal entitlement to acquisition of nationality by children of immigrants (Hansen & Weil 2001; Çinar 1994). How can we explain the persistence of Austria's highly reluctant approach towards the integration of immigrants and their descendents as citizens?

A first simple hypothesis is that Austria has not developed a self-understanding as an immigration country, despite the permanent settlement of post-war migrants and their family members, but has retained 'guest worker' approach. Yet, other European countries with inclusive citizenship policies also do not regard themselves as countries of immigration, and Austria no longer pursues 'guest worker' policies. On the contrary, Austria is the first European country that adopted an immigration policy based on a quota system in the early 1990s. However, this shift in immigration policy, i.e., the establishment of strict immigration controls, did not entail a shift in 'immigrant policies' (Hammar

1985) in terms of an active policy of integration, for example, by facilitating the acquisition of nationality by immigrants and their descendents. Restrictions with respect to immigrants' access to social rights and benefits, as well as to political rights were maintained, and the conditions for naturalisation became more demanding in the late 1990s.

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

It is noteworthy that until the mid-1990s there were no major political debates about Austrian national identity and Austrian Nationality Law. After 1945, Austria could not afford to reconstruct its political self-image on the basis of traditional German nationalism. Yet, neither was the reconstruction of the 'Second Republic' connected to the multiethnic and multilingual composition of the Habsburg Monarchy, nor did it build upon a republican understanding of political belonging and membership (Bauböck & Çinar 2001). In the post-war period, the vacuum of national identity was filled mainly by referral to music, arts and landscape rather than common descent, ethnicity and language. With respect to nationality legislation, the political 'emptiness' of Austrian national identity produced a peculiar framework: the principle of ius sanguinis was reaffirmed after 1945, but requirements of cultural assimilation were not part of nationality legislation. From the mid-1980s, however, Austria's political landscape – dominated by Conservatives and Social Democrats – underwent a major transformation due to the rapid rise of the right-wing Freedom Party as well as increasing support for the Greens. The impact of this reconfiguration was, among other things, the politicisation of questions related to immigration, identity and citizenship. The steady growth of voters opting for the

Freedom Party combined with the federal structure of the Austrian political system eventually triggered a political competition among the federal provinces to be more restrictive with respect to the naturalisation of immigrants (Bauböck & Çinar 2001). While the Social Democratic Party failed to participate with self-confidence in the debate on the meaning of citizenship and the conditions for membership in the Austrian polity, their then coalition partner, the Conservatives, successfully enforced the claim for a more restrictive naturalisation policy and the introduction of German language proficiency as a condition for naturalisation.

The most important factor, however, that led to calls for a restrictive administration of nationality legislation was the surge in naturalisations since the early 1990s. Despite demanding conditions for naturalisation, a steadily increasing number of immigrants acquired Austrian nationality as they fulfilled the general residence requirement of ten years. Thus, more and more immigrants could escape the legal restrictions imposed on third country nationals with respect to access to the labour market, social rights and benefits and political participation. In the province of Vienna, where access to municipal housing was for a long time exclusively reserved for Austrian nationals, this development led to growing resentments about the allocation of municipal housing to (naturalised) 'foreigners'. Already before the amendment of the nationality legislation in 1998, the Viennese authorities responded by making facilitated naturalisations dependent on more restrictive conditions. The example of Vienna shows that a restrictive naturalisation policy is not necessarily the expression of an assimilationist approach. Rather, it can be argued that restrictions in nationality legislation have more to do with the wish to constrain immigrants' access to the labour market, social benefits, political rights and family reunion, and less with an ethnic conception of Austrian national identity. In the case of Austria, this latter point is of particular importance. Contrary to the well-known arguments about the 'denationalisation' of citizenship rights (Soysal 1994), acquisition of Austrian nationality still matters a lot with respect to immigrants' security of residence, access to the labour market and social and political rights.

This fact is clearly reflected in the continuous surge in naturalisations over the last decade, despite the fact that the reform of 1998 made acquisition of Austrian nationality dependent on proof of sufficient knowledge of the German language and increased the residence requirement for facilitated naturalisations of third country nationals (except for recognised refugees) from four to six years. The tightening of the conditions for facilitated naturalisation did not produce the result that the government intended to achieve with the reform of 1998, i.e., gaining control over the increasing numbers of persons natura-

lised, as the proportion of foreign nationals who have lived in the country for at least ten years has grown considerably since the last major immigration wave of the 1990s. Thus, in order to effectively restrict the number of naturalisations, the general conditions for naturalisation and, in particular, family-based modes of acquisition would rather have to be made more difficult.

In its government programme of 2003, the Austrian government already expressed its intentions to further restrict the possibility of naturalisation of immigrants after less than ten years of residence, while at the same time removing certain conditions of naturalisation for former Austrian nationals.[36] An extensive amendment to the law was finally passed on 6 December 2005.[37] The new provisions came into force in March 2006. The most important changes can be summarised as follows:

– *General conditions for discretionary naturalisation*: Under current legislation, naturalisation is possible after ten years of uninterrupted and registered 'principal residence'. Henceforth, only periods of 'legal' residence will count and applicants must be 'settled' for at least five years under the *Law on Settlement and Residence of 2005*.[38] Naturalisation of foreign nationals, who cannot obtain a settlement permit (e.g. asylum seekers who are not granted refugee status but enjoy subsidiary protection) will now require a minimum residence of fifteen years. The duration of legal residence will be interrupted by residence abroad that exceeds 20 per cent of the required time of residence in Austria. Any prison sentence for an intentional crime or a fiscal offence as well as any conviction for an offence specified in the *Aliens Police Law* of 2005 shall preclude the granting of nationality.[39] In addition, serious and repeated violations of administrative regulations, especially concerning road safety, will also prohibit naturalisation. According to a new provision Austrian nationality must not be granted to foreigners if they have a 'close relation' with an extremist or terrorist group. The new law no longer allows the granting of nationality if the applicant has a lack of financial means, even if this is due to circumstances beyond the applicant's control, and it rules out recourse to provincial welfare benefits (*Sozialhilfe)* for the three years preceding naturalisation.
– *Language proficiency and knowledge of the country*: Stricter conditions will apply for knowledge of the German language irrespective of whether nationality is to be granted by discretion or legal entitlement. Henceforth, applicants for naturalisation have to comply with the requirements of the 'integration agreement' regulated by § 14 of the Law on Settlement and Residence of 2005, i.e., they must either attend a 'German integration course' of at least 300 hours or otherwise prove knowledge of German at the proficiency level A-2 of the

Common European Framework of Reference. Certain categories of applicants, including former nationals, survivors of the Holocaust, and persons who are not able to comply with the requirement of language proficiency because of old age, lasting illness or lack of legal capacity, will be exempted. No proof of language proficiency is required from minor children attending a primary school (generally from ages six to ten). However, those in secondary school (ages eleven to fourteen) must obtain a passing grade in the subject of German language. In addition, applicants must prove basic knowledge of the 'democratic order and history of Austria and the respective federal province' by taking a multiple-choice test.[40]

- *General integration clause*: The new law also adds a clause that all decisions on naturalisation have to take into account the applicants' 'orientation towards social, economic and cultural life in Austria and towards the basic values of a European democratic state and its society'.
- *Conditions for facilitated naturalisation by legal entitlement*: Three groups of foreign nationals who could be naturalised by discretionary decision after four years of residence under the old law will instead be granted legal entitlement to acquisition of Austrian nationality after six years, if they comply with the general conditions for naturalisation, i.e. (1) recognised refugees, (2) nationals of EEA-states and (3) persons born in Austria. Birth in Austria will thus for the first time establish a legal claim to the acquisition of nationality. However, this move towards ius soli is, seriously called into question by the many conditions for naturalisation that apply to these native-born persons as they do to immigrants.
- *Conditions for naturalisation of foreign spouses*: Naturalisation of foreigners married to Austrian nationals will become much more difficult. The required duration of uninterrupted and legal residence will be raised from three or four to six years and the duration of marriage from one or two to five years.
- *Facilitating reacquisition and retention of Austrian nationality*: Some minor changes will make it easier for certain groups (especially minors) to reacquire Austrian nationality or to retain it when naturalising abroad. Similar reasons for retaining a previous nationality will still not be accepted for immigrants who naturalise in Austria.
- *Higher fees*: Federal fees for acquiring nationality will be raised drastically. Provincial fees that are added to federal ones are also likely to rise to compensate for the costs of the newly introduced exams on provincial history. Fees for naturalisation in Austria will in most cases then be the highest among the fifteen 'old' EU states.

This recent amendment of Austrian nationality legislation is inspired by the principle of 'integration before new immigration' which has been asserted in domestic politics since the late 1990s. The first major step to establish this principle in the law was taken in 2002 when the Aliens Law was amended to introduce an obligation for persons who entered the country since 1998 onwards to comply with a so-called 'integration agreement', i.e., to attend German integration courses of 100 hours. The second step consists of a new regulation that came into force in January 2006, which raised the duration of the compulsory integration courses to 300 hours. The amendment of Austrian nationality legislation is the third step in the process of redefining integration as a task to be accomplished by immigrants before they can be granted secure residence or full citizenship rights. While its traditionally restrictive approach towards the legal integration of immigrants as citizens during the previous two decades as citizens made Austria appear as an 'outsider', or at least a latecomer, in terms of the integration of immigrants, the recent domestic reforms of immigration and nationality legislation are in line with similar restrictive reforms in a number of other European immigration countries, and they may thus have changed Austria's position to that of a 'trend setter'.

Chronological table of major reforms in Austrian nationality law since 1945

Date	Document	Content
27 April 1945	Law 1/1945 (StGBl. 1/1945)	Proclamation of Independence of Austria.
1 May 1945	Law 4/1945 (Verfassungs-Überleitungsgesetz; StGBl 4/1945)	Restoration of the Austrian Constitution of 1920, in the version of 1929.
29 May 1945	Notification (Kundmachung StGBl. 16/1945), entry into force: 10 June 1945	Notification on the abolishment of acts and decrees of the German Reich concerning nationality within the territory of Austria.
10 July 1945	Law on the re-establishment of Austrian nationality (Staatsbürgerschafts-Überleitungsgesetz, StBGl. 59/1945), entry into force: 15 July 1945	
10 July 1945	Law on acquisition and loss of Austrian nationality (Gesetz über den Erwerb und Verlust der österreichischen Staatsbürgerschaft – Staatsbürgerschaftsgesetz 1945, StBGl. 60/1945), entry into force: 15 July1945	
4 November 1949	Law 276/1949 (Staatsbürgerschaftsgesetz 1949 and Staatsbürgerschafts-	Re-announcement due to numerous amendments between 1945 and 1949 of the re-

Date	Document	Content
	Überleitungsgesetz 1949, Constitutional Provisions on Nationality concerning the treatment of National Socialists, BGBl. 276/1949), entry into force: 31 December 1945	establishment of Austrian nationality law on acquisition and loss of Austrian nationality and of constitutional provisions concerning the treatment of National Socialists with regard to Austrian nationality.
2 June 1954	Law 142/1954 (Bundesgesetz betreffend den Erwerb der Staatsbürgerschaft durch Volksdeutsche, BGBl 142/1954), entry into force: 6 August 1954	Law on the acquisition of nationality by 'Volksdeutsche' (defined as German-speaking persons, who are stateless or whose nationality is unclear).
26 October 1958	Law 214/1958 (BGBl. 214/1958)	Ratification of the protocol concerning military obligations in certain cases of double nationality.
6 November 1958	Law 45/1959 (BGBl. 45/1959)	Agreement between Austria and Germany on exchange of information concerning naturalisations and dual nationality.
17 July 1963	Law 40/1964 (BGBl. 40/1964)	Agreement between Austria and Denmark on exchange of information on naturalisations.
10 September 1964	(BM.f. I.-Zl. 220-275-32/65)	Agreement between Austria, Belgium, Germany, Greece, France, Italy, Luxemburg, the Netherlands, Switzerland and Turkey on exchange of information on naturalisations.
15 July 1965	New codification and re-announcement of the Federal Law on Austrian Nationality 1965 (Staatsbürgerschaftsgesetz 1965, BGBl. 250/1965), entry into force 1 July 1966	Comprehensive amendment of automatic modes of acquisition and loss of nationality in preparation of Austria's accession to international conventions; abolishment of automatic acquisition of nationality by women marrying Austrian nationals.
19 January 1968	Law 238/1968 (BGBl.238/196)	Accession to the Convention on the Nationality of Married Women
11 July 1973	Federal Law amending the Nationality Law 1965 (BGBl. 394/1973), entry into force 1 January 1974	Facilitation of naturalisation of minor children; adaptation to reform of the law on elections to federal parliament and law on deletion of criminal record 1971; facilitation of the retention of Austrian nationality when naturalising abroad; introduction of new modes of acquisition for expatriates and former Austrian nationals.

Date	Document	Content
7 November 1974	Federal Law amending the Nationality Law 1965 (BGBl. 703/1974), entry into force 1 January 1975	Adjustment to reform of criminal law.
22 September 1972	Law 538/1974 (BGBl 538/1974), entry into force: 1 September 1975	Ratification of the Convention on the Reduction of Statelessness 1961.
31 July 1975	Law 471/1975 (BGBl. 471/1975), entry into force: 1 September 1975	Ratification of the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality.
1 January 1981	Law 450/1981 (BGBl. 450/1981)	Agreement between Austria and Argentina concerning military obligations of dual nationals.
3 March 1983	Federal Law Amending the Nationality Law1965 (BGBl. 170/1983), entry into force 1 September 1983	Granting Austrian women the right to pass their nationality on to their children born in wedlock upon declaration within three years after the entry into force of the amendment; further equalisation of the conditions of voluntary acquisition of nationality to be fulfilled by men and women.
27 September 1984	Constitutional Court Decision (VfGH VfSlg 10.036, BGBl 375/1984)	Concerning automatic acquisition of nationality upon legitimation by a child of an Austrian father.
9 May 1985	Federal Law amending the Nationality Law 1965 (BGBl 202/1985), entry into force 1 June 1985	Extension of co-determination rights of minors above the age of fourteen concerning acquisition and loss of nationality.
19 July 1985	Federal Law on Austrian Nationality 1985 (Staatsbürgerschaftsgesetz 1985, BGBl 311/1985), entry into force 31 July 1985	Re-announcement of the Nationality Law 1965 including all amendments since 1965.
3 July 1986	Federal Law amending the Nationality Law 1985 (BGBl 386/1986), entry into force 1 September 1986	Extension of the right of Austrian mothers to pass on nationality to their children born before 1983 until 31 December 1988.
29 November 1988	Law 685/1988 (BGBl 685/1988), entry into force 1 January 1989	Constitutional Amendment anchoring the uniformity ('Einheitlichkeit') of Austrian nationality in the Constitution and adjustment of the Nationality Law 1985.
14 March 1990	Law 148/1990 (BGBl 148/1990), entry into force 15 March 1990	Amendment of the legal regulations on voting rights.
30 July 1993	Amendment of Nationality Law 1985 (BGBl 521/1993), entry into force: 31 July 1993	Facilitation of reacquisition of Austrian nationality by former nationals who suffered persecution by organs of the

Date	Document	Content
		NSDAP or the authorities of the Third Reich.
8 July 1994	Law 505/1994 (BGBl 505/1994), entry into force: 1 January 1995	Adjustment of the Nationality Law 1985 to terminology of the Law on Principal Residence (Hauptwohnsitzgesetz).
19 August 1997	Law 109/1997 (BGBl 109/1997)	Adjustment of the Nationality Law 1985 to the amendment of the Law on Civil Service and the Law on the Organisation of Universities concerning foreign university or college professors.
17 September 1998	Law 39/2000 (BGBl. III Nr. 39/2000), entry into force: 1 March 2000	Ratification of the European Convention on Nationality.
1 January 1998	Law 30/1998 (BGBI. 30/1998)	Adjustment of terminology to the amendment of the Law on Training of Women in the Federal Armed Forces (Gesetz über die Ausbildung von Frauen im Bundesheer.
1 July 1998	Law 123/1998 (BGBl 123/1998)	Adjustment of Nationality Law 1985 to the amendment of the Law on Civil Service (1. Dienstrechts-Novelle 1998).
14 August 1998	Amendment of the Nationality Law 1985 (Staatsbürgerschaftsgesetz-Novelle 1998, BGBl 124/1998), entry into force: 1 January 1999	Among other things introduction of sufficient knowledge of German as a condition for naturalisation; amendment of the conditions for 'facilitated' naturalisation; introduction of a legal entitlement to naturalisation after 15 years of uninterrupted residence in case of proof of 'lasting integration'.
19 March 1999	Law III Nr. 214/2000 (BGBl. III Nr. 214/2000), entry into force: 1 January 2001	Agreement between Austria and Switzerland concerning military obligations of dual nationals (a dual national shall fulfil his military obligations in the country of habitual residence).
6 December 2005	Amendment of the Nationality Law 1985 (Staatsbürgerschaftsgesetz-Novelle 2005, BGBl 37/2006), entry into force: 23 March 2006	Longer residence periods for acquisition through marriage and facilitated naturalisation; stricter requirements of clean criminal record and sufficient financial means; standardised German language test and new societal knowledge test; increase of fees.

Notes

1 Federal Law on Austrian Nationality 1985, Staatsbürgerschaftsgesetz 1985, BGBl. 311/1985, entry into force 31 July 1985.
2 Bundesgesetz, mit dem das Staatsbürgerschaftsgesetz 1985 (StbG), das Tilgungsgesetz 1972 und das Gebührengesetz 1957 geändert werden (Staatsbürgerschaftsrechts-Novelle 2005), BGBl. I Nr. 37/2006.
3 Amendment of Nationality Law 1985, Staatsbürgerschaftsgesetz-Novelle 1998, BGBl. 124/1998, entry into force: 1 January 1999.
4 For a detailed description of the conditions for naturalisation by legal entitlement see sect. 1.3.1.1.
5 The Freedom Party, who joined the ÖVP-led government in 2000, split in spring 2005. The FPÖ ministers and members of Parliament then formed the BZÖ (Alliance for the Future of Austria).
6 For a detailed discussion of the Treaty of Saint-Germain and bilateral treaties see Thienel (1989: 49-60).
7 For persons who had to flee Austria because of political persecution, the time spent abroad was put on par with residence in Austria.
8 Law 142/1954, Bundesgesetz betreffend den Erwerb der Staatsbürgerschaft durch Volksdeutsche, BGBl. 142/1954, entry into force: 6 August 1954.
9 New codification and re-announcement of the Federal Law on Austrian Nationality 1965, Staatsbürgerschaftsgesetz 1965, BGBl. 250/1965, entry into force 1 July 1966.
10 Federal Law Amending the Nationality Law1965, BGBl. 170/1983, entry into force 1 September 1983.
11 BGBl. 170/1983, art. I/II; Federal Law amending the Nationality Law 1985, BGBl. 386/1986, entry into force 1 September 1986, art. I/II.
12 Federal Law on Austrian Nationality 1985, Staatsbürgerschaftsgesetz 1985, BGBl. 311/1985, entry into force 31 July 1985.
13 Law 685/1988, BGBl. 685/1988, entry into force 1 January 1989.
14 See BGBl. 311/1985 in the version of BGBl. I Nr. 124/1998 (Nationality Law 1985) and BGBl. 329/1985 in the version of BGBl. 660/1993 and 982/1994 (Decree on Nationality).
15 Since 1998, this provision applies only to persons who are not EEA-nationals. Spouses and minor children of the respective persons acquire Austrian nationality by declaration (§ 25 (2)).
16 The amendment that came into force in March 2006, however, introduced for the first time a legal entitlement to naturalisation for foreign nationals born in Austria after six years of residence (see sect. 1.4).
17 The formal recognition of paternity by the father is not sufficient, as such recognition does not establish a marital father-child bond (Thienel 1990: 150).
18 The residence requirement of ten years may be waived also in the case of a person who, prior to 1945, had the nationality of one of the successor states of the Austro-Hungarian Monarchy or was stateless, had his or her principal residence in the federal territory and had to leave the country because of political persecution (§ 10 (4) 2).
19 The Convention came into force in Austria in December 1975 (See BGBl. 538/1974). Austria made two reservations to art. 8, § 3 (a), (i) and (ii) of the Convention. First, Austria declared that it retains the right to deprive a person of his nationality if such a person enters the military service of a foreign State of his own free will. Second, Austria retained the right to deprive a person of his nationality, if such person being in the service of a foreign State, acts in a manner seriously prejudicial to the interests or to the prestige of the Republic of Austria.

20 E.g., VwGH 94/01/0744 and 93/01/1255.
21 See Reservation concerning art. 6 (1) lit.b of the European Convention on Nationality, BGBl. III 39/2000.
22 In this context, it is noteworthy that according to Chapter II art. 5 (2) of the European Convention on Nationality 1997, to which Austria is a Contracting State, each State Party should be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently. Although Austria did not make any reservations to Chapter II art. 5 (2) of the Convention, the explanatory notes to the draft proposal of the Austrian government state that the principle of non-discrimination between nationals is not a binding provision, but still contain a declaration of intent to eliminate such discriminatory provisions in matters of nationality law (see RV 1089, AB 1319 BlgNR, XX. GP).
23 See note 20 above concerning Austria's reservations to the Convention on the Reduction of Statelessness 1961.
24 See art. 2 of Law no. 4112 and Dogan (2002: 127-130).
25 *Der Standard*, 12/13 October 1996: 27.
26 Regierungsvorlage, 1283 BlgNR 20.GP.
27 For the purposes of this overview we excluded the special reason former Austrian nationality (§ 10 (5) 1) here and rather grouped it together with other modes of acquisition targeting former Austrian nationals; for details see the note to Table 1.1.
28 Para. 69 Geschäftsordnungsgesetz, BGBl. 10/1975 in the version of BGBl. I Nr. 163/1998.
29 Information provided by the Ministry of the Interior, 10 February 2005.
30 1283 BlgNR 10.GP.
31 VwGH 2000/01/0081.
32 Information provided by the Nationality Department of the Federal Government of Upper Austria, 29 April, 2005 (on file with the authors).
33 VwGH 2000/01/0277.
34 VwGH 2002/01/0147 and VwGH 2002/01/0186.
35 Austria is party to the UN Convention on the Status of Married Women (BGBl. 238/1968), the Convention on the Elimination of all Forms of Discrimination against Women (BGBl. 443/1982), the UN Convention on the Reduction of Statelessness (BGBl. 538/1974), the Convention of the Council of Europe on the Reduction of Multiple Nationality and Military Obligations in Cases of Multiple Nationality(BGBl. 471/1976), the Protocol on Military Services in cases of Multiple Nationality (BGBl. 214/1958), and the European Convention on Nationality (BGBl. III 39/2000).
36 See Chapter 4 of the 'Regierungsprogramm der österreichischen Bundesregierung für die XXII. Gesetzgebungsperiode' (on file with the author).
37 See Amendment of Nationality Law 1985, Staatsbürgerschaftsgesetz-Novelle 2005, BGBl. 37/2006, entry into force: 23 March 2006.
38 Applicants who have resided in Austria for at least 30 years are exempted from the requirement of 'legal' residence.
39 Such offences include (among other things) prostitution and procurement, human trafficking, provision of false information, marriages of convenience, illegal employment, etc.
40 The Ministry of the interior and the provincial governments shall regulate the content of the test on the basis of the curriculum for the final grade of secondary school (*Hauptschule*). Topics to be covered are the structure and relevant institutions of the Republic of Austria, basic civil rights and liberties, possibilities of legal protection, electoral rights, and the history of Austria and the respective province.

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