

== AKT 116035 == Dokument 1 == [Østrig: svar på høring] ==

Begrundelse: + § 32, stk. 2

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Titel: Amb. Wien - SVAR PÅ INSTRUKTION - andre landes holdning til ændring af FN's konvention af 1961 om begrænsning af statsløshed
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JTFM's instruktion af 30. juni 2016

Der har i Østrig for to år siden været drøftelser i relation til spørgsmålet om statsborgerskab og FN-konventionen. Vinklen var imidlertid spørgsmålet om *fratagelse* af østrigsk statsborgerskab for personer, der rejste til udlandet for at kæmpe i væbnede konflikter (foreign fighters). Det østrigske udenrigsministerium har udarbejdet vedhæftede tekst (i 2015), som opsummerer overvejelserne samt udkommet ift. national lovgivning – essensen er, med henvisning til FN-konventionen samt European Convention on Nationality, at østrigske statsborgere ikke kan fratages statsborgerskab i forbindelse med deltagelse i væbnet konflikt i udlandet, såfremt dette måtte gøre dem statsløse.

Kompetencen ift. *tildeling* af statsborgerskab ligger på delstatsniveau (die Bundesländer), og ambassadens samtalepartnere er ikke bekendt med, at der skulle have været sager, der har givet anledning til debat i stil med den danske debat.

Fra østrigsk side opfatter man det ikke som muligt at suspendere tildeling af statsborgerskab til personer, som måtte være omfattet af FN-konventionen.

Fra østrigsk side er man umiddelbart indstillet på en nærmere dialog med ligesindede lande vedr. fortolkning/mulig ændring af konventionen, men først og fremmest ift. vinkler vedr. fratagelse af statsborgerskab i forbindelse udrejse til væbnet konflikt eller fx hvor statsborgerskab måtte være tilkendt på baggrund af bevidst afgivne urigtige oplysninger (svindel).

Amb. Wien - Mads Weck Hansen

2. Foreign fighters, withdrawal of Austrian citizenship

Like citizens of other European countries, a number of Austrian citizens have recently departed to foreign countries in order to join groups involved in armed conflicts in these countries. Austria is seriously concerned about this phenomenon, the so-called "foreign fighters", and has taken action against it. In this context, draft legislation was prepared by the Ministry of the Interior in close cooperation with the Foreign Ministry providing for the withdrawal of the Austrian citizenship from "foreign fighters". While such withdrawal does not pose any problem under international law as far as persons with dual nationalities are concerned, this would not be the same concerning persons possessing only Austrian citizenship, in which case the withdrawal would make them stateless. In that case, Austria's obligations as party to the UN Convention on the Reduction of Statelessness^[1] and the European Convention on Nationality^[2] had to be taken into consideration.

According to Article 8 of the UN Convention, a contracting state shall not deprive a person of its nationality if such deprivation would render him stateless. Upon its accession to this Convention in 1972, Austria declared to retain the right to deprive a person of his nationality, if such person enters, on his own free will, the military service of a foreign state. This declaration corresponds to a traditional provision of the Austrian Citizenship Act and was thus in conformity with Article 8(3) of the Convention which allows states to retain the right to deprive a person of his nationality, if such right was based on grounds existing in its national law at that time of signature, ratification or accession.

According to Article 7 of the European Convention, a state party may not provide in its internal law for the loss of its nationality if the person concerned would thereby become stateless (unless the nationality was acquired

fraudulently). Upon its ratification of the Convention in 1998, Austria made a reservation to this article declaring that it retains the right to deprive a national of its nationality if such person voluntarily enters the military service of a foreign state.

A possibility discussed only theoretically to ensure that the Austrian citizenship can be withdrawn from foreign fighters even if this would make them stateless would have been to denounce the two conventions, to change the Austrian legislation and to accede to the conventions with a new declaration and a new reservation. However, since this procedure would have been problematic from a rule of law perspective and would have met with criticism from other states, it was not further explored.

Instead, it was examined more closely whether it could be explained through an interpretative declaration that the object and purpose of Austria's declaration and reservation of 1972 and 1998 respectively was to sanction Austrian citizens taking part in military activities abroad. While this traditionally took the form of joining the military service of a foreign state, nowadays non-state actors have increasingly become involved in armed conflicts and foreign fighters are frequently joining non-state organized armed groups. In that case, Austria's declaration and reservation of 1972 and 1998 could possibly be interpreted as covering also the withdrawal of the Austrian citizenship from such foreign fighters. The feasibility of such an interpretative declaration was discussed at a meeting of the international law working group of the Council of Europe (CAHDI) on 18/19 September 2014 and not pursued in view of the result of that discussion.

Consequently, the following proposal for a new Section 33 (2) of the Citizenship Act, taking account of Austria's obligations under the two conventions, was submitted by the Federal Government to Parliament:

„(2) The citizenship of a citizen who voluntarily and actively participates, in support of an organized armed group, in hostilities taking place abroad in the framework of an armed conflict, is to be withdrawn if such withdrawal does not make him stateless.”

The explanatory report of the government bill^[3] specifies *inter alia* that the wording “organized armed group” is to be understood in accordance with its meaning under international humanitarian law and that it may also include the participation in hostilities of members of private military companies, but excludes activities undertaken in the context of peacekeeping and peace supporting operations. It also explains that the jurisprudence of the European Court of Justice^[4] requires a proportionality analysis to be undertaken if the Austrian citizenship to be withdrawn is the only citizenship of an EU member state of the person concerned and its loss would therefore entail the loss of EU citizenship.

The amendment was adopted by Parliament in December 2014 and entered into force on 1 January 2015^[5].

[1] Federal Law Gazette 538/1974.

[1] Federal Law Gazette III 39/2000.

[1] Government bill RV 351BlgNR XXV. GP.

[1] See in particular the *Rottmann* case, C-135/08.

[1] Federal Law Gazette I 104/2014.

[1] Federal Law Gazette 538/1974.

[2] Federal Law Gazette III 39/2000.

[3] Government bill RV 351BlgNR XXV. GP.

[4] See in particular the *Rottmann* case, C-135/08.

[5] Federal Law Gazette I 104/2014.