Draft version

Nationality law and Naturalisation in Austria

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1. Origins of Austrian Nationality Law

In recent debates, it has become common to illustrate the impact of widely diverging national traditions with regard to the inclusion of postwar immigrants by referring to France and Germany respectively. However, examining the origins of the Austrian Nationality Law reveals that the historical counterpart of the French conception of citizenship is represented by legal regulations implemented at the beginning of the nineteenth century within the Habsburg Empire (Grawert 1973, 122). Contrary to the emergence of a republican conception of citizenship along the lines of the French Revolution, nationality legislation in Austria has evolved within a monarchical framework. Legal provisions concerning attribution and acquisition of Austrian nationality were for the first time codified at the beginning of the nineteenth century (Thienel 1989; Brandl 1996). The Civil Code of 1811 introduced Austrian citizenship as a new, unified status and established an exclusive link between civil rights and nationality status. Art. 28 of the Civil Code declared that only Austrian citizens were entitled to unrestricted enjoyment of civil rights.

The introduction of the Civil Code was motivated simultaneously by the attempt to redefine the internal boundaries within the Empire‘s resident population and to foster political unity across the Erbländer and the Kronländer (Grawert 1973, 151). Subsequent changes to nationality legislation in the following years reflect continuous efforts to hold together a multiethnic population by means of a uniform nationality law.

While the Civil Code of 1811 came into effect originally only in certain parts of the Empire, the constitution of 1849 provided for the enactment of a new nationality law to be effective in all provinces of the Empire including Hungary (Thienel 1989, 37). Though the constitution of 1849 was repealed a few years later, the Civil Code of 1811 was put into force in Hungary and in other parts of the Empire in 1851. However, in Hungary lasting resistance led to the abrogation of the Civil Code in 1861. In 1867 Hungary finally gained autonomy with respect to nationality legislation. Thereafter citizens of the Austrian part of the Empire were treated as foreigners in the Hungarian part and vice versa (Heinl 1950, 33; Brandl 1996, 63). In the Austrian provinces of the monarchy legal provisions of the Civil Code of 1811 and several decrees concerning their implementation continued to operate until the collapse of the monarchy at the end of World War I.

The Civil Code of 1811 contained regulations with respect to the attribution of citizenship by birth or naturalisation and for the automatic loss of citizenship by an Austrian women marrying a foreigner. Emigration was another major reason for being deprived of citizenship. This was regulated by the Auswanderungspatent of 1832 (Emigration Law). The status of an Austrian citizen was automatically attributed to descendants of an

Austrian father, to foreign women upon marriage of an Austrian husband and to others upon entry into the civil service. Foreigners were naturalised automatically after ten years of continuous residence if they had not been convicted for a criminal offence. This regulation gave rise to diplomatic disputes and the compulsory naturalisation of foreigners after ten years of residence was transformed into conditional or discretionary admission in 1833. Foreigners who had been already automatically naturalised were allowed to renounce their Austrian citizenship within six months after the enactment of the new regulation (Heinl 1950, 33).

However, the acquisition of Austrian citizenship did not confer the right to unconditional residence or the right to the provision of poor relief (Brandl 1996, 63). Both of these rights were conditional upon holding the Heimatrecht in a municipality which in turn could be acquired only by Austrian citizens either by birth or after at least ten years of residence in the municipality (Heinl 1950, 28ff; Thienel 1989, 45ff.). Austrian citizens living in a municipality in which they did not enjoy the Heimatrecht were liable to be deported if they could not sustain themselves and became a public burden. The Heimatrecht thus established a form of local citizenship which restricted the territorial scope of public assistance and operated as a control mechanism over internal migration. At the same time, it was also used to mark the boundary between citizens and foreigners. The Heimatrecht could not be directly acquired by foreigners and naturalisation was conditional upon confirmation that a municipality was willing to grant the applicant its Heimatrecht. Long before the general use of passports, the Heimatschein (certification of Heimatrecht) was the official proof of citizenship status. Legal provisions concerning Heimatrecht existed with some modifications until 1939 and formed a reference point for the redefinition of the citizenry after 1918.

2. The Unmixing of Nationalities during the First Republic

The creation of the Republic of Deutsch-Österreich in 1918 caused a rather chaotic constellation. Former citizens of the Austro-Hungarian monarchy had to be assigned to one of the successor states. This made for complicated procedures based on provisional national regulations, on the Treaty of Saint Germain-en-Laye which came into force in July 1920 and on some bilateral agreements (Thienel 1989, 58ff). The Treaty of St. Germain contained certain provisions for the ëunmixing of peoples‘: The draft version of the Treaty provided for the assignment of individuals to one of the successor states according to their actual residence at that time. However, representatives of Deutsch-Österreich successfully introduced the Heimatrecht in an Austrian municipality into the provisions (Thienel 1989, 51). The intention of the Austrian government was particularly to exclude roughly 30.000 Jewish refugees stranded in Austria after 1918 from the acquisition of Austrian citizenship on the basis of actual residence (Grandner 1995, 62).

According to the principle of Heimatrecht everyone holding this right in a municipality henceforth outside the new territorial borders of the Austrian Republic acquired the nationality of one of the successor states (Grandner 1995, 70). However, such persons could opt for the acquisition of the citizenship of another successor state according to

Art. 80 of the Treaty of St. Germain if they spoke the same language or were ëof the same race‘ as the majority of that state.

At the level of national legislation the provisions of the Civil Code of 1811 remained in force until 1925 when a new Nationality Law came into force. The Nationality Law of 1925 provided for naturalisation after already four years of residence in Austria (de Groot 1989, 150). Other provisions were mainly based on the legislative framework which had been developed within the monarchy. An important new rule concerned the loss of citizenship upon voluntary acquisition of a foreign nationality.

Austria was annexed to Nazi Germany and became a German province on 13 March 1938. All former Austrian citizens became nationals of the Third Reich. The Anschlu_ was declared null and void on 27 April 1945 and a transitory law re-established the provisions of the nationality law of 1925. After reestablishment of Austria as an independent state in 1945 the German citizenship of former Austrian citizens expired and all persons already holding Austrian citizenship in 1938 were declared to be Austrian citizens (Brandl 1996, 66f). Although the German citizenship of Austrians had been invalidated, Austrian citizens could regain the citizenship of Germany by option if they had actually resided in Germany (Brandl 1996, 66; Thienel 1989, 71). A new nationality law of the Second Republic was only adopted in November 1949.

3. Postwar Reconstruction of Austrian Nationality

One legacy of the monarchy was that Austria became a federal republic with a separate status of provincial citizenship (Landesbürgerschaft) for each of its nine Länder. The major effect of this federal structure, which still exists today, is that the Länder administer the law on nationality. Especially with regard to discretionary naturalisations the law leaves them considerable power to interpret the criteria of admission.

The most important development in the immediate postwar period was the integration of ethnic Germans who had been expelled from their homelands in Central and Eastern Europe after the war into Austrian citizenship. Different from Germany, Austria was first only a reluctant host country for these Volksdeutsche Vertriebene. The option of acquiring Austrian citizenship by declaration was only offered between 1954 and 1956 if they had resided in Austria in the period from 1944 to 1950 (Thienel 1989, 83f). According to estimates roughly 230 000 Volksdeutsche became Austrian citizens until 1958 (Scheuringer 1983, 25). Other displaced persons stranded in Austria who were not of German descent and many of whom had been victims of forced labour or survivors of the Holocaust were deliberately excluded from permanent settlement and integration in Austria.

During the late 1950s and early 1960s three international conventions caused further important changes in the law and led to a new version in 1965. These were the UN Convention on the Status of Married Women of 1957, the UN Convention on the Reduction of Statelessness of 1961 and the Convention of the Council of Europe on the Reduction of Multiple Nationality of 1963. Although equality of men and women in

matters of nationality was only fully achieved in 1983 in response to the UN Convention on the Elimination of All Forms of Discrimination of Women, the 1965 law introduced for the first time an independent position of women. Ius sanguinis a patre remained the basic rule until 1983. Only children born out of wedlock acquired their mother‘s nationality. The 1965 law introduced ius sanguinis a matre in cases where the child would otherwise have been stateless. Since 1983 ius sanguinis operates from either the father‘s or the mother‘s side, so that children born out of mixed marriages acquire the Austrian citizenship together with a foreign citizenship. The other major change was the abolishment of a female ëprivilege‘. While women had until then acquired their Austrian husband‘s nationality by simple declaration, husbands of Austrian wives had to wait for three years before being admitted to citizenship. The law established the same waiting periods for both genders. The international conventions on reducing statelessness and multiple nationality also had major impacts on legislative reforms.

Various modifications of the 1965 law led to its reissuing in 1985 which still forms the current law. A new element introduced at this time was that children above the age of 14 gained a more independent status. They have to be asked for their consent before naturalisation of a parent is extended to them. The most interesting feature is, however, that the Austrian Nationality Law does not reflect the major changes in migration patterns during these 20 years which transformed Austria from a country of emigration to one of immigration. Neither the successive admissions of refugees from Communist regimes in Eastern Europe nor the guestworker policy and subsequent chain immigration since the 1960s caused major changes in the rules of admission to Austrian citizenship. Minor parliamentary debates during the early 1970s ended without legislative reform impacts.

4. Developments in the 1990s

In the early 1990s the reform of immigration and refugee policies has occupied a prominent place on the domestic agenda. In stark contrast with other Western European countries, including Austria‘s neighbours Germany, Switzerland and Italy, reform of citizenship has never been seen as an element of this same package. This has only changed in the last two years. The traditional implicit cross-party consensus between the Social Democrats and the Conservatives not to politicise nationality law has gradually eroded. Meanwhile, the reform of the Austrian Nationality Law has become a hotly debated issue. The main reason for this development is the growing interest in naturalisation on behalf of the migrants. New and harsher conditions for family reunification, for access to legal employment for foreign residents and insecurity of residence status have operated as strong incentives for naturalisation in the last years.

The long term development of naturalisation in the postwar period shows very high figures between 1950 and 1957 due to the facilitated naturalisation of Volksdeutsche (between 11 000 and 22 000 per year), a long period of stagnation at a low level from 1958 to 1982 (between 2200 and 8600) and a slow and discontinuous increase since then. In the period from 1983 to 1991 the total number of naturalisations per year has been at roughly 10 000. Since then it has increased to more than 15 000 (16 274 in

1997). Over the last ten years the composition of foreign citizens naturalised in Austria has changed remarkably. During the first half of the 1980s roughly 40 percent of persons acquiring Austrian citizenship were nationals of other Western European countries and of overseas OECD-states (Findl 1991, 767). At this time the leading country of previous citizenship was Germany. Since then the number of Germans as well as of other EU-citizens acquiring Austrian citizenship have decreased rapidly. In 1997 EU-citizens accounted for only 1.7 percent of all naturalisations compared to roughly 26 percent in 1986 (Findl 1997, 828). At the same time the number of naturalised persons from Turkey and former Yugoslavia has markedly increased since the late 1980s and particularly since the early 1990s.

This should not be misinterpreted as the result of liberal naturalisation practices. One major effect is the ëageing of immigration cohorts‘ with greater numbers of immigrants becoming eligible after ten years of residence. A second effect is the ëescape into naturalisation‘ after the introduction of new requirements for legal residence and family reunification in 1993. Thirdly, the majority of naturalisations are not discretionary decisions about individual applicants, but rather the extension of naturalisation to spouses and minor children which is both a legal entitlement and strongly promoted by the authorities who want to prevent a splitting of citizenship status within immigrant families. (This is seen as a way of accumulating the benefits of two nationalities and thus circumventing the strict renunciation requirement.). The extension of naturalisation to family members explains thus a major part of the statistical increase. However, there is also a significant change of attitudes in the second largest immigrant contingent, which comes from Turkey. While immigration from Turkey has started already in the early 1970, naturalisation rates remained extremely low until the end of the 1980s. The growth in naturalisations among former Turkish citizens since then is considerable (from below 400 until 1987 to 5068 in 1996).

The conservative Peoples‘ Party as well as the right wing Freedom party have therefore seen a need to tighten the conditions for naturalisation in order to close this escape route and preserve the exclusive nature of Austrian citizenship. The Liberal and Green parties, on the other side, have pressed for a more liberal naturalisation policy. Until now immigrant groups have not themselves participated in the public debates on Austrian citizenship policy.

The proposals of the Greens and the Liberals would introduce moderate forms of ius soli and facilitate naturalisation for first generation immigrants by reducing the waiting period from ten to five years of residence and by tolerating dual citizenship. Contrary to these attempts to widen the access to Austrian citizenship, the Conservative Party lobbied for a much tighter law particularly by restricting access to citizenship upon marriage, making naturalisation conditional upon sufficient knowledge of the history and the political system of Austria and upon fluency in the German language. The Freedom Party immediately staked its claim to the most radical anti-immigrant programme by outbidding the Conservatives. Its proposal includes inter alia a constitutional amendment that Austria is not a country of immigration and an ëintegration certificate‘ as a naturalisation requirement.

In December 1997, the Social Democrats who had been so far most reluctant to address the issue entered the political debate, too. The Minister of the Interior emphasised the necessity of reforming the Austrian citizenship law but rejected, on the one hand, the introduction of comprehensive assimilation requirements and, on the other hand, a general toleration of dual citizenship. In May 1998 the coalition parties reached an agreement and presented a joint draft bill the main aim of which is the ëharmonisation‘ of the naturalisation procedure across the federal provinces. The government bill was approved by the parliament at the end of June 1998. The new regulations became effective in January 1999.

Faced with strong opposition by the Conservatives during the negotiations over the draft the Social Democrats backed down from their own proposals for liberalising certain aspects of naturalisation, such as reducing the general waiting period to eight years and temporary dual citizenship for the ësecond generation‘ until the age of majority. Thus, the changes are the result of a compromise between the two leading parties. Generally, the prevailing framework of citizenship policy in Austria has been maintained. Transforming immigrants and their descendants into citizens has never been seen as a means of integration but as the last step of a successful process of integration to be managed mainly by the immigrants. The recent reform of the Austrian Nationality Law merely accentuates this approach without introducing major changes in the traditional regulation of access to Austrian citizenship.

5. Rules of Naturalisation

Characteristics of the current legislation are the principle of ius sanguinis, the avoidance of statelessness and of multiple nationality, the equal treatment of men and women and the principle that members of a family should ideally have a common citizenship (Mussger/Fessler 1996, 24ff). Foreign citizens may acquire Austrian citizenship by naturalisation either on the basis of residence or of family ties. Whereas in the first case naturalisation is a discretionary procedure, family members of Austrian citizens or of a foreign citizen who applies for Austrian citizenship have a right to be naturalised. Since the exclusive reliance on ius sanguinis has been maintained so far, there is no special entitlement to citizenship for immigrant children born and raised in Austria.

In any case, foreign citizens have to comply with the general conditions of naturalisation. The most important requirements are that applicants (1) must not have been convicted to imprisonment of more than three months, (2) must have a positive attitude towards the Republic and must not present a danger to public order and security, (3) must have sufficient income, (4) must have basic knowledge of the German language, (5) must not entertain relations with a foreign state which could damage the interests or the reputation of Austria, and (6) must renounce their present citizenship. Finally, authorities have to take into account the applicant‘s ëextent of integration‘ if the naturalisation decision is a matter of discretion.

As a rule, discretionary naturalisation on the basis of residence requires at least ten years of uninterrupted residence in Austria. In exceptional cases, that is, if there is a reason ëdeserving particular consideration‘, foreign citizens may be naturalised after four or six years of residence. The decision whether there is a reason for facilitated naturalisation was left to the discretion of provincial authorities until recently. In the province of Vienna, where a more liberal naturalisation policy had been practised until 1994, the proportion of foreign citizens who have been granted Austrian citizenship for ëspecial reasons‘, i.e. without being resident in Austria for at least ten years has grown steadily since the late 1980s. This development was one of the major reasons for the amendment of the Austrian Nationality Law in 1998 which specifies now the list of criteria for shortening the general residence requirement of ten years. Thus, since January 1999 various categories of foreign citizens have the possibility to be naturalised by discretion after four years of residence, namely, recognised refugees, citizens of the EEA and minors with foreign citizenship. The special provision for EEA citizens imitates an earlier Italian reform which also reduced the waiting period for EU citizens to four years while simultaneously lengthening that of ëextracommunitari‘ to ten years (e birth in Austria has been introduced as a relevant circumstance for the acquisition of citizenship. However, foreign citizens born in Austria do still have no individual entitlement to naturalisation.

Generally, a legal claim to citizenship acquisition arises after at least 15 years of residence. However, this claim still depends on a proof of integration and on meeting the requirements for discretionary naturalisation after ten years of residence. Only after 30 years of residence the acquisition of citizenship becomes an entitlement independently of the applicant‘s ability to prove ëdurable‘ integration in Austria. Apart from long-term residents, there are two categories of foreign citizens who have a right to naturalisation, namely foreign spouses and minor children of Austrian citizens. Except for the condition of ten years of residence, family members have to meet the general requirements of naturalisation. Minor children are exempted from the residence requirement. Foreign spouses of Austrian citizens are entitled to naturalisation after at least four years of residence in Austria if the marriage has lasted for at least one year and the couple cohabits. The waiting period is reduced to three years of residence if the couple has been married for at least two years. Finally, after five years of marriage foreign spouses of Austrian citizens have a right to naturalisation. Under the same conditions spouses and minor children of a foreigner who is granted naturalisation have a right to acquire Austrian citizenship simultaneously. In this case the extension of the naturalisation of the main applicant to his or her family members requires a simple declaration of intent.

6. Dual citizenship and loss of Austrian citizenship

Austria is among the few remaining countries in Europe which strictly enforce the renunciation of a previous citizenship as a precondition for naturalisation. The nationality law requires that applicants cannot receive Austrian citizenship unless they have taken all possible and reasonable actions to be released from their present citizenship and if they attempt in any way to retain it. In this respect, the reform of 1998 has introduced

some new provisions. First, if the costs of expatriation can be proven to be unreasonable, applicants may be permitted to retain their original citizenship. Second, a restriction has been introduced with respect to applicants who have been recognised as refugees according to the Geneva Refugee Convention of 1951 (GRC). These refugees had been previously exempted from the requirement of renouncing their citizenship of origin. Since January 1999, naturalisation of recognised refugees is also conditional upon expatriation, unless applicants can show that this is an unreasonable demand.

Generally, applicants have to prove expatriation before they can be naturalised. This may lead to temporary statelessness which can become permanent if after expatriation an applicant is no longer eligible for naturalisation (e.g. because of a loss of means of subsistence or a prison penalty). In certain cases provincial authorities may decide to grant naturalisation if applicants can prove that they have applied for expatriation and a delay is not their fault. However, Austrian citizenship may be revoked within six years after naturalisation if a person is deemed responsible for retaining a previous citizenship.

Austria also expatriates its citizens when they acquire a foreign citizenship. Exemptions may be granted only because of extraordinary individual achievements or because of a special interest of the Republic. In contrast with some other countries, this provision is also enforced for citizens who are permanent residents in Austria. This closes one of the major legal avenues for the acquisition of dual citizenship in other states, such as Germany, where immigrants cannot be denaturalised when they reapply for a previous citizenship after temporary expatriation for the sake of naturalisation.

There are thus only the following ways how dual citizenship may be acquired in the Austrian system:

at birth by ius sanguinis from parents with two different nationalities, or at birth abroad from a parent with Austrian citizenship in a ius soli country;

through naturalisation if voluntary expatriation from a present citizenship is impossible or unreasonably difficult, or if the applicant has been recognised as a refugee according to the GRC;

in certain marginal cases of automatic acquisition or entitlement to naturalisation (such as the appointment as a full professor at an Austrian university or the reacquisition of Austrian citizenship by victims of the NS-Regime);

illegally if a person manages to conceal the fact that he or she has retained or regained a previous citizenship or successfully applied for a foreign citizenship, or legally if naturalised Austrians have managed to conceal this fact for six years.

Austria does however, significantly contribute to the proliferation of dual citizenship by birth because, unlike in many other states, ius sanguinis transmission of Austrian citizenship abroad is not limited to the first or second generation or by requirements that

holders of Austrian nationality must take up a residence in Austria or declare their intention to do so in order to retain their citizenship. Moreover, as part of the reform of 1998 Austrian citizens by descent may retain Austrian citizenship when acquiring a foreign citizenship, if expatriation would be too disruptive to personal or family life. Austria also grants substantial political participation rights to its citizens living abroad including the franchise for parliamentary and presidential elections as well as in national referenda.

7. Impact of international developments

The prevailing conditions of attribution and acquisition of Austrian citizenship show a striking continuity when compared to the legislation developed at the beginning of the nineteenth century. And until recently, there has been hardly any political discussion on reforming the naturalisation rules in order to bring nationality legislation more into line with the transformation of the composition of the permanently resident population by postwar immigration. The settlement of a large immigrant population mainly from former Yugoslavia and Turkey has not been a driving force with respect to legal modifications in the postwar period.

In this area the influence of international trends towards facilitating naturalisation has been very limited. On the contrary, Austrian representatives have for example sought to block the liberalisation of the Strasbourg Convention on the Reduction of Cases of Multiple Nationality. Reception of developments abroad is limited to the existence or introduction of similarly 'protective' regulations. As far as the Austrian situation is considered, one must admit that there is no explicit learning from other countries in the area of citizenship policies.

However, there is an indirect impact of restrictive immigration policies, an area where there is not only learning by emulation, but an explicit co-ordination effort at intergovernmental levels. In the Austrian case, the indirect effect is that the goal of restricting immigration since the beginning of the 1990s has blocked any attempt of liberalising naturalisation rules. Contrary to the common argument that reducing immigration will allow for a more open access to citizenship or for the granting of ëdenizenship' rights (Hammar 1990) to settled immigrants, most Austrian policy-makers do not want to be seen as being soft on any policy area related with immigration.

One may speculate whether the common citizenship of the European Union might have a future impact towards harmonisation of rules in the member states. Until now, this has certainly not been the case as far as Austria is concerned. Austria's policy has been extremely reluctant even in those matters where a reform of legislation concerning foreigners had become necessary as a consequence of joining the EU in 1995. Examples are initial attempts to prevent or delay the implementation of provisions of the EU association treaty with Turkey which had the effect of improving the position of Turkish immigrants with regard to residence and employment permits, or the refusal to grant municipal voting rights to EU immigrants in Vienna under the pretext that Vienna is

also a federal province. Unless EU institutions adopt an explicit policy of harmonising nationality laws from above, spontaneous adaptation from below is very unlikely in the Austrian case.

While developments abroad had very limited effects on domestic nationality legislation, there is a strong impact of local factors towards maintaining or tightening existing legal provisions. To a great extent this is due to the Austrian federal system. As explained above, since 1925 nationality legislation is a matter of federal legislation, while the implementation of legal provisions is carried out by the Länder (provincial authorities). The administration of applications for naturalisation by provincial authorities equipped with discretionary power makes not only for unequal conditions of access to citizenship across Austria, but the separation of legislation and implementation of legal provisions has also led to an increasing political competition among the Länder which try to be more restrictive than others and to raise the hurdles to be jumped by applicants. This is particularly true with respect to facilitated naturalisation in case of ëspecial circumstances‘ which have been interpreted in a restrictive manner over the past few years. For instance, the province of Vienna had used this provision to allow a number of categories of immigrants access to citizenship during a time when there was a general need to stop the ageing and decline of the capital‘s population. As of August 1997 these special circumstances for facilitated naturalisation have been redefined by the Viennese authorities as presupposing ëtotal integration‘, which has been interpreted as, for instance, fluency in German or active promotion of the ëcoexistence between the native and immigrant populations‘. At the same time, the residence requirement in these cases has been raised from four to six years. This wide discretion in the implementation of the law resulted in significant differences with regard to naturalisation numbers and rates in the various provinces.

In contrast to common interpretations, the justification of the restrictive administration of applications for naturalisation is neither based on the conception of the nation as a community of descent nor on the predominance of ëguestworker policies‘ in Austria. It should also be stressed that although nationality legislation in Austria is exclusively based on ius sanguinis, it has so far contained no explicit requirements of cultural assimilation and language proficiency as a precondition for naturalisation has only been introduced by the reform of 1998. The practice of deterring immigrants from applying for citizenship (by for example strong insistence on the renunciation of their original citizenship) seems not necessarily to be related to the conception of the nation as an ethnic community. In the case of Austria restricting access to citizenship is rather seen as a way of excluding immigrants from access to social welfare benefits. The example of Austria shows also the limits to a ëtransnationalisation‘ of citizenship rights (Sassen 1998; Soysal 1994) in Europe. In the absence of secure residence rights and/or of equal social welfare rights formal nationality status can still have an important impact on immigrants‘ opportunities and status in society. A good example for this is provided by municipal housing in Vienna which forms a large share in the housing market and is reserved for Austrian citizens. Popular resentment against the admission even of naturalised ‘foreigners‘ to these housing estates has increased the political pressure to make naturalisation more difficult in the capital. The Viennese authorities

reacted to this development by tightening the conditions for facilitated naturalisation discussed above.

8. Conclusions

If there is a European trend towards harmonisation and liberalisation of citizenship acquisition by immigrants and their descendants, Austria is certainly an exception to this tendency. The major features of ius sanguinis, long waiting periods and a strict enforcement of renunciation of a previous citizenship have been maintained over the whole period of new immigration since the late 1960s and have been recently confirmed in the reform of the Austrian Nationality Law.

How can this remarkable stability be explained? One hypothesis is that, in contrast with other Western democracies, the Austrian Nationality Law has remained rather disconnected from debates about Austrian identity. The postwar reconstruction of the Austrian polity failed to establish a clear basis for national identity. One the one hand, Austria had to define itself as a nation in contrast with Germany and the discredited native traditions of German nationalism in which all major parties of the interwar republic had been implicated. This has, however, not led to embracing the multiethnic heritage of the Habsburg monarchy as an alternative source of identity. In Ernest Renan‘s words, developing a national sense of belonging required forgetting rather than remembering the variety of origins and the painful processes of oppression and assimilation which dissolved ethnic minorities into a German cultural mainstream (Renan 1947, 891). On the other hand, the historic opportunity for defining nationhood in republican terms, which Germany seized when it adopted its Basic Law of 1949, was missed in Austria. The official view that Austria had been Hitler‘s first victim led to the reestablishment of constitutional continuity with the First Republic. Austria‘s present constitution is still based on the Kelsenian constitution in its reformed version of 1929 and does not include a catalogue of fundamental rights and duties of the citizens which could serve as a reference point for ‘constitutional patriotism‘. One might thus say that Austrian national identity suffers from a dual deficit of being neither clearly defined in ethnic terms nor in civic republican ones.

This ambiguity may help to explain why the nationality law and naturalisation procedures have been generally seen as instruments for regulating certain aspects of immigration, but not as defining or affirming a positive conception of Austrian identity. Especially the Social Democratic Party has maintained that access to naturalisation is a policy issue that ought to be decided on purely pragmatic grounds. This means that, on the one hand, state interests in naturalisation prevail over those of immigrants but, on the other hand, naturalisation has also not been tied to assimilation into an imagined national community. The flip side of this is a very weak public sense of the importance of citizenship as a status of equal membership in the polity. Many naturalised immigrants complain that they are still regarded as foreigners in most aspects of public life. Only recently have the Conservatives and the Freedom Party switched to emphasising the ‘value of Austrian identity‘ by demanding that naturalisation should become more difficult.

This reluctance to stir up issues of national identity and to acknowledge the postwar transformation of Austrian society through immigration explains why the Austrian Nationality Law remained excluded from the two major overhauls of immigration and asylum laws in 1991-93 and 1997. Sequencing is also important for understanding why the 1998 reform has not led to liberalisation. The tightening of immigration laws in the early 1990s had increased the demand for naturalisation. The completion of the legislative reform in the late 1990s left naturalisation as the remaining gate for immigrants over which control had to be asserted.

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See tables 1, 2 and 3 in appendix.

See Section 10 and 10a Austrian Nationality Law (ANL), BGBl. I 124/1998.

Section 11 ANL.

Section 10 (4) ANL.

See Section 12 (1b) ANL.

See Section 12 (1a) ANL.

See Section 11a and 17 ANL.

See Section 16 and 17 ANL.

Section 20 (4) ANL.

Section 34 (1) 1 and (3) ANL.

Section 28 (2) ANL.

See the revised version of the information brochure of the Viennese Fund for Integration ìHow to become an Austrian citizenî, Vienna 1995.

See tables 4, 5 and 6 in the appendix.