

The year 2011 was an important year: a year of progress for the political rights of French citizens abroad. From the regained possibility to vote from abroad at the European elections to the ratification of the ordinance on the election of deputies for French citizens abroad and to the establishment of a Secretariat of State for French Citizens Abroad on 29 June 2011, the demand of our compatriots residing abroad concerning the right to vote was heard by the government.

The dynamic started in 2011 in favor of the political rights of French citizens abroad will continue and I will continue to battle with my colleagues in the Senate and soon in the National Assembly in order to assure a veritable equality between citizens regardless of their place of residence. In an attempt to convince those countries that have not yet conferred full political rights upon their expatriates, I assert that political rights are fundamental human rights, and nothing can justify the deprivation of citizens of these rights at present.

Ferdinand Mayrhofer-Grünbühel

The Nation-concept and Policies on Citizenship in Austria

The concepts of nation and nationality have of course different meanings for different people. In the English language nationality and citizenship usually are employed interchangeably. In this view a nation is “the body of inhabitants of a country united under an independent government of their own.”¹ The same view is predominant in all nation-states, like France, although in reality of course, most states are multi-national. Only 10 percent of states are considered to be nation-states, meaning that the boundaries of the nation and the state coincide and this was not very often the case in Central Europe and still is not today.

While citizenship is a legal category, nation is a social category. It denotes informal membership in or identification with a particular people, characterized usually by a common language (central criterion), common history, culture and territory, sometimes also by a common religious faith. However, in the final analysis the essential criterion seems to be, whether the people concerned *want* to be a nation or see themselves as a nation. Switzerland and Austria are examples in this regard – in both cases some of the most important criteria usually regarded to be essential for a people to be called a nation are missing.

The dismemberment of the Austrian Empire

The Austrian nation concept cannot be understood without a look at history. The importance that the Peace Treaty of Trianon takes in Hungarian political life and, indeed, in the minds of many Hungarians usually comes as a surprise to us Austrians. While the overwhelming majority of Hungarians would be able to say something about the relevance of Trianon, only a small minority of Austrians would be able to put into the right context the Peace Treaty of Saint Germain-en-Laye that together with Versailles and Trianon determined the fate of those who lost the First World War. Yet, in some ways the result of Saint Germain for Austria was more dramatic than that of Trianon for Hungary.

¹ Websters Dictionary

This was succinctly put by Georges Clemenceau (1841-1929), Prime Minister of France and co-signatory of the Peace Treaty on 10 September 1919, when he said: “L’Autriche c’est ce qui reste” – Austria is what is left over. And indeed, it is much quicker said what was left over of the Austrian, or the Cisleithanian part of the Dual-Monarchy than what was taken away: The crown lands Bohemia and Moravia, Austrian Silesia and some communities of Lower Austria went to Czechoslovakia; Galicia went to Poland; South Tyrol, Welsh Tyrol the Canal Valley and Istria went to Italy; the Bukovina went to Rumania; most of Lower Styria and parts of Carinthia, the Mieß Valley and the Seeland, and, of course, Dalmatia and Carniola, went to the new Kingdom of the Serbs, Croats and Slovenes.

For completeness’ sake it should be added, that the new Austria received a small western, largely German-speaking part of Hungary which became the province of Burgenland.

In this repartition the question of the language spoken by the population concerned, or ethnicity (nationality), played some role but not a very clear and understandable one. What is particularly remarkable is the fact that Saint Germain carved up entities such as Tyrol, Styria or Carinthia which had been in place for nearly thousand years. In the final analysis, what counted at the Paris peace conferences was that Austria-Hungary had lost the war.

The new Austria was in a very peculiar situation. The Austrian Empire, or as it was also called, “The Kingdoms and States represented in the Imperial Council” had 28,5 Million inhabitants in 1910, while 6,5 Million (not even one fourth) remained in the new Austria. From over 300.000 square km the new state was reduced to 80.000. The vast reduction of population, territory and resources of the new Austria relative to the old empire, wreaked havoc on the economy, most notably in Vienna, an imperial capital without an empire to support it.

More than 3 million German-speaking Austrians found themselves living outside of the borders of the Austrian Republic in the nations of Czechoslovakia, Yugoslavia and Italy. A particularly large German minority remained in the newly-established Czechoslovakia with the entire historic German populations of Bohemia, Moravia and Austrian Silesia cut off from their motherland. Austria was also deprived of half of Tyrol, which was awarded to Italy as a prize for entering the war on the Allied side.

The Austrian identity crisis

While the Hungarian nation – in spite of significant territorial changes over the years, including the dramatic reductions as a result of Trianon – never seems to have had any difficulty with its identity, the majority of the state-supporting class in the new Austria, the “left-over” after the decline of the Dual Monarchy in 1918 suffered from a severe identity crisis. Most Austrians did not believe in the survival of the small Austrian Republic which had lost its economic, political and cultural connections. In the Austrian federal state Vorarlberg there was a vote to join Switzerland, in Tyrol and Salzburg there were tendencies to join Bavaria. Many saw a future only in a union with Germany – the German language having been perhaps the only major link between the old crown lands that now made up Austria. Thus between 1918 and 1919 the new state called itself “German-Austria”. The Allied Powers, however, refused the accession (Anschluss), the designation as “German-Austria” had to be abandoned and Austria became the first country in world-history which became sovereign against the will of the majority of its citizens.

Many Austrians rejected the newly founded state. Plenty of government officials, military officers and influential figures who had previously served “the house of Austria” did not “recognize” the new state and did not want to have any part in it. The doubts over Austria, the lack of confidence in the future and divergent opinions about this future played a significant part in the rough – and partly bloody – domestic quarrels in the late 1920s and the 1930s.

The First Austrian Republic lasted until 1933 when Chancellor Engelbert Dollfuss dissolved parliament and established an autocratic regime tending towards Italian fascism (Austrofascism), in order, partly, to check the power of Nazis who were advocating union with Germany. The two big parties at this time —the Social Democrats and the Conservatives— had paramilitary armies, which fought each other. The “Heimwehr”, the paramilitary arm of the Conservative party supported Dollfuss’s Fascist regime; the “Republikanischer Schutzbund”, was the military arm of the Social Democrats which was outlawed in 1933 but still existed underground - civil war was to break out.

After the Austrian Civil War in February 1934, several members of the Schutzbund were executed, the Social Democratic party was outlawed and many of its members were imprisoned or emigrated. In May of that year the so-called “Ständestaat” was introduced in a new constitution which cemented Dollfuss’s power but on 25 July he was assassinated in a Nazi coup attempt.

His successor Kurt Schuschnigg, struggled to keep Austria independent (even a restoration of the Habsburgs was contemplated), but on 12 March 1938 German troops occupied the country and organized a plebiscite confirming union with Germany. Hitler himself, as is known, was a native of Austria who had lost Austrian citizenship in 1925.

For five years, the authoritarian government of Austria had defended itself against Nazi-Germany's blackmailing and assimilation initiatives. Finally, Austria failed due to the division of its population which lacked a sense of national cohesion.

A nation is born

After the devastating period of World War II and National Socialism – in which Austria became Nazi-Germany's first victim and in which Austrians were both victims and perpetrators – the way was clear for a new identity to develop. The experiences from that period, the Austrian State Treaty, the Declaration of Permanent Neutrality and the "economic miracle" – which was at least partly based on the specifically Austrian form of "social partnership" – were important components of this process. Thus the new Austria has finally and definitely accepted its identity.

The Austrian writer Michael Scharang, born in 1941, describes this by postulating: *"My generation – grown up in the second republic – is the first for whom Austria as a state and nation is an undoubted fact. That is not self-evident, rather historically new. For the first time, doubts about Austria are no longer a theme of our literature."*

Austrians had to go through a change of national consciousness, since the Habsburg family – formerly the symbol of unity – had lost its function. A sense of national community which would have been based on the affiliation to an ethnical or linguistic group could not provide the necessary framework. Today Austrian national consciousness is based on the affiliation to a state-political community, not to a linguistic-ethnical one.

The change of national consciousness is probably the reason why we Austrians seem to feel little identification with our own history. Although the majority of Austrians see the time of the monarchy in a basically positive light, they nonetheless pretend not to have much to do with that period. In the Austrian official calendar, not even one day reminds us of our pre-Republican history. The anniversaries we celebrate only refer to post-World War II events.

By contrast, Hungarian political culture appears to be bound to historical categories to a large extent. Hungarians – regardless of

their ideological background – seem to believe in historical continuity. History, as it seems, is being recalled almost every day.

The change of consciousness I mentioned above also means that we accept our small Austria as it is today. The borders of today's Austria are neither being questioned nor are they considered to be unjust (with the exception of South Tyrol). We support the German-speaking communities of former Austria in very modest dimensions and in areas they ask for our help. We showed a strong commitment only in the question of South Tyrol, not so much because South Tyroleans were German speaking but due to the fact that they historically always were Tyroleans. Thus, our engagement relates to their "Tyrolean", rather than their "Austrian" quality. Since World War I the question of South Tyrol has been a point of friction with our neighbour Italy – until a negotiated settlement was found in the 1969. Today the situation in South Tyrol/Alto Adige can be regarded as resolved, and is often referred to as a model for inter-ethnic and transnational cooperation in Europe.

In the past centuries, the meaning of "Austria" has undergone several changes. An "Austrian Empire" existed only since 1804. In 1867 – just over 60 years later – the Compromise between Austria and Hungary created the Austro-Hungarian Dual Monarchy. Only at a later stage, Cisleithania, "The Kingdoms and States represented in the Imperial Council" were referred to as "Austria". The Republic of Austria of today is, as Clemenceau said, what was left over. The trials and lessons of history, our mistakes and the enormous joint effort by the Austrian population, including by many refugees from our neighbouring states, helped build and shape a country which is among the most stable and prosperous in the world. The widespread sense of loss and uncertainty of the first Republic is no longer. It has given way to a solid, perhaps somewhat sceptical and often self-critical patriotism.

The legal background to the current Nationality Law²

It is against this historical background that the issues to be highlighted in this Conference need to be seen in the case of Austria. Questions such as *the relation of the kin-state and the expatriates*, or of *the nation-concept of the state - definition of the majoritarian nation (the relation of state and majority)*, *the relation to expatriates*, *the relation to minorities/nationalities living within on the territory of the state* (quotes from the editorial guidelines) are not automatically applicable and easily answerable in the Austrian context. This is all

² For the current Nationality Law see the webpage as follows: www.ris.bka.gv.at/

the more so as the Austrian Nationality Law evolved from the Law on *Heimatrecht*, i.e., the right of abode in a municipality, of 1863. According to that law, which is a peculiarity in the context of citizenship law, every Austrian citizen was to have *Heimatrecht* in an Austrian community (municipality)³. This law was formally abrogated only in 1939 under the German rule.

The Austrian General Civil Code of 1812 (*Allgemeines Bürgerliches Gesetzbuch*) provides a number of regulations with regard to citizenship. It makes the full benefit of civil rights dependent on Austrian citizenship which is obtained by birth from an Austrian father. A decree of the Ministry of Interior clarifies that children born out of wedlock obtain the citizenship of the mother. A series of other decrees provides further regulations to the citizenship law. The Civil Code itself allows foreigners to obtain Austrian citizenship after ten years of residence, however, a number of conditions are attached that were further elaborated by several decrees.

According to the Civil Code loss of citizenship occurred by emigration or by marriage to a foreigner (§32 ABGB).

After the end of First World War 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 that entered into force in 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. Accordingly, the law on the German-Austrian nationality⁴ defined as Austrian citizens all persons with *Heimatrecht* in a municipality of the German-Austrian Republic. Persons who by 30 June 1919 opted for another state, to which parts of the former Austro-Hungarian Monarchy belonged, lost their Austrian nationality. The same law provided of course for a number of transitional measures necessary at that time of enormous and tumultuous change.

Of particular interest was the right of persons who had lost their Austrian nationality because they lived in a territory that no longer belonged to Austria and had been given another citizenship, to opt within a year for their original citizenship and *Heimatrecht*. These persons had to move to the state for which they had opted, within a year.

³ For an extensive review of Austrian citizenship law see: Peter Kurnik, Österreichisches Staatsbürgerschaftsrecht "Von der Heimatrolle zur Staatsbürgerschaftsevidenz", Festschrift „50 Jahre Fachverband der österreichischen Standesbeamten“ 1997

⁴ Law of 5.12.1918 on the German-Austrian Citizenship, StGBI. Nr. 91/1918

Hungarian citizens who had the home right in the small part of western Hungary that had been given to Austria were recognized as Austrian citizens unless they opted for Hungarian citizenship.

The Austrian Constitution of 1920 that is still the basis of today's constitutional law introduced two important elements in matters of nationality. First it provided in art. 6 (1) "For every province (Land) exists a land citizenship (Landesbürgerschaft). Precondition for the provincial citizenship is the *Heimatrecht* in a community of the province. Conditions for obtaining and losing land citizenship are the same in every province". Art. 6 (2) "By obtaining land citizenship a person also obtains federal citizenship".

The Constitution further provides that administration of laws on citizenship and on *Heimatrecht* remains the competence of the federal provinces (*Bundesländer*).

The citizenship law of 1925⁵ provides a comprehensive regulation of the acquisition and the loss of citizenship that hitherto was scattered over a great number of different legal texts. It very much emphasises the position of the federal provinces. The citizenship law remained essentially unchanged until Austria was occupied in 1938.

Even the nationality law of 1965⁶ still speaks of a federal citizenship and a land citizenship in accordance with art. 6 of the Constitution, but stipulates that this is to be regulated by a future special constitutional legislation. Finally, art. 6 of the Austrian Constitution was amended in 1988⁷ to read. "(1) For the Republic of Austria exists a uniform (einheitliche) citizenship. (2) Citizens with regular residence in a land are citizens of that land."

Thus, 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.

The concept of the "regular place of residence" (*ordentlicher Wohnsitz*), or later "main place of residence" (*Hauptwohnsitz*) continues to have an important role in Austrian Nationality Law and more generally in administrative law.

During the time of the *Anschluss*, on the basis of a German decree, persons that had Austrian citizenship on 13 March 1938 were regarded as German citizens.

⁵ Federal law of 30.7.1925 on the Acquisition and Loss of Land- and Federal Citizenship, BGBl. Nr. 285/1925 ()

⁶ Federal Law of 15. 7. 1965 on the Austrian Citizenship. BGBl Nr. 250/1965

⁷ Federal Constitutional Law of 29. 11. 1988, on the Amendment of the Federal Constitution of 1929. BGBl Nr. 685/1988

By decree of the Austrian State Government of 29 May 1945 the laws and decrees of the German Reich on German citizenship for Austrians were abrogated. In accordance with the occupation theory Austrian citizenship was “dormant” during 1938 – 1945 but continued to exist.

This theory is confirmed by the law on the transition to Austrian Nationality of 1945 that was amended several times and reissued in 1949⁸ and is still applicable today. Essentially, persons who had Austrian citizenship on 13 March 1938 or would have obtained citizenship during the occupation, if the Austrian law of 1925 had continued to be in force, were declared to be Austrian citizens.

The nationality law itself was adapted in 1945, amended several times and republished in 1949.⁹

Of special interest in the present context is the federal law of 2 June 1954¹⁰ that provides the possibility to opt for Austrian citizenship for ethnic Germans (*Volksdeutsche*) that were stateless or whose citizenship was unclear because of World War II events. Between 1945 and 1950 roughly one million ‘displaced persons’ from Eastern Europe and the former Soviet Union, among them more than 300,000 ethnic Germans, had become stranded in Austria. While many of them left for other destinations, about 530,000 settled permanently. Between 1954 and 1956, roughly 230,000 *Volksdeutsche* acquired Austrian nationality.

The Austrian nationality law was again codified in 1965¹¹ taking into account three international conventions that had become applicable for Austria, namely the UN Convention of 1957 on citizenship of married women, the UN Convention of 1961 on avoiding statelessness and the Convention of the Council of Europe of 1963 on reducing cases of multiple citizenship and military service in cases of multiple nationality. Central features of the 1965 law are abolition of acquisition as well as loss of citizenship for women by marriage and improvements concerning the acquisition of citizenship by descent. The 1965 Nationality Law was amended on numerous occasions, specifically in 1973, 1974, 1977, 1983 and 1985.

Current citizenship law is codified in the 1985 Nationality Act¹², following again numerous amendments in the version of 22.08.2012.

⁸ BGBl.276/1949

⁹ BGBl.276/1949

¹⁰ Federal Law of 2. 6. 1954, on the Amendment of the Law on Associations of 1951. BGBl. Nr. 142/1954

¹¹ Federal Law of 15. 7. 1965 on the Austrian Citizenship. BGBl Nr. 250/1965

¹² Federal Law on the Austrian Citizenship of 1985. , BGBl Nr. 311/1985

Principles of the current Austrian Nationality Law

The Nationality Act of 1985 is based on five principles:¹³

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. Similarly, children born abroad to Austrian expatriates acquire Austrian nationality by birth.

Second, the Nationality Act of 1985 contains certain provisions to avoid statelessness.

The *third* principle characteristic of the Austrian Nationality Act is the ban on multiple nationalities.

Fourth, the 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.

Austria, historically an emigration country, over the last decades has become an immigration country, yet Austrian Nationality Law still does not contain provisions based on the principle of *ius soli*.

After birth (descent, legitimation) the main paths to Austrian nationality are discretionary naturalisation and legal entitlement. *Naturalisation by discretion* (“may be granted”) 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. *Facilitated naturalisation* may reduce the ten years to four or six years of residence if the general conditions for naturalisation are fulfilled and if there are “grounds particularly deserving of consideration”. 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 recognized for special achievements may be naturalised after six years of residence.

Groups of foreign nationals who are *legally entitled to obtain Austrian nationality* (“shall ... be granted”) include, inter alia, (1)

¹³ Acquisition and Loss of Nationality, Policies and Trends in 15 European States, IMISCOE Research, Amsterdam University Press

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.

According to art. 11 (1) of the Constitution, nationality legislation is a federal matter, whereas the administration of the law is a matter of the nine federal provinces, their governments being the highest executive authority in each case. The provincial authorities had a wide margin of interpretation in *discretionary naturalisation*, and decisions on matters of nationality were frequently subject to judicial review by the Administrative Courts. 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. While during the 1980s between 8,000 and 10,000 persons were naturalised annually, in the following years the number of naturalisations increased steadily.

Naturalization practices, political and public discussion and a new concept

Since the mid-1990s the continuous growth of the number of persons granted Austrian nationality has met with resistance from the right-wing Freedom 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. In 1998, the two governing parties SPÖ and ÖVP reached agreement on stiffening 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 aim of the reform of 1998, to restrict the possibility of facilitated naturalisation, was, however, not achieved. Statistics since the entry into force of the new provisions in January 1999 show that the total number of naturalisations kept rising. Roughly 25,000 persons acquired Austrian nationality in 1999. In 2003 and 2004, more than 40,000 persons were granted Austrian nationality. An ever growing

number of immigrants had become eligible to apply for naturalisation after at least ten years of residence. Furthermore, naturalisation of Turkish immigrants increased significantly as they no longer faced serious disadvantages when they renounced their Turkish nationality. At that time Turks were the major immigrant group in Austria.

Political pressure from the right but also popular mood pushed the governing parties to seek regulations that would contain the number of naturalisations.

An extensive amendment to the Nationality Law was passed in December 2005, entered into force in March 2006 and brought the following main changes for *discretionary naturalization*:

- the residence requirements are significantly tightened, for example, legal residence is interrupted by residence abroad that exceeds 20 per cent of the required time of residence in Austria.
- any prison sentence, offences under the Aliens Police Law of 2005 and serious and repeated violations of administrative regulations, especially concerning road safety, will prohibit naturalisation, as well as lack of financial means
- requirements for language proficiency and knowledge of the country are made much stricter
- 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* were adapted as follows:

- Three groups of foreign nationals (recognised refugees, nationals of EEA states and persons born in Austria) who could be naturalised by discretionary decision after four years of residence under the old law will henceforth be granted legal entitlement after six years, if they comply with the general conditions for naturalisation,
- Naturalisation of foreigners married to Austrian nationals becomes much more difficult. The required duration of uninterrupted and legal residence is raised from three or four to six years and the duration of marriage from one or two to five years.

The 2005 amendment of the 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 amendment defines integration as a task to be accomplished by immigrants before they can be granted citizenship rights. The limiting approach towards naturalization of immigrants generated consider-

able criticism, including at the international level, and at the time made Austria appear as an ‘outsider’ in terms of the integration of immigrants, other European immigration countries have meanwhile followed suit with similar restrictive reforms.

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 majority of minors acquire Austrian nationality together with their parents rather than because of birth in Austria.

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,

Finally, further amendments to the Nationality Law were approved by Parliament in 2009, entering into force on 1 January 2010, which raised the requirement of sufficient income as a condition for naturalization, made obtaining citizenship by fraud punishable, made an adjustment for adopted children required by a court decision and another adjustment regarding the citizenship test. It further introduced into the oath of loyalty to the Republic a commitment to the “core values of a European democratic state and society.”

Dual nationality

The ban on dual or multiple nationalities is one of the principles of Austrian Nationality Law and was reinforced by the adherence to the Convention of the Council of Europe on the Reduction of Multiple Nationality of 1963. Accordingly “a person who acquires a foreign nationality upon his application, his declaration or his express consent loses the nationality if he was not granted the right to retain the nationality before”.¹⁴ Such permission is only to be given if the granting of nationality is in the particular interests of the Republic by reason of the alien’s actual or expected outstanding achievements

¹⁴ Art. 27.(1)

and if the foreign country whose citizenship the Austrian national is applying for consents to the retention of his or her nationality.¹⁵

The amendment of the Austrian Nationality Act of 1993 stipulates that victims of National-Socialist persecution once holding Austrian citizenship can re-obtain citizenship by submitting a claim to this effect.¹⁶ This new provision also made it possible for the victims to maintain their current citizenship in their country of residence and as such it is one of the very few exceptions to the ban on dual nationality.

A legal provision that had been a traditional part of Austrian Nationality Law and which granted Austrian Nationality to University or college professors upon acceptance of an employment contract under public law was repealed in 2009.¹⁷

The case of South Tyrol

As mentioned above, South Tyrol with its predominantly German speaking population (89% according to the census of 1910) was occupied by Italy and annexed as a result of the Treaty of St. Germain following World War I. The agreement between Hitler and Mussolini of October 1939 as well as the result of World War II confirmed this situation, while Italy, in the agreement between Austrian and Italian Foreign Ministers Gruber and De Gasperi of 1946 agreed to extend autonomy to the German (and Ladinian) speaking population and to recognize Austria as a Protecting Power (Schutzmacht). In 1971 the Austrian and Italian Parliaments agreed to a package of measures designed to enhance South Tyrolean autonomy and to a roadmap of implementation which eventually (1992) led to a settlement of the dispute between Austria and Italy and is often cited as a model for good solutions to difficult minority situations.

By and large all sides seemed satisfied with the situation which had been brought about with the support also of the local parliaments in Tyrol and South Tyrol. South Tyroleans received many privileges in Austria, for example free access to the University in Innsbruck, the capital of the Austria Province Tyrol. For many years neither a possible return of South Tyrol to Austria nor the extension of Austrian nationality to South Tyroleans has been an issue.

However, in the last few years these questions have been raised by representatives of right wing political parties. Official reactions both

¹⁵ Art. 28.(1)

¹⁶ Art. 58c of the Federal Law on the Austrian Citizenship of 1985, BGBl Nr. 311/1985

¹⁷ Federal Law of 2009 on the Amendment of (...) the Law on the Austrian Citizenship of 1985.BGBl Nr 122/2009

on the part of the Austrian Government and South Tyrolean Government initially were very reserved. The Austrian Foreign Minister pointed out that dual nationality did not correspond to the basic principles of the Austrian Nationality Law and would require numerous legal changes. But in 2009, in response to continuing demands, the Austrian Parliament created a Sub Committee on South Tyrol of the Committee for Foreign Affairs that *inter alia* deals with the issue of citizenship.

An outcome is not in sight but there is agreement that the matter will be further discussed. It is an emotional issue for some but its practical relevance is close to zero. In various comments it was pointed out that the population of South Tyrol itself did not seem to regard the issue as a priority.

Laws relevant to expatriate vote

Voting rights for expatriates were introduced in Austria in 1990.¹⁸ Before the necessary legal changes were made participation of expatriates was excluded, since the *Wahlerevidenzgesetz* (law on registry of voters) made voting conditional upon having the main residence in Austria. Several organizations of expatriates had been fighting for voting rights, but it was an individual complaint to the Constitutional Court that cleared the path.

Since then, Austrian nationals living abroad enjoy full voting rights in parliamentary and presidential elections, elections to the European Parliament, 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 in his municipality (which usually is the municipality of his last main residence in Austria or failing that some other link as defined in the *Wahlerevidenzgesetz*) and needs to be renewed every ten years.

The voting procedure itself was initially complicated and bureaucratic but after much discussion was significantly improved and simplified in 2007¹⁹, 2010²⁰ and again in 2011.²¹ It is noteworthy that

¹⁸ Federal Law of 28. 2 1990 on the Amendment of the Law on National Council Elections of 1971, of the Law on Presidential Elections of 1971, of the Law on the Registry of Voters of 1973, BGBl 148/1990

¹⁹ Federal Constitutional Law of 2007 on the Amendment of the Federal Constitutional Law of 1930. BGBl Nr. 27/2007 and Nr. 28/2007

²⁰ Federal Law of 2010 on the Amendment of the Law on European Parliamentary Elections (...) BGBl. I Nr. 13/2010

²¹ Federal Constitutional Law of 2011 on the Amendment of the Federal Constitutional Law of 1930. BGBl I Nr. 43/2011

no separate law exists for the expatriate vote but the legal dispositions are contained in several laws, of which the *Wahlerevidenzgesetz*²² and the *Nationalratswahlordnung* (law on elections to the National Council, the lower house of the Austrian Parliament)²³ are key. The basic premise is that every Austrian national is entitled to participate in elections; the question was, as it were, a technical one, namely how to make this possible within the existing system. The voting cards are issued by the municipality where the expatriate is registered and the ballot has to reach the district election authority by 5 p.m. of Election Day. That means in practice, that the ballots have to be mailed or deposited with the Consulate several days (at least six) before Election Day. The procedures for voter registration as well as for the voting itself are laid out in great detail by the law.

As the expatriate votes in accordance with the *Wahlerevidenzgesetz* are always linked to a specific election district no separate transformation process of expatriate votes is required. The expatriate votes are simply added to the votes in the relevant election district.

According to the Austria Foreign Minister roughly 500.000 Austrian nationals live abroad, nearly half of them in Germany.²⁴ The participation of expatriates in elections, however, has been very limited. At the parliamentary elections 2008 only 28.151 expatriates voted, 6.308 of them for Vienna. The vote of expatriates is therefore not likely to have an impact on the outcome of elections. By contrast, a relatively large number of persons (558.300) with main residence inside Austria cast their vote during a stay abroad.

Conclusion

It would seem that the case of Austria with regard to National Policy and dual citizenship is quite separate from that of the other countries of Central Europe. Only two, three generations ago Austrians were deeply divided over the issue of nationality and of its own national sovereignty. After the decline of the Dual Monarchy in 1918 the majority of the state-supporting class in the new Austria, the “left-over” (Georges Clemenceau: “L’Autriche c’est ce qui reste”), suffered from a severe identity crisis. Most Austrians did not believe in the survival of the small Austrian Republic which had lost its economic,

²² Law on the Registry of Voters of 1973, BGBl 601/1973, updated version of 2012

²³ Federal Constitutional Law of 1992 on the Amendment of the Federal Constitutional Law of 1929. BGBl 471/1992

²⁴ www.auslandsoesterreicher.at/ currently about 342.000 in Germany, 50.000 in Switzerland, 27.000 in USA, 22.000 in UK, 18.000 in South Africa, and 15.000 each in Australia and Spain (4/5 of the total)

political and cultural connections. This was no basis for a National Policy that would reach beyond its borders.

It took the Austrian civil war in the 1930s and the devastating experience of World War II and National Socialism to clear the way for a new identity to develop. The lessons from that past, the Austrian State Treaty, the Declaration of Permanent Neutrality and the “economic miracle” – which was at least partly based on the specifically Austrian form of “social partnership” – were important components of this process. Thus the new Austria finally and definitely accepted its identity.

The ban on dual or multiple nationalities fits into this picture; it is one of the principles of Austrian Nationality Law and was reinforced by the adherence to the Convention of the Council of Europe on the Reduction of Multiple Nationality of 1963. The exceptions to the rule are very few.

Voting rights for expatriates were introduced in Austria in 1990 following a judgment of the Constitutional Court. Before the necessary legal changes were made participation of expatriates was excluded, since the *Wählerevidenzgesetz* (law on registry of voters) made voting conditional upon having the main residence in Austria. Since 1990, Austrian nationals living abroad enjoy full voting rights in parliamentary and presidential elections, elections to the European Parliament, as well as in national referenda, if they are included in the register of voters in a municipality.

The view from abroad? Generally Austrian National Policy, nationality law and laws on expatriate vote seems to have responded to expectations. In the late Nineties plans and implementation of stiffening conditions for integration of immigrants and for granting of Austrian citizenship to immigrants have met with some criticism. Following some adjustments in the meantime these seem to be more or less within the European mainstream.

III. Citizenship in East Central Europe