

CASE NOTE

RISK OF STATELESSNESS — THE RETENTION OF AUSTRIAN CITIZENSHIP DESPITE VOLUNTARY PARTICIPATION IN COMBAT

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I INTRODUCTION

Over the past decade, European states have significantly amended legislation to enable the revocation of citizenship for individuals involved in terrorism. These reforms emerged largely in response to the violence surrounding the Islamic State (‘ISIS’) and targeted European nationals who travelled abroad to join terrorist organisations.¹ The reforms were further accelerated by a series of deadly attacks between 2015 and 2020 in France (Paris, Nice) and Austria (Vienna), which prompted renewed counter-terrorism commitments across Europe.² Consequently and during the course of these events, citizenship revocation has been increasingly deployed as a punitive instrument to sanction individuals and to prevent their return on national security grounds, as demonstrated by the case of former British citizen, Shamima Begum.³

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‡ Academic AI was used to revise grammar and spelling and to shorten translations from the decision.

German–English translations were done by the author. Turkish–German translations appeared in the court decision.

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¹ Jules Lepoutre, ‘Citizenship Loss and Deprivation in the European Union (27 + 1)’ (Working Paper No 2020/29, Robert Schuman Centre for Advanced Studies, Global Governance Programme, European University Institute, May 2020) 8.

² Max Zander, ‘Together against “Barbaric Terrorism”’, *Deutsche Welle* (online, 14 November 2020) <<https://www.dw.com/en/eu-interior-ministers-step-up-efforts-to-combat-terrorism/a-55598193>>, archived at <perma.cc/8JCF-ZZZR>.

³ *Begum v Secretary of State for the Home Department* [2021] UKSC 7.

Similarly, Austria enacted two major legislative reforms to facilitate citizenship revocation. In 2014, it amended the *Federal Act on Austrian Citizenship* ('*Austrian Citizenship Act*') to allow withdrawal where a person voluntarily and actively participates in combat abroad for an organised armed group in an armed conflict, provided this does not result in statelessness.⁴ In 2021, following the Vienna attacks, Austria expanded these grounds. Whereas revocation had previously been limited to participation in armed groups abroad, the amendment covered a broader range of terrorism-related offences, including financing terrorism and travelling for terrorist purposes.⁵

Against this backdrop, Austria began withdrawing citizenship based on participation in armed combat, with decisions taken by the competent authority in each of the nine federal states.⁶ By June 2021, the Vienna Municipal Department for Immigration and Citizenship had initiated citizenship withdrawal proceedings in 17 cases as the responsible authority. Nine resulted in deprivation and five remained pending. Two were awaiting review by the Vienna Administrative Court, which had already denied one deprivation application due to the risk of statelessness.⁷ A freedom of information request revealed that the authority could not provide data on Austrian citizenship deprivation between 2015 and January 2022 in the aforementioned context due to technical issues in its database. Between February 2022 and May 2026 though, no further cases of citizenship deprivation have been recorded.⁸ This case note deals with an administrative and legal dispute initiated in 2019 following a decision by the authority for foreigners (*Fremdenbehörde*) in Vienna to revoke Austrian citizenship of a man alleged to also hold Turkish nationality.⁹ It is the second time that an individual of alleged dual nationality (Turkish citizenship at birth, Austrian citizenship through naturalisation) has successfully challenged the decision of the competent authority to revoke their Austrian citizenship despite accusations of participation in combat. The appeal was upheld on the grounds that the man did not possess Turkish

⁴ *Bundesgesetz, mit dem das Grenzkontrollgesetz und das Staatsbürgerschaftsgesetz 1985 Geändert Werden* [Federal Act Amending the Border Control Act and Citizenship Act 1985] (29 December 2014) BGBl I No 104/2014, art 2 cl 1 (Austria) ('*Austrian Citizenship Act*'). For the current version, see *Bundesgesetz über die Österreichische Staatsbürgerschaft (Staatsbürgerschaftsgesetz - StbG)* [Federal Act on Austrian Citizenship (Citizenship Act)] (30 July 1985) BGBl I No 311/1985, § 33(2) (Austria), last amended by *Bundesgesetz, mit dem das Asylgesetz 2005, das BBU-Errichtungsgesetz, das BFA-Einrichtungsgesetz, das BFA-Verfahrensgesetz, das Fremdenpolizeigesetz 2005, das Grundversorgungsgesetz – Bund 2005, das Staatsbürgerschaftsgesetz 1985 und das Ausländerbeschäftigungsgesetz Geändert Werden (Asyl- und Migrationspakt-Anpassungsgesetz – AMPAG)* (11 June 2026) BGBl I No 39/2026 (Austria).

⁵ *Bundesgesetz, mit dem das Staatsbürgerschaftsgesetz 1985 und das Symbole-Gesetz geändert werden* [Federal Law amending the Citizenship Act 1985 and the Symbols Act] (27 February 2021) BGBl I No 162/2021, art 1(2) (Austria).

⁶ *Bundes-Verfassungsgesetz (B-VG)* [Federal Constitutional Law] (1 January 1930) BGBl No 1/1930, art 11(1) (Austria), last amended by *Bundesgesetz, mit dem das Bundes-Verfassungsgesetz, das Volksanwaltschaftsgesetz 1982 und das Heimopferrentengesetz geändert werden* (11 June 2026) BGBl I No 41/2026 (Austria).

⁷ Hubert Kicking, 'Neun IS-Kämpfer verloren Staatsbürgerschaft', *ORF* (online, 10 June 2021) <<https://wien.orf.at/stories/3107549>>, archived at <perma.cc/ZSW9-MX2U>.

⁸ Response to a Freedom of Information Request (MA 35-602237-2026-3) from the Municipality of Vienna, Municipal Department 35 (MA 35), Immigration and Citizenship to Helena-Ulrike Marambio, 19 May 2026. Document on file with the author.

⁹ Verwaltungsgericht Wien [Administrative Court Vienna], VGW-152/071/4840/2020-52, 15 April 2022 ('AC Vienna').

nationality at the time of revocation.¹⁰ Against this backdrop, the present case demonstrates that, notwithstanding allegations of involvement in combat abroad for a terrorist organisation, Austria adheres to international and regional standards that prioritise the avoidance of statelessness over punitive measures such as citizenship revocation. It further implies that European Union (‘EU’) citizenship functions as an additional — potentially stronger — safeguard against the loss of nationality.¹¹

II FACTS

In 2019, the male plaintiff lodged an appeal before the Administrative Court of Vienna against the decision of the Provincial Government of Vienna to revoke his Austrian citizenship.¹² The decision was based on his voluntary participation in combat for ISIS in Syria.¹³ He was kept in custody.¹⁴ At the time of revocation, the plaintiff appeared to hold dual Austrian and Turkish nationality.¹⁵

The plaintiff had acquired Austrian citizenship in 2005 after moving to the country as a child with his Turkish parents in 2004 and was granted a long-term residence permit (*Niederlassungsnachweis*). Due to his status as a minor, he was not required to renounce his Turkish citizenship as part of the naturalisation process.¹⁶

The competent authority for foreigners determined that the plaintiff had joined the ‘*Al-Nusra Front*’ (or rather its successor organisation), which constituted one of the parties to the Syrian Conflict.¹⁷ It further found that he had attended a training camp operated by the organisation and had taken part in armed ‘walks’ (*Spaziergänge*). Due to the plaintiff’s retained Turkish citizenship, the revocation did not render him stateless in 2019. Given the severity of his conduct, the authority deemed the revocation of Austrian citizenship — and thus EU citizenship, to be proportionate.¹⁸ The plaintiff appealed the decision in 2020, arguing that the proceeding should not be concluded prior to his release from

¹⁰ Overall, three cases are available on the data platform ‘Rechtsinformationssystem des Bundes’ [Legal Information System of the Republic of Austria], which offers selected cases to the public: Federal Chancellery of Austria, ‘Welcome’, *Rechtsinformationssystem des Bundes* (Web Page, 2026) <<https://www.ris.bka.gv.at/defaultEn.aspx>>, archived at <perma.cc/NC3R-ZPFD>. It should be noted that each of the nine Austrian federal states has only one Administrative Court. Therefore, these courts are also referred to as Federal State Administrative Courts (*Landesverwaltungsgerichte*, or LVwG), and are listed as such on the platform. For the first case of a supposed dual national, see Verwaltungsgericht Wien [Administrative Court Vienna], VGW-152/089/16414/2019-13, 20 April 2020. In the third case, concerning a man allegedly holding both Russian and Austrian citizenship, the Court found no clear evidence of his active participation in armed combat in Syria. Moreover, his survival status was uncertain: Verwaltungsgericht Wien [Administrative Court Vienna], VGW-152/071/5967/2021-35, 14 April 2022.

¹¹ Sara Poli and Luigi Lonardo, ‘Limits to Deprivation of National Citizenship under European Union law: the Case of Foreign Terrorist Fighters and the Right to be Readmitted into the EU for Their Children’ (2025) 26(1) *German Law Journal* 43.

¹² AC Vienna (n 9) 1.

¹³ *Austrian Citizenship Act* (n 4) art 33(2); AC Vienna (n 9) [1.1].

¹⁴ AC Vienna (n 9) [1.4].

¹⁵ *ibid* [2.1].

¹⁶ *ibid*.

¹⁷ *Jabhat Al Nusra* (also called ‘*Al Nusra Front*’) held close relationships with Al Qaida and was one of the main opponents to the Assad regime in Syria: Antonio Giustozzi, ‘A Struggle for Power: Al Nusra and Al Qaida in Syria’ (2021) 44(1) *Studies in Conflict & Terrorism* 1.

¹⁸ AC Vienna (n 9) [1.1].

custody.¹⁹ As a result, the authority did not issue a preliminary decision on his appeal, but transferred it (alongside his administrative file) to the Administrative Court of Vienna ('Court') for adjudication.²⁰

As part of the proceeding, the Court examined several records, including data from the residents' registration record (*Melderegister*), the Central Register of Foreigners, and the criminal register. It also sought information from the Vienna State Police Directorate, the State Office for the Protection of the Constitution and Counterterrorism, and two municipal departments (*Magistratsabteilungen*). Additionally, the Court requested the transmission of the plaintiff's naturalisation file.²¹

Following this evidentiary review, the Court held a public oral hearing in 2021, during which it heard the plaintiff, alongside his parents who served as witnesses.²² On 4 April 2022, the plaintiff submitted to the Court an extract from the Turkish civil registry (*Nüfus Kayıt Örneği*) alongside a copy of a Turkish Blue Card (*Mavi Kart*) issued on the same date.²³ The documents indicated that his Turkish citizenship was lost on this date 'at the latest'.²⁴

III ISSUES

The case concerns a dispute regarding two provisions of the *Austrian Citizenship Act*, which state:

A citizen who voluntarily participates actively in combat abroad for an organised armed group in the context of an armed conflict shall have their citizenship revoked if this does not render them stateless.²⁵

The deprivation of citizenship (articles 32 and 34) or the reopening of the proceeding pursuant to article 69, paragraph (1), subparagraph 1, of the [*General Administrative Procedures Act*] shall be decreed *ex officio* or upon request by the Federal Minister of the Interior. The Federal Minister of the Interior is a party to the procedure opened upon his request.²⁶

In its decision, the Court also referred to an explanatory note accompanying the introduction of art 33(2) of the *Austrian Citizenship Act*, which provides safeguards against statelessness under the 1961 *Convention on the Reduction of Statelessness* ('1961 Convention') and the 1997 *European Convention on*

¹⁹ *ibid* [1.2].

²⁰ *ibid* [1.3].

²¹ *ibid* [1.4].

²² *ibid* [1.5].

²³ *ibid* [1.6].

²⁴ *ibid* [2.2].

²⁵ *Austrian Citizenship Act* (n 4) art 33(2).

²⁶ *ibid* art 35.

Nationality ('ECN').²⁷ While the acquisition and loss of citizenship generally fall under the jurisdiction of the individual member states according to public international law, this jurisdiction must be exercised 'in compliance with community [EU] law'.²⁸ Thus, as an EU Member State, Austria must also comply with EU law on citizenship revocation. Loss of Austrian citizenship is therefore problematic when it entails the automatic loss of EU citizenship for individuals who are not nationals of another member state. This is because EU citizenship derives from member state nationality under art 20(1) of the *Treaty on the Functioning of the European Union*,²⁹ which supports the EU's constitutional basis. Member states must comply with the principle of proportionality under EU law and the case law of the Court of Justice of the European Union ('CJEU'). Accordingly, any decision to revoke citizenship requires a proportionality assessment in line with the ruling in *Rottmann v Freistaat Bayern*.³⁰

IV HOLDING

The Court considered the authorities' evidence (ie, the plaintiff's date and place of birth, residence status, and naturalisation) as well as the information provided during the oral hearing to be credible.³¹ It reached the same conclusion with respect to the evidence on the loss of Turkish nationality.³² Although the civil registry extract did not contain an explicit entry recording the loss, the Court reasoned that the relinquishment of Turkish citizenship is typically indicated by the register being marked as 'closed' (*kapalı kayıt*), rather than 'open' (*sağ*). In

²⁷ For the procedure on the amendment of the Citizenship Act 1985 (as eventually published in the *BGBl* [Federal Gazette] I No 104/2014), see Parlament Österreich [Austrian Parliament], 'Grenzkontrollgesetz, Staatsbürgerschaftsgesetz, Änderung (351 dB)' [Border Control Act, Citizenship Act, Amendment (351 Annexes)] (online, 12 December 2014) <<https://www.parlament.gv.at/gegenstand/XXV/I/351/>>, archived at <perma.cc/PE3X-Q6RW>; Zu Artikel 2 (Änderung des Staatsbürgerschaftsgesetzes 1985), zu Z 1 (§ 33 Abs. 2) [On Article 2 (Amendment of the Citizenship Act 1985), No 1 (§ 33 para 2)] (ErläutRV [Explanatory Memorandum for Government Draft Bill] No 351, BlgNR [Annexes to the Stenographic Records of the National Council], GP [Legislative Period] XXV) 9 (Austria) <https://www.parlament.gv.at/dokument/XXV/I/351/fname_372674.pdf>, archived at <perma.cc/K48Y-BMY8>; Bundesgesetz, mit dem das Grenzkontrollgesetz und das Staatsbürgerschaftsgesetz 1985 Geändert Werden [Federal Act Amending the Border Control Act and Citizenship Act 1985] (Regierungsvorlage [Government Draft Bill] No 351, BlgNR [Annexes to the Stenographic Records of the National Council], GP [Legislative Period] XXV) 2 (Austria) <https://www.parlament.gv.at/dokument/XXV/I/351/fname_372672.pdf>, archived at <perma.cc/F8VN-EJ82>; *Austrian Citizenship Act* (n 4); *Convention on the Reduction of Statelessness* (adopted 30 August 1961, entered into force 13 December 1975) 989 UNTS 175 ('1961 Convention'); *European Convention on Nationality*, signed 6 November 1997, ETS 166 (entered into force 1 March 2000).

²⁸ The explanatory note in n 27 refers to the following case law of the Court of Justice of the European Union: *Mario Vicente Micheletti and Others v Delegación del Gobierno en Cantabria* (Court of Justice of the European Union, C-369/90, ECLI:EU:C:1992:295, 7 July 1992) [10]; *Belgium v Fatna Mesbah* (Court of Justice of the European Union, C-179/98, EU:C:1999:549, 11 November 1999) [29]; *Man Lavette Chen and Kunqian Catherine Zhu v Secretary of State for the Home Department* (Court of Justice of the European Union, C-200/02, ECLI:EU:C:2004:639, 19 October 2004) [37]; *Janko Rottmann v Freistaat Bayern* (Court of Justice of the European Union, C-135/08, ECLI:EU:C:2010:104, 2 March 2010) [39].

²⁹ '[E]very national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.'; *Consolidated Version of the Treaty on European Union* [2012] OJ C326/13, art 9.

³⁰ *Janko Rottmann v Freistaat Bayern* (n 28) [56].

³¹ AC Vienna (n 9) [3.1]–[3.2].

³² *ibid* [3.3].

the present case, the extract was marked as closed and supported the conclusion that the plaintiff had relinquished Turkish citizenship. Apart from that, the Court considered the loss of citizenship to be corroborated by the presentation of a Blue Card (*Mavi Kart*), a document issued exclusively to former Turkish citizens to facilitate entry and preserve certain rights in Turkey. Current Turkish nationals are not eligible to hold such a document. Consequently, the Court concluded, beyond reasonable doubt, that the plaintiff had lost his Turkish citizenship no later than 4 April 2022 and only held Austrian citizenship.³³

The Court further emphasised that, for the purpose of assessing the revocation of citizenship under art 33(2) of the *Austrian Citizenship Act*, the decisive point in time was that of the adjudicating Court's decision. It also reiterated that an essential prerequisite for the revocation of citizenship was that the individual concerned must not be rendered stateless.³⁴

Since the plaintiff possessed neither Austrian nor Turkish citizenship, nor any other nationality, the revocation of his Austrian citizenship would have rendered him stateless. Given the 'clear' wording of art 33(2), the Court deemed the revocation inadmissible.³⁵ Accordingly, the plaintiff's appeal was granted and the decision of the authority for foreigners annulled without having to address the remaining requirements of the provision, particularly whether the plaintiff had voluntarily and actively participated in combat operations abroad in an armed conflict for an organised armed group.³⁶

Finally, the Court clarified that the circumstances surrounding the loss of the plaintiff's Turkish citizenship were irrelevant to the legal assessment. The decisive factor for the appeal was that at the time of the Court's decision, the individual possessed exclusively Austrian citizenship.³⁷

V ANALYSIS

The decision is noteworthy for prioritising the avoidance of statelessness over the plaintiff's alleged participation in combat for a terrorist group. The Court emphasised that art 33(2) of the *Austrian Citizenship Act* imposes an unequivocal obligation on the Austrian State to not render individuals stateless, even where they have engaged in hostilities abroad. Although the precise date of the plaintiff's loss of Turkish nationality could not be established on the presented evidence (ie, civil registry extract), the Court did not question the loss and proceeded in line with legislation.³⁸ Moreover, the Court signalled that the imperative of avoiding statelessness outweighed any need for a more detailed examination of the plaintiff's conduct.

In light of the above, the case captures two essential issues. First, a state's sovereign authority to regulate and revoke citizenship is constrained by international and regional legal frameworks.³⁹ As reflected in the explanatory

³³ *ibid* [3.4].

³⁴ *ibid* [5.1].

³⁵ *ibid* [5.2].

³⁶ *ibid*.

³⁷ *ibid* [5.3].

³⁸ *Austrian Citizenship Act* (n 4) art 33(2).

³⁹ Statelessness caused by citizenship withdrawal is not always arbitrary and contrary to international human rights law. See *1961 Convention* (n 27) art 8(3); Sandra Mantu, "'Terrorist' Citizens and the Human Right to Nationality" (2018) 26(1) *Journal of Contemporary European Studies* 28, 29.

comment on art 33(2) of the *Austrian Citizenship Act*, EU citizenship provides an additional and potentially stronger layer of protection against citizenship withdrawal, alongside the *1961 Convention* and the *ECN*.⁴⁰ In its first ruling on the loss of German nationality in the case of Janko Rottmann — whose naturalisation was annulled for fraud — the CJEU established that such measures must be assessed with ‘due regard’ to EU law.⁴¹ Since the withdrawal of citizenship of an EU Member State automatically leads to the loss of EU citizenship (and associated rights such as free movement and residence), the matter falls within the scope of EU law.⁴² In the present case, the documents submitted to the Court (ie, civil registry extract and Blue Card) suggested the plaintiff’s loss of Turkish nationality and precluded further examination of the permissibility of the withdrawal decision by law.

Second, citizenship governs the socio-legal relationship between the individual and the state.⁴³ Beyond the legal sphere, citizenship is embedded in questions of ‘identity’ and ‘belonging’ while also entailing ‘normative claims about how citizenship should be’.⁴⁴ Thus, as the present case suggests, citizenship operates as a conditional and dynamic status, situated at the intersection of law and politics.⁴⁵ The legal dimension delineates the scope and limits of citizenship revocation, while the political dimension reflects broader societal values and interests about whether an individual qualifies as a ‘worthy citizen’.⁴⁶ In the case discussed, however, that tension is resolved by international and regional standards on the prevention of statelessness, which restrict the ability of EU Member States to easily revoke citizenship as a sanction.

VI CONCLUSION

The withdrawal of citizenship in the context of terrorism has been an expanding measure over the past decade. However, the Austrian case indicates that states are bound by different standards that limit the exercise of state power, while emphasising their responsibility to protect individuals from becoming stateless. Moreover, it demonstrates that both EU law and the CJEU’s case law have shaped legal obligations of EU states to live up to these standards.

⁴⁰ Poli and Lonardo (n 11).

⁴¹ *Janko Rottmann v Freistaat Bayern* (n 28) [32].

⁴² Poli and Lonardo (n 11) 49.

⁴³ See *Nottebohm (Liechtenstein v Guatemala) (Judgment)* [1955] ICJ Rep 4.

⁴⁴ Lee Jarvis and Michael Lister, *Anti-Terrorism, Citizenship and Security* (Manchester University Press 2015) 48.

⁴⁵ Andrea Birdsall, “‘Enemy of the State’: Citizenship Deprivation and the Problem of Returning Foreign Terrorist Fighters’ (2025) 18(1) *Critical Studies on Terrorism* 246, 247.

⁴⁶ *ibid* 251.