

## **Simplified Acquisition of Austrian Citizenship for Victims of National Socialism and their Descendants**

Petsch Frosch Klein Arturo  
Rechtsanwälte OG  
Schubertring 14  
A-1010 Wien  
+43 1 586 21 80  
www.pfka.eu  
pfka@pfka.eu

Vienna, 19.07.2022

### **1. Introduction**

Since 1 September 2020 victims of National Socialism and their descendants enjoy easier access to Austrian citizenship. The amendment of the Austrian Citizenship Act has broadened the scope of people eligible to apply for Austrian citizenship and additionally extended it to include descendants in direct line of victims of National Socialism. An important feature of this procedure is that Austrian law in this case - as an exception - does not require a renunciation of the previous citizenship before obtaining Austrian citizenship.

This amendment attracted attention in many countries and was positively received internationally. Within the first six months upon introduction of this new procedure, more than 10.000 applications for Austrian citizenship were submitted, mainly from Israel, the USA and Great Britain.

Starting from May 2022 an additional amendment came into effect, which once more broadened the scope of eligible persons.

### **2. Stipulation for Victims of National Socialism**

Already before the amendment to the Austrian Citizenship Act, taking effect on 1 September 2020 there was a simplified procedure for obtaining Austrian citizenship open to persons who fled from the Nazi regime before 9 May 1945.

The amendment that entered into force with first September 2020 extended the relevant time period for leaving Austria, which now also includes people who left after the end of the war until 15 May 1955.

Another change in effect since September 2020 is that the simplified procedure is also open to citizens from states of the former Danube monarchy who left Austria if they had their main residence in the federal territory of Austria. This means that victims who held Polish, Czechoslovakian, Hungarian, Italian, Romanian or Yugoslavian citizenship at the time of leaving Austria are eligible to obtain Austrian citizenship under this simplified procedure as well, provided they fulfil the remaining legal requirements.

After the amendment to the Austrian Citizenship Act in 2020, a person who fulfils the following criteria is considered a victim of persecution in the sense of the relevant provision of the Austrian Citizenship Act (Article 58c StbG):

- i) They were Austrian citizens (since 01.05.2022, also persons who lost their Austrian citizenship through marriage shortly before they left Austrian) or citizens of one of the successor states of the former Austro-Hungarian Empire or stateless, in each case with their main residence in the federal territory of the Austrian Republic and
- ii) they went abroad before 15 May 1955, because they had reasons to fear persecution or suffered persecution by organs of the National Socialist German Worker's Party or by the authorities of the Third Reich or because they were subject to persecution or had to fear such persecution because of their advocacy for the democratic Republic Austria.

Upon evaluation, the legal requirement "went abroad" which implied a voluntary departure from Austria was considered inadequate as it excluded for example victims who were murdered or deported from Austria by organs of the NSDAP or authorities of the Third Reich. Therefore, a further amendment passed in the Austrian parliament and went into effect on first May.2022. Now also the following persons are considered victims of persecution and are therefore eligible to obtain Austrian citizenship under the simplified procedure:

- i. Austrian citizens who did not have their main residence in Austria between 30.01.1933 and 09.05.1945 because they had to fear persecution by organs of the National Socialist German Worker's Party or by the authorities of the Third Reich or because of their advocacy for the democratic Republic Austria if they returned or entered Austria.
- ii. Austrian citizens who were deported from Austria before 9 May 1945 by organs of the National Socialist German Worker's Party or by authorities of the Third Reich or for their advocacy for the democratic Republic Austria.
- iii. Citizens of one of the successor states of the former Austro-Hungarian Empire or stateless persons with their main residence in the federal territory of the Austrian Republic who were deported from Austria before 9 May 1945 by organs of the National Socialist German Worker's Party or by authorities of the Third Reich or because of their advocacy for the democratic Republic Austria.

### **3. Citizenship for Descendants**

Furthermore, with the amendment to the Austrian citizenship Act which went into effect on 1 September 2020 access to Austrian citizenship was extended to direct descendants of victims of persecution (e.g. children, grandchildren, great-grandchildren etc.). Adoptees are also considered direct descendants if they were adopted as minors.

A prerequisite for the application by a direct descendant is that the ancestor fulfils the criteria specified in point 2.

The scope of eligible descendants was broadened and since 01.05.2022 direct descendants of the following persons are also eligible to obtain Austrian citizenship:

- i. Austrian citizens who died before 9 May 1945 because they suffered persecution by organs of the NSDAP or authorities of the Third Reich or because of their advocacy for the democratic Republic Austria.
- ii. Citizens of one of the successor states of the former Austro-Hungarian Empire or stateless persons with their main residence in the federal territory of the Austrian who died before May 1945 because of the persecution they suffered by organs of the NSDAP or authorities of the Third Reich or because of their advocacy for the democratic Republic Austria.

#### **4. Exclusion grounds**

It should be noted, however, that there are certain grounds that exclude an applicant from obtaining Austrian citizenship even if the criteria described in point 2 and 3 are fulfilled. These grounds for exclusion are for example:

- i) a ban from residence in Austria or pending proceedings to terminate residence,
- ii) expulsion from Austria within the last 18 months,
- iii) relations with other states that are contrary to Austria's interests,
- iv) frequent or serious administrative offences, or
- v) a final conviction for a criminal offence or a financial offence or the pendency of such proceedings.

Furthermore, descendants of victims are excluded from obtaining Austrian citizenship under these provisions if they possessed Austrian citizenship and lost it after 1 May 2022 by acquiring a foreign citizenship. This ground for exclusion does not apply if the possession of the Austrian citizenship was unknown to the descendent. Obtaining Austrian citizenship under this procedure is also not possible for descendants who renounced their Austrian citizenship or had their Austrian citizenship revoked.

#### **5. Procedure**

Austrian citizenship can be acquired under this procedure by an informal application to the authorities. The application is not subject to a time limit and is free of charge. With the application, unobjectionable documents or other suitable evidence must be presented to certify the prerequisites. The authorities will request further documents if the submitted ones are deemed insufficient.

##### **5.1) General required documents**

Along with the completed application, the following documents are required in the procedure pursuant to Article 58c StbG:

- i) Valid passport
- ii) Recent photograph (passport photo)
- iii) Birth certificate ("long-form" of US-birth certificates)

iv) Documents regarding the marital status (e.g. marriage certificate), if this has resulted in a change of name, and

v) a current extract from the criminal record of your country of residence (unless your country of residence is Austria).

The documents must be presented in German or English. If they are presented in another language, a translation into German by a sworn and court-certified translator is required. Depending on the country of origin, these documents may require diplomatic certification or an apostille.

## **5.2) Documents regarding the persecuted person or the persecuted ancestor**

Furthermore, the following documents (if applicable) must be provided to prove that the applicant or the ancestor of the applicant fulfils the criteria set out in point 2 and thus is or would have been entitled to receive Austrian citizenship:

i) Documents proving that the applicant or the applicant's ancestor had Austrian citizenship or citizenship of one of the successor states of the former Austro-Hungarian.

ii) Documents proving the main residence of the applicant or the applicant's ancestor in the federal territory of the Republic of Austria and the departure from Austria before 15 May 1955.

iii) Documents proving the persecution or feared persecution of the applicant or the applicant's ancestor.

iv) For descendants of the persecuted person: documents proving the relationship in direct line with the persecuted ancestor (e.g. birth certificates).

In individual cases, the challenge may sometimes lie in finding out, which specific documents are sufficient or required.

## **6. Dual Citizenship**

As a general rule, Austrian citizenship law requires the renunciation of the current citizenship in order to obtain Austrian citizenship. However, this does not apply to victims of the Nazi regime and to their direct descendants. They are permitted to keep their current citizenship. It should be noted, however, that persons who acquire Austrian citizenship under this procedure and, therefore, do not have to give up their previous citizenship under Austrian law cannot automatically be dual citizens in every case. It is necessary to consider the law of the applicant's home jurisdiction, which could mandate the loss of the citizenship in the event of obtaining another citizenship. Therefore, it is recommended if a person intends to retain his or her current citizenship to check as a first step the legal situation regarding dual citizenship in the person's home country.

Legal support is advised when obtaining Austrian citizenship according to this procedure, especially when checking and compiling the documents and when filing the application with the competent authority.

## **7. Rights and obligations that may accompany the acquisition of Austrian citizenship**

Obtaining Austrian citizenship is very appealing since Austria is an EU member state and therefore grants the corresponding rights, in particular the right to move and reside freely within the entire territory of the European Union and the right to take up and pursue gainful employment in other EU member states.

However, persons interested in obtaining Austrian citizenship should be aware that citizenship rights (e.g. right to vote, right of residence) also entail citizenship obligations. The obligations of a citizen may include, for example, compulsory military service (only for male citizens) or jury duty.



Claudio Arturo  
Lawyer/Mediator  
Petsch Frosch Klein Arturo Rechtsanwälte  
Schubertring 14  
A-1010 Vienna