

CASE LAW COVER PAGE TEMPLATE

Name of the court ¹ (English name in brackets if the court's language is not English): Verfassungsgerichtshof (Constitutional Court of Austria)	
Date of the decision: 06 / 03 / 2014	Case number: ² U2131/2012
Parties to the case: the applicant, Austrian Asylum Court	
Decision available on the internet? Yes If yes, please provide the link: https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20140306_12U0213_1_00	
Language(s) in which the decision is written: German	
Official court translation available in any other languages? No (If so, which):	
Country(y)(ies) of origin of the applicant(s): The applicant is a stateless Roma born in Austria. According to the applicant, his mother is a Serbian citizen and his father a citizen of BiH.	
Country of asylum (or for cases with statelessness aspects, country of habitual residence) of the applicant(s): Austria	
Any third country of relevance to the case: ³ -	
Is the country of asylum or habitual residence party to:	
The 1951 Convention relating to the Status of Refugees Yes	Relevant articles of the Convention on which the decision is based: N/A
(Only for cases with statelessness aspects) The 1954 Convention relating to the Status of Stateless Persons Yes	Relevant articles of the Convention on which the decision is based: Art. 31
(Only for cases with statelessness aspects) The 1961 Convention on the Reduction of Statelessness Yes	Relevant articles of the Convention on which the decision is based: N/A
(For AU member states): The 1969 OAU Convention governing the specific aspects of refugee problems in Africa <input type="checkbox"/> Yes <input type="checkbox"/> No	Relevant articles of the Convention on which the decision is based:
For EU member states: please indicate which EU instruments are referred to in the decision None	Relevant articles of the EU instruments referred to in the decision: None

Topics / Key terms: (see attached 'Topics' annex):

Statelessness

Roma

Right to a nationality

Expulsion

Suggestions for key terms not included in the annex:

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Key facts (max. 200 words)

The asylum-seeker is a stateless Roma (mother Serbian citizen, father citizen of BiH) who had an unlimited residence permit in Austria. Due to criminal convictions, this permit was withdrawn and the individual was issued an unlimited residence ban. While serving his prison sentence, he applied for international protection. His application was rejected and subsequently, the individual was issued an expulsion order to Bosnia and Herzegovina. The Asylum Court found that the expulsion was justified due to the criminal convictions of the complainant. The Asylum Court also argued that the individual could end his statelessness by applying for either Bosnian or Serbian citizenship.

A complaint was made to the Austrian Constitutional Court. The latter partly granted the complaint. It annulled the ruling of the Asylum Court on the complainant's expulsion and referred the case back to the appeal instance. According to the Constitutional Court, the initial ruling disregarded the human dignity of a person to be expelled from a country, while not having ties to any other state and therefore being deprived of any legal basis of his/her existence and not being able to establish a legal existence elsewhere.

Key considerations of the court (translate key considerations (containing relevant legal reasoning) of the decision; include numbers of relevant paragraphs; do not summarize key considerations) [max. 1 page]

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The Court's decision:

The Constitutional Court partly granted the complaint. It annulled the ruling of the Asylum Court on the complainant's expulsion and referred the case back to the appeal instance.

The Constitutional Court advised that the appeal instance must, also in line with Art. 31 of the 1954 Convention relating to the Status of Stateless Persons, declare the expulsion of the individual as inadmissible – and this for a period long enough for the individual to try to obtain citizenship of another country. If it proves permanently impossible for the individual to obtain citizenship of another country, the expulsion of the individual would therefore be permanently inadmissible.

The Court's legal assessment:

The judgement of the Constitutional Court concerned a stateless Roma (mother Serbian citizen, father citizen of BiH, both also living in Austria), born in Austria, who had enjoyed an unlimited residence permit in Austria until 1995. At that time, his residence permit was withdrawn due to criminal convictions and an unlimited residence ban was issued against him. In 2011, while serving a prison sentence, he applied for international protection, which was not granted. As part of the negative asylum decision, the individual was issued an expulsion order to Bosnia and Herzegovina. The Asylum Court had determined his statelessness (as both the Serbian Ministry of the Interior and the Bosnian Embassy had confirmed that he was not a national of their State) and stated that (contrary to the decision of the Federal Asylum Office) no country of former habitual residence existed in this case. It had, however, found that the expulsion was justified due to the criminal convictions even though the person had been born in Austria, lived there his whole life, lives together with his German partner and has parents living in Austria. The Asylum Court had further argued that it was for the person concerned to end his statelessness by applying either for Bosnian or Serbian citizenship, both of which he is entitled to obtain, according to the respective citizenship regulations.

The Constitutional Court partly granted the complaint, annulled the ruling of the Asylum Court on the applicant's expulsion and referred the case back to the appeal instance. According to the Constitutional Court, expelling a person who was born and exclusively resided in Austria (for several decades) and who, due to his statelessness and for lack of habitual residence in another state than Austria, has no ties to another state, disregards the human dignity of such a person, as s/he is thereby deprived of any legal basis of his/her existence, being unable to establish a legal existence elsewhere. If the legislation would authorize such an expulsion, as the Asylum Court had wrongly assumed, it would be unconstitutional due to a violation of Article 3 ECHR. According to Article 10 of the Asylum Act, the execution of an expulsion must be suspended for the necessary period of time where it would, for reasons lying with the person of the asylum-seeker and which are not of a permanent nature, violate Article 3 ECHR. In a case like the one at hand, the expulsion thus needs to be determined as being inadmissible and the person concerned granted a reasonable time limit to acquire the nationality of another country (also in view of respective obligations under Article 31 of the 1954 Convention). If despite reasonable efforts of the person concerned he or she is unable to acquire another nationality, his or her expulsion would be permanently inadmissible.

Other comments or references (for example, links to other cases, does this decision replace a previous decision?)

EXPLANATORY NOTE

1. Decisions submitted with this form may be court decisions, or decisions of other judicial, quasi-judicial and administrative bodies.
2. Where applicable, please follow the court's official case reference system.
3. For example in situations where the country of return would be different from the applicant's country of origin.

For any questions relating to this form, please contact the RefWorld team at the address below.

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