

Austria - Tirol Administrative Court judgment of 22 January 2019

The applicant was born in Belarus between 1990 and 1993, to parents of Armenian ethnic origin, and lived in Austria since the age of 9. Austria's civil registration allows for the registration of births of individuals who are stateless or whose nationality status is unclear, and the applicant argued her birth should be registered based on this provision, as she is stateless, or at least her nationality status is undetermined. The authorities considered that the applicant is an Armenian national based on findings in her asylum file, but the Court sided with the applicant and determined that she is entitled to have her birth registered in Austria.

Case name (in original language) : LVwG-2018/14/1219-1

Case number: LVwG-2018/14/1219-1

Citation:

https://www.ris.bka.gv.at/Dokumente/Lvwg/LVWGT_TI_20190122_LVwG_2018_14_1219_1_00/

Date of decision: 22/01/2019

State: Austria

Court / UN Treaty Body: Tirol Administrative Court

Language(s) the decision is available in: German

Applicant's country of birth: Belarus

Applicant's country of residence: Austria

Key aspects: Birth registration, Burden of proof, Childhood statelessness, Standard of proof, State succession, Statelessness and asylum, Statelessness determination

Facts

The applicant was born in Belarus to parents of Armenian ethnic origin. Her parents moved to Belarus in 1990 during the Soviet Union, and stayed there until 1993, and in this time frame all their children were born. The applicant lived in the same household as her parents and siblings from her birth until her marriage on 21 July 2017. She came to Austria at the age of 9 with her family, and has not left Austria

since. She requested for her birth to be registered in Austria, but the request was denied on 22 March 2018, because she was considered to be an Armenian national, and only non-Austrians who are stateless or whose nationality has not been clarified can have their births registered in Austria, provided they habitually reside in Austria.

Legal arguments by the applicant

The applicant argued that the finding that she is an Armenian national is based on her asylum procedures, and this finding is wrong and incomprehensible. The authority registering birth should have conducted an independent assessment of her nationality status before refusing birth registration. If such an assessment was carried out, the authority would have concluded that she has at least an unclear nationality status or that she is altogether stateless.

She moreover argued that since her parents' and siblings' nationality was determined as stateless, so should be hers, as she derived her nationality status from her parents and lived in the same household until her marriage. The births of her family were registered in Austria, and they received travel documents for foreigners.

She also submitted a confirmation from the Armenian embassy from 8 June 2016 stating that the applicant is not registered in Armenia and does not have an Armenian passport. She argued that she cannot prove that she lost her Armenian nationality, as the authorities require her to do, as she never acquired that nationality in the first place. The authorities have never proven on which basis it is assumed that she is an Armenian national. It is neither reasonable nor possible for the applicant to provide any further evidence demonstrating her statelessness.

She argued that when her mother mentioned in the asylum procedure that the family was "Armenian", she was referring to the family's ethnic origin, and not their nationality status.

Legal arguments by the opposing party

The authorities argued that the applicant was correctly registered as an Armenian national by the authorities in the asylum procedure. In order to be considered stateless, the applicant needs to prove that she lost her Armenian nationality.

Decision & Reasoning

The Court reasoned as follows:

"[...] the applicant was born outside the Republic of Armenia, only knows the state to a very limited extent from a relatively short period of time following her deportation from Sweden, and therefore has no reference to Armenia, especially since she did not attend school during her stay in Armenia. It was also found that she speaks Armenian "poorly"."

After considering relevant nationality legislations of Belarus and Armenia, the Court concluded the following:

"From the submitted file it can be inferred that the applicant's parents considered that they belonged to the Armenian ethnic group. However, this does not mean that she is ipso iure to be regarded as a national of the Republic of Armenia, since this would require a legal action of acquiring the nationality. Obviously, no such action was carried out, especially since it is clear from the documents in the file that at the time of the establishment of the Republic of Armenia, the [applicant's] family was in Belarus and all of the children [in the family] were born in Brest, Belarus."

"Regarding the nationality, the information provided by the Embassy of Armenia on June 8, 2016 is significant, confirming that it has no information about the applicant's nationality and that she does not have an Armenian passport. The same confirmation was issued for [the applicant's family members], so applicant's view that she is to be regarded as stateless is correct."

"The view that she is stateless or that at least her nationality status has not been clarified cannot, based on the available evidence, be challenged [...]."

"According to Section 35 (2) PSTG, a civil status event that occurred abroad must be entered if [it] concerns a stateless person or a person of unclear nationality if they have their habitual residence in Austria."

Decision documents

[Tirol_22Jan2019.pdf](#)

Outcome

The Court decided that the applicant is to be considered stateless and her birth ought to be registered in Austria.