

FEDERAL LAW CONCERNING THE AUSTRIAN NATIONALITY (NATIONALITY ACT 1985)

- *unofficial consolidated version* -

Issued on 30 July 1985

Federal Law Gazette of the Republic of Austria, FLG No. 311/1985, amended by FLG No. 386/1986, FLG No. 685/1988, FLG No. 521/1993, FLG No. 505/1994, FLG I No. 109/1997, FLG I No. 30/1998, FLG I No. 123/1998 and FLG I No. 124/1998

[NOTE: This is an unofficial consolidated translation edited on the basis of a translation done by the Austrian Ministry of the Interior.]

Section I

General Provisions

Article 1. [*Repealed*]

Article 2. In this act the following terms shall have the meanings here under:

1. Republic means the Republic of Austria;
2. Nationality means the nationality of the Republic of Austria (Austrian nationality);
3. National means a person holding Austrian nationality regardless of sex;
4. Alien means a person not holding Austrian nationality regardless of sex.

Article 3. Except in cases under article 8, a person whose nationality cannot be determined is to be regarded as stateless.

Article 4. For the purposes of the scope of this federal law, sex and family status shall have no legal relevance, except as otherwise expressly provided for herein. Aliens who have filed an application for the granting of nationality shall, however, be required in such procedures to explain their family situation, the centre of their vital interests and their personal circumstances.

Article 5. For the spouse of a national who is an employee of a public territorial body and is posted abroad (civil servant abroad), for the purpose of this law and irrespective of articles 22, paragraphs (2) and (3), 37, paragraph (2) and 41, paragraph (2), Vienna shall be regarded as the place of principal domicile residence, if this person is an alien and lives permanently in the same household as the civil servant and who has no ordinary residence of his own in Austria. The same applies to a spouse of a national employed by the Austrian Chamber of Commerce and Trade of Austria who are posted abroad.

Section II

Acquisition of nationality

Article 6. Nationality shall be acquired by

1. Descent (legitimation)(articles 7, 7a and 8);
2. Naturalization (extension of naturalization)(articles 10 to 24);
3. Taking up the post of university or college professor (article 25 (1));

4. Declaration (article 25, paragraph (2));
5. Notification (article 58c).

Descent (legitimation)

Article 7. (1) Children born in wedlock acquire nationality at birth, if

- a) at this time one parent is a national or
- b) one parent, who died earlier, was a national on the day of death.

(2) [*Repealed*]

(3) Children born out of wedlock acquire nationality at birth if the mother is a national at this time. Paragraph (1) b above applies accordingly.

(4) [*Repealed*]

Article 7a. (1) An alien born out of wedlock acquires the nationality by legitimation if he is still a minor and unmarried and if at this time his father is a national or if he died earlier was a national on the day of his death.

(2) If the legitimated person has already reached the age of 14, paragraph (1) above only applies if the legitimated person and his legal representative give their consent to the acquisition of nationality.

(3) The consent under paragraph (2) above has to be given in writing to the registration authority (*Evidenzstelle*) (article 49, paragraph (2)). In such a case, the legitimation takes effect with regard to nationality only as soon as the registration authority has received all necessary declarations of consent according to paragraph (2) above.

(4) Consent according to paragraph (2) above is ineffective, if it reaches the registration authority after the marriage of the legitimated person or later than three years after the applicant has received the written instruction according to article 52, paragraph (2).

(5) If the legitimated person, having reached the age of fourteen, or his legal representative refuses to give the consent (paragraph (2) above), it can be replaced by court, if the acquisition of nationality is to the benefit of the legitimated person for educational, professional or other important reasons. The same applies if the legitimated person has no legal representative or the legal representative is not available and the designation of a legal representative meets with insurmountable obstacles. The same applies if the legitimated person is of unknown residence or otherwise not available. The jurisdiction lies with the domestic civil court which would be competent to act in guardianship or custody matters if the legitimated person were an Austrian national. The deadline for giving the consent (paragraph (4) above) is met if the court was addressed before its expiry and the legitimated person is still unmarried when the court decision reaches the registration authority.

(6) Acquisition of nationality through legitimation also extends to children born out of wedlock of a legitimated woman. If they have already reached the age of fourteen, paragraphs (2) to (5) above apply accordingly.

Article 8. (1) Until proof to the contrary, a person under the age of six months found on the territory of the Republic is regarded as national by descent.

- (2) The same applies to a person born on the territory of the Republic if
- a) born in wedlock one parent,

b) born out of wedlock the mother was born on the territory of the Republic.

(3) Paragraph (1) above also applies to persons found on the territory of the Republic before the 1st of September 1993, paragraph (2) above also to persons born before that day if their legitimate father or illegitimate mother were born on the territory of the Republic.

Article 9. [Repealed]

Grant of nationality

Article 10. (1) Nationality may be granted to an alien if:

1. The alien's principal residence has been in the federal territory for an uninterrupted period of at least ten years;
2. The alien has not been sentenced by final judgement of a domestic or foreign court to a term of imprisonment of more than three months for the commission of one or more wilful offences, the punishable acts on which the sentence of the foreign court is based are also punishable under domestic law, and the sentence has been pronounced in proceedings conforming to the principles set out in article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), FLG No. 210/1958;
3. The alien has not been sentenced by final judgement of a domestic court to a term of imprisonment of more than three months for a fiscal offence;
4. No criminal proceedings are pending in a domestic court against the alien on suspicion of the commission of a wilful offence liable to a sentence of imprisonment or a fiscal offence liable to a sentence of imprisonment;
5. No residence ban has been imposed on, and no procedure for termination of residence is pending against, the alien;
6. On the basis of his or her conduct hitherto, the alien guarantees that he or she has a positive attitude towards the Republic and neither represents a danger to law and order and public safety nor endangers other public interests as stated in article 8, paragraph (2), of the European Convention on Human Rights;
7. The alien's livelihood is sufficiently ensured or the alien is not to blame for his or her situation of financial hardship, and
8. The alien does not have relations with foreign States of such a nature that the granting of nationality would be detrimental to the interests of the Republic.

(2) A determining judgement as referred to in subparagraph 2 or 3 of paragraph (1) above shall not be admissible if it may not be included in criminal records information to the authority. A determining judgement as referred to in subparagraph 2 or 3 of paragraph (1) shall be admissible if it is rendered in respect of a juvenile offence.

(3) An alien possessing foreign citizenship may not be granted nationality if he or she:

1. Fails to take the necessary steps to relinquish his or her previous nationality even though such steps are possible and reasonable for the alien, or
2. On the basis of his or her application or otherwise deliberately retains his or her previous citizenship.

(4) The requirement laid down in subparagraph 1 of paragraph (1) above may be waived:

1. On grounds particularly deserving of consideration, if the under-age person or the alien concerned has had his or her principal residence in the federal territory for an uninterrupted period of at least four or at least six years respectively, unless otherwise provided for in paragraph (5) below with regard to the duration of such residence;

2. In the case of an alien who, prior to 9 May 1945, possessed the nationality of one of the successor States of the former Austro-Hungarian monarchy or was stateless, had his or her principal residence in the federal territory and at that time went abroad because he or she had reason to fear or had suffered persecution by agents of the National Socialist German Workers' Party (NSDAP) or of the authorities of the Third Reich, or because, on account of his or her active support for the Democratic Republic of Austria, was exposed to or had reason to fear persecution.

(5) Grounds particularly deserving of consideration (subparagraph 1 of paragraph (4) above) shall be deemed to mean in particular:

1. Loss of nationality otherwise than by deprivation (articles 33 and 34), or
2. Actual or expected outstanding achievements in the fields of science, commerce, the arts or sport, or
3. Proof of sustained personal and occupational integration, or
4. The granting of asylum pursuant to the 1997 Asylum Act, FLG I No. 76, including entitlement to asylum (article 44, paragraph (6), of the Asylum Act) following a period of residence of four years, or
5. Possession of the nationality of a State party to the European Economic Area Agreement (EEA Agreement), FLG No. 909/1993, following a period of residence of four years, or
6. Birth in the federal territory.

(6) (**Constitutional provision**) The requirements set out in subparagraphs 1 and 7 of paragraph (1) and in paragraph (3) above shall not apply if the Federal Government confirms that the granting of nationality is in the particular interests of the Republic by reason of the alien's actual or expected outstanding achievements.

Article 10a. A corresponding knowledge of the German language, having due regard to the alien's personal circumstances, shall in all cases be a requirement for granting nationality.

Article 11. The authority shall, in exercising the discretionary power conferred upon it by article 10, be guided by the considerations of the common good, the public interests and the extent of integration of the alien, taking due account of the alien's general conduct.

Article 11a. (1) An alien shall, subject to the requirements set out in article 10, paragraphs (1) 2 to 8 and paragraph (3), be granted nationality if:

1. The alien's spouse is an Austrian national and lives under the same roof as the alien;
2. The marriage has not been the subject of a judicial separation, either by divorce *a mensa et thoro* or otherwise without dissolving the marriage tie;
3. He or she is not an alien by reason of deprivation of nationality pursuant to article 33, and
4. (a) The marriage has continued for at least one year and the alien's principal residence has been in the territory of the Republic for a continuous period of at least four years or, in the case of a marriage of at least two years' duration, the alien's principal residence has been as aforesaid for an uninterrupted period of at least three years, or
(b) The marriage has continued for at least five years and the alien's spouse has been an Austrian national for an uninterrupted period of at least ten years, or
(c) The spouse acquired nationality through naturalization pursuant to article 10, paragraph (4) 2, or by means of a declaration in accordance with section 58c, and the alien had his or her principal residence prior to 9 May 1945 in the federal territory and at that time went abroad together with his or her future spouse.

- (2) An alien may not be granted nationality pursuant to paragraph (1) above if:
1. The alien married his or her spouse for a second time and
 2. That spouse had been granted nationality on the ground of marriage to an Austrian national following dissolution of the first joint marriage.

Article 12. An alien shall, subject to the requirements set out in article 10, paragraph (1) 2 to 8 and paragraph (3), be granted nationality if he or she:

1. Is not an alien by reason of deprivation of nationality (articles 33 or 34) or renunciation of nationality (article 37), and either:
 - (a) Has had his or her principal residence in the federal territory for an uninterrupted period of at least 30 years, or
 - (b) Has had his or her principal residence in the federal territory for an uninterrupted period of at least 15 years and can give proof of sustained personal and occupational integration, or
2. Had possessed nationality for an uninterrupted period of at least ten years, had lost that nationality otherwise than through deprivation (articles 33 or 34) or renunciation (article 37), has since been an alien and has had his or her principal residence in the territory of the Republic for an uninterrupted period of at least one year, or
3. Had lost nationality, at a time when he or she did not enjoy full legal capacity, otherwise than through deprivation pursuant to article 33, has since been an alien and applied for naturalization within two years of attaining full legal capacity, or
4. Is unable to acquire nationality pursuant to article 17 through extension of the grant of nationality for the sole reason that the determining parent (adoptive parent) is already an Austrian national.

Article 13. An alien shall, subject to the requirements set out in article 10, paragraph (1) 2 to 8 and paragraph (3), be granted nationality if he or she:

1. Had lost nationality because he or she:
 - (a) Married an alien,
 - (b) Acquired the same foreign citizenship simultaneously with his or her spouse, or
 - (c) Acquired the citizenship of an alien during his or her marriage to that person;
2. Has since been an alien;
3. The marriage has been dissolved through the death of the spouse or otherwise, and
4. Applies for naturalization within five years following dissolution of the marriage.

Article 14. (1) An alien shall be granted nationality if he

1. was born on the territory of the Republic and has been stateless since birth;
2. has had his principal domicile on the territory of the Republic for a period of not less than ten years, of which a continuous period of not less than five years preceding the granting of nationality;
3. has not been sentenced by a domestic court under one of the following legal provisions:
 - a) Articles 103, 124, 242, 244, 246, 248, 252 to 254, 256, 257/2, 258, 259, 260, 269, 274 to 276, 279 to 285 and 320 of the Criminal Code;
 - b) Articles 277 and 278 of the Criminal Code as far as the act was committed in relationship to an act punishable under Section 103 of the Criminal Code;
 - c) Article 286 of the Criminal Code, as far as the act was committed in relationship to the criminal acts listed under subparagraph (a) above;
 - d) Articles 3a and 3b as well as 3d to 3g of the "Verbotsgesetz 1947" (i.e. law against Nazism);
4. has neither been sentenced by a domestic nor by a foreign court to imprisonment of five or more years, the criminal act underlying the sentence of the foreign court being punishable also under the domestic law and the

sentence being passed in proceedings in conformity with the principles of article 6 of the European Human Rights Convention and

5. applies for naturalization after the age of 18 years and not later than two years after having attained majority.

(2) A person born aboard a ship under the marine flag of the Republic or aboard an aircraft of Austrian nationality is considered to be born on the territory of the Republic, when applying paragraph (1), subparagraph (a), above.

Article 15. (1) The counting of periods of residence under article 10, paragraph (1) 1, and paragraph (4), article 11a, paragraph (4), subparagraph (a), article 12, subparagraphs 1 and 2, as well as article 16, paragraph (1) 3a) is interrupted by

- a) a valid ban from residence ("Aufenthaltsverbot");
- b) a stay of more than 6 months in a penitentiary, in an institution for mentally disturbed offenders, an institution for the detoxication of offenders or an institution for dangerous repetitive criminals in the country or in such institution abroad following a sentence for an offence punishable under Austrian law; hereby the periods in a criminal penitentiary and the time of the implementation of a freedom-depriving preventive measure are to be added together.

(2) An interruption of the periods of residence under paragraph (1), subparagraph (a), above is to be disregarded if the ban from Austrian territory was lifted because it subsequently proved unfounded.

Article 16. (1) The granting of nationality to an alien shall be extended to the alien's spouse living under the same roof under the conditions of article 10, paragraph (1) 2 to 8 and paragraph (3); if

1. the marriage has neither been dissolved by separation nor divorce;
2. the person has not become an alien by deprivation of nationality under article 33; and
3. a) the marriage has lasted for a continuous period of not less than one year and the person has had his principal domicile on the territory of the Republic for a continuous period of not less than four years or in case of marriage for a continuous period of not less than two years, an ordinary residence for a continuous period of three years or
b) the marriage has lasted for a continuous period of not less than five years.

(2) The lack of the prerequisites under paragraph (1) 3 above and article 10, paragraph (3), does not preclude the extension if nationality is granted under article 10, paragraph (6).

Article 17. (1) The granting of nationality is to be extended under the conditions of article 10, paragraph (1) 2 to 8 and paragraph (3), to

1. the children of the alien born in wedlock;
2. the children born out of wedlock of a woman;
3. the children born out of wedlock of a man, if his paternity has been established or acknowledged and he has custody over the children;
4. the adopted children of the alien if the children are minors, unmarried and not aliens because of deprivation of nationality under article 33.

(2) The granting of nationality is furthermore to be extended under the conditions of article 10, paragraph (3), to the children born out of wedlock of the descendants listed in paragraph (1) above if the latter are female and the granting of nationality is extended to them.

(3) The condition of being a minor does not apply to a handicapped child, if the handicap is substantial and the child lives in the joint household with the parent relevant

for the extension of nationality or if this parent has custody over the child and honours the obligation to cover the child's maintenance. To be considered as substantially handicapped according to this provision are persons whose physical or mental capacities are limited to an extent that they need special care or special means of support and will probably be permanently unable to support themselves. The considerable handicap has to be certified by an Austrian official physician.

(4) The lack of the prerequisites under article 10, paragraph (3), does not preclude the extension of nationality, if nationality is granted under article 10, paragraph (6).

Article 18. The extension of nationality may only be granted simultaneously and with the same date of effect as the granting of nationality.

Article 19. (1) The granting of nationality and the extension of the grant of nationality shall be subject to a written application.

(2) Aliens under full age who are at least 14 years old may file an application pursuant to paragraph (1) above personally only; any such application shall require the agreement of their legal representative.

(3) Applications by other aliens not enjoying full legal capacity shall be subject to their written consent.

(4) If, in the cases referred to in paragraph (2) above, the legal representative does not give his agreement, such agreement may be given in the legal representative's stead, by the guardianship court ex officio or at the request of the under-age alien if the granting or extension of the grant of nationality is in the best interests of the alien. The foregoing shall also apply if the applicant does not have a legal representative or if his or her legal representative cannot be contacted and the appointment of a legal representative meets with insurmountable obstacles.

(5) If, in the cases referred to in paragraph (3) above, an alien not enjoying full legal capacity does not give his or her consent or is not in a position to do so, such consent shall be given, in his or her stead, by the guardianship court ex officio or at the request of the legal representative if the granting or extension of the grant of nationality is in the best interests of the alien.

Article 20. (1) The granting of nationality shall provisionally be guaranteed to an alien in cases where within two years he or she gives proof of having relinquished the nationality of his or her previous home country, if:

1. He or she is not stateless;
2. Neither article 10, paragraph (6), nor articles 16, paragraph (2), or 17, paragraph (4), apply, and
3. Such guarantee makes possible or could facilitate his or her relinquishing of the nationality of his or her previous home country.

(2) The guarantee shall be revoked if the alien no longer fulfils any one of the requirements laid down for the granting of nationality.

(3) Nationality whose granting has been guaranteed shall be granted as soon as the alien:

1. Relinquishes the nationality of his previous home country, or
2. Gives proof that he was unable or could not reasonably be expected to take the necessary steps to relinquish the nationality of his or her previous home country.

(4) Nationality whose granting has been guaranteed may be granted as soon as the alien satisfactorily establishes that, in order to relinquish his or her previous nationality,

he or she would have had to make payments which would have proved out of proportion for the alien alone or as regard the amounts required in respect of his or her entire family.

(5) The provisions of paragraphs (1) to (4) above shall also apply to any extension of the grant of nationality.

Article 21. An alien who has full legal capacity or is over eighteen years old and does not enjoy full legal capacity only due to his age, has to take the following oath before being granted nationality (extension of granting): "I swear that I will be a loyal citizen of the Republic of Austria, that I will always conscientiously abide by the laws and that I will avoid everything that might harm the interests and the reputation of the Republic".

Article 22. (1) If the alien has his ordinary residence on the territory of the Republic, this oath has to be delivered at the according to article 39 competent authority. This authority may, however, delegate this function to the district authority where the alien has his principal domicile.

(2) If the alien has his principal domicile abroad the oath has to be delivered orally at the Austrian diplomatic or consular representation requested by the according to article 39 competent authority to receive this oath. This does not apply if the alien due to the distance of his residence or to other important reasons cannot reasonably be expected to appear before the Austrian diplomatic or consular representation.

(3) If the alien has no principal domicile at all or if paragraph (2) above second sentence applies, the oath shall be delivered in writing to the according to article 39 competent authority, if the alien does not appear before this authority in person.

(4) If the oath is delivered orally written record shall be taken thereof.

Article 23. (1) The decree on the granting of nationality (extension of granting) shall be issued in writing.

(2) Nationality is acquired at the date stated in the decree. This date shall be determined taking into consideration the presumable date of delivery of the decree.

(3) If the alien who is to be granted nationality delivers the oath orally the decree shall be handed to him immediately thereafter. Otherwise the decree shall be served by post to the person who applied for the nationality.

Article 24. The reopening of a procedure of granting nationality may be allowed or decreed for the reasons laid down in article 69, paragraph (1) 2 and 3 AVG [General Administrative Procedures Act], FLG No. 51/1951, only if the person concerned does not thereby become stateless.

Taking up the post of university or college professor

Article 25. (1) **(Constitutional provision)** An alien who does not possess the nationality of a country whose nationals have to be granted by Austria the same rights of access to employment as Austrian nationals by virtue of an international treaty within the context of European integration shall acquire nationality upon acceptance of an employment contract under public law as a university or college professor (article 154, subparagraphs 1 (a) and 2 (a), of the 1979 Civil Service Regulations Act, FLG No. 333 at an Austrian university, at the Vienna Academy of Fine Arts or at an Austrian college of art.

(2) Under the conditions of article 10, paragraph (1) 2 to 8, the following persons acquire nationality by the declaration expressing the wish to belong to the Republic as loyal citizens, from the moment of the installation of the university professor;

1. the spouse if the marriage has not been divorced or separated and this person is not an alien due to the deprivation of nationality under article 33;
2. the children if in the case of granting nationality the nationality could have been extended to them under article 17;

(3) Declarations under paragraph (2) above have to be delivered to the according to Section 39 competent authority within one year after the installation of the university professor. Article 19, paragraph (2), second and third sentence shall apply accordingly. If the conditions are met, the authority shall declare by written decree that the nationality was acquired on the day of the installation of the university professor.

Section III

Loss of nationality

Article 26. The nationality is lost by

1. acquisition of a foreign nationality (articles 27 to 39);
2. entry into the military service of a foreign state (article 32);
3. deprivation (articles 33 to 36);
4. renunciation (articles 37 and 38).

Acquisition of a Foreign Nationality

Article 27. (1) 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.

(2) A national not enjoying full legal capacity loses the nationality only, if the declaration of will intended to acquire a foreign nationality (paragraph (1) above) was expressed on his behalf either by his legal representative or, with the legal representatives consent, by himself or a third person. The consent of the legal representative has to be given before the acquisition of a foreign nationality. If neither the parents nor the foster parents are the legal representative the loss of nationality only occurs if the court competent in guardianship or custody matters approves the declaration of will (consent) of the legal representative before the acquisition of the foreign nationality.

(3) Furthermore, a minor national over the age of fourteen shall lose the nationality only under the condition that he has expressly consented to the declaration of will (paragraph (1) above) of his legal representative or a third person (paragraph (2) above) before the acquisition of the foreign nationality.

Article 28. (1) An Austrian national shall be permitted to retain his or her nationality in the case of acquisition of foreign citizenship (article 27) if:

1. The retention of nationality is in the interests of the Republic on account of that Austrian national's actual or expected outstanding achievements, or on grounds particularly deserving of consideration, and
2. The foreign country whose citizenship the Austrian national is applying for consents to the retention of his or her nationality, and
3. The requirements set out in article 10, paragraphs (1) 2 to 4, 6 and 8, are satisfied *mutatis mutandis*.

(2) The foregoing shall apply to Austrian nationals who meet the requirements set out in paragraph (1) 2 and 3 above if they have acquired nationality by descent and grounds particularly deserving of consideration for the retention of their nationality are to be found in their private and family life.

(3) The maintenance of the nationality may only be granted upon a written request and under the condition that the foreign nationality is acquired within a period of two years.

(4) The request by a national who enjoys full legal capacity must be signed in person. If the national lacks legal capacity the request has to be signed on his behalf by his legal representative in person or with that person's consent by himself or a third person. The request by the legal representative or with the legal representative's written consent by a third person needs the written consent of the minor national if he is over fourteen. If the legal representative is another person than a parent or a foster parent the request or the consent of the legal representative needs the authorization of the court competent in guardianship and custody matters.

(5) The decree granting the maintenance of nationality has to be issued in writing.

Article 29. (1) The loss of nationality by a national under article 27, also extends to

1. his children born in wedlock,
2. his adopted children, if they are minors and unmarried and follow him into the foreign nationality by law or would follow him if they were not already in the possession of that nationality, except in the case that the other parent (foster parent) remains a national. Article 27, paragraph (3), applies accordingly.

(2) The loss of nationality also extends to the children of the national if they are minors unmarried and born out of wedlock and would follow him into the foreign nationality by law if their legal representative has explicitly given his consent to the acquisition of the foreign nationality in advance. This applies to children of a man only if his paternity has been established or recognized and he is in charge of care and custody of the children. Article 27, paragraph (2) last sentence and paragraph (3), apply accordingly.

Article 30. (1) If a national has applied for a foreign nationality but has not been granted the maintenance of the nationality the authority shall certify upon his request that he loses the Austrian nationality if he acquires a foreign nationality. Upon his request in this certificate as the case may be also the minor children shall be listed to whom the loss of nationality would extend under article 29.

(2) The certificate for a national who lacks full legal capacity under paragraph (1) above may only be issued if the consent of the legal representative and the minor who is over fourteen and, if necessary, the consent of the court (article 27, paragraph (2), and article 29, paragraph (2)) have already been given.

Article 31. [*Repealed*]

Entry into the Military Service of a Foreign Country

Article 32. A national who voluntarily enters the military service of a foreign country shall lose the nationality. Article 27, paragraph (2), applies accordingly.

Deprivation

Article 33. A national in the services of a foreign country shall be deprived of nationality, unless article 32 already applies, if the national through his behaviour severely damages the interests or the reputation of the Republic.

Article 34. (1) A national shall be deprived of nationality if

1. he acquired the nationality more than two years ago either through granting or extension of the granting under this federal act;
2. neither article 10, paragraph (6), nor articles 16, paragraph (2), nor 17, paragraph (4), were applied;
3. despite the acquisition of nationality retained a foreign nationality for reasons under his responsibility.

(2) The respective national shall be instructed on the provision under paragraph (1) above at least six months prior to the intended deprivation of nationality.

(3) Upon expiry of the period under paragraph (1) 1 above, deprivation shall be decreed without undue delay. After six years following the granting (extension of granting) deprivation is no longer admissible.

Article 35. The deprivation of nationality (articles 33 and 34) shall be decreed ex officio or upon request by the Federal Minister for the Interior. The Federal Minister of the Interior is a party to the procedure opened upon his request.

Article 36. If the person who is deprived of nationality lives abroad and the service of summons has been tried without success, article 11 AVG [General Administrative Procedures Act], FLG No. 51/1951, applies even if his residence is known.

Renunciation

Article 37. (1) A national may renounce the nationality if

1. s/he possesses a foreign nationality;
2. no criminal procedure or execution of a criminal sentence is pending in Austria for an offence punishable with more than six months of imprisonment;
3. s/he is not a member of the Armed Forces and, if of male gender
 - a) has not yet passed the age of sixteen nor the age of thirty-six;
 - b) has fulfilled the regular military service or the regular civil service;
 - c) has been found unfit for military service by the Recruiting Commission or has been declared permanently unfit for any kind of civil service by the competent administrative physician;
 - d) he has been dispensed from recruitment to the Federal Army for reasons of mental illness or mental disorder; or
 - e) he has fulfilled the military obligations or in their place service obligations in another state of which he is a national and therefore is dispensed from regular military service or regular civil service on the basis of a bilateral agreement or of an international covenant.

(2) The conditions under paragraph (1) 2 and 3 above do not apply if the person renouncing the nationality has had his principal domicile outside the territory of the Republic for a continuous period of not less than five years.

Article 38. (1) The declaration of renunciation shall be given in writing to the according to article 39 competent authority. Article 28, paragraph (4), applies on the understanding that the consent of the legal representative and of the minor who is fourteen years old or the approval by the court can also be given after the declaration of renunciation.

(2) The authority (article 39) has to establish whether the conditions for a renunciation are met. If this is the case, the authority shall declare that the person

renouncing nationality has lost the nationality on the day of arrival of the declaration of renunciation.

Authorities and procedures

Article 39. (1) Notwithstanding article 41, the Provincial Government shall have jurisdiction to render administrative decisions in matters of nationality.

(2) The Provincial Government in whose area of administration the person to whom the administrative decision relates has his or her ordinary place of residence or otherwise the Provincial Government in whose area of administration the registration authority (article 49 (2)) is located shall have territorial jurisdiction. Jurisdiction with regard to the extension of the grant of nationality shall be determined by the jurisdiction to grant nationality.

(3) The decree establishing the loss of nationality upon renunciation shall be issued in writing.

Section IV

Competent authorities and procedure

Article 40. (Constitutional provision) An application pursuant to article 28 may also be submitted to the diplomatic or consular authority which is competent according to article 41, paragraph (2), and which shall be required to forward it to the authority.

Article 41. (1) With regard to the issue of certifications in matters of nationality and rulings on applications for the issue thereof, the municipality (association of specific municipalities) in whose area of administration the person to whom the certification relates has his or her ordinary place of residence shall have jurisdiction. With regard to the issue of certifications in respect of a deceased person, the municipality (association of specific municipalities) in whose area of administration the person had his or her principal residence at the time of his or her death shall have jurisdiction.

(2) **(Constitutional provision)** If the principal residence of that person is not located within the territory of the Republic, the Austrian permanent consulate or, failing which, the Austrian diplomatic mission in whose area of administration the principal residence is located shall have jurisdiction. The diplomatic and consular authorities shall in connection with the foregoing apply the General Administrative Procedures Act (AVG), FLG No. 51/1991; the Provincial Government shall rule on appeals against an administrative decision dismissing an application for the issue of a certification.

(3) If territorial jurisdiction cannot be established by reference to the first sentence of paragraph (2) above, the registration authority (article 49 (2)) shall have jurisdiction.

(4) If an alien who has settled in the federal territory acquires nationality otherwise than by descent, the authority (article 39) shall give notification thereof to the aliens police authority of first resort in whose area of administration the principal residence of the person concerned is situated; if the latter authority is a federal policy headquarters, the immigration control authority of first resort (article 89, paragraph (1), of the Aliens Act) shall also be informed accordingly. In such notification, the authority shall state the name, sex, date and place of birth, address and previous citizenship of the person concerned and shall indicate the date when nationality was acquired.

Article 42. (1) Except in the cases specifically governed by articles 25 (3), 38 and 58c, a declaratory ruling shall be rendered by administrative decision in matters of nationality if the applicant has a legal interest in the declaration.

(2) A declaratory ruling shall also be rendered by administrative decision if so requested by the Federal Minister of the Interior. In such eventuality, the Federal Minister of the Interior shall have the status of a party to the procedure.

(3) A declaratory ruling may be rendered by administrative decision *ex officio* if there is a public interest in the declaration.

Article 43. (1) In addition to the cases specifically governed by this federal law, a certification shall be issued in matters of nationality if the applicant demonstrates a legal interest in the issue of the certification.

(2) A certification may be issued *ex officio* if there is a public interest therein.

(3) A certification may not be issued if substantiated doubts exist as to whether it is in conformity with the factual and the legal situation.

Article 44. (1) A certification to the effect that a particular person possesses nationality shall be issued solely in accordance with the specimen to be determined by order of the Federal Minister of the Interior (proof of nationality).

(2) If the proof of nationality is issued only for the official use of an authority or other public agency, it shall be retained by the office for which it is intended.

Article 45. Certifications in which legal circumstances relating to nationality are incorrectly recorded, in particular proofs of nationality that have become incorrect by reason of loss of nationality, shall, if they are submitted to the authorities (articles 39 and 41), be withdrawn by them and forwarded to the registration authority (article 49 (2)). The holder of any such certification shall hand it over to the registration authority at its request.

Article 46. (1) The form of the documents to be drawn up pursuant to articles 23 (1), 25 (3), 28 (5), 30 (1), 38 (3), 44 and 58c (2) shall be determined by order of the Federal Minister of the Interior. In that connection, steps shall be taken to ensure that such documents are of an appropriate size, that their appearance is commensurate with their importance and that their forgery or falsification is as far as possible prevented.

(2) The Federal Minister of the Interior may, with a view to ensuring that the documents referred to in paragraph (1) above have a uniform format and for the purpose of preventing their forgery or falsification, order that only printed forms which have been produced at printing works specified by the Federal Minister of the Interior may be used for drawing up such documents.

Article 47. (1) Municipalities that form part of an association of registry authorities (article 60 of the Civil Status Act) shall by operation of the law constitute an association of specific municipalities for the discharge of the responsibilities specified in articles 41, 49 to 52 and 53, subparagraph 5.

(2) The seat of the regional authority shall be the municipality in which the association of registry authorities has its seat.

(3) The association of specific municipalities shall be designated the association of nationality authorities (*Staatsbürgerschaftsverband*); it shall incorporate any additional descriptive elements by which the association of registry authorities is designated.

Article 48. (1) The municipalities (association of specific municipalities) shall bear the costs arising for them from the discharge of the responsibilities devolving upon them under this federal law. The Provincial Government shall, however, reimburse to the municipalities (regional authorities) any costs arising for them from keeping the nationality register (article 49).

(2) The reimbursement of costs as provided for in paragraph (1) above shall be effected annually in lump sums. Such sums shall be fixed by order of the Provincial Government for every hundred persons, or part thereof, recorded in the nationality register. For the purpose of calculating the costs to be reimbursed, the number of persons recorded in the nationality register as at the end of each financial year shall be applied.

(3) The municipalities (association of specific municipalities) shall on pain of forfeiture submit the claim for reimbursement of costs to the Provincial Government within three months following the end of the financial year.

(4) Any disputes arising in connection with claims for reimbursement pursuant to paragraph (1) above shall be resolved by the Provincial Government.

Section V

Nationality register

Article 49. (1) The municipalities (association of specific municipalities) shall keep a permanent record of nationals (nationality register) in accordance with the provisions of this section.

(2) The registration authority shall be:

- (a) In the case of persons born within the territory of the Republic prior to 1 July 1966: the municipality (association of specific municipalities) of birth;
- (b) In the case of persons born within the territory of the Republic on or after 1 July 1966: the municipality (association of specific municipalities) in which, according to the entry in the register of births, the mother's place of residence was located at the time of the birth of the person to be recorded, but the municipality (association of specific municipalities) of birth of the person to be recorded if the aforementioned place of residence was located abroad;
- (c) In the case of persons born abroad or persons in respect of whom jurisdiction cannot be established pursuant to (a) or (b) above: the municipality of Vienna.

Article 50. (1) The nationality register shall be kept separately for each municipality in the form of a card index file. More detailed specifications may be laid down by order of the Federal Minister of the Interior regarding the size and format of the record cards and the index file equipment.

(2) The nationality register may be kept by means of an automated system.

Article 51. The registration authority shall record nationals in the nationality register and enter the facts substantiating their acquisition of nationality as soon as it has knowledge, through a notification pursuant to articles 53 to 55 or by any other means, of the manner in which they acquired nationality. The registration authority shall, to the extent possible without undue administrative outlay, take *ex officio* every opportunity to gain such knowledge. Deceased persons not yet recorded in the nationality register shall be included therein only if the facts substantiating their acquisition of nationality are known and require no further investigation or a declaratory ruling has been rendered pursuant to article 42 or a certification has been issued pursuant to article 43.

Article 52. (1) In addition, the registration authority shall, as soon as it has knowledge through a notification pursuant to articles 53 to 55 or by any other means, enter:

- (a) Facts relating to loss of nationality;
- (b) A declaration rendered by administrative decision to the effect that a person has never possessed nationality;
- (c) The annulment of a marriage if the wife or a child of that marriage is thereby no longer regarded as a national;
- (d) A declaration of the legitimacy or illegitimacy of a child if the child is thereby no longer regarded as a national;
- (e) An amendment or rectification of the surname or forename of a national or of a person already recorded; and
- (f) The death of a national or of a person already recorded.

(2) As soon as it receives notification of the legitimization of an under-age, unmarried alien who is more than 14 years old (article 53, subparagraphs 3 (a) and 5 (c)), the registration authority shall without delay inform that person and his or her legal representative in writing that the effects of the legitimization under nationality law (article 7a) will commence only upon the giving of their consent.

Article 53. The registration authority shall be notified without delay:

1. By the provincial government office: of every administrative decision rendered by the Provincial Government in matters of nationality;
2. By the court:
 - (a) Of consent given pursuant to articles 27 (2) and 29 (2);
 - (b) Of the annulment of a marriage if only one spouse was a national at the date of the marriage or if at the date of the annulment at least one spouse was a national or had hitherto been regarded as such;
 - (c) Of a declaration of the legitimacy or illegitimacy of a child if at the time of its birth at least one parent was a national; and
 - (d) Of a ruling declaring a national to be dead or recognizing the proof of his or her death as established;
3. By the Federal Ministry of Justice:
 - (a) Of the legitimization of an under-age, unmarried alien by resolution of the Federal President; if the legitimized child is female, notification of its children born out of wedlock shall, if applicable, also be given; and
 - (b) Of the recognition of a foreign judgement annulling a marriage if the requirements set out in subparagraph 2 (b) above are met;
4. By the Austrian diplomatic or consular authority abroad: of every certification issued by it in matters of nationality;
5. By the municipality (association of specific municipalities):
 - (a) Of the birth of a national recorded in its area of administration;
 - (b) Of every certification issued by it in matters of nationality;
 - (c) Of the legitimization of an under-age, unmarried alien through the recorded marriage of its parents if the child's father is a national; if the legitimized child is female, notification of its children born out of wedlock shall, if applicable, also be given;
 - (d) Of the amendment or rectification of the surname or forename of a national recorded within its area of administration unless the amendment or rectification was brought about by a ruling of an Austrian authority; and
 - (e) Of the death of a national recorded within its area of administration;
6. By the educational establishments referred to in article 25: of an alien's taking up the post of full university professor or full college professor.

Article 54. Notification of every ruling affecting a person's surname or forename shall be given without delay by the ruling authority to the registration authority if such

ruling concerns a person who possesses or has possessed nationality and notification of the ruling does not already have to be given under article 53.

Article 55. If the provincial government office, the district administrative authority, the Austrian diplomatic or consular authority abroad, the municipality or association of specific municipalities (article 47) has knowledge of any facts that are to be entered in the nationality register and notification of such facts does not already have to be given under article 53 or article 54, notification thereof shall be given to the registration authority if it can be assumed that the facts are not yet known to it.

Article 56. All individuals, authorities and government offices and hospital managers responsible for financial, administrative and technical matters shall be obliged to supply to the municipalities (association of specific municipalities) fully and truthfully the information requested by them that is required for the nationality register, if necessary by means of official documents.

Section VI

Final and transition clauses

Articles 57, 58, 58a and 58b. *[Repealed]*

Article 58c. (1) An alien acquires the nationality under the conditions listed in article 10, paragraph (1) 2 to 6 and 8, upon written notification to the competent authority (article 39) with reference to this federal law that he went abroad as a national before the 9th of May, 1945 because he had good reasons to fear or had actually suffered persecution by organs of the NSDAP or the authorities of the Third Reich, or had suffered or had to fear persecution due to his intercession for the democratic Republic of Austria.

(2) If the conditions of paragraph (1) above are fulfilled the authority shall establish by written decree, that the person has reacquired the nationality on the day the notification arrived at the authority (article 39).

(3) (**Constitutional provisions**) The notification (paragraph (1) above) may also be delivered to the competent representation abroad under article 41, paragraph (2), which shall forward it to the authority.

(4) The notification (paragraph (1) above), the decree (paragraph (2) above) and documents to be produced in the procedure as in particular certificates, documents on the legal status of persons and translations are acquit from fees.

Articles 59 and 60. *[Repealed]*

Article 61. Proofs of nationality issued in accordance with the specimen contained in annex 1 to the Nationality Regulations of 29 October 1945, FLG No. 28/1946, shall be valid as proofs of nationality within the meaning of article 44.

Article 62. The municipalities shall be obliged to keep domicile records used for the purposes of the 1928 Right of Domicile (*Heimatrecht*) Amendment Act, FLG No. 355, and other documents relating to the right of domicile including, in particular, domicile registers and inventories of certificates of domicile. The Federal Minister of the Interior may lay down by ministerial order that municipalities belonging to an association of specific municipalities (article 47) shall hand over to that association of specific municipalities their documents relating to the right of domicile.

Deprivation of Personal Documents

Article 63. (1) To prevent the abuse of foreign identity documents international agreements may provide for the deprivation of passports, nationality documents and other personal identity papers which identify a person as national of another state if this person has lost the foreign nationality by acquiring the (Austrian) nationality.

(2) If an agreement under paragraph (1) above exists, the Provincial Government has to decree if necessary the deprivation of the identity documents falling under this agreement.

Penal Provision

Article 64. Any person who fails to comply with a request pursuant to article 45 or an order pursuant to article 63 (2) or to discharge an obligation devolving upon him or her under article 56 shall be guilty of an administrative infraction. The foregoing shall not apply to officials of the Austrian local authorities.

Article 64a. (1) Article 37, paragraph (1) 3, in the version of the Federal Law FLG I No. 30/1998 shall enter into force as of 1 January 1998.

(2) Articles 4, 5, 10, paragraphs (1) to (5), 10a, 11, 11a, 12, 13, 15, 16, 17, 19, 20, 24, 28, 34, 36, 38, 41, 46 and 66, as amended by Federal Law FLG I No. 124/1998, shall enter into force on 1 January 1999.

(3) (**Constitutional provision**) Articles 10, paragraph (6), and 40, as amended by Federal Law FLG I No. 124/1998, shall enter into force on 1 January 1999.

Article 65. [*Repealed*]

Implementation

Article 66. The following shall be responsible for the implementation of this federal law:

1. Insofar as implementation concerns the federal administration:
 - (a) The Federal Government with regard to article 10 (6);
 - (b) The Federal Minister of Justice, in agreement with the Federal Minister of the Interior, with regard to articles 7a (5), 19 (3), 27 (2) last sentence, 28 (4) last sentence, 29 (2) last sentence, and 53, subparagraphs 2 and 3;
 - (c) The Federal Minister for Foreign Affairs, in agreement with the Federal Minister of the Interior, with regard to articles 41 (2), 53, subparagraph 4, and 58c (3);
 - (d) The Federal Minister of Science and Research, in agreement with the Federal Minister of the Interior, with regard to article 53, subparagraph 6;
 - (e) The Federal Minister of Finance with regard to article 58c (4); and
 - (f) The Federal Minister of the Interior with regard to the other provisions of this federal law;
2. Insofar as implementation concerns the provincial administration: the Provincial Government.