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THE PROBLEM OF STATELESSNESS

Information transmitted by States in pursuance of
Economic and Social Council resolution 352 (XII)
relating to the problem of statelessness

The Secretary-General has received a communication dated 3 November 1953 from the Permanent Observer of Austria to the United Nations enclosing a memorandum, which the Secretary-General has the honour to circulate:

AUSTRIA

I. Measures for the prevention of statelessness

1. General:

The existing Austrian nationality law takes largely into account the principle that statelessness should be avoided where possible. Loss of Austrian nationality without simultaneous acquisition of a foreign nationality is limited to the cases mentioned in Article 9, paragraph 1, sub-paragraph 2, of the 1949 Nationality Act (voluntary engagement in the public or military service of a foreign State). Even in these cases, loss of nationality does not apply to a citizen who accepts appointment as teacher in a higher education establishment in a foreign country under whose law such appointment does not involve acquisition of the country's nationality, or to a citizen already in the service of the armed forces of the United Nations on 15 July 1945.

As can be seen from the statement of reasons issued by the Federal Government, the afore-mentioned provision as to loss of nationality, which was taken from the Federal Act of 30 July 1925 (Article 10, paragraph 1

sub-paragraph 2), was included in the Act in consideration firstly of the fact that engagement in the service of a foreign State is incompatible with the requirements of loyalty to the Austrian Republic and, secondly, where military service is concerned, of the obligation on Austria under Article 158 of the Treaty of St. Germain to prevent Austrian nationals from engaging in the armed forces of a foreign State.

2. Nationality of married women

(a) Women of Austrian nationality married to foreigners.

The wife loses her nationality only where it is established that under the law of the State of which the husband is a national, she acquires the nationality of that State by the marriage (Article 8, paragraph 1, of the 1949 Act). This provision is in conformity with Article 8 of the Hague Convention which stipulates:

"If the national law of the wife causes her to lose her nationality on marriage with a foreigner this consequence shall be conditional on her acquiring the nationality of the husband".

(b) Forfeiture of nationality by the husband.

Under Article 9, paragraph 1, of the 1949 Nationality Act, a person who acquires a foreign nationality or who voluntarily engages in the public or military service of a foreign State forfeits his Austrian nationality by deprivation.

As regards the extension of the loss of nationality to the wife, paragraph 2 of the above-mentioned article originally stipulated:

"Loss of nationality by deprivation shall extend to the wife only if the marriage continues to be valid in law and the spouses are not judicially separated a mensa et thoro, and to minor children of the marriage, only if they simultaneously acquire a foreign nationality."

In view of the ambiguity of the text, it was not clear in practice whether the requirement as to simultaneous acquisition of a foreign nationality applied to the children only, or also to the wife. The wife might consequently become stateless. The new wording used in the 1949

amending Act, RGB1. No. 142 (Article II, sub-paragraph 7) removed this ambiguity by clearly stipulating that the wife loses her Austrian nationality only if she simultaneously acquires a foreign nationality.

3. Nationality of Children

(a) Legitimate children of stateless persons or persons of uncertain nationality.

Under the 1949 amending Act a provision was included in Article 3 of the Nationality Act to the effect that where the mother possesses an Austrian nationality and the father is stateless, the child follows the nationality of the mother. As was pointed out to the provincial government administrations by Ordinance of 8 March 1950 (Zl.43.532-7/50 (S.L.)), the provision in question may by a liberal interpretation be extended to children born before the commencement of the 1949 amending Act (19 July 1949), provided that all of the following requirements are met:

- (aa) The father must have been stateless on the date of birth of the child, if legitimate; or if he was no longer living (posthumous children) there must be the presumption that, had he been alive at that time, he would have been stateless.
- (bb) The mother must have possessed a nationality on the date of birth of the child and likewise on 19 July 1949.
- (cc) If the father was living at the afore-mentioned deadline, he must have been stateless at the time.

As already pointed out in section A II, this solution is far more satisfactory than that provided by the corresponding regulation in the Protocol regarding a special case of statelessness, which is based on the presumption that the (legitimate) child was born in the country of the mother's nationality (Article 1) and consequently fails to prevent statelessness in many instances.

(b) Legitimation of illegitimate children.

Illegitimate children acquire the nationality of the father as a result of legitimation (part 3, section 1, last sentence of the 1949 Nationality Act). This provision is designed to prevent children

becoming stateless who under the law of their former country of nationality lose their nationality through legitimation.

Concerning loss of Austrian nationality through legitimation, Article 8, paragraph 2, of the 1949 Act originally stipulated:

"The illegitimate children of a woman who marries an alien shall lose their nationality concomitantly with their mother only if they are legitimated as a result of the marriage."

Since under the laws of many countries the legitimation of an illegitimate child does not automatically result in the acquisition of the nationality of the country concerned, illegitimate children legitimized in the manner mentioned in the Act lost their Austrian nationality without acquiring a foreign nationality. They thus become stateless. In order to remedy this situation, the 1949 amending Act included the new formulation contained in Article 8, so that a child no longer loses his nationality by the mere fact of legitimation, but only if he is recognized as legitimate and thereby simultaneously acquires the nationality of the foreign country in question.

(c) Forfeiture of nationality by the father of a legitimate child (mother of an illegitimate child).

Article 9, paragraph 2 of the 1949 Act stipulates that forfeiture of nationality (by the father of a legitimate child or mother of an illegitimate child) only extends to children not qualified in their own right if they simultaneously acquire the foreign nationality, and in the case of female children, if they are unmarried.

II. Measures for the abolition of existing statelessness

1. Revocation of forfeiture of nationality pronounced on "political" grounds

Initially, Article 4, paragraph 1, of the Interim Nationality Act simply stipulated that:

"A person who has been deprived of his Austrian nationality under the provisions of Article 10, paragraph 2 of the Federal Act of 30 July 1925, BGBl. 285, as amended by Federal Government Ordinance of 16 August 1953 (BGBl. No. 369), shall, upon

application to the district authorities (federal police authorities) and submission of the necessary documents, recover his Austrian nationality, provided it is established that he was not deprived of his nationality because his conduct in general is incompatible with the principles of an independent, democratic Republic of Austria."

All persons from whom Austrian citizenship had been withdrawn under the relevant provisions published in the Federal Law Gazette No. 369/1933 on the ground of their connexion with the former National Socialist German Labour Party were therefore prohibited from recovering Austrian nationality. Consequently, a large number of such persons remained stateless. In order to help persons whose political conduct since Austria's liberation has been above reproach to recover Austrian nationality, the 1949 amending Act added a new paragraph 2 to Article 4 (Article 1, sub-paragraph 3, sub-sub-paragraph a) which reads:

"An order for the deprivation of nationality may be revoked by the authorities mentioned in Article 3, paragraph 1 (i.e. the administrative department of the provincial government competent for the place of residence) even in the case of a person deprived of his nationality who does not satisfy the requirements of Article 1, provided his political conduct has been such as to afford full assurance of his allegiance to the independent Republic of Austria."

Applications for the recovery of citizenship must be lodged before 31 December 1953 with the authority which previously pronounced the sentence of deprivation of citizenship (Article 4, paragraph 3, of the 1949 Interim Nationality Act).

2. Acquisition of Austrian nationality by stateless persons permanently residents in the territory of the Republic

Where such persons can produce evidence that they have been resident in the territory of the Republic since 1 January 1919, they can, subject to certain additional conditions, acquire Austrian nationality with force of law by making a declaration of their intention to become loyal citizens of the Austrian Republic (Article 2, paragraph 1, of the 1949 Interim Nationality Act).

The wife acquires Austrian nationality by virtue of her husband's declaration provided the marriage continues to be legally valid and the spouses are not judicially separated a mensa et thoro. Minor children unqualified in their own right follow the nationality of the father, and illegitimate children that of the mother, but female children only if unmarried (Article 2, paragraph 2, 1.c.).

The declaration must be addressed in writing before 31 December 1953 to the administrative department of the provincial government competent for the place of residence (Article 3, paragraph 1, 1.c.).

Lastly, an alien resident in the territory of the Republic for thirty years immediately preceding the application for nationality is legally entitled to be invested with Austrian nationality provided he satisfies certain conditions (Article 5, paragraph 3, of the 1949 Nationality Act).
