

■ CONSTITUTIONAL DEVELOPMENTS IN AUSTRIA

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Rights of minorities and place name signs

Austrian Constitutional Court
Judgement of 26th June 2006 (V20-22/06, V32/06)

In this judgement, the Austrian Constitutional Court repealed the place names "Ebersdorf" and "Bleiburg" in an ordinance of the district administration (*Bezirkshauptmannschaft*) Völkermarkt by reason of opposition to the protection of minorities in the State treaty of Vienna. The application concerning the place name "St. Kanzian" was rejected.

The Circumstances of the case

Already in Dezember 2005 the Austrian Constitutional Court repealed the words "Bleiburg-Ebersdorf" und "Bleiburg" in an ordinance of the district administration Völkermarkt (VfSlg 17.733/2005) because of illegality. The repeal was limited until passing June 30th 2006.

Prior to expiry of the fixed period of time the district administration Völkermarkt enacted a new ordinance, which contained place name signs for Ebersdorf and Bleiburg insignificant displaced to their original position and still only in German.

On March 31st 2006 the Ombudsman Board (*Volksanwaltschaft*) made an application on the illegality of an ordinance for repeal of the place names "St. Kanzian", "Ebersdorf" and "Bleiburg" because of opposition to Art 7 lit 3 second sentence State Treaty of Vienna.

The Ombudsman Board gave following reasons for this application: In January 2006 the Ombudsman Board was informed about that the place names St. Kanzian and St. Kanzian, Klopein still were installed only in German, also over three years after validity of the repeal of the Constitutional Court in its pronouncement in VfSlg.16404/2001. Furthermore the Governor of Carinthia *Dr. Jörg Haider* and *Gerhard Dörfler*, member of the State Government of Carinthia announced multiply to prevent the determination of place names in German and Slovene.

The district administration Völkermarkt had the instruction of the office of the Land Administration Chief (*Landesamtsdirektion*) to enact a monolingual ordinance for Bleiburg inclusively 'displacement' of the place name signs. The office of the Land Administration Chief relied again to an instruction of State Governor *Dr. Jörg Haider* concerning this matter. Moreover the district administrator (*Bezirksh-*

hauptmann) of Völkermarkt *Dr. August Muri* was referred to an earlier instruction with which *Landesrat Gerhard Dörfler* had pronounced a conditional approval (*Genehmigungsvorbehalt*) for all ordinance proceedings concerning places in the district Völkermarkt. On February 8th 2006 the displacement and new disposition of monolingual place name signs was conducted in attendance and assistance of both office bearers. The district administrator provided a concept of an ordinance (March 2nd 2006) and planned the slovenian place names for Bleiburg 'Pliberk' and for Ebersdorf 'Drbeša ves'. This ordinance concept was forwarded to *Gerhard Dörfler* because of the conditional approval, but still the approval is missing.

As per Ombudsman Board the place names in the appealed ordinances are illegal for the following reasons:

1. St. Kanzian

In its pronouncement VfSlg 16.404/2001 the Constitutional Court holds the view that a place with a minority of more than 10% is an administrative district with mixed populations pursuant to Art 7 lit 3 second sentence State treaty of Vienna. Last affirmed by pronouncement of December 12th 2005 (VfSlg 17.733/2005). In its pronouncement VfSlg 16.404/2001 the Constitutional Court stated St. Kanzian as an administrative district with mixed populations and repealed the words "St. Kanzian" und "St. Kanzian, Klopein" in the ordinance. However in the final analysis the repeal was thwarted.

2. Ebersdorf and Bleiburg

In its pronouncement of December 12th 2005 (VfSlg 17.733/2005) the Constitutional Court repealed the words "Bleiburg-Ebersdorf" and "Bleiburg" in an ordinance and set a time limit until June 30th 2006. Both places Bleiburg and Ebersdorf have a percentage of more than 10% Slovene minority and are consequential administrative district with mixed populations pursuant to Art 7 lit 3 second sentence State treaty of Vienna. The district administration enacted a monolingual ordinance anew on February 7th 2006. As well as the judgement 2001 in the final analysis the repeal was thwarted.

The setting of the time limit for the validity of the repeal was ought to permit the district administration to enact an ordinance in accordance with the law and the constitution. If the authority enacts an ordinance before the expiration of the period, this new ordinance has to be in accordance with the law and the constitution.

In summary the Ombudsman Board considers that the arraigned parts of the ordinance are in substantive the same as in the pronouncement of December 12th 2005, so that the German place names "Bleiburg" and "Ebersdorf" are to be repealed.

Furthermore the Ombudsman Board adds that if an authority enacts an ordinance which is contrary to the legal opinion of the Constitutional Court, the ordinance is not only illegal but also the authority casts itself in the suspicion of consciously perversion of justice¹. Such case exists in the present situation as the

1 Cp. VfSlg 12.927/1991

district administration provided a concept of an ordinance in accordance with the constitution, but prevented from responsible members of the State Government of Carinthia.

The State Government of Carinthia renounced their statement because of lack of examination of the Constitutional Court with their position in the earlier pronouncements.

Moreover the Constitutional Service of the Federal Chancellery (*Verfassungsdienst des Bundeskanzleramts*) had chance to issue a statement and considered that the question of administrative district with mixed populations pursuant to Art 7 lit 3 State Treaty of Vienna is not clearly answerable. Admittedly the Constitutional Court had already ascertained that St. Kanzian, Bleiburg and Ebersdorf are administrative districts with mixed populations. Further the Constitutional Service shares the opinion of the Ombudsman Board that a regulation which is enacted before the repeal entered into force, is contestable from the date of announcement and self-evident to examine at the standard of the constitution.

Relevant Austrian Law

State Treaty of Vienna
(Federal Law Gazette 152/1955)

Art 7 lit 3

3. In the administrative and judicial districts of Carinthia, Burgenland and Styria, where there are Slovene, Croat or mixed populations, the Slovene or Croat language shall be accepted as an official language in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene or Croat language as well as in German.

Former pronouncements cited above of the Austrian Constitutional Court

- December 13th 2001, VfSlg 16.404/2001 GZ G213/01, V62/01 ua. (St. Kanzian)
- December 12th 2005, VfSlg 17.733/2005 GZ V64/05 (Bleiburg, Ebersdorf)

All Austrian law and rulings of all major Austrian courts can be viewed at <http://www.ris.bka.gv.at/auswahl/>, especially the decisions of the Austrian Constitutional Court: <http://www.ris.bka.gv.at/vfgh> (only available in German).

The Court's Assessment

The Court holds that the place names Bleiburg and Ebersdorf in an ordinance of the district administration Völkermarkt are illegal by reason of opposition to Art 7 lit 3 second sentence State treaty of Vienna, same reasons as in its pronouncement December 12th 2005 (VfSlg 17.733/2005).

In the population census of 2001 the place Ebersdorf had a percentage of 12,4% Austrian citizens with Slovenian as colloquial language. In former population

censuses the percentage came up to 6,9% (1961), 17% (1971), 17,6% (1981) and 18% (1991).

Bleiburg had a percentage of 16,2% Slovenian-speaking Austrians in the population census 2001; in former population censuses the percentage came up to 15,1% (1961), 18,9% (1971), 15,6% (1981) and 14,8% (1991).

The Court sees no reason to diverge from its continuous jurisdiction – starting in 1987 – that for ascertainment when a district is an administrative district with mixed populations the Court has to assume the statistic data collection as in the population census.

The constitution regulation in Art 7 lit 3 second sentence State Treaty of Vienna demands therefore for the places Ebersdorf and Bleiburg that topographical terminology and inscriptions, in particular road signs, have to be written in Slovenian as well as in German. Following the place names "Bleiburg" and "Ebersdorf" are to be repealed in the ordinance because of illegality.

However the place St. Kanzian had a percentage of 8,7% Austrian citizens with Slovenian as colloquial language in the last population census of 2001 and in previous censuses the percentage came up to 14,1% (1961), 23,8% (1971), 31,2% (1981) and 9,9% (1991). The result of the population census of 2001 was not available at the time of the last pronouncement concerning St. Kanzian on December 13th 2001 (VfSlg 16.404/2001), so that the Constitutional Court could not take this result into account. But since the minority status counted less than 10% and the trend was decreasing, it results that St. Kanzian is no longer an administrative district with mixed populations pursuant to Art 7 State Treaty of Vienna. Thus there was no obligation that topographical terminology and inscriptions shall be in the Slovene language as well as in German, so that the application was rejected.

The district administration which enacted the ordinance has to take measures to remove the road signs which were erected as announcement of the ordinance and where the place names "Bleiburg" and "Ebersdorf" are repealed because of illegality.

Opinion

Unlike previous complaints this application was made by the Ombudsman Board. The general task of the Ombudsman Board is to investigate into any form of potential maladministration. With respect to ordinances the Ombudsman Board may request the Constitutional Court to pronounce on their legality as is the present case. Maladministration means more than illegality and includes everything that could give rise to complaint. In the present case maladministration is given since the pronouncements of the Constitutional Court (VfSlg 16.404/2001 and VfSlg 17.733/2005) were not implemented by the acting authorities. For example, the office of the Land Administration Chief gave the instruction to enact a monolingual ordinance for Bleiburg including the 'displacement' of the place name signs.

Basically and essentially the Constitutional Court follows its preceding jurisdiction since it affirmed once more that a place with a minority of more than 10% is presumed to be an administration district with mixed populations pursuant to Art 7

lit 3 second sentence State Treaty of Vienna. Therefore Bleiburg and Ebersdorf are administrative districts with mixed populations.

In its last pronouncement concerning St. Kanzian (VfSlg 16.404/2001) the Constitutional Court ascertained St. Kanzian as well as administrative district with mixed populations, because the result of the population census of 2001 was not available yet. As in the population census of 1991 the percentage came up to 9,9% and in earlier years up to more than 10%, St. Kanzian was presumed to be an administration district with mixed populations. In accordance with its preceding jurisdiction the Constitutional Court stated that the percentage has to amount more than 10% minority over several years. In the year 1991, the divergence of 0,1% was so marginal and the percentage of the last population census was over 10%, so that St. Kanzian was presumed to be an administrative district with mixed populations. Admittedly in the population census of 2001 the percentage came only up to 8,7% and so there is a minority of less than 10% since about 15 years. As there is no minority of more than 10% over several years, St. Kanzian is not an administrative district with mixed populations pursuant to Art 7 lit 3 second sentence State Treaty of Vienna and therefore an obligation, that topographical terminology and inscriptions shall be in the Slovene language as well as in German, no longer exists.

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