

## ■ CONSTITUTIONAL DEVELOPMENTS IN AUSTRIA

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### **Bilingual Topography: Differences between German and Slovenian Place Names in Size are Unconstitutional**

Austrian Constitutional Court  
Judgement of 13 December 2006 (V 81/06)

#### **Facts and Circumstances of the Case**

In December 2006 and December 2007 the Constitutional Court quashed several administrative regulations of the district administration authority (*Bezirkshauptmannschaft*) of the Carinthian district of *Voelkermarkt*. The regulation had ordered to erect the city limit signs of *Bleiburg (Pliberk)*, *Ebersdorf (Drvesa vas)*<sup>1</sup> and *Schwabegg (Zvabek)*<sup>2</sup> only monolingual, which the Constitutional Court considered an infringement of the provision Art 7 para 3 of the 1955 State Treaty for the re-establishment of an Independent and Democratic Austria (henceforth the Vienna Treaty)<sup>3</sup>. This provision grants in its second sentence topographical terminology and inscriptions to be set up in the language of the respective ethnic group in districts with Slovenian, Croatian or mixed population. Section 12 of the Minorities Act<sup>4</sup> specifies this obligation; the concrete obligation to put up the signs is stated in section 53 of the Road Traffic Act (*Straßenverkehrsordnung* 1960)<sup>5</sup> as place name signs mark the urban area in which a maximum velocity of 50 km/h is permissible. These signs are the mode of publication of traffic regulations (section 44 of the Road Traffic Act).

In reaction to the first decision the district administration authority drafted new regulations which would have ordered the erection of bilingual city limit signs. This draft was not approved by the competent member of the government of the province of Carinthia (who has no competence in the field of traffic).<sup>6</sup> Subsequently, a directive of this member of the province government and the governor of the

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1 Judgement Dec 13<sup>th</sup>, 2006, V 81/06.

2 Judgement Dec 12<sup>th</sup> 2007, V 8/07.

3 Federal Law Gazette 1955/152; Art 7 para 3 of the treaty was confirmed do be part of the Austrian Constitution in the 1964 amendment, Federal Law Gazette 1964/59.

4 Federal Law Gazette 1976/396, last amended I 2008/2.

5 Federal Law Gazette 1960/159, last amended I 2008/2.

6 The Province Government is composed by the Governor of Province (*Landeshauptmann*) and a number of members which are competent for special areas of administration (*Landesraete*). The competent member of government in the field of traffic is competent to give binding instructions to the district administration authority in the relevant legal area.

province was issued to the head of the district administration authority, which ordered to draft a new regulation. Its content should be the erection of a monolingual sign; the Slovenian name of the villages should only be mentioned in small additional signs.

## The Constitutional Court's findings

### *The Applications*

The administrative regulations were referred to the Court by the ombudsman board (*Volksanwaltschaft*), which has the competence to challenge the lawfulness of administrative regulations in abstracto (ie without an issue of constitutional relevance resulting from concrete case). The board based its challenge on the wording of Art 7 para 3 of the Vienna Treaty, which orders to put up topographical terminology and inscriptions but without mentioning any indication of a distinction between the German and the Slovenian name of the agglomeration. According to the board's view section 53 of the road traffic act orders that city name signs have to express the name of the city, which in combination with Art 7 para 3 of the Vienna treaty can only mean that both the German and the Slovenian name, which are equivalent, have to be scripted.

In addition, the board put emphasis on section 54 of the road traffic act which orders that additional signs must not be used if their content can be expressed by other road signs; this is the case with city limit signs.

As a result of the wording of the regulation the board did not apply for the annulment of the entire text, but only applied to annul a certain passage.<sup>7</sup> The reason for this application lay in the fact that the remaining text of the regulation – which would stay in force – would in consequence order the erection of one bilingual city name sign.

### *The Decisions of the Court*

In the oral hearing held by the Court, the representative of the district administration authority argued that the application of the ombudsman board was not sufficiently founded. The Constitutional Court did not follow this objection after a citation of the major arguments of the ombudsman board.

The reasoning of the court is rather short and follows the arguments of the board in both points: As to the constitutional argument the court explains that the Vienna Treaty in connection with section 53 of the road traffic act and sections 2 and 12 of the Ethnic Group Act states that place name signs in the relevant area have to contain the German and the Slovenian Name of the respective town. The court also follows the ombudsman board in its view that additional signs are legally inappropriate to express the name of a village.

For these reasons, the court quashed the passages of the administrative regulation and obliged the Carinthian Province Government to publish the decision in the province's law gazette immediately.

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7 The original wording of the regulation stated that city limit signs have to be put up: "at kilometre (...) with the City Name 'Bleiberg' and **the additional plate with the inscription 'Pliberk'** (...)". The board only applied to quash the text which is marked bold.

*Consequences of the judgements*

The court did not rule that the quashed passages would stay in force until a certain date in order to give the authority time to draft and publish a new regulation, as it had done in some earlier judgments on bilingual inscriptions. Such an additional holding would in fact have been useless as the constitutionality and lawfulness of the original regulation could be reached by the mere deletion of the challenged passages without an additional, positive act of the district authority. In consequence, the district administration authority would only have to put up bilingual signs in order to act in accordance with the regulation.<sup>8</sup>

Nevertheless, the district administration authority chose another reaction to the constitutional court's decision: Neither the regulation nor the place name signs have been changed; the only change of the former construction concerned the location of the additional sign in the construction. The additional signs were removed from outside the frame of the place name sign and fixed inside the blue frame, underneath the German name of the village.<sup>9</sup>

This leads to the strange consequence that the city limits of the respective villages are marked with a combination of road signs which are not foreseen in the Road Traffic Act at all. In my opinion, this leads to the consequence that the regulations have no legal power, as they have not been published in accordance with the law. The effect of this situation is that the regulations do not prescribe a definite speed limit for the village area, which adds a considerable security problem to the basic problem that the Carinthian authorities seem to be unwilling to act in accordance with the law.

**Conclusion**

The expectation that the judgements of the Constitutional Court would force the Carinthian Government and the competent district administration authority to enact new regulations which finally fulfil the obligations resulting from Art 7 para 3 sentence two of the Vienna Treaty were disappointed. New procedures against the current Carinthian 'solution' are already pending at the Constitutional Court. Although none of these cases has been decided yet, in the light of the latest judgements it seems rather clear that the Court is not going to accept the current situation. Nevertheless, it seems doubtful that the next decisions of the Constitutional Court will lead to a sustainable solution of the conflict.

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8 See *Klingenbrunner/Klinger*, *Zweisprachige Ortstafeln im Brennpunkt rechtsstaatlicher Unzulänglichkeiten*, *migralex* 2007, 13.

9 See <http://volksgruppen.orf.at/slowenen/aktuell/stories/63217/> (April 28<sup>th</sup>, 2008)