

## ■ CONSTITUTIONAL DEVELOPMENTS IN AUSTRIA

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### **Minority rights of the Slovene minority in Carinthia: Placement of bilingual signs for municipal units (Ortschaften) with 10% (previously 25%) minority population**

Austrian Constitutional Court  
Judgement of 13 December 2001  
("Municipal Signs Judgement" – VfSlg. 16.404/2001)

#### **Circumstances of the Case**

The lawyer *Rudi Vouk*, a member of the Slovene minority, exceeded the speed limit, when he was driving in the village St. Kanzian in the political district Völkermarkt in the Federal State Carinthia. He was charged with a fine of 500 Austrian Schillings by the administrative authority of first instance (*Bezirkshauptmannschaft*). Upon his request, the administrative decision adopted in an abridged procedure and imposing a fine (*Strafverfügung*) was issued also in Slovenian. Mr. *Vouk* submitted a complaint against the decision, in which he admitted to exceeding the speed limit; however, he claimed that he could not be held liable for the offence: The topographical signs, which legally represent a regulation (*Verordnung*), display the village name only in the German language, rather than also in the Slovene language, as required by Art. 7 subpara. 3, second sentence, of the State Treaty of Vienna. Therefore, the regulations providing for the village signs "St. Kanzian" and "End of St. Kanzian" had not been duly published. After exhaustion of the administrative remedies, Mr. *Vouk* appealed to the Constitutional Court, which initiated a judicial review of the legality of the regulations and the constitutionality of the laws applicable in the case.

#### **Relevant Laws and Regulations**

**State Treaty of Vienna 1955 (State Treaty for the Re-establishment of an Independent and Democratic Austria (State Treaty of Vienna), Federal Law Gazette No. 152/1955; according to Article II para. 3 of the Amendment to the B-VG, Federal Law Gazette No. 59/1964, Article 7 paras. 2-4 are of constitutional rank)**

"Article 7

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 recognised as an official language in addition to German. In such districts signs and indications of a topographical nature shall be in the Slovene or Croat language as well as in German."*

**Ethnic Groups' Law 1976, Federal Law Gazette No. 396/1976**

"§ 2. (1) *By mutual agreement with the main committee of the National Council and after hearing the respective Länder government, the Federal Government shall issue regulations to determine: ...*

2. *The parts of the territory in which bilingual topographical signs shall be put up, because a quite considerable number (**a quarter**) of the inhabitants are members of the ethnic group.*

(2) *When issuing the regulations provided in para. 1 as well as in implementing section III of this Federal Act, existing obligations under international law shall be taken into account. In addition, the number of members of the ethnic group, the distribution of its members over the federal territory, the ratio of their number as compared with other citizens of Austria in a particular area as well as their particular needs and interests for ensuring their existence shall be taken into account. For this purpose, the results of data collected by official statistics shall also be taken into account."*

"Topographical signs

§ 12. (1) *Within the parts of the territory pursuant to § 2 para. 1 subpara. 2, signs and indications of a topographical nature put up by bodies of public law of the Federal State, the Länder or the municipalities (Gebietskörperschaften) or other bodies (Körperschaften) and institutions of public law (Anstalten) shall be in the German language and in the language of the respective ethnic groups. This obligation does not apply to the names of places located outside such parts of the territory.*

(2) *The regulation pursuant to § 2 para. 1 subpara. 2 shall determine also the places eligible for bilingual naming, as well as the topographical names in the language of the respective ethnic group to be displayed next to the name in German language. For this purpose also local custom and the results of scientific research shall be taken into account.*

(3) *Topographical names existing only in the language of one ethnic group shall be used by bodies of public law of the Federal State, the Länder or the municipalities (Gebietskörperschaften) without being changed."*

**Regulation of the Federal Government of 31.5.1977 about the determination of parts of the territory, in which topographical signs in German and the Slovene language shall be put up (Topographical Regulation), Federal Law Gazette No. 306/1977**

"*On the basis of § 2 para. 1 and § 12 of the Ethnic Groups' Law, Federal Law Gazette No. 396/1976, by mutual agreement with the main committee of the National Council the following regulation is issued:*

§ 1. *in the following parts of the territory (§ 2 para. 1 subpara. 2 of the Ethnic Groups' Law, Federal Law Gazette No. 396/1976) signs and indications of a*

*topographical nature, which are put up by bodies of public law of the Federal State, the Länder or the municipalities (Gebietskörperschaften) or other bodies (Körperschaften) and institutions of public law (Anstalten), shall be in the German and in the Slovene language: ...*

*2. In the political district Voelkermarkt: In the municipality Bleiburg in the areas of the former municipalities Feistritz ob Bleiburg and Moos, in the municipality Eisenkappel-Vellach in the area of the former municipality Vellach, in the municipality Globasnitz and in the municipality Neuhaus in the area of the former municipality Schwabegg."*

**Regulation of the administrative authority of first instance (Bezirkshauptmannschaft) Völkermarkt of 17.8.1982 about road traffic signs in the course of the St. Kanzian road L 116, as amended by the regulation of 30.9.1992**

*"§ 1. In the course of the St. Kanzian road L 116 ... the following traffic restrictions and prohibitions are decreed:*

*B) Indications:*

*1. At km 9,795 'village sign' and 'end of village' with the village name 'St. Kanzian' and at km 10,950 'village sign' and 'end of village' with the village name 'St. Kanzian, Klopein' based on § 53, Z 17a und 17b..." of the Road Traffic Law.*

**Findings of the Court**

The Court abrogated § 2 para. 1 subpara. 2 of the Ethnic Groups' Law, which required a considerable number of minority members (25%) among the inhabitants in order to create an obligation to put up bilingual topographical signs, as unconstitutional for violating Art. 7 subpara. 3, second sentence, of the State Treaty of Vienna, which has constitutional rank. In this context, the Court held that, in connection with topographical signs, an "administrative district with a mixed population" pursuant to the State Treaty of Vienna refers to municipal units. To qualify as such districts, the municipal units – as St. Kanzian in the case at issue – must have a share of more than 10% of Slovene-speaking population in the total population, when observed in censuses over a longer period of time, indicating that the language of a national minority is an everyday language.

In addition, the Court abrogated the provisions of the Topographical Regulation which did not provide for bilingual topographical signs in St. Kanzian, despite the percentage of more than 10% of minority members in censuses over a longer period of time, as well as the provisions of the Regulation of the administrative authority of first instance (*Bezirkshauptmannschaft*) Völkermarkt determining monolingual municipal signs for St. Kanzian, for violating the law.

**Comments**

While the minority provisions of the State Treaty of St. Germain 1919 apply to all minorities in Austria, those of the State Treaty of Vienna 1955 apply only to

the Slovene and Croat ethnic groups in Carinthia, Burgenland and Styria. Art. 7 of the State Treaty of Vienna provides as a *lex specialis* the right to mother-tongue education (subpara. 2), the use of the minority language as official language (subpara. 3, first sentence) and the placement of bilingual topographical signs (subpara. 3, second sentence) in administrative districts with a mixed population. The dogmatic problem that has been posed in the jurisprudence of the Constitutional Court is whether Art. 7 subpara. 3 State Treaty confers a subjective right on the individual or merely represents an objective constitutional rule. This is important, because an individual has standing in a procedure for judicial review before the Constitutional Court only, if he or she has been issued an individual administrative decision (Bescheid) or, in the absence of such decision, is conferred a subjective right by a constitutional provision with direct effect. If this is not the case, the question arises of how inactivity of the legislator to establish a subjective right in laws or regulations can be sanctioned.

#### *Direct effect and subjective rights*

In its jurisprudence the Constitutional Court has accorded direct effect to Art. 7 subpara 3 of the State Treaty; however, only in the absence of implementing legislation (e.g. VfSlg. 11585/1987: Art. 7 subpara. 3, first sentence, has direct effect, VfSlg. 17327/2004: Art. 7 subpara. 3, second sentence, has no direct effect). Moreover, besides Art. 7 subpara. 2 on the "right" to mother-tongue education, Art. 7 subpara. 3, first sentence, on official language has been interpreted by the Court as conferring a subjective right (e.g. VfSlg. 9744/1983, VfSlg. 9752/1983, VfSlg. 9801/1983), whereas Art. 7 subpara. 3, second sentence, on topographical signs has not (VfSlg. 17416/2004, VfSlg. 16403/2001). Although the wording does not significantly differ from the first sentence to this respect, the Court held that this provision includes merely an international obligation on the part of the Austrian State and a duty of the state bodies (Staatszielbestimmung), with the legal quality of an objective rule, to put up bilingual signs and topographical indications. The goal of such indications is to inform the general public that a significant number of minority members live in this area, rather than assisting individual minority members. Therefore, no subjective right of an individual can be derived from the provision, due to the lack of a sufficiently individualized interest of the parties in the observation of an objective constitutional rule. An individual complaint for judicial review would not be admissible. Subsequently, VfSlg. 17733/2005 abrogated another regulation in Carinthia for violating Art. 7 subpara. 3, second sentence, State Treaty of Vienna and established a duty of the administrative authority of first instance (Bezirkshauptmannschaft), which results from the direct effect of the provision, in the absence of implementing legislation, to determine the place names in the German as well as in the Slovene language, when adopting the regulation.

#### *Meaning of "administrative district with a mixed population"*

In interpreting the notion "administrative district with a mixed population", the Court argued that the notion should have a unitary meaning within of the State Treaty, i.e. the same meaning in the first sentence (official language) and

the second sentence (topographical signs) of Art. 7 subpara. 3 State Treaty. Thus VfSlg. 15970/2000, relating to the use of the Slovene and the Croat language as an additional official language, stated that an "administrative district" also refers to a municipality (*Gemeinde*). An administrative district with a "mixed population" refers to a municipality with a share of the Slovene-speaking population in the total population of 10.4%, as was the case with the municipality of Eberndorf. Previously, the Court had held in VfSlg. 12836/1991 that the notion "administrative district with a mixed population" refers to an area, where a large number or a percentage of the inhabitants which is not totally insignificant belongs to the minority, as based on censuses. This is supported by the goal of the State Treaty, i.e. to enable the minority to preserve its own language, which had been mentioned already in VfSlg. 9801/1983. Eisenstadt in the Federal State of Burgenland, where only 5% of the population belonged to the Croat minority, did not constitute such an administrative district. VfSlg. 17733/2005 extended the notion further to cover also the municipal units (*Ortschaften*) which make up a municipality (Austrian constitutional law refers to an abstract concept of municipality, which comprises towns for which a specific statute is to be adopted (*Statutarstädte*) and municipalities regardless of their geographical size and population (*Gemeinden*); municipalities consist of municipal units (*Ortschaften*), which may be villages (*Dörfer*) or other kinds of settlements).

#### *Percentage of minority members*

To establish the percentage of 10%, rather than the 25% required so far by the Ethnic Groups' Law, the Court referred to the purpose as well as to the historical background of Art. 7 of the State Treaty; at the time of its drafting, the British suggestion of a "considerable proportion" of minority members was dropped in favour of the Soviet suggestion of "administrative and judicial districts with a mixed population". Although international practice oscillates between 5 and 25 % (and a maximum of 30%), not every provision of national law establishing a percentage between 5 and 25%, especially not one in the upper range, could, according to the Court, conform to the State Treaty. A municipality (*Gemeinde*) is an "administrative district with a mixed population", whenever in censuses – seen over a longer period of time – the percentage of the minority population has been more than 10%, because Art. 7 subpara. 3 stipulates special rights for minority members. This was the case with the municipality of St. Kanzian am Klopeiner See. In VfSlg. 17733/2005 the Court states that the percentage applies independently of what territorial unit qualifies as "administrative district", i.e. it applies not only to municipalities or administrative districts, but also to municipal units, because of the specific settlement structure of the Slovene ethnic group who live mainly in dispersed settlements so that some municipalities display a high percentage, while some have no minority population at all or a small percentage. The Slovene or Croat language must also be recognised before those district administrative authorities (*Bezirksverwaltungsbehörden*), where the minority does not represent a totally insignificant percentage districtwide.

However, in VfSlg. 17895/2006, the Court held that the character of a place as an "administrative district with a mixed population" may also be lost, if – like in St. Kanzian considering the results of the 2001 census – the share of the

Slovene-speaking inhabitants in the population had been below 10% in the two most recent censuses and if the trend follows a downward direction, while "Ebersdorf" and "Bleiburg" had maintained this character. The new Topographical Regulation for Carinthia, Federal Law Gazette II No. 245/2006, has been in force since 30.6.2006. It needs to be seen in the context of another Topographical Regulation for Carinthia, Federal Law Gazette II No. 263/2006, which lists many more municipal units (Ortschaften) that are to have bilingual signs and indications; however, its § 6 para. 1 provides that it will enter into force at a point in time to be determined by federal constitutional law.

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