

2nd Report

On the Implementation of the

European Framework Convention for
the Protection of National Minorities

in the Republic of Austria

1.) Introduction

The Framework Convention for the Protection of National Minorities (in the following: FC), Federal Law Gazette III 1998/130, is the first legally binding multilateral convention that is exclusively devoted to the protection of national minorities. It became effective in Austria on July 1, 1998.

The FC was approved in Austria as a state treaty (Staatsvertrag - StV) of an amendatory or law-changing character by the Federal Parliament with reference to § 50 (1) and (2) of the Federal Constitutional Act (B-VG) but with reservations as to compliance. Initially no domestic legal effects ("special transformation") evolved. With the compliance reservations, it was "authentically" determined that the FC was not immediately applicable. This means that the clauses cannot be implemented by the administrative authorities or the courts, and also, among other things, that the members of minorities cannot infer any subjective rights from the clauses of the FC in domestic affairs. (Of course not every immediately applicable clause in state treaties grants subjective rights.)

The FC is to be implemented by "implementation laws" (these refer not only to formal laws and acts, but also to ordinances, if a corresponding authorization for ordinances already exists); "implementation laws" are not necessary if the domestic legal situation is equivalent to the international obligations.

After Austria declared, upon the ratification of the FC, that it interprets the concept "national minorities" as only those living in parts of the federal territory, and those groups included in the scope of application of the Minorities Act (Federal Law Gazette 1976/ 196) who are Austrian citizens with non-German mother tongues and their own folklore culture, the Austrian Centre for Ethnic Groups assumes that at present the FC is applicable to the Croat, Slovak, Slovene, Czech, Hungarian and the Roma minorities.

With the compliance reservations, the Republic of Austria excluded the Polish and potentially other minority groups who have also lived in Austria for generations but are still not officially recognized as national minorities.

According to § 25 FC every contractual party must convey complete information on the legislative and other measures taken for the implementation of the declared principles. Initially this report must be conveyed to the Secretary General of the Council of Europe within a year of taking effect, and afterward regularly and as often as the ministerial committee demands.

The Austrian Federal Government was belated in its 1st national report. The same goes for the 2nd national report, which was two years behind schedule. The Austrian Centre for Ethnic Groups sees the reason for this in the fact that the decisions of the Austrian Constitutional Court concerning the allowance of Slovene as an official language and concerning bilingual topographical signs and designation in Carinthia (the Constitutional Court decisions are from the years 2000 and 2001, further decisions concerning bilingual topographical signs and designations are from the years 2005 and 2006 and will be explained later) have still not been implemented.

The Austrian Centre for Ethnic Groups, as an umbrella organization of the representative associations of all the autochthonic minority groups in Austria, conveyed to the Secretary General of the Council of Europe, this NGO-report on the implementation of the FC in Austria parallel to the 2nd Austria national report, because the Austrian Federal Government – contrary to the version in the national report – did

not involve non-governmental independent representative organizations of the Austrian minority groups in the preparation of the report. The responsible department in the Federal Chancellery simply and solely sent a draft of the national report to the government-appointed so-called Advisory Council of the Minority Groups (or Minorities Council) on about December 20, 2005 and demanded an opinion by January 15, 2006. A serious consideration of the substantial materials was hardly possible. To accuse the responsible bureaucracy of arbitrariness in light of the purposefully chosen Christmas and New Years holidays is perhaps unfair, but not is not to be entirely ruled out, as the national report was in the office responsible for nearly a year and was conveyed to the Council of Europe only in December, 2006. At any rate the national report is tendentious and not objective.

The following organizations cooperated in this report of the Austrian Centre for Ethnic Groups:

Council of Slovenes in Carinthia / *Rat der Kärntner Slowenen* / *Narodni svet koroških Slovencev*,

Article 7 – Cultural Association for Styria – Pavel House / *Artikel-VII-Kulturverein für Steiermark – Pavelhaus* / *Kulturno društvo den 7 za avstrijsko Štajersko – Pavlova hiša*,
Minority Council of the Czech and Slovak Ethnic Groups in Austria / *Minderheitsrat der tschechischen und slowakischen Volksgruppe in Österreich* / *Menšinová rada české a slovenské větve v Rakousko*,

Austrian-Slovak Cultural Association/ *Österreichisch-Slowakischer Kulturverein* / *Rakúsko-slovenský kultúrny spolok*,

Burgenland-Hungarian Cultural Association/ *Burgenländisch-Ungarischer Kulturverein* / *Burgenlandi Magyar Kultúregyesület*,

Central Association of Hungarian Organizations in Austria / *Zentralverband ungarischer Vereine und Organisationen in Österreich* / *Ausztriai Magyar Egyesületek és Szervezetek Központi Szövetsége*,

Association of Independent Hungarian Organizations in Austria / *Dachverband der Unabhängigen ungarischen Vereine in Österreich* / *Ausztriai Független Magyar Kultúregyesületek Csúcsszervezete*,

Association of Roma / *Verein Roma*,

Cultural Association of Austrian Roma and Croats / *Kulturverein österreichischer Roma und Kroatischer Kulturverein in Burgenland* / *Hrvatsko kulturno društvo u Gradišću*.

The Austrian Centre for Ethnic Groups took as a basis for its own NGO report the summary of the determinations of the test report of the advisory committee of May 16, 2002 [CM(2002)91] and the Resolution of the Ministerial Commission [ResCMN(2994)1] and the suggestions for improvement from the Council of Europe included therein. Those measures taken by the Republic of Austria and the delayed measurements will be elucidated, as well as other developments concerning the minority groups since presentation of the first report of the Austrian Centre for Ethnic Groups in January, 2000. Preceding the report is a summarized account; at the end, proposals for recommendations of the advisory committee have been added.

2.) Summary

In spite of current measures for supporting the autochthonic minority groups, their existence is endangered. The protection of the minority groups under constitutional law has not been fully implemented and needs an urgent extension to the Hungarian minority group in Burgenland, the Croat, Hungarian, Czech and Slovak minority groups in Vienna as well as the Roma in Burgenland and Vienna. A much more decisive approach on the part of the authorities is necessary to help these communities to maintain their identity, above all in the areas of the media and their participation in public life. This is especially true for the Slovene minority in Styria, the Croat, Hungarian, Czech and Slovak minorities in Vienna as well as the Roma in Burgenland and Vienna.

The Austria Federal Government – contrary to the version in the national report – did not involve non-governmental, independent, representative associations of the Austrian minority groups in the preparation of the report.

On the occasion of the intended revision of the Austrian Federal Constitution, the protection of minority groups should be included in a central article for the protection of minorities in the Federal Constitution, based on the proposal brought forth by the Austrian Centre of Ethnic Groups in Committee IV of the Austrian Convent. Thus, the various levels of protection of the minority groups, oriented on the standard of § 7 of the State Treaty of Vienna and so currently only effective for members of the Croat and Slovene minorities, would be unified and carefully further developed.

Particularly the minority protections clauses of § 7 of the State Treaty of Vienna from 1995 are to be fully implemented.

The official language provisions and the topography ordinances for Carinthia and Burgenland are to be changed according to the decisions of the Constitutional Court.

The educational and media offerings are to be specifically supported, especially the programs for increasing language competency in pre-school and school ages, and the assistance for the private school system of the minority groups (the Komenský school association, among others) is to be increased.

Minority school laws for Vienna and Styria are to be resolved in the style of the current minority school rights by the federal law-makers after a hearing of the minority groups concerned.

To compensate for inflation and or a special subsidy for media production in the minority groups languages, the minority group subsidy from 2007 on to be increased by 50% (since 1995, the minority group subsidy has remained unchanged at Euro 3.8 million). In the following years the subsidy it is be adjusted to the requirements and need according to new, but still to be codified minority protection articles in the Federal Constitution.

3.) General Information on the Autochthonic Minority Groups in Austria

Historical Development

Croats in Burgenland

The settling of Croats in the territories of the Austro-Hungarian monarchy of that time, in West Hungary, in Lower Austria, in southern Slovakia and southern Moravia ensued in many waves of settlement up to the year 1584. At the beginning of the 17th century, about 120,000 Croats lived in this area, and this was equivalent to a proportion of the population of 25-28%.

During the Counter-Reformation, the Croats in Burgenland developed their own regional written language. In the Treaty of Trianon (1921), Hungary had to transfer West Hungary to the Republic of Austria. After the annexation of Austria to Hitler's Germany, Croat organizations as well as instruction in Croatian in the schools were forbidden. Burgenland was an economically underdeveloped area in both the First and Second Republics. In the First Republic many people from Burgenland emigrated to America, while in the Second Republic they sought for work in the metropolitan areas of Vienna and Graz.

Poles

From the beginning of the 17th century, many Polish families settled in the imperial capital of Vienna. As early as 1860, Vienna had 4,700 Polish-speaking residents. The largest organization representing the Poles, "Strzecha" has kept and broadened its range of activities continuously to the present day. By definition, the Polish minority group is included in the coverage of the Minorities Act and, through the declaration of Austria on the occasion of the Ratification, is also included in the range of coverage of the European Framework Convention for the Protection of National Minorities, even if the Austrian Federal Government *de facto* does not recognize it as a minority group.

Slovaks

The more recent Slovakian settlements in some Lower Austrian villages along the March River took place in the 16th century. In these villages, the original Slovak language has remained intact in part to this day. The moving of Slovaks to the imperial capital of Vienna was limited to single individuals up to the Turkish siege of Vienna. After that, more and more Slovaks moved to Vienna and after 1835 the first Slovak organizations were founded in Vienna. Especially since the co-called "velvet revolution" in the former Czechoslovakian Socialist Republic, there has been a revival of the Slovak minority group in Vienna.

Carinthian Slovenes

The immigration of the Slovenes into the southeastern territories of present-day Austria took place towards the end of the migration of nations in the last third of the 6th century. In the middle of the 19th century, Klagenfurt/Celovec was the cultural centre of all Slovenes. After the First World War and the resulting plebiscite in the year 1920, south Carinthia with its Slovene-speaking population stayed in Austria; also those Slovenes resident in Styria became an Austrian minority through the Peace Treaties of Paris. Under the yoke of the Nazis, all Slovene associations were dissolved. In 1942, about 300 Slovene families were deported and as a result an organized armed resistance of the Slovenes against Hitler's Germany emerged. The resistance of the Slovene partisans was the only militarily organized revolt against the Nazi-regime in Austria.

With the annexation of Austria to Germany, the situation of national minorities in the state rapidly deteriorated, even from their position in the First Republic, which was not exactly ideal. In Carinthia, a "Folklore" Office was installed that was headed by Carinthian Nazi - and later war criminal - Alois Maier-Kaibitsch who defined the policies toward the Slovene minority. Leading Slovene politicians and teachers had to leave the country, and at the same time the National-socialist rulers forbade the public use of the Slovene language – under the slogan "Carinthians speak German".

On April 14, 1942 the forced resettlement of around 200 Slovene families began and about 1000 people were deported, either to German work camps for forced work or to concentration camps. The deportation of Slovene families that was ordered by Reichsführer SS Heinrich Himmler, organized and carried out by Maier-Kaibitsch, followed a precise plan that had been prepared in Carinthia before the outbreak of the war.

The first armed encounter between the Slovene partisans and SS units took place in Carinthia on August 25, 1942.

The Slovene partisan resistance was the only armed resistance against the Nazi regime in the entire territory of the Republic of Austria. These facts later played a significant role in the negotiations for the Austrian State Treaty, as the presence of an armed anti-Nazi resistance was stated as a condition for attaining the state sovereignty, as mentioned in the Moscow Declaration of 1943. In January, 1947, the Yugoslav government conveyed their official claims to the special ambassador of the Allied Forces in London; these claims included 2,470 square kilometers of Carinthian territory including the cities of Klagenfurt and Villach south of the Drau River with a total population of 180.000 as well as 130 square kilometers of territory in Styria with a population of 10.000. Yugoslavia substantiated these claims with the participation of Austria in Hitler's aggression towards and occupation of Yugoslavia, with the war crimes committed, with the violent Germanization in northern Slovenia and the re-settlement of the Slovene population as well as the economic and political suppression of the Carinthian Slovenes in the First Republic, with the national liberation fight of the Carinthia Slovenes as well as the ethnic character of the Slovene Carinthians and the geographic-economic connection of Slovene Carinthia and the Styrian borderlands with Yugoslavia. The Yugoslav claims were supported by, among others, a memorandum of 51 Slovene priests in Carinthia. (Here it should also be mentioned that Austria also registered territorial claims after World War II: for the German Berchtesgaden, the

Hungarian Ödenburg/Sopron, for the Slovenian (at that time Yugoslavian) Miestal/Mežiska dolina and Maribor, as well as for the Italian Val Kanale and of course for South Tyrol)

Due to the clear resistance of the western Allies to the Yugoslav territorial claims that were not even supported by the Soviets, Yugoslavia began as early as 1947 to reduce its demands. At the same time special protection for the Slovene and Croat minorities was demanded. The development process of the minority articles in the State Treaty moved relatively quickly in the June session of 1949 in Paris. On June 20, a compromise formulation was approved "that the Austrian borders should be those of 1938; that the Treaty should provide that Austria guarantee the protection of the Slovene and Croat minorities in Austria; that no reparations would be demanded of Austria, but that Yugoslavia should have the right to take over, withhold or liquidate Austrian property, rights and interests on Yugoslav territory". For later interpretations, the fact that, at the insistence of the Russians, the original British formulation was dropped is important. The original British formulation was for a "considerable proportion" of members of the minority groups to qualify for official language and bilingual topography. Instead, § 7 (3) - official language and bilingual topography - is effective in administrative and court districts "with Slovene, Croat or mixed population".

The Vienna Treaty on the re-building of an independent Austria is the fundamental political document and the pillar under constitution law of the Second Austrian Republic, whose predecessor the First Republic ingloriously disappeared with the invasion of German troops on March 13, 1938 and the following accession as the "Ostmark" of the Great German Third Reich. The Austrian State Treaty is also the pillar under constitutional law of the chartered rights of the Slovene minority in Carinthia and Styria as well as the Croat minority in Burgenland, whereby in the 5 paragraphs of §7 these minority groups are guaranteed special rights. The State Treaty was signed on May 15, 1955 and went into effect on July 27, 1955.

Styrian Slovenes

Since the early Middle Ages there has been a Slovene population in the area of the current region of Styria and they lived peacefully with their German neighbors. Traces of Slavic settlement can be in all of Styria. Numerous names of localities and rivers point to this, for example Graz (from the Slovene "gradec" meaning "small castle"). On both sides of the current southern border of Styria, the Slovenes belonged to the farming population, while the bourgeoisie of the cities and market towns were German speaking.

On December 1, 1918, the "Kingdom of Serbs, Croats and Slovenes" was proclaimed in Belgrade. On November 1 already, Major Rudolf Maister had taken over military authority in the city of Marburg, Therafter his troops moved northward and within a few weeks occupied the bilingual areas of Soboth, Leutschach, Spielfeld, Radkersburg as well as some German speaking municipalities north of them. The surrounding municipalities became hard-fought border areas. These incidences left deep traces in the people concerned and through the decades has aggravated living together. After the Southern Slavic troops drew back, not only those who supported the occupation were persecuted; the distrust of everyone with Slovene as a mother tongue intensified.

On September 10, 1919 in St. Germain, in the state treaty between Austria and the former war opponents of the newly broken-up monarchy, the borders of the national territory were defined. The southern border of Styria to the newly founded Serb-Croat-Slovene state were so drawn that parts of the bilingual areas (such as Slovenske Gorice south of Mureck and the Apaško polje) came to the southern Slavic state, and others in turn (the areas around the Soboth, Leutschach and Radkersburg) came to Austria. With the drawing of the borders, personal and economic relations were broken. For some farmers suddenly a national border went right between their farmstead and their fields, in some cases even between their houses and their barns. With the drawing of the border, many localities - both Austrian and Slovene - lost their hinterlands, which in turn increased emigration. To the present day, these borderlands have remained a crisis area.

After the occupation by the southern Slavs and the drawing of the borders, it became increasingly difficult for the Slovene-speaking Styrians to remain committed to their language. Loyalty declarations to Austria and to German folklore were expected from the population.

The liberation of Austria from the National-Socialism would have been a chance to encourage cooperation of two languages in the border area. In reality however, the old fears and patterns of suppression were resumed. These were fueled additionally by the dispossession and eviction of German-speaking Lower Styrians and the territorial demands of Yugoslavia on Austria. The bilingual population found itself in a double-bind: whoever acknowledged their Slovene mother tongue was easily suspected of ideological nearness to communist Yugoslavia. Moreover, the bilingual population lost more than ever their cross-border contacts. The extreme periphery of the region exacerbated its economic situation; this resulted in massive emigration which further diminished the bilingual population.

Roma

Since the 15th century, Sinti and Roma have lived in Central Europe. Their entire history is marked by discrimination and persecution. During the Nazi regime, more than half of the 11,000 Austrian Roma and Sinti were killed in concentration camps.

Czechs

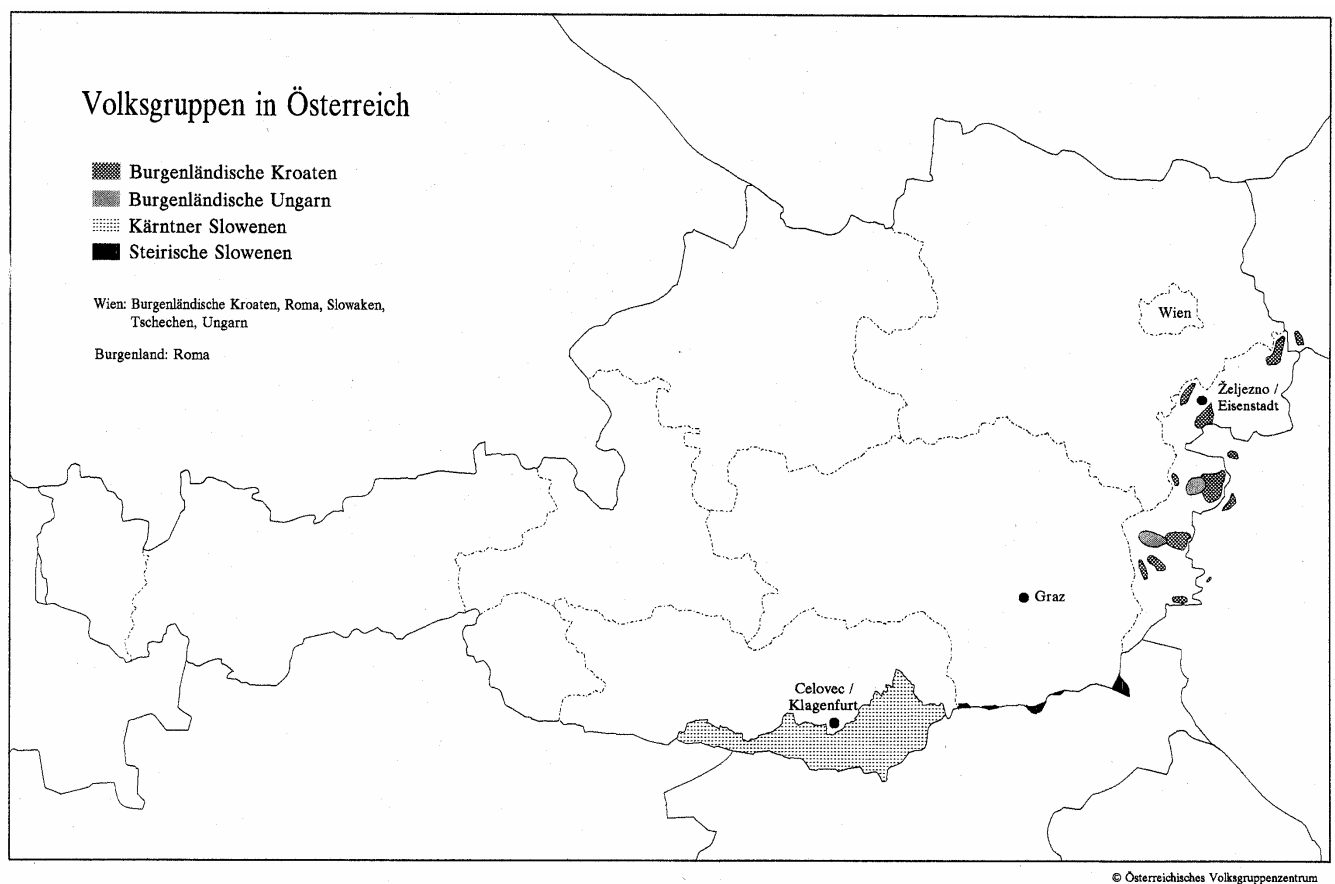
The first indications of Czech settlement in Vienna date from the regency of King Přemysl Ottokar II in the 13th century. From the middle of the 19th century on, the first Czech organizations were founded in Vienna. At the end of the 19th century about 200,000 Czechs lived in Vienna, the largest part of them re-migrated after the founding of the Republic of Czechoslovakia in 1918. During the Nazi regime, the Czech organizations were dissolved and members of the ethnic group were victims of a massive political persecution. Three Czech resistance groups existed in Vienna.

Hungarians

The Hungarians moved into the Carpathian basin in the years 895 and 896. The ancestors of the present-day Hungarians in Burgenland were settled there as so-called

border guards in the 11th century to protect the west Hungarian border. Due to the Turkish wars in the 16th century as well as the settlement of the area by Croats and German Protestants, the Hungarians in Burgenland have existed in linguistic enclaves for the last 450 years. Furthermore, the Hungarians have been closely tied to Vienna since the 16th century. During the Austro-Hungarian Monarchy, there was a strong migration from Hungary to Vienna. After the First World War, only a relatively small group remained in Vienna and its surrounding peripheral municipalities. Several migrations triggered by political and economic developments – in the 1920s, after the Second World War, in large number in 1956, and even more after the opening of the borders and the joining of the EU by Hungary and other countries with Hungarian populations, have brought new members to the minority group.

Settlement Areas of the Minority Groups



Minority Groups in Austria

Burgenland Croats
Burgenland Hungarians
Carinthian Slovenes
Styrian Slovenes
Vienna: Burgenland Croats, Roma, Slovaks, Czechs, Hungarians
Burgenland: Roma

Burgenland Croats

Members of the Croat minority groups live in six of the seven political districts of Burgenland with German-speaking and Hungarian-speaking population. Only in the southernmost part of the region, in the district of Jennersdorf, are there no Croatian or mixed-language municipalities. The Croats do not make up a majority in any of these districts. In relative numbers, the most Croats live in the district of Oberpullendorf, in absolute numbers the most live in the district of Eisenstadt. In these districts there are Croat enclaves, whereby these are interspersed with German-speaking localities. Only in the district of Oberpullendorf and partially in the district of Eisenstadt is there a more or less compact Croat or increasingly bilingual area. There are no more localities of 100% Croats, the largest Croatian-speaking population are in the small localities (500 to 1500 population, 80 – 95% Croat) in the district of Oberpullendorf.

A large part of this minority group has settled in Vienna for above all economic reasons. This emigration process began just after the First World War and has continued to the present. These people are partially weekly commuters, partially they live in Vienna all the time. The Burgenland Croats in Vienna are culturally and as a minority politically well organized.

Poles

The largest part of the Austrian Poles lives in the federal capital of Vienna, a small part is scattered all over Austria.

Roma

The primary settlement area is Burgenland, Vienna and Lower Austria. A smaller part of the Roma live in Graz, Linz and in locations scattered all over Austria. Sinti and Lowara live in the metropolitan areas. The main settlement area of all groups is in the eastern part of Austria.

Oberwart and environs is the actually visible settlement area. In the large cities members of the minority group live anonymously in larger apartment complexes.

Slovaks

The eastern area of Lower Austria belonged to the first state structure of the original Slovaks in the 5th to the 9th centuries. Linguistic and anthropological analyses indicate a continuous Slovak settlement of this area to the present day. About one-fourth of the population lives in Lower Austria.

The larger part of the minority group, about one-third, live in Vienna at present. Slovaks live in all districts of the city, in slightly larger numbers in the western and southern districts; there are no really accumulation areas and no compact Slovak enclaves. The rest of the minority group are scattered out all over Austria.

Carinthian Slovenes

The bilingual area of Carinthia is usually equated with the valleys of Jauntal / Podjuna, Rosental / Rož and the Gailtal / Zilja. This is actually incorrect as the bilingual areas on the one hand cross over these valleys (for example around Völkermarkt / Velikovec north of the Drau River) and on the other hand does not include all of the Gailtal / Zilja. Exactly delimited, the bilingual area corresponds exactly with the geographical scope of the School Language Ordinance of 1945 – that is, those areas in which between 1945 and 1958 all children in the primary schools were taught bilingually. This area is

regarded by the Carinthian Slovenes as their autochthonic settlement area, in which the territorial protection of minorities is effective. Interestingly, in the last 30 years, the number of localities in Carinthia in which Slovene speakers live has remained the same. In 2001 there were 800 localities (in 1991, also 800, in 1981, 801 localities and in 1971, 804).

The Carinthian Kindergarten Funding Act (Regional Law Gazette nr. 74/2001) also defines the "settlement areas of the Slovene minority group in Carinthia" as "those municipalities in which, according to § 1 and §3 of the Minority School System Implementation Act, at least one primary school has bilingual instruction." This is notable insofar as, for example, the allowance of Slovene as an official language or the bilingual topographical signs and designations defines the geographical scope in narrower terms. This is in clear contradiction to § 7 of the State Treaty of Vienna and is confirmed in a series of decisions of the Constitutional Court.

STRENGTH AND DISTRIBUTION OF THE MINORITY GROUP

*From: Data and Facts on the Situation of the Slovene Minority Group in Carinthia
April, 1980*

*Compiled by the Constitution Service of the Office of the Carinthian Regional
Government*

"The commitment to a minority group is open. No person is obliged to give proof of his or her membership in a minority group" (§ 1 (3) Minorities Act). On the basis of the language declarations of the regular population census, and above all on the basis of registration to bilingual instruction, and further on the basis of conclusions drawn from regional and local elections, and finally on the basis of the participation in Slovene facilities and at Slovene events, it can be concluded that about 15,000 to 17,000 Carinthian feel associated with the Slovene minority group, that is approximately 3% of the Carinthia regional population.

The members of the Slovene minority group live in municipalities in the southern parts of the region, scattered over a relatively large area and, with the exception of very few concentrated settlements, represent a local minority. *The autochthonic settlement areas of the Carinthian Slovenes is equal to the areas of the municipalities with bilingual schools and measures 2,374 km², or 22% of the regional territory* (emphasis by editors). In this area there are 120,191 inhabitants, or 23 % of the Carinthian population. Of those 15,680 people are Slovene. They make up a proportion of 13% in the historically inherited settlement area."

The Styrian Slovenes live primarily in five villages of the "Radkersburger Wikel", around the city of Bad Radkersburg / Radgona in Goritz / Gorica, Zelting / Ženkovci, Laafeld / Potrna, Dednitz / Dedonci, Sieldorf / Žetinci in the southeastern part of Styria and in scattered settlements south of Leutschach / Lučane as well as in the area around Soboth / Sobota.

Czechs

The settlement areas of the Czech is the Marchfeld and the Tullner Feld, above all however in the city of Vienna. In Vienna, most of the Czechs live in the districts of Leopoldstadt, Landstraße, Favoriten, Rudolfsheim-Fünfhaus, Ottakring, Brigittenau and Floridsdorf. The Czechs are primarily an urban minority.

Hungarians

Hungarians can be divided into two groups:

Burgenland: Specifically this concerns the Hungarian "In der Wart" with settlements of Siget, Oberwart and Unterwart, or Oberpullendorf with the incorporated municipality of Mittelpullendorf (since 1958). Around 1920, the proportion of Hungarians in Lackenbach was 13.9%, in Markt Neuhodis 16.9%, in Pinkafeld 12.2%, in Eberau 16.2% and in Güssing 28.5%, in Eisenstadt even 30%. The Burgenland Hungarians account for even larger concentrations in northern Burgenland, in addition to those around Oberwart and Oberpullendorf. In 1920, in the territory of the later Austrian region of Burgenland, 24,988 persons with Hungarian as their mother tongue, 3 years later only 15,354 persons. The continuous assimilation led to the situation that in 1951, 10,442, in 2001 only 6,641 persons in the entire resident population declared Hungarian as their language of everyday life. The loss in this time period from 1920 and 1923 to 1951 58.21% and 31.55%, from 1951 to 2001, 36.40%; in the whole time period from 1920 – 2001, 73.42% and from 1923-2001, 56.46%. The loss especially hit the Hungarians in northern Burgenland and in the 44 municipalities in all of Burgenland in which the proportion of the Hungarians ranged between 10 and 60%. The cause for assimilation of this measure lies primarily in the scattered situation of the Hungarian; primarily, however, the adoption of the German language in all areas of life, which over time widely replaced the Hungarian language. In the main settlements of Oberpullendorf and Oberwart as district suburbs, the settling of German-speaking civil servants, teachers, business owners, especially after the Second World War, led to a broad over-layering of the population: in 1920 the Hungarian speaking population in Oberpullendorf counted 94%, in 1971 only 32.70%; for Oberwart, these figures are 75.40% to 27.20%. The trend has held unchanged to the present: By 2001, the proportion of Hungarian in Oberpullendorf fell to 21.52%, in Oberwart to 16.82%. Although the Burgenland Hungarians, even before the incorporation of Burgenland into Austria, showed a broad geographical scattering with the already mentioned accumulations and they were economically and socially strongly differentiated, they belonged to the majority population at that time. Because there were hardly any local associations, they could hardly psychologically and politically cope with the change to the minority. Nevertheless, in 2001, in the district of Oberwart 2,551 persons (38.42%) declared Hungarian as one of their languages of everyday life, in the district of Neusiedl am See 1,150 persons (17.31%), in the district of Oberpullendorf 1,039 persons (15.65%), Eisenstadt and environs including Rust 937 persons (14.11%) and in the district of Mattersburg 530 persons or 7.98%. In 2001, 39.40% of the Burgenland Hungarians lived in northern Burgenland, where up to now they have not been in the field of vision of minority group policies. Because of their scattered locations, they have been under considerable pressure to assimilate.

The Burgenland-Hungarian Cultural Association was founded in a time of assimilation (1968) and could not cope with the complex problems.

The non-Burgenland Hungarians exist on the basis of various immigration waves. The traces of the Hungarians especially in Vienna go back to the Middle Ages. Partially

through family clans there were connections between the citizens of Vienna and the Hungarian cities. Hungarian students, who made up their own nation ("nation hungarica"), are recorded in the registry of the University of Vienna back to the year 1377. With the election of Archduke Ferdinand as King of Hungary (1526), and the following occupation of the Hungarian capital city Buda by the Turks (1541), an array of Hungarian central administrative offices were transferred to Vienna, so that the presence of Hungarian, mostly aristocratic holders of the court and their followers, have been continually detectable from this time. In addition, in the last quarter of the 17th century a stronger immigration of the Hungarians to Vienna was observed. From this group even Hungarian guilds were established (butchers, lace-makers, boot-makers, button-makers etc). The importance of the "Viennese Hungarians" especially regarding cultural activities must be emphasized (books, newspapers, the spread of the Enlightenment, renewal of the Hungarian language and literature). In spite of the strong fluctuation – minorities in the metropolitan areas can regenerate only with the help of new immigration – in 1940, there were about 15,000 Hungarians in Vienna. In 1890, the numbers were up to 32,749. By 1910, the numbers grew to 139,300. In the period 1881-1913, 75,592 persons applied for Austrian citizenship. For the social structure of the Hungarians around 1910 it was characteristic that 64, 208 were classified as workers, 10,434 were domestic servants, and 2.128 were daily wage-earners. The first Hungarian organizations were founded in the 1860s, like the Hungarian Readers Club (1864), the Viennese-Hungarian Association and the Hungarian University Club (1868) and the Hungarian Social Club (1870).

Result of the Population Censuses and numerical Strength of the Austrian Minority Groups

Based on the fact that depending on the point in time of the official population census in Austria questions were asked about their language of everyday life, mother tongue, language of thinking, cultural circle or family language, and on the basis of the questionable reliability of counting commissioners who more or less strongly influence the results of the census, and on the basis of the various strong pressures to assimilate, the results of the population censuses are challenged by the minority group organizations. They are seen as only one of many indicators to determine the actual size of the individual minority groups. They do show, however, very graphically the unnatural assimilation pressure of the last decades.

Result of the Population Censuses

	1910	1951	1991	2001
Croats	44.243	35.181	29.596	19.374
Roma	not listed separately			4.348
Slovaks	included under Czech			
	(Bohemian - Moravian - Slovak)	301	1.015	3.343
Slovenes	74.210	42.413	20.191	18.520
Czechs	119.447	3.817	9.822	11.035
Hungarians	26.570	8.408	19.638	25.884

According to self-assessments of independent representative organizations of the Austrian minority groups, at present in Austria there are:

Croats	40.000 - 50.000
Poles	ca. 30.000
Roma	10.000 - 20.000
Slovaks	5.000 - 10.000
Slovenes	ca. 50.000
Czechs	10.000 - 20.000
Hungarian	30.000 - 50.000

Burgenland Croats

In 1991, according to official statistics, 19,109 persons indicated Croatian as their mother tongue, or used Croatian as their language of everyday life. In Vienna, there were 6.300 persons. According to church surveys, about 35.000 people would like the Sunday masses held in Croatian in Burgenland, according to estimates of the Croat cultural associations, at least 15,000 Burgenland Croats live in Vienna. These discrepancies demonstrate very well the problem of official surveys. Many members of minority groups do not want to declare themselves in official censuses. Besides that, it makes a great difference whether one is asked about the minority membership, about mother languages or about the use of languages in such censuses. Just using the word "Croatian" in the question about language use (until 1981: "German or "other languages" resulted in the fact that, in 1991, there were more Croatian-speakers than in the previous census. In the population census of 2001, there was a differentiation between Burgenland Croatian and Croatian, against the will of the minority group that has always designated their language "hrvatski", "Croatian". The double-naming contributed to a considerable confusion. Thus, in the 2001 population census in Burgenland 16.245 citizens declared "Burgenland Croatian" and 996 citizens declared "Croatian" as their language of everyday life. In Vienna, 2,456 listed "Burgenland Croatian" and 12.562, "Croatian". The official numbers can thus show trends but can give no reliable information about the actual numerical size of the minority groups.

"Minority determination" is rejected by all of the minority groups.

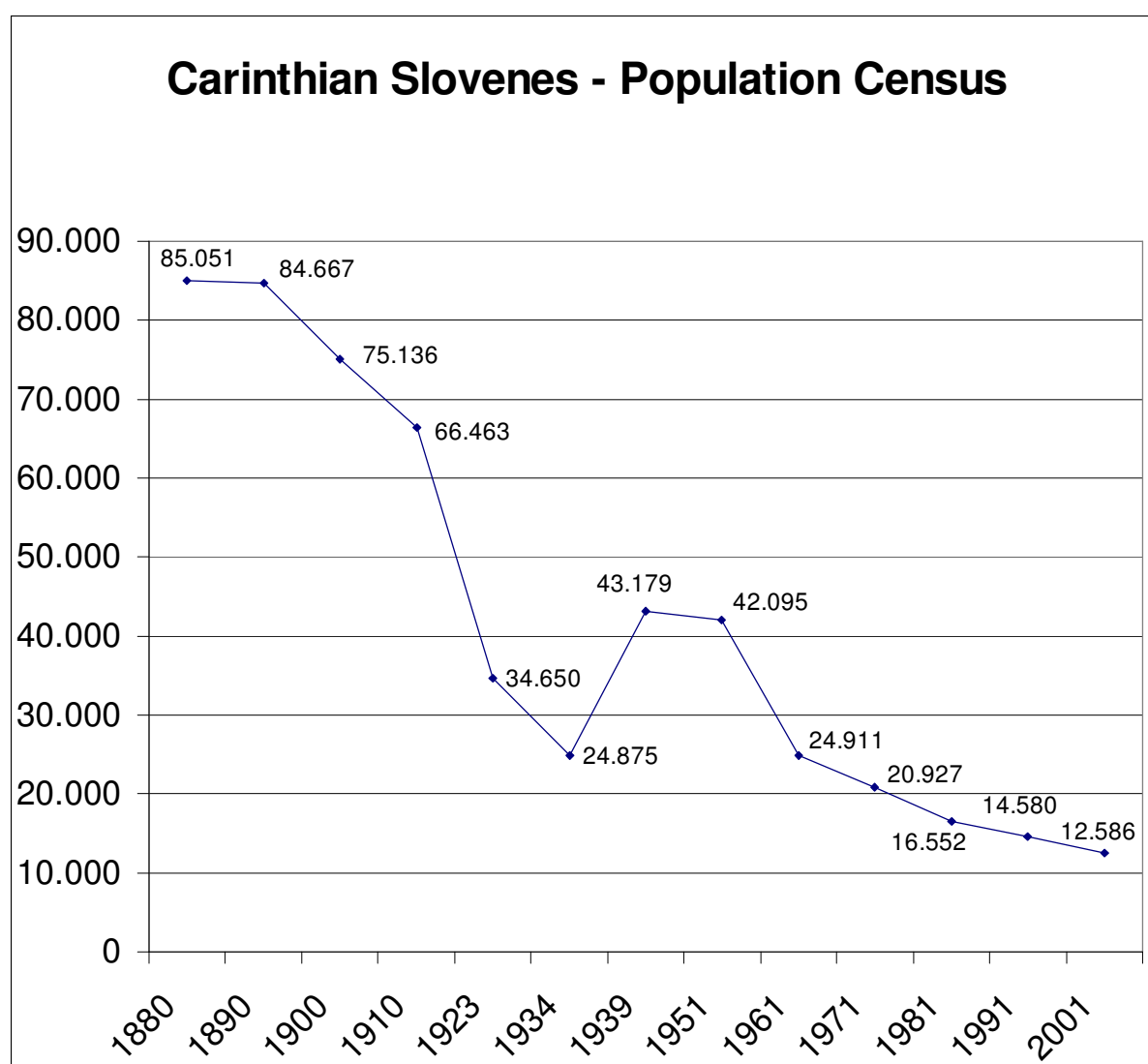
Roma

During the Nazi-regime, two-thirds of the Austrian Roma were victims of the racist-motivated genocide. The current number, according to the self-assessment of the minority group on the basis of 1938, there are more than 10.000 persons whereby the largest part is made up of the Burgenland Roma. Sinti and Lowara together make up only about 1.000 persons. In the population census of 2001, in which for the first time the language of everyday life, Romani, was asked about, 4,348 citizens declared the use of this language, most of them in the anonymity of the metropolitan area.

Slovaks

Around 1900, the number of resident Slovaks reached its zenith with about 70,000, mostly in Vienna and in the Marchfeld. After that the numbers declined dramatically. In 1914, there were only 20,000 Slovaks in present day Austria. After 1918, some Slovaks re-settled in the newly-founded Czecho-Slovakia; the population census of 1923 showed there were still 4,802 Slovaks in all of Austria. Since then even this number has declined. In the population census of 2001, 10,234 persons in all of Austria declared their use of Slovak as a language of everyday life; of these, 3,343 were Austrian nationals. Most of the Slovaks live in Vienna and Lower Austria. According to the census of 2001, a total of 7,643 persons, of whom 2,624 were Austrian nationals. The actual number of the members of the minority groups is estimated at around 5,000.

Carinthian Slovenes



The first population census in Carinthia took place in 1848, the so-called "Czoernig population census". According to that, southern Carinthia was a closed Slovene-speaking area, whereby the linguistic borders ran along the line Hermagor/Šmohor – Gailtaler Alpen/Ziljske Alpe – southern limits of Villach/Beljak – Ossiacher Tauern/Osojske Ture – Moosburg/Blatograd – Maria Saal/Gospa sveta –

Ottmanach/Otmanje – Brückl/Mostič – the southern edge of the Saualpe/Svinška planina – Lavamünd/Labot. The city of Klagenfurt / Celovec was a German language enclave in a Slovene-speaking environs. At this time the population of Carinthia was approximately two-thirds German speaking to one-third Slovene speaking.

Up till the first official population census in 1880, the area north of Klagenfurt / Celovec had become German-speaking. The rest was still however a self-contained, continuous Slovene-speaking area with approximately 85,000 Slovene speaking inhabitants.

Up to the end of the monarchy, the assimilation of the Carinthian Slovenes intensified especially in the industrial municipalities of Arnoldstein / Podklošter and Ferlach / Borovlje as well as along the line Villach / Beljak – Wörthersee / Vrbsko jezero – Klagenfurt / Celovec – Völkermarkt / Velikovec. The areas of the lower Gailtal / Zilja, the Rosental / Rož and the Jauntal / Podjuna that were still 80% Slovene speaking were then separated by areas in between in which the Slovene population was in the minority.

After the plebiscite on October 10, 1920, in which - above all to the credit of the voting behavior of the Carinthian Slovenes – the majority of the southern Carinthians decided in favor of remaining in the Republic of Austria, the number of the Carinthia Slovenes, according to population censuses, went from 66,000 in the last census of the monarchy to about 37,000 in the first census of the First Republic. However these censuses do not represent the actual language situation; private censuses assumed a number of over 60,000 Slovene-speaking Carinthians in the First Republic.

After the first population census of the Second Republic in 1951, the number of Carinthian Slovenes was about 42,000. This number decreased in the following years to the population census of 2001 to only 12,500. However it must be noted that in the Second Republic for the first time in the population census the category of "Windisch" was used, whereby one considers the "Windisch" to be those members of the minority group who are willing to give up their Slovene identity. This also actually happened: the group of the "Windisch" became smaller and smaller with each succeeding census and today has nearly completely disappeared.

Since the middle of the last century, the Carinthian Slovenes have only sluggishly managed to build an appropriate national consciousness among members of the minority group, due to the purposeful policies of assimilation, especially due to "Germanization" through the public schools and because of the unfavorable social structure of the minority group whose core in the 1970s was made up of farmers and only after the founding of the Federal Grammar School for Slovenes in 1957 could build on a broader intelligentsia class.

There is considerable difference between the data of the population censuses and the estimates of the minority itself about its numerical strength. In order to determine the numerical strength of a minority group it is necessary to include other data like the presence of a language in school education, the preservation and the number of minority organizations, election results of candidates representing the interests of the minority groups, the circulation of media in the minority languages and the use of the minority languages for religious rituals. According to the self-assessment of the representative organizations of the Carinthian Slovenes, there are still around 50,000 people in Carinthia who are proficient in Slovene at least passively. An investigation of

the Austrian Central Office for Statistics in 1999 showed similar results. According to that, 54,000 people in Carinthia over the age of 15 spoke Slovene. One-third showed high proficiency, one-third mid-level proficiency and one-third low-level proficiency.

Styrian Slovenes

The population census of 2001 showed that in Styria there were 2,192 Austrian citizens who declared Slovene as their language of everyday life. By comparison in 1991, there were only 1,695 persons. Statistically that is an increase of more than 29%. In the border districts of Deutschlandberg, Leibnitz and Bad Radkersburg, 452 people indicated they spoke Slovene. By comparison to the last census, there were only 246. Statistically an increase of 83%

Czechs

The Czech emigration to Vienna was so strong at the end of the 18th century that in the suburbs of Vienna communiqués were also issued in Czech. The height of the Czech emigration to Vienna was between 1880 and 1890, when over 200,000 Czechs, primarily workers, came to Vienna. After the founding of the Republic of Czechoslovakia in 1918, however, more than 100,000 Czechs were repatriated. The population census of 1923 showed only about 51.000 Czechs. This number remained unchanged throughout the First Republic. After the Second World War, the Czechoslovakian Central Committee organized another re-migration to Czechoslovakia, whereby between 15,000 and 20,000 persons followed this call.

The remaining Czechs were exposed to a strong pressure to assimilate. The population census of 1971 showed 7,500 Czechs, the census of 1981 only 4,600. In the census of 1991 there was a slight increase, as more than 8,000 citizens declared they used Czech as their language of everyday life. In the census of 2001, 11,036 citizens declared Czech as their language of everyday life; 5,778 of these in Vienna. The Czech organization estimate there are about 15,000-20,000 members of the minority group.

Hungarians

In the population census of 2001, 25,885 citizens declared they used Hungarian as a language of everyday life, of these 4,704 in Burgenland and 10,686 in Vienna. (see also the chapter "Settlement areas")

The results of the population censuses show a continual numerical decrease in the minority group in the autochthonic settlement areas and confirm the hypothesis that the minority groups in Austria need a broader legal protection as the current one does not even secure their preservation. For a reversal of this negative trend additional measures of positive discrimination are necessary, which have been demanded by the representative organizations of the minority groups for decades, and always been rejected by the Austrian administration, even though most of these measures are based on international instruments to which Austria has obliged itself to use.

Exkurs: The Problem of Population Censuses

Population censuses, which ask about membership in a minority group by asking about the language of everyday life, mother tongue or in other ways, should supply evidence of an objective picture of the language situation in a certain area. As such, population census are no problem and are even in the interest of the minority group to get information about the numerical strength and development.

The minority groups in Austria, however, were and are very skeptical about population censuses for some very understandable reasons. In the past, as today, statistical data about the numerical strength of the minority groups have always been used to "count away" the members of the minority groups, and so to curtail the rights of the minority groups. The granting of minority groups rights is according to Austrian law dependent on the number of members of a minority grouping a certain area, or their proportion of the total population in that area. This results in unequal treatment of the minority groups and also of individual members of the group. For example, the law-makers created out of the simple ruling of § 7 of the Austrian State Treaty seven categories of Slovenes – and if one takes into consideration the possibilities that citizens of municipalities not officially recognized as bilingual but nevertheless can use Slovene as an official language at the district administration there are even 9 categories, and if one adds the possibility to attend a public bilingual kindergarten, there are even 12 categories of Carinthian Slovenes:

Category 1:

Bilingual topographical signs and designations, bilingual kindergartens, Slovene as official language in municipalities, district administration and courts, right to primary education in the Slovene language: former municipalities of Moos / Blato, Globasnitz / Globasnica, former municipalities of Vellach / Bela, Feistritz ob Bleiburg / Bistrica nad Pliberkom.

Category 2:

Bilingual topographical signs and designations, bilingual kindergartens, Slovene as official language in municipalities and district administration, right to primary education in the Slovene language: Ludmannsdorf / Bilčovs.

Category 3:

Bilingual kindergartens, Slovene as official language in municipalities, district administration and courts, right to primary education in the Slovene language: Sittersdorf / Žitara vas, remaining municipalities of Bleiburg / Pliberk, Eisenkappel / Železna Kapla.

Category 4:

Bilingual topographical signs and designations, Slovene as official language in municipality, district administration and the courts, right to primary education in the Slovene language: Zell / Sele, former municipality of Windisch Bleiberg / Slovenji Plajberk, former municipality of Schwabegg / Žvabek.

Category 5:

Bilingual topographical signs and designations, Slovene as official language in municipality, district administration, right to primary education in the Slovene language: former municipality of Radsberg / Radiše.

Category 6:

Slovene as official language in municipality, district administration and the courts, right to primary education in the Slovene language: Remaining parts of the municipality of

Ferlach / Borovlje, St. Margareten i. R. / Šmarjeta v. R., Feistritz i. R. / Bistrica v. R., former municipality of Leifling / Libeliče.

Category 7:

Slovene as official language in municipality and district administration, right to primary education in the Slovene language: St. Jakob i. R. / Šentjakob v R., Rosegg / Rožek, remaining part of the municipality of Ebental / Žrelec.

Category 8:

Slovene as official language in district administration and the courts, right to primary education in the Slovene language: Gallizien / Galicija

Category 9:

Slovene as official language in district administration, right to primary education in the Slovene language: Eberndorf / Dobrla vas, St. Kanzian / Škocijan, Völkermarkt / Velikovec, Griffen / Grebinj, Ruden / Ruda, Diex / Djekše, Poggersdorf / Pokrče, Maria Rain / Žihpolje, Köttmansdorf / Kotmara vas, Keutschach / Hodiše, Schiefling / Škofiče, Velden / Vrba, Finkenstein / Bekštanj, Arnoldstein / Podklošter, Feistritz a.d. Gail / Bistrica na Zilji, Hohenthurn / Straja vas, Nötsch / Čajna.

Category 10:

Right to primary education in the Slovene language: St. Stefan an der Gail / Štefan na Zilji, former municipalities of Egg / Brdo, Görttschach / Goriče, former municipality of Maria Gail / Marija na Zilji.

Category 11:

Slovene as official language in district administration, right to primary education in the Slovene language as the need arises: remaining parts of the districts of Villach-environs / Beljak-dežela and Klagenfurt-environs / Celovec-dežela including the municipality of Techelsberg / Teholica, Maria Wörth / Otok and the former municipality of St. Thomas / Šenttomaž in the autochthonic settlement area of the Carinthia Slovenes.

Category 12:

Right to primary education in the Slovene language as the need arises: the rest of Carinthia, including the former municipalities of Viktring / Vetrinj and Hörtenndorf / Trdnja vas in the autochthonic settlement area of the Carinthia Slovenes.

The first population census after the war in Styria and Carinthia was distinguished by the fact that it divided the language of everyday life into several categories thereby making for confusion both for the counted and the counters. The Slovenes were divided into 8 categories: Slovene, Windisch, Slovene-German, German-Slovene, German-Windisch, Windisch-German Slovene-Windisch and Windisch-Slovene. The statistical chaos that resulted in this connection hit the Slovene minority so hard that in a scientific treatise on it, it was called "statistical genocide". The goal of the population census was the production of such data on the linguistic identity of the Slovenes so that the already modest rights of the Slovene minority would be cut back even more. The census counted the linguistic structure but interpreted the national affiliation, which is why the Carinthian Slovenes describe them as instruments of "Germanization". The statistical interpretations served the law-makers, whose purpose it was to outplay the minority protection clauses of the State Treaty of 1955, as an excuse for legislation antagonist to the minority,

A closer analysis of the results of population censuses in Carinthia throws an extremely ambivalent and conflicting light on the language surveys in the First and Second Republics up to the present day. The census results reveal a massive influencing on the

part of the census takers, and the results were very often manipulated essentially to the detriment of the Slovene minority. This is easy to prove on the basis of a few examples: In the locality of Heiligenstadt / Sveto mesto in the municipality of Neuhaus / Suha there were no Slovenes in 1961, but 90% Windisch; in 1971, the population was allegedly entirely German speaking. In 1991, there was suddenly a Slovene-speaking majority. In the locality of Humtschach / Humče in the municipality of Eberndorf / Dobrla vas there was still a Slovene-speaking majority of over 90% in 1971. In the census of 1991, there was only one single Slovene left, or less than 1%.

The manipulation of the Census for special purposes on November 14, 1976 (better known as the "secret determination of minorities") ,was even more open that came to light. Beforehand it must be said that the minority group called for a boycott of the census and the secret determination of the minority group back-fired. This special census was a result of the Minorities Act of July 7, 1976 and the results were to be used for the determination of the areas for bilingual topographical signs and designations. In 42 census locations the evaluation showed a participation of more than 100% of the eligible people .

These census results have nothing to do with reality. Examples of manipulation can be proven from census to census, municipality to municipality. It is absolutely certain that the actual number of Carinthian Slovenes in each census was much higher than officially accounted for.

The Austrian linguistic surveys from 1880 to 2001 were investigated and analyzed in detail by

Univ. Prof. Dr. Matjaž und Univ. Prof. Dr. Vladimir Klemenčič in their book *Prizadevanja koroških Slovencev za narodnostni obstoj po drugi svetovni vojni*, published in January 2007 by Hermagoras Verlag / Mohorjeva založba in Klagenfurt / Celovec.

As minority group rights are basic rights that cannot be made dependent on the numerical strength of the minority group, the minority group rejects every type of "minority group determination". The minority groups can find an impartial handling of population censuses and their own numerical strength and weaknesses, only if the actual objective linguistic proportions are collected and the protection of minorities regardless of the numerical strength of the minority group is guaranteed.

The statement in the National Report is incorrect that as a "result of the Register Count Act, a secret survey of mother tongues, which has been strictly rejected by the minority group is no longer allowed." The Register Count Act (Regional Law Gazette nr. 33 /2006) explicitly allows a survey of the language of everyday life (only in parts of the federal territory).

Article 1 (3):

"The responsible Federal Minister may issue an ordinance, if deemed absolutely necessary for the implementation of federal duties and responsibilities, for a complete individually-related survey of vernacular languages in the form of a questionnaire of all Austrian nationals, who on the test date are duly registered with a primary residence, according to § 1(7) of the Registry Act, and an anonymous survey of the religious affiliation. Should only partial results be necessary for fulfilling federal duties and responsibilities, the survey can also be undertaken only in specified parts of the federal

territory. The issuance of the ordinance must be in compliance with § 4(3) of the Federal Statistics Act 2000, Federal Law Gazette I nr 163/1999."

Also here the statements in the national Report are contradictory to statements made by the regional governor Dr. Jörg Haider, who explained through the Austria Press Agency on February 5, 2007, that an enduring solution to the issue of bilingual topographical signs and designations in Carinthia "can only come about if the minority groups allow a statistical survey of the mother tongues". The APA reported that governor Haider was addressing a query to the Constitutional Court in this connection. Specifically Haider wanted to know how the Constitutional Court evaluated the situation that "up till now contrary to human rights" a survey of the languages of everyday life as measurement for the size of the minority group was to be considered. "How does the Constitutional Court evaluate the violation of the framework Conditions for the Protection of National Minorities?" governor Haider asked the Constitutional Court. In February, 2007, the governor demanded a determination of the members of the Slovene minority group in Carinthia by name.

Representative Organizations of the Austrian Minority Groups

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Austrian Centre for Ethnic Groups
Teinfaltstr. 4
A-1010 Wien
Telefon: ++43 / 1 / 533 15 04
Fax: ++43 / 1 / 535 58 87
e-mail: oevz@twinet.net

Rat der Kärntner Slowenen / Council of Slovenes in Carinthia
Narodni svet koroških Slovencev
Viktringer Ring 26
A-9020 Klagenfurt/Celovec
Telefon: ++43 / 463 / 51 25 28-0
Fax: ++43 / 463 / 51 25 28-22
e-mail: office@nssk.at

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in Carinthia
Zveza slovenskih organizacij na Koroškem
Tarviser Straße 16
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Artikel-VII-Kulturverein für Steiermark – Pavelhaus / Article VII-Cultural Association for Styria – Pavel
House
Kulturno društvo den 7 za avstrijsko Štajersko – Pavlova hiša
Elisabethinergasse 34
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or

Laafeld/Potrna 30
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Minderheitsrat der tschechischen und slowakischen Volksgruppe in Österreich / Minority Council of the
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Menšinová rada české a slovenské větve v Rakousko
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Hungarian Organizations in Austria
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Verein Roma / Association Roma
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Kulturverein österreichischer Roma / Cultural Association of the Austrian Roma
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Verein Roma – Service / Association Roma - Services
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Kroatischer Kulturverein in Burgenland / Croat Cultural Association in Burgenland
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Kroatisches Kultur- und Dokumentationszentrum / Croat Cultural and Documentation Centre
Hrvatski kulturni i dokumentarni centar
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STRZECHA /Verband der Polen in Österreich / Association of Poles in Austria
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In addition to these, there are about 200 branch association and clubs operating on the local levels that can be categorized anywhere from academic institutes to cultural associations to sport clubs. All minority group associations are registered associations under Austrian law and are not regulated by any public law.

Only the Carinthian Slovenes have their own political party:

Enotna lista / Einheitsliste / Unity List
Viktringer Ring 26
9020 Klagenfurt/Celovec
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The Austrian Minority Group Rights

I. Constitutional Protection of Minorities

The essential constitutional guarantees of the protection of minority groups are based on international obligations (Peace Treaty of 1919 and the State Treaty of 1955) that Austria had to sign following both of the World Wars.

The only constitutional clauses that represent a comprehensive and at the same time autonomous Austrian regulation concerning the protection of ethnic groups are in §19 of the Basic Law of 1867 (Imperial Law Gazette 1867/ 142) (further reference StGG), whose applicability concerning the minorities living in present-day Republic of Austria is disputed (although the doctrine supports applicability).

Original wording:

Article 19

(1) All ethnic entities of the empire enjoy equal rights, and each ethnic entity has an inviolable right to the preservation and fostering of its nationality and language

(2) The state recognizes the equal rights of all current languages in schools, administration and public life.

(3) In the regions in which several ethnic entities live, the public teaching institutes are to be organized in such a manner that without application of an obligation to learn a second national language, each of these ethnic entities receives the necessary means for education in its own language.

According to articles 66, 67 and 68 of the State Treaty of St. German (State Law Gazette 1920/303) (following reference: StV v St Germain) that also have constitutional rank, all members of Austrian minority groups are protected.

Original wording:

Article 66

(1) All Austrian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

(2) Differences of religion, creed or confession shall not prejudice any Austrian national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

(3) No restriction shall be imposed on the free use by any Austrian national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

(4) Notwithstanding any establishment by the Austrian Government of an official language, adequate facilities shall be given to Austrian nationals of non-German speech for the use of their language, either orally or in writing, before the courts.

Article 67

Austrian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Austrian nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

Article 68

(1) Austria will provide in the public educational system in towns and districts in which a considerable proportion of Austrian nationals of other than German speech are resident adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Austrian nationals through the medium of their own language. This provision shall not prevent the Austrian Government from making the teaching of the German language obligatory in the said schools.

(2) In towns and districts where there is a considerable proportion of Austrian nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious or charitable purposes.

Article 7 of the Austrian State Treaty of May 15, 1955 (Federal Law Gazette 1955/152 (following reference StV v Wien) includes the most important protection clauses for the Slovene and Croat minority groups in the "Länder" of Carinthia, Styria and Burgenland. Paragraphs 2-4 have constitutional rank according to § 2 (3) of the Federal Constitutional Law Amendment, Federal Law Gazette 59/1964.

Original Text:

Article 7 – Rights of the Slovene and Croat Minorities

(1) Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights as all other Austrian nationals including the right to their own associations, meetings and press in their own languages.

(2): They are entitled to elementary instruction in the Slovene or Croatian language and to a proportional number of secondary schools; in this connection, school curricula will be reviewed and a section of the Inspectorate of Education shall be established for Slovene and Croatian schools.

(3) In the administrative and judicial districts of Carinthia, Burgenland and Styria with Slovene, Croat or mixed populations, the Slovene or Croatian language shall be accepted as official languages in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene or Croatian language as well as in German.

(4) Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall participate in the cultural, administrative and judicial systems in these territories on equal terms with other Austrian nationals.

(5) The activity of organizations whose aim is to deprive the Croat or Slovene population of their minority capacity or rights shall be prohibited.

Article 8 of the Federal Constitutional Act (following reference B-VG)

Original Text

Article 8

1) The German language is, irrespective of rights granted by federal law to the linguistic minorities, the state language of the republic.

(2) The Republic of Austria (Federal Government, "Länder", and municipalities) is committed to their linguistic and cultural varieties, which have evolved in the course of time and finds its expression in the autochthonous ethnic groups. The language and culture, continued existence and protection of these ethnic groups are to be respected, safeguarded and promoted.

Article 7 of the **Minorities School Act for Carinthia (Federal Law Gazette 1959/101)** (following reference MindSchG f Ktn)

Original wording:

§ 7. The right to use the Slovene language as a language of instruction or to learn it as a compulsory subject is guaranteed to every school pupil in the geographical area described in § 10 (1) of this federal law and in the schools designated in §10 (1) of this federal law, as long as this is the declared intention of the legal guardians. A pupil can be allowed to use Slovene as a language of instruction or to learn it as a compulsory subject only with the declared intention of the legal guardian.

Article 1 of the **Minorities School Act for Burgenland (Federal Law Gazette 1994/641)** (following reference MindSchG f Bgld):

Original wording:

§ 1 (Constitutional clause)

(1) The right to use the Croatian or Hungarian language as a language of instruction or to learn it as a compulsory subject in Burgenland is guaranteed to Austrian nationals of the Croat and Hungarian minority groups in the schools designated according to § 6, § 10 and § 12 (1) of this federal law.

(2) A pupil cannot be allowed to use the Croatian or Hungarian language as a language of instruction against the declared intention of the legal guardian.

II. Federal Laws and Ordinances

The Minorities Group Act of July 7, 1976 (Federal Law Gazette 1976/196 and Federal Law Gazette I nr. 35/2002) (following references VolksgruppenG)

The most important provision in original wording:

SECTION I General Provisions

(1) Ethnic groups in Austria and their members are under the protection by law; preservation of ethnic groups and safeguarding of their existence are ensured. Their language and their traditions shall be respected.

(2) Ethnic groups in terms of this Federal Act are such groups of Austrian citizens living in parts of the Federal territory and having a language other than German as mother tongue and having traditions of their own.

(3) There are no restrictions for anybody to declare himself member of an ethnic group. A member of an ethnic group must not be discriminated by exercising or not any rights he is entitled to as such member. Nobody shall be obligated to give evidence of his/her being a member of an ethnic group.

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

1. The ethnic groups for which an ethnic group advisory board shall be instituted, including the number of members of the council.

2. The parts of the territory in which bilingual topographic signs shall be put up.

3. Authorities and public offices in which a language of an ethnic group may be used in addition to the German official language, but the right to use such language may be restricted to certain persons or matters.

(2) When issuing the regulations as provided for in paragraph 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 areas of the territory they live in, 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.

SECTION III. Financial support for ethnic groups

§ 8. (1) The Federal Government shall – irrespective of general financial support measures – award financial support for activities and projects serving the preservation and safeguarding of the existence of the ethnic groups, their traditions as well as their characteristics and rights.

(2) The Federal Minister of Finance shall, in consideration of the situation of the Federal budget and the objectives of paragraph (1) incorporate in the draft of the annual budget to be presented to the Federal Government an adequate amount for support funds, subdivided for benefits pursuant to § 9 paragraph 1 and benefits pursuant to § 9 paragraph 5.

SECTION IV. Topographic Names

§ 12. (1) Within the area of the parts of the territory as referred to pursuant to § 2 paragraph 1 subparagraph 2, names and signs of topographic character set up by regional bodies corporate under public law or by other bodies corporate and institutions of public law shall be worded 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 of the area of such parts of the territory.

(2) The regulation pursuant to § 2 paragraph 1 subparagraph 2 shall determine also the places eligible for bilingual naming, as well as the topographic 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) Topographic names existing only in the language of one ethnic group shall be used by regional corporate bodies under public law the way they are without being changed.

SECTION V. Official Language

§ 13. (1) The authorities and public offices shall ensure that the language of an ethnic group can be used for communication with such authorities and public offices pursuant to the provisions of the subject Section.

(2) When dealing with an authority or public office in terms of paragraph 1, everybody has the right to use the language of the ethnic group. Nobody however is allowed to withdraw from an act performed by a public officer intervening in an official function and due to its nature to be performed immediately or refuse to comply with it because the official act is not performed in the language of the ethnic group.

(3) Provided that they speak the language of an ethnic group, organs and public offices also of authorities other than as referred to in paragraph 1 shall communicate in the language of an ethnic group if this makes dealing with persons easier.

(4) Additional use of the language of the ethnic group in general public announcements of municipalities in which the language of an ethnic group is admitted as official language is admissible.

(5) The regulations on the use of the language of an ethnic group as official language do not apply to in-house communication of authorities and public offices.

The following implementation ordinances to the Minorities Group Act of 1976 are still in effect;

- Ordinance of the Federal Government regarding the Minorities Group Advisory Council, Federal Law Gazette 38/1977 and as a follow-up Federal Law Gazette 895 / 1993
- Ordinance of the Federal Government regarding the provision for parts of territories in which topographical signs and designations are to be put up in the German language and also in the Slovene language Federal Law Gazette II, 245/2006
- Ordinance of the Federal Government regarding the provision of the courts, administrative authorities and other public offices for which the Slovene language is allowed as an official language in addition to German, Federal Law Gazette 307/1977 and as a follow-up Federal Law Gazette II, 428/2000
- Ordinance of the Federal Government regarding the provision of the courts, administrative authorities and other public offices for which the Croatian language is allowed as an official language in addition to German, Federal Law Gazette 231/1990 and as a follow-up Federal Law Gazette 6/1991
- Ordinance of the Federal Government regarding the provision for parts of territories in which topographical signs and designations are to be put up not only in the German language and also in the Croatian or Hungarian language, Federal Law Gazette II, 170/2000
- Ordinance of the Federal Government regarding the provision of the courts, administrative authorities and other public offices for which the Hungarian language is allowed as an official language in addition to German, Federal Law Gazette 229/2000 and as a follow-up Federal Law Gazette II, 335/2000

The Treaty of Brünn between Austrian and Czechoslovakia from June 7, 1920 (Federal Law Gazette 1921/163) in § 19 standardizes rights to be under public law for private primary schools of the Czechoslovakian minority, as there were also such private schools (for the German minority) in the Republic of Czechoslovakia that were given this right to be organized under public law.

The Austrian Broadcasting Corporation Act - ORF Act (Federal Law Gazette 379/1984 and as a follow-up Federal Law Gazette I 83/2001) defined special mandates in § 5 (1) and (2) for broadcasting programmes in the languages of the autochthonic minority groups for the Austrian Broadcasting Corporation.

Original wording:

§ 5.

- (1) In the framework of those programmes distributed under § 3, reasonable programme shares must be provided in the languages of those national minorities which are represented by a National Minority Council. The scope of the programme share shall be laid down in the annual programme broadcasting plan following a consultation with the Audience Council.*
- (2) The Austrian Broadcasting Corporation may also partly comply with its mandate under paragraph 1 in that it emits programmes under paragraph 1 following a contractual agreement with other broadcasters in the areas of autochthonous minorities in Austria (paragraph 1) by using the transmission capacities allocated to these broadcasters. The scope of programmes broadcast in such manner shall be counted towards the programme shares listed under paragraph 1 as decided by the Board of Trustees at the proposal of the Director General following the consultation with the Audience Council. Similarly, the Austrian Broadcasting Corporation may participate in the creation and production of programmes by other broadcasters which distribute a separate programme geared to the need of the national minorities.*

II. Regional ("Länder") Laws

Burgenland

The Burgenland Kindergarten Act (Regional Law Gazette 1990/7) regulates the geographical scope and type of bilingual (German-Hungarian or German-Croatian) education in Burgenland. In the Kindergarten Acts in other regions the minority groups are not considered.

Carinthia

The Carinthian Kindergarten Fund Act (Regional Law Gazette 74/2001) created a fund for "Supporting the bi-lingual and multi-lingual kindergartens in the settlement areas of the Slovene minority group in Carinthia", called the "Carinthian Minority Group Kindergarten Fund". The act defines the settlement areas of the Slovene minority group in Carinthia as "those municipalities in which, according to §1 and §3 of the Minorities School System Implementation Act, instruction in at least one primary school is to be bilingual". The fund is to guarantee financial appropriations for covering operational deficits to those responsible for bilingual and multi-lingual kindergartens.

In addition to that, Austria adopted the following international instruments within multilateral framework for obligations for the protection of minorities:

From the instruments of a political, general but legally binding nature, the following are especially notable:

- the Declaration of the United Nations on the rights of persons belonging to national, ethnic,
- religious and linguistic minorities OF December 18, 1992.

- The document of the Copenhagen meeting of the Conference on the human dimension of the OSCE from June 29, 1990.
- The report of the OSCE-meeting of experts on national minorities in Geneva from July 19, 1992.
- The "Vienna Declaration" of the summit conference of the Council of Europe from October 9, 1993, as well as
- The instrument of the Central European initiative for the protection of minority rights from November 19, 1994.

From the area of instruments of an international nature, especially notable are:

- the European Human Rights Convention (following reference EMRK) is in its basic rights clauses immediately effective in Austria and has constitutional standing.
- The international pact on civil and political rights (Federal Law Gazette 1978/591)
- The European Framework Convention for the Protection of National Minorities from February 1, 1995 (Federal Law Gazette 1998/130) (following reference FC) was ratified on March 1, 1998 with a reservation on implementation, effective as of July 1, 1998, basically has to be implemented by domestic statutory provisions, as well as
- The European Charter on Regional or Minority Languages from November 5, 1992, signed on the same day but not yet ratified by Austria

III. Judicature of the Constitutional Court

The Austrian Constitutional Court has over the years taken on an important if not even a decisive role in the realization of minority rights of the Slovenes of Carinthia. Listed here are only the most important relevant decisions of the Constitutional Court in recent years:

Basis Principles of Minority Protection

In 1981, the Constitutional Court decided with the ruling **VfSlg.9224** that an effective minority protection also demands positive discrimination in the sense that the minorities should be granted more rights than the other nationals because first through positive discrimination can the legal equality of the members of the minorities be guaranteed. Concretely this concerns a petition of the Carinthian Unity List (KEL) about the unfair (in their opinion) changes in the voting district boundaries in Carinthia that would effectively prevent a party of the Slovene minority from getting into the Regional Assembly. This grievance was rejected by the Constitutional Court, but however the emphasis on "positive discrimination" remained a constant factor in the interpretations of decisions concerning minority rights.

School System

With the decision **VfSlg. 12.245** of December 15, 1989 the Constitutional Court ruled that the members of the Slovene minority in Carinthia have the right to elementary instruction (primary school) in the Slovene language in all of the region of Carinthia, whereby in the autochthonous settlement areas of the Slovene minority this possibility must be guaranteed in every municipality and with any number of registrations, outside

of this area as the need arises. Only on the basis of this decision was it possible to have bilingual instruction also in Klagenfurt / Celovec. As a result of this decision, the public bilingual primary school and the private bilingual primary school Hermagoras were opened.

With the decision number **G 2-4 / 2000** of March 9, 2000 the Constitutional Court ruled that in bilingual primary schools the children registered have to be taught in Slovene and German in approximately the same amounts in all school levels, because with the concept "elementary instruction" in § 7 of the State Treaty of Vienna of 1955 all four levels of the primary school was meant. Up till then bilingual instruction was limited to the first three levels, from the 4th level on, Slovene was imparted only in form of a special subject.

Official Language

With the decision **VfSlg. 11.585** in 1987, the Constitutional Court for the first time suspended parts of the Minorities Act (Federal Law Gazette 396 / 1976). This decision is in reference to the Burgenland Croats who have no possibility to make use of Croatian as an official language because of the lack of rulings by the Austrian Federal Government, in which localities and for which agencies Croatian would be allowed. The Constitutional Court ruled that the clauses of § 7 of the State Treaty of Vienna of 1955 regarding official languages is immediately applicable, so that the Federal Government and the simple law-making bodies could not prevent the implementation of these rights by their own inaction.

With the decision **VfSlg 14.425** from March 5, 1996, the Constitutional Court ruled that the members of Austrian minorities in all of Austria have the right to have their personal documents (birth certificates, marriage certificates, death certificates) also issued in their mother tongues. Up until this decision, the public offices only allowed this right in officially recognized bilingual municipalities. But, because the majority of the children are born in hospitals outside of the bilingual areas and of course also many people die in such hospitals, the members of the minorities have rarely been able to have their personal documents issues in the mother tongues.

With the decision **VfSlg. 15.582** from October 2, 1999, the Constitutional Court ruled that in federal and regional administrative offices in which Slovene as an official language is allowed in the sense of the goals of the Minorities Act of 1976, Federal Law Gazette 396/1976, those members of the minorities, who do not live in the recognized bilingual municipalities, also have the right to use Slovene as an official language. Up until this decision the right to use Slovene as an official language in federal and regional administrative offices was only allowed for those living in the officially recognized bilingual municipalities; other members of the Slovene minority group were denied this right.

With the decision number **V91/99** from October 4, 2000, the Constitutional Court ruled that Slovene as an official language had to be allowed at any rate in the municipalities that have had a 10% Slovene population over a longer period of time. With this decision the Constitutional Court suspended part of the ordinance on Slovene as an official language, Federal Law Gazette 307/1977, because this did not conform to § 7 of the

State Treaty of Vienna of 1955. Up until this decision the allowance of Slovene as an official language at the municipality level was effective *de facto* with the 25% clause.

The Constitutional Court left the percentage open for fixing a limit for the allowance of Slovene as an official language. It only determined that 10% proportion of minorities would be at any rate enough. From the decision VfSlg. 12836/1991 it is apparent that the Constitutional Court was moving toward even a 5% limit. In this decision, it ruled that in Eisenstadt Croatian as an official language did not have to be allowed because the Croat population are less than 5% of the population there.

Topography

With the decision number **G213/01, V 62/01 B 2075 /99** from December 13, 2001, the Constitutional Court ruled that the 25% clause for bilingual signs in the Minorities Act, Federal Law Gazette 396 / 1976, does not conform to § 7 of the State Treaty of Vienna. As in the decision concerning official languages (V 91/99) the Constitution Court determined that regarding bilingual signs, they must be intended for all municipalities and localities that have had a 10% Slovene population over a longer period of time. With this decision the Constitutional Court suspended parts of the ordinance regarding topographical signs and designations, Federal Law Gazette 306/1977 because this did not conform to § 7 of the State Treaty.

With the decision number **V 64/05-11** from December 13, 2001, the Constitutional Court ruled for the localities of Bleiburg / Pliberk and Bleiburg-Ebersdorf / Pliberk-Drveša vas that the place-name signs have to be bilingual because both localities have had more than a 10% Slovene population since the census of 1971. The Constitutional Court saw no reason to depart from its continual judicature, namely, that the criteria for defining a mixed-language area is considered to be a minority percentage of over 10% over a longer period of time. The Constitutional Court stays with its opinion that the results of the population census and not other parameters are decisive. The situations in the localities are relevant and not in the municipalities or in the administrative districts. The Constitutional Court specifically put on record: the ramifications of the suspension by the Constitutional Court is also that for the ordinance-issuing agencies the legal obligation exists to take away those mono-lingual traffic signs that were used for the public notification and coming into effect of the ordinances now suspended.

The case concerning the locality of St. Kanzian / Škocijan found that: the results of the population census of 2001 showed a proportion of 8.7% of Austrian nationals with Slovene as their language of everyday life. In 1991, this proportion was 9.9%. The results at hand show that the minority proportion in St. Kanzian / Škocijan remained under 10% for 2 population censuses – that is the value from which the Constitutional Court used as a parameter for its evaluation. In addition there is a recognizable declining tendency. St. Kanzian / Škocijan therefore no longer qualifies as a “mixed language area” for which there is an obligation under constitutional law to install signs and designation of a topographical nature in Slovene as well as in German.

With the decision number **V 46/06**, the Constitutional Court ruled that the place-name signs for the locality of Rückerdorf / Rikarja vas (municipality of Sittersdorf / Žitara vas) must be bilingual.

With the decision number **V 47/06**, the Constitutional Court ruled that the place-name signs for the locality of Buchbrunn / Bukovje (municipality of Eberndorf / Dobrla vas) must be bilingual.

With the decision number **V 544-58/06**, the Constitutional Court ruled in the continuation of its judicature:

- the entire topographical ordinance of 1977 was unconstitutional in its entirety, because regarding the political district of Klagenfurt / Celovec it was incomplete and the political districts of Villach / Beljak and Hermagor / Šmohor were not considered at all;
- in the political district of Völkermarkt / Velikovec, the place-name signs for Bad Eisenkappel / Železna Kapla, Loibach / Libuče (municipality of Bleiburg / Pliberk), Edling / Kazaze and Mökriach / Mokrije (municipality of Eberndorf / Dobrla vas), Grabelsdorf / Grabalja vas (municipality of St. Kanzian / Škocjan) in the use of the known measure must be bilingual;
- in the political district of Klagenfurt / Celovec the place-name signs of Hundsdorf / Podsinja vas (municipality of Feistritz im Rosental / Bistrica v Rožu) have to be bilingual;
- in the political district of Villach / Beljak the place-name signs for Mühlbach / Reka (municipality of St. Jakob in Rosental / Št. Jakob v Rožu) must be bilingual;
- in the political district of Hermagor / Šmohor, the place-name signs for Dellach / Dole (municipality of Hermagor / Šmohor) must be bilingual.

With the decision number **V 81/06**, the Constitutional Court ruled that putting up an additional sign with Slovene names for the localities instead of a bilingual place-name sign finds to justification in the traffic ordinances. The legal imperative derived from the relevant clauses demands that both the German and the Slovene "name of the locality" are to be indicated on the place-name sign and "end of locality" sign.

Conclusion

The determination suggests itself that the Republic of Austria, despite seemingly comprehensive and extensive domestic laws concerning the protection of the Slovene minority, has not managed for most of the areas to this day to approve an appropriate implementation legislation in order to comply with her explicit international obligations derived from the State Treaty of Vienna of 1955, and thus also offer appropriate protection of the minority groups from assimilation. Detailed analysis and investigations confirm that the level of legal protection for the minority groups have step-by-step been reduced primarily due to domestic regulations. But also the already approved regulations generally are inappropriately and incompletely implemented.

Minority Group Assistance

According to § 8 of the Minorities Group Act, the Federal Government, in an annual federal estimate, is to allot an appropriate contribution to measures and projects that serve the preservation and security of the existence of the Austrian minorities, their folklore as well as their characteristics and rights.

Representative organizations of the Austrian minorities consider the amount of the minority group assistance as too low. Above that, delays in the disbursement and the kind of bureaucratic modalities of final clearing have been criticized and found pure chicanery.

The highest controlling body of the Republic, the Court of Audit (Rechnungshof, RH), has repeatedly found fault with the subsidy practices of the responsible department, the Federal Chancellery, and stated in its report of 1988 among other things: "The current general guidelines for subsidies of the Federal Government reduces the incentives of the minorities to take up at least cost-effective activities. Even though the Court of Audit has found fault with the sluggish disbursement of subsidies for the last ten years, in December 1997, still about 30% of the annual subsidies had not been paid out", and recommended (1) The subsidy grants and the final clearings are to be accelerated. (2) Only clearly assignable subsidies for goals of the Minorities Act with consideration of current alternatives should be granted. (3) The planning over several years with main focuses should be developed. (4) All measures that would lead to an increase in the activities of the grantee should be developed." That this massive criticism of the Court of Audit was hardly taken seriously for a long time points to the next and most current report concerning this matter from the year 2004, in which among other things was determined: "The minority group assistance and its distribution among the individual minority groups has essentially stayed unchanged since 1995, at around 3.8 million EUR. There were delays in the execution of the grants in the Federal Chancellery, especially in the disbursement of the subsidies." Further it was criticized. "The annual report that according to the Minorities Act is to be sent to the Federal Parliament was issued by the Federal Chancellery the last time for the fiscal year 1995."

Several minority group organizations find the administration of the minority groups assistance a chicanery and often enough dependent on the good conduct of the those requesting the grant. Still the grants are paid out late and some requesting the grants got a negative answer, if at all, often a year after application. At least concerning the disbursement of the subsidies there has been a notable improvement recently.

The fact that the minority groups assistance has remained the same for more than a decade, and *de facto* due to the reasons of withholdings on the part of the Federal Chancellery and the annual inflation rate has actually shrunk by about a third, makes the work of the minority groups very difficult. The minority groups demand a noticeable increase in assistance in the year 2007 of at least half, from the present 3.8 million to 5.5 million €

4.) (Non)-Implementation of international and constitutional provisions for the protection of minorities

In an attempt to substantiate an allegedly high standard of minority protection in Austria, the Second Report submitted by Austria referred to the conclusion in the report of the so-called "Council of the Wise" ("Weisenrat") from the year 2000, in which the authors Martti Ahtisaari, Jochen Frowein and Marcelino Oreja came to the following conclusion concerning minorities' rights: *"The Austrian legal system has created a special protection for the minorities living in Austria. This protection has constitutional rank. The minority protection granted by the Austrian legal system to the minorities living in Austria is broader than the protection granted in many other European states."*

In the spring of 2000 at the request of the 14 EU member states, the President of the European Court for Human Rights appointed a 3-person "Council of the Wise" to investigate the political character of the Austrian Freedom Party. At that time, the Freedom Party together with the Austrian People's Party made up the new government. The "Council of the Wise" was to examine the relationship of this government to minorities' rights, refugees and immigrants. During their visit to Austria in July, 2000, the "Council of the Wise" were not willing to meet with representatives of the Austrian minorities, which was greatly disappointing to them. Shortly before the adoption of the report, a single representative of the Carinthian Slovenes, Valentine Sima, along with a number of other NGOs, was received by the "Council of the Wise". The report that was presented in September, 2000, contained a description of the current situation of the Austrian minorities with the conclusion quoted above. The Austrian government was satisfied, but not the minorities, as they had great expectations on the work of the "Wise". Their representative evaluated the report on the situation of the minorities as "superficial, generalized, undifferentiated, and missing the point" and as a "slap in the face for the minorities whose future attempts for equality will be even more difficult to achieve."

The "Wise Men" did not competently study either the legal or the factual situation of the Austrian minorities, although the Austrian Centre for Ethnic Groups sent them a comprehensive and complete report in sufficient time. In this report the blatant discrepancy between the legal norm and the actual situation was pointed out. The report of the "Council of the Wise" mentioned neither § 19 of the Basic Law nor the protection clauses of the State Treaty of St. Germain, both of which are valid Austrian constitutional rights. The mission of the "Council of the Wise" was perhaps in the beginning supposed to be a check on the constitutionality of Austria and of the situation of human rights and minority rights in Austria. Their mode of operation and their report, however, leave room for doubt about the purpose of their mission. The "Council of the Wise" essentially relied on official standpoints of the Austrian government. A representative of the minority groups was heard only at the end, after the report was already finished, so that the comments of the minority group representative were not taken into consideration. Thus, the "mission of the wise" missed its goal and exposed the double standards of the EU, which demands higher requirements from the EU candidate countries than it does from its member states.

It is indisputable that minority protection in Austria is legally more extensive than in some other European countries. That is because the essential constitutional guarantees of the protection of ethnic groups in Austria are based on international obligations that Austria had to enter into in the wake of the two World Wars.

The practice shows, however, a very different picture: the application of the minority protection clauses are restrictive.

As an example, in the following is the text of a presentation held by Rudi Vouk in October, 2006:

"In the previous presentations and lectures you have heard many statements packed carefully in legal terms and expressions and precautionary diplomatic formulations. I apologize in advance for departing from this pattern. I am a lawyer by profession and we lawyers are not only obliged to represent the interests of our clients. In §9 (1) of the Ordinance for Lawyers there is further the nice formulation: "He is authorized to present everything candidly that he sees fit to represent his client according to the law, and for his means of attack and his defence strategies to use everything that does not contradict his mandate, his conscience or the law". Thus we are really obliged to candidly express ourselves somewhat more clearly in the interest of the party involved.

When as a representative of the minority groups, which I am, I theoretically make the Slovene minority group to my client, the situation concerning the implementation of the rights of this minority group is anything but rosy. In public, the impression could be given that in recent years that the issue only concerns place-name signs and when this issue is solved, everything will be fine again. In reality, the place-name issue hides numerous other important problems. The discussion on bilingual place-name signs is more or less a symptom for the unsatisfactory situations in numerous other areas. A few examples only from the last three or four months:

Let's look at the area of official language: Just last weekend a colleague from this house got married. He comes from a Slovene family, she from a family of the majority population. Quasi as an expression of this bilingual relationship they wanted to have the marriage ceremony performed bilingually and to have the marriage certificate in both German and Slovene. They are entitled to this in officially recognized bilingual municipalities. In order not to make a mistake about this, they asked weeks in advance, which municipalities these are, and on this basis chose the municipality of Ebenthal / Žrelec, coincidentally the home municipality of the bride. They spoke with the presiding registrar beforehand, who said at first he didn't know the rules. So they had a short legal opinion drawn up, photocopies of appropriate decisions of the high courts as well as the text of the law, which was clear enough in itself. Everything to no avail, as the registrar refused to issue the marriage licence in both languages. He accepted this in a composed way, she was absolutely shocked, because she couldn't believe that the rights of the Carinthian Slovenes would be so obviously ignored. Naturally, the way of legal process is open to them and sometime or another they will have their rights confirmed by the Administrative Court. But what does it matter then, the wedding day was spoiled and one should ask what drove the registrar to spoil for this pair the supposedly most beautiful day of their lives in the illegal manner. To avoid any misunderstandings here, Ebenthal / Žrelec is an SPÖ municipality.

Another example:

In the municipality of St. Kanzian / Škocjan, a group of Slovene citizens demanded that the municipality issue the assessment notices (for water, waste-water and garbage pick-up) in Slovene. They are at any rate entitled to this. According to the judicature of the Constitutional Court, municipalities in the district of Völkermarkt / Velikovec, in which there is more than 10% Slovenes, Slovene has to be allowed as an official language. As the assessment notices were not issued in the Slovene language, at least one municipal citizen decided he would pay the fees only if the legally designated assessment notice was issued in the Slovene language. The municipality did not do this and instead simply sent out a notice of arrears and brought in a request for execution. The municipal citizen, of course, did not know this until his employer dunned his wages. There was with a lot of trouble and a certain amount of legal finesse was needed to discontinue the execution, the entire amount had to be deposited with the court. It is not true that the municipality refused a petition to use the Slovene language, so that one could attack the move legally. The municipality simply ignored all the Slovene petitions. Even a clear recommendation from the Department of Municipalities of the regional government to the municipality government didn't change things. There is no choice but to either give up this minority right or to file a complaint against those responsible in the municipality, which would not exactly improve the atmosphere. And it is not true that it would cause a great deal of trouble to issue the assessment notices in Slovene, as one could copy those from neighbouring municipalities where this more or less functions. And again, to avoid any misunderstandings, this concerns an SPÖ municipality.

Even in municipalities where the use of Slovene as an official language functions fairly well, the applicants are regularly told how much work it is to issue these written forms in Slovene. One has to have a lot of stubbornness not to give in, not to give up. And on the other hand, one hears regularly hears the reproach directed at the minority group that the right of having Slovene as an official language is, anyway, only seldom made use of. It's kept a secret that without a detailed legal knowledge and a large amount of self-confidence it's better not even to try.

Otherwise it can happen that one is even punished for using Slovene as an official language.

A group of young people at the lake "Klopeiner-See" were making too much noise. The police came and right then and there cited them for indecent uproar and excitement. Euro 21.00 were to be paid. One of the youth demanded this official act to be held in Slovene. He was taken to the police station where he had to wait more than hour for an interpreter. After that the whole thing could have ended with a fine of €21.-, but instead the youth was issued 3 additional fines for a total of €120. After this the youth regularly got dunning letters with threats of execution. Only after the intervention of a lawyer, did it come out that, unfortunately, these dunning letters were issued by a defective computer program. Normal citizens would simply have paid the fine and accepted the situation that an attempt to use Slovene with the police could lead to a fine six times as high.

In the area of official languages rulings, one could continue with a very long list.

But this is not only about official languages. Concerning pre-school child-care, in the general public there is the image that the issue of bilingual kindergartens has been wonderfully solved. But it's been kept a secret that this only concerns the private bilingual kindergartens. These have been set up by the Slovene minority group themselves, because numerous municipalities have refused to allow registration for bilingual kindergarten groups. They have used the excuse that there is no need for them and similar excuses. Where private bilingual kindergartens exist they hopelessly overbooked and parents register their children at birth to secure a place there. But there are not private bilingual kindergartens everywhere, we cannot avoid that. In the area of municipal kindergartens, there are simply no regulations on bilingual kindergarten education. Contrary to Burgenland, the Carinthian Kindergarten Act is silent on this issue. It depends totally on the mayor if, whether and how much Slovene kindergarten education will be allowed. There are municipal kindergartens that are bilingual on paper, but in reality no more than 20 minutes a week in Slovene are allowed. There are, of course, positive examples, but also as many negative examples, or examples in which this is not even a discussion topic. And when the general public is made aware of the situation, there is always a reference to the financing of the private kindergartens, the Carinthian Slovenes are reproached for never being satisfied. To finish the picture: In the training of bilingual kindergarten teachers there is a course for Slovene but no appropriate certification. Whether a bilingual kindergarten teacher is sufficiently qualified is not verifiable; it was not considered necessary to provide for this in the curriculum.

After kindergarten comes school. And here as well, in the general public, there is the peaceful picture that everything is just fine. The registration to bilingual instruction has been increasing for years. In the meantime, more than one-third of the pupils in the bilingual areas are registered for bilingual instruction. If we look at the situation carefully, we see that of this one-third only about one-fifth have sufficient command of Slovene, another one-fifth have some command but nearly two-thirds come to bilingual instruction with no knowledge of Slovene at all. This is, of course, not the problem, it is wonderful that more and more parents of the majority population decide to allow their children access to the Slovene language in a border area with ever closer relationship with its neighbouring country – this is a very reasonable development. The teachers, however, face the difficult situation to have to please everybody. If they teach Slovene as a foreign language to those who have no previous knowledge of Slovene, then the children of the minority group who have some command of the language get very little. If they teach Slovene at the normal level, the other children can't keep up. The results are unsatisfactory for both groups. One hears the criticism that the children don't learn anything. The decision for bilingual education then is often revised, the attempt to learn both languages in the bilingual areas often discontinued. There are models with better results, but in these models the pre-condition is that all the children are registered for bilingual schooling. In the bilingual areas that shouldn't be a problem – until 1958 we had such a situation, and internationally that is the usual thing. Here with us, it would not even be possible; the constitution would have to be changed. We have in the Minorities' School Act the specific constitutional provision that no child can be instructed in Slovene without the express consent of the parents. It would be possible by a simple ordinance to make Italian a compulsory subject for all children, or French or Chinese. Only with making Slovene a compulsory subject do we need a constitutional amendment. The urgently needed discussion on a reform of the bilingual school system is not happening, on the ground of the well-founded fear that such a discussion might

immediately be turned against the established bilingual schools and the current positive approaches would be undone. The Carinthian Slovenes can still feel the chill in their bones from the school debates of the 1980s.

Numerous questions are still open concerning the bilingual school situation. It should go without saying that the headmaster of a bilingual school has bilingual qualifications himself or herself. Until 1976, this was specifically the case. Until 1999 this was so in practice. Then one began to appoint monolingual headmasters for bilingual schools. One candidate filed a complaint with the Constitutional Court, where he won the case formally, on the grounds that the appointment process was not transparent. Instead of repeating the process correctly, the Carinthian regional government simply suspended the whole thing. The candidate filed another petition to the Constitutional Court and again won the case. But it has helped him very little –after six years of court cases he is now nearly retired. Another example: in Velden / Vrba there were two primary schools, a larger one in which all children were registered for bilingual instruction and a smaller monolingual one. The schools were combined, but who was appointed headmaster? Not the headmaster of the larger bilingual school but rather his monolingual colleague. Whether the whole process of appointment was correct is an open question at the moment, and how it will end one can tell right now. But it is typical that such marginal circumstances always lead to such problems. Bilingualism in after-school care hardly exists at all and is not problematized; the issue of the closing of small schools hits the minority group especially hard; the current issues in connection with bilingual instruction would fill evenings of discussion.

To get from the schools to other minority demands let us stay for a moment in the area of education. Besides the German language music schools, there is also the Slovene music school Glasbene šola. The music schools are financed by public funds, specifically from radio and television fees. In the meantime, according to clear legal regulations, these contributions from radio and television fees are to be used in Carinthia to finance the music schools, and so also the Slovene music schools. In reality they do not get any of these funds. What they get is a subsidy for the Slovene music schools that is less than one-fourth of the subsidies per pupil as for the majority music schools. Glasbene šola has to file a petition to the Constitutional Court to get even this amount, on the basis of the State Treaty of St. Germain of 1920 that states that of all public funds for educational purposes a commensurate amount is to be set aside for the minorities. But it is afraid to do so on the grounds that in this case for the entire length of the procedures with an uncertain end they would not get any payments at all and would be forced to close down. While the Glasbene šola cannot manage with the inadequate funds, it needs additional funds from the general minority groups' funds which are actually designated for other things. This money is lacking then for the Slovene cultural associations and other institutions of the Slovene minority group. Incidentally, the subsidies for the minority groups have not been increased since 1995, which actually means due to inflation over this ten-year period the funds have been reduced. The radio and television fees have been increased however, and only one-half of this increase would guarantee the survival of the Slovene music schools. Unofficially of course, we are told that would be no problem – just relinquish the demand for additional place-name signs....

Another example: Recently a draft for a new Carinthian Print Media Act was released for assessment. The subsidies for the print media are considerable. But, in order to be granted these subsidies, the newspaper has to have at least 3000 subscribers. As a matter of course it was forgotten that the minority newspaper "Novice", because of the smallness of the Slovene minority group, cannot meet this criteria. And so this guarantees that our newspaper "Novice" has to continually fight for its very existence. A special subsidy for minority group media is simply not provided for.

In § 7 of the State Treaty we have the wonderful provision that organizations whose goals it is to take away the rights of the minorities are to be forbidden. No one demands that the BZÖ be forbidden. It would be self-evident, however, in the case of this provision to think about such organizations as the Carinthian Defence Fighters' Union. This is, indeed, an idle right; there has never been action taken on this provision. At the moment no one is demanding this. But is it necessary to give such organizations a semblance of legitimacy? This evening on the occasion of the anniversary of the Carinthian Plebiscite of 1920, there is an event sponsored by the Carinthian Defence Fighters' Union, under the patronage of the Military Command Headquarters for Carinthia; the military band is playing there, too. The Austrian Military should basically remain politically neutral. In this situation in which – not for the first time, this is traditional – the military officially participates in the events of the Carinthian Defence Fighters' Union, the military has left the range of neutrality in the issue of minority protection, and gives the semblance of a state function to organizations hostile to the minorities – that under a strict interpretation should be officially banned.

The long list of legal problems and the ignorance of the minority group rights besides the place-name signs can go on and on. These examples all just occurred recently. On paper the legal situation doesn't look so bad, but in daily practice it's totally different. We are far away from an implicitness of compliance with the provision of the protection of minorities. Again and again, minority rights have to be petitioned through the courts, and as with the issue of the place-name signs, not even that is enough. To complicate matters further, individuals have to go the way of the courts, with all the risks of costs, time and psychological pressure and with the result that they are often tagged as agitators, radical fomenters. The right to file class action suits does not exist for the minority group organizations that could demand minorities' rights in the name of the minority group. The representative organizations are associations, legally no better off than a savings club at the local pub. The wish for a regulated representation of interests under public law has not found an attentive hearing in the last decades. There is no political representation of the minority groups in the law-making bodies, as is usual in many countries in Europe – and so there is no forum where the various problems as discussed previously can be brought forth. They remain hidden and silenced. An atmosphere of resignation has spread to many members of the minority groups because always the same problems have been coming up for decades without any willingness to come to a solution or at least a factual dialogue. That no one has ever been made accountable for contempt of the minority group's rights I don't even need to mention. In this area breaking the law goes without penalties, it even helps foster one's career.

Now in conclusion, a brief look at the place-name issue.

We have a decision of the Constitutional Court that has not been implemented for five years. The discussion about it is well-known. Above all we have a State Treaty that even after 50 years has not been fully implemented. If the criteria for putting up topographical signs and designations developed by the Constitutional Court in direct use of the State Treaty was applied at the time of the decree of the State Treaty, there would be over 600 localities in southern Carinthia stipulated for bilingual signs. The Constitutional Court suspended the 25% clause in the Minorities Act of 1976 as unconstitutional and meant that 10% would be sufficient. So, if one logically wanted to determine which localities had 10% Slovene population in 1976 in order to implement the Constitutional Court decision, there would be about 400 localities. And by the way, if the 25% clause had actually been implemented in 1976 we would have had over 200 localities with bilingual signs for over 30 years and not only the 93 that are now allotted and the 77 that were actually put up. At that time a 25% clause was stipulated, but actually in the ordinance only those localities were listed that had a 60% Slovene population in the 1971 census. The Republic was not even ready to stand by its own very restrictive – and in the end – unconstitutional provisions. Even if only the census of 2001 was used as a basis, there would be 250 localities that according to the judicature of the Constitutional Court would have to have bilingual place-name signs. But one heard nothing of all that in these last five years since the decision of the Constitutional Court. Without any system, suddenly 158 localities were earmarked for bilingual signs and then, under the pressure of circumstances and the condition that additionally an opening clause was to be provided, the Carinthian Slovenes finally declared their approval. The corresponding draft of an ordinance was suddenly over night swept from the table, and was substituted by a draft for a constitutional law that allowed for only 141 bilingual localities, and this with an opening clause that in reality would prevent for all time the possibility of additional place-name signs. While the Constitutional Court demanded a 10% population, the draft had an initial 15 % clause; in municipalities with less than a 15% Slovene population only those localities with a 33% Slovene population at the present time would qualify. It doesn't get much more absurd: the Constitutional Court suspends the 25% clause as being too high and the law should be amended with a 33% clause! This draft, thank God, was defeated. Today I wonder how that was ever possible. Since the draft was approved by the Federal Government, supported by the Carinthia political parties and even greeted by the Slovenian Foreign Minister – it really is sensational that we were able again to avert an attempt to revise the State Treaty. One must again urgently point out that this attempt to amend the content of the State Treaty would not only affect the topographical signs. The official language ruling is closely tied to this, and the Carinthian regional governor, in his initial euphoria, openly announced that a further consequence would relate to the bilingual school system. The danger still exists that not only the topography area, but also the entire field of application of the minority protections provisions would be limited.

Unfortunately, in this attempt also the Constitutional Court played an incomprehensible role that must be criticized. In its decision of June 26, 2006 it wrote that St. Kanzian / Škocjan, the place of the test case, would not have to have a bilingual sign. The Constitutional Court brought in a legal construction of "falling tendencies". It explained that St. Kanzian / Škocjan falls out of the topography area because in this locality after the last census there was less than a 10% Slovene population left. The argument of "falling tendencies" is not correct. The Slovene population actually increased in absolute numbers, it was just that the majority population increased more, so that all in all there

was a lower percentage. What kind of an understanding of provisions for minority protection is behind all these decisions that say minority protection can be omitted when the minority falls under a certain percentage? If the bilingual topographical signs had to have been put up in 1955, it would have been done and the minority rights would have been observed, and if there hadn't been continuous cases as already mentioned, then there would, of course, not ever been a "falling tendency". If you follow the judicature in this way, then you only have to postpone the implementation of minority rights until the minority group becomes so weak that you can drop them altogether.

In this conference, the framework conventions and the charter have been presented in detail. That in this European Convention there is a prohibition on the deterioration in the area of minority protection, the Constitutional Court did not go into. The political pressure to end the discussion once and for all was far too high. On this decision we have brought in a motion to have the case re-opened. Within a short time more than 14 % of the population of St. Kanzian swore themselves by name and signed declaration to be members of the Slovene minority group. This alone showed that the results of the population censuses are obviously used to the disadvantage of the minority group and therefore can only be carefully "enjoyed". Nevertheless we are prepared to accept the results, but not in the sense of "falling tendencies" and the possibility to count away the minority population. This has nothing to do with minority protection as it at least should be European standard –at least on paper.

In conclusion it is left to say that the minority group has been engaged for decades in the implementation of rights that are on paper and to which the Federal Government likes to point to in reports on the situation of the minority groups. We are still making an effort to implement a 50 year old State Treaty, efforts that in a constitutional state should not be necessary. The world and the situation of the minorities have changed dramatically since then. We can hardly act and react upon the needs for the preservation of the minority group. We are still radical because we only demand the preservation of current legal norms, how much more radical would we be able to be if we would insist on current demands, which is actually the job of every representation of interests."

Article 19 of the Basic Law of December 21, 1867

The applicability of § 19 of the Basic Law for the minorities living in present-day republican Austria is controversial; legal doctrine supports the applicability. As much as it be the case that the factual conditions have been transferred to the Republic, as little does the situation warrant the conclusion that the old Austrian concept of the protection of nationalities has simply become obsolete. On the contrary. The approaches to the conception of a legal group, as they could be interpreted in §19 of the Basic Law partially were already evolved in the judicature of the imperial court, are becoming important in the changing condition of a minorities' situation: while ethnic *groups* as components of a multinational state can hardly be threatening to each other's existence, ethnic *minorities* see themselves as under massive pressure to assimilate on the part of the majority culture. This makes the perpetuation of the minority culture a major concern of basic rights which can only be adequately implemented as a collective right.

In the year 2000, the Office of the Federal Chancellery presented a draft for an amendment to the Federal Constitutional Law (national policy objective – national Minorities), in which, besides the commitment of Austria to its historically grown linguistic and cultural diversity, there was a proposal for the annulment of § 19 of the Basic Law. In the explanation it is stated by the Office of the Federal Chancellery that the validity and applicability of this article is controversial in the theory and practice of the judiciary. In its decision VfSlg. 2459 / 1952, the Constitutional Court advanced the view that this article has been superseded by § 66, § 67, and § 68 in the Treaty of St. Germain. In two later decisions (VfSlg. 3509 / 1959 and 9224 / 1991) the question of the superceding of § 19 was explicitly left open. That is why the Office of the Federal Chancellery suggested the formal annulment of § 19 of the Basic Law “for reasons of legal clarity”, whereby it must be noted that the national policy objective (new paragraph 2 § 8 of the Federal Constitutional Law) is an appropriate substitute for the still valid parts of § 19 of the Basic Law. Due to the strong protests of the Austrian minorities and the intensified supervision of the 14 member states of the European Union the suspension of § 19 was not implemented. This attempt confirms, however, the fact that the Basic Law is still valid.

The international origins of the minority protection in Austria implicates that these are only rudimentary and inconsistent. The provisions of the State Treaty of St. Germain pertain to all minorities, but contain - appropriate to the union-of-nations concept of that time – hardly any provisions that transcend a protection against discrimination relating to the rights of an individual. And §7 of the State Treaty of Vienna, which contains detailed positive obligations for protection and benefits, was comprised only for those minorities for whom outside protector states managed to enforce guarantees, namely for the Croats and Slovenes in Carinthia, Styria and Burgenland.

The core of the catalogue of basic rights of the Austrian Federal Constitution is still the Basic Law on the general rights of citizens from 1867 (see § 149 (1) of the Federal Constitutional Law. The applicability of § 19 is, as already mentioned, controversial. Not least because the

Austrian Centre for Ethnic Groups suggested a new formulation of § 19 of the Basic Law instead of the National Policy Objective of § 8 (2) of the Federal Constitutional Law, which went into effect of August 1, 2000, and was given immense support in judicial circles. For various reasons, a new formulation of § 19 of the Basic Law of 1867 is preferable to a simple national policy objective: for formal reasons, a national policy objective is out of place in the Austrian constitutional charter, because the Federal Constitutional Law has the function and style of a directive for political procedures (“rules of the game constitution”). The new formulation of §19 of the Basic Law would leave the stipulations in the Austrian Catalogue of Basic Rights of 1867 and emphasis more strongly the Austrian identity that has its roots in the linguistic and cultural diversity of the monarchy.

The draft of the Austrian Centre for Ethnic Groups attempts to substitute the controversial and very fragmented constitutional legal position with a unified stipulation. This is equivalent to the attempt to revise the general fragmentation of the Federal Constitutional Law. And it is a justified concern of the Austrian minority groups to create

a unified and clear constitutional situation for all the minority groups and to anchor this in the Federal Constitutional Law in an appropriate place.

Concerning the systematic placement of such an anchoring, the draft of the Austrian Centre for Ethnic Groups is based on the consideration that the Basic Law is still the actual constitutional charter relating to basic rights. Because with the constitutionally granted rights of the minority groups it concerns the basic rights of the members of minority groups as well as the minority groups as such, the provisions in the Basic Law are preferable to those in the Federal Constitutional Law. Thus, the subjective character of these rights is emphasized. Article 19 of the Basic Law is also important because it contains the only provision concerning the protection of minorities with a comprehensive validity.

Concerning the content, the draft attempts to unify the current holding of constitutionally guaranteed rights of minority groups and the members of minority groups. The rights guaranteed in the State Treaty of Vienna to the Slovene and Croat minorities in Carinthia, Styria and Burgenland are to be applied to all "autochthonous" minorities. Loopholes in the current set of rights are closed in that, for example, also the kindergarten system is included. The judicature of the Constitutional Court is taken into consideration. To guarantee the draft's

ability to reach a consensus, not only principally new rights not yet anchored in current constitutional law are provided for. The existing draft attempts a consolidation of the currently valid Federal Constitutional Law. A further development of this collection of rights is a question of constitutional politics, for which appropriate consensus is necessary. The system of protection rights will be carefully further developed in that the minority groups as such would be guaranteed the possibility to enforce their collective rights, and this can be connected to the judicature of the imperial court on §19 of the Basic Law.

Draft of the Austrian Centre for Ethnic Groups in original wording:

Federal Constitution Act of _____ with which the Basic Law concerning the rights of the citizens is to be amended.

Article I

Article 19 of the Basic Law of December 21, 1867, Imperial Law Gazette nr. 142, concerning the general rights of citizens for those countries and kingdoms represented in the Imperial Council, last amended through the Federal Constitutional Law, Federal Law Gazette nr. 684 / 1988, is as follows:

(1) The Republic of Austria (the Federation, "Länder" and municipalities) is committed to its linguistic and cultural diversity which has evolved in the course of time and finds its expression in the autochthonous ethnic groups. The language and culture, continued existence and protection of these ethnic groups shall be respected, safeguarded and promoted. The minority groups and their members have special protection under the law.

(2) There are no restrictions for anybody to declare himself a member of an ethnic group. A member of an ethnic group must not be discriminated against by exercising or

not any rights he is entitled to as such member. Nobody shall be obligated to give evidence of his/her being a member of an ethnic group.

(3) The minority groups and their members have the right to kindergarten and school instruction in their respective minority group language. The number and location of kindergartens and schools in which the minority group language is taught, as well as the amount of this instruction are to be determined based on the amount of interest in the preservation of the use of the minority group language in the traditional settlement areas and above that according to local needs.

(4) The members of the minority groups have the right to use their minority group language in public life and in dealings with public offices. Commensurate with need, but at any rate in the traditional settlement areas, the minority group language is to be used along with German as an official language equal before the law. In addition the members of the minority groups are granted appropriate facilitation in the use of the minority group language. In their traditional settlement areas, the minority groups have the right to topographical signs and designations written in the minority group language.

(5) Associations and representative bodies whose legal purpose is to represent the interests of the minority groups and are representative of the minority groups, have the right to enforce the rights anchored in this article and legal interests of the respective minority group before state authorities. The rights of the members of the minority groups remain inviolate.

Article II

Article 7 of the State Treaty concerning the reconstitution of an independent and democratic Austria, Federal Law Gazette Nr. 152/1855, remains inviolate.

Article III

The Federal Government is responsible for the implementation of this Federal Constitutional Law

In spite of all the misgivings voiced, Austria took the path of national priority objectives. In general, national priority objectives grant no subjective rights, rather they serve as an objective measurement for law-making and implementation. As a measurement for the verification of the laws, such constitutional applications are not suitable, as they lack precise linguistic formulations. As law-making applications they provide guidelines for future regulations of certain materials, whereby the failure to act on the part of the law-makers is not opposable. For state administration they serve as a measure for interpretation and as a bid for consideration.

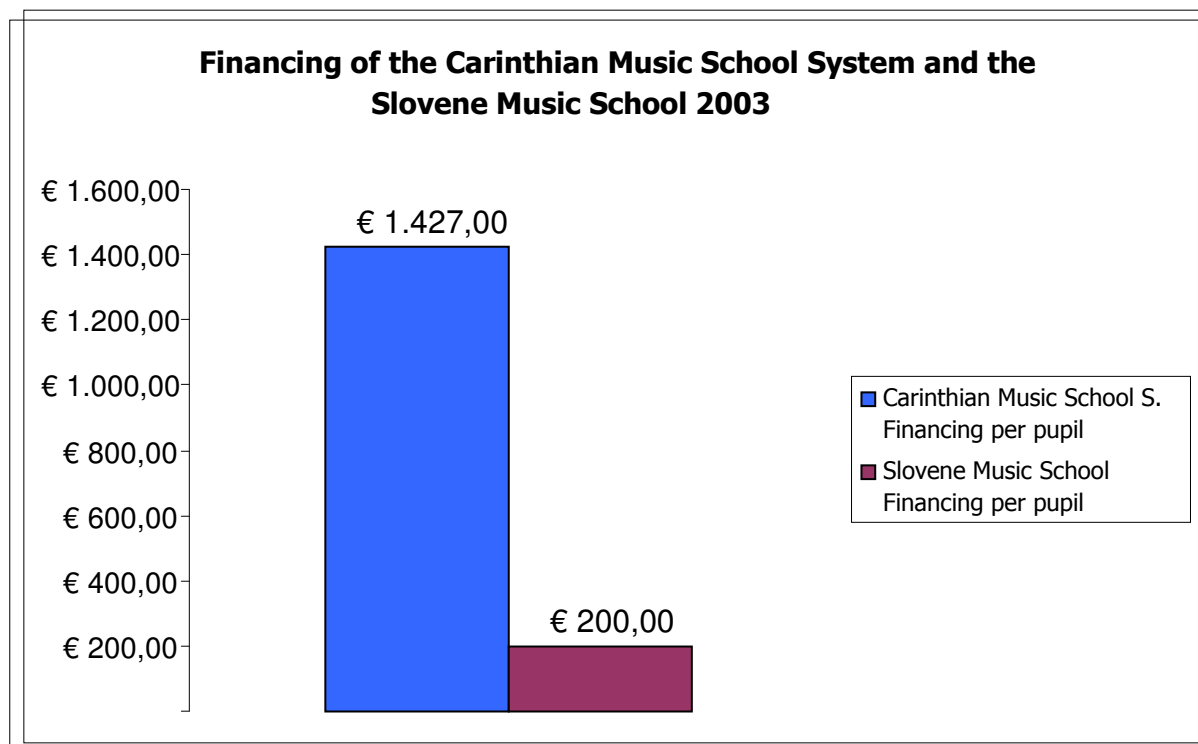
Article 68 (2) of the State Treaty of St. Germain

According to § 149 (1) of the Federal Constitutional Law the minority provisions of the Treaty of St. Germain are considered as federal constitutional rights. The Peace Treaty of St. Germain means a qualitative regression in minority protection, because, contrary to the old Austrian right of nationalities, it brings in the individual protection of members of the minority groups and no longer the minority as a whole. The doctrines thus reject any interpretation, whereby the provision for protection of the Treaty of St. Germain should replace § 19 of the Basic Law. It interprets the wording of § 62 of the Treaty of St. Germain in the way that minimal standards are defined, while § 19 of the Basic Law allows a higher level of minority protection.

In § 68 (facilitating instruction in primary school in the minority language, the right to an appropriate proportion of budgetary means) norms of positive minority rights are expressed that are contingent on a "considerable number" of members of the minority groups that exist in cities and municipalities. In the old Austrian rights of nationalities the highest courts determined as a condition for recognizing a language as a "typical language" a low percentage of speakers of the minority languages within the whole population of an administrative unit; it could even be under 5%.

Article 68 (2) of the Treaty of St. Germain orders that in cities and districts where a relatively considerable number of Austrian nationals live who belong to a minority group of race, religion or language, these minorities are secured "an appropriate proportion of all the amounts from public funds in state, municipal or other budgets for, for instance, education, religious or charitable purposes." The Constitutional Court in VfSlg 9224 / 1981 determined that through §68 (2) of the Treaty of St. Germain the minorities as such are granted a (material) entitlement that extends to an appropriate proportion of the public funds devoted to the purposes named. The wording "**for instance** for education, religious or charitable purposes" implies that the naming of the budgetary allocations is not exhaustive.

An example of this here is the Slovene Music School / Slovenska glasbana šola on the basis of the budget amount for the year 2003 and the general subsidies for cultural activities of the Carinthian regional government on the basis of the budget amounts for the years 2003 and 2004 (more recent ones are not yet available):



Article 68 (2) of the Treaty of St Germain provides for an obligation for support in the area of education under constitutional law. Under the category of “education” is in any case the subsidies for music schools, that as “schools” in the meaning of the Federal Constitutional Law have educational goals. The wording “other budgets” in § 68 (2) of the Treaty of St. Germain includes the budgets of the regional governments in which the respective minority groups live. The necessary understanding of the concept of “district” not only in the meaning of political districts, but also in the meaning of municipalities and localities leads to a geographical application of § 68 (2) of the Treaty of St. Germain.

Article 68 (2) of the Treaty of St Germain can be classified in detail as an obligation for a positive support that goes beyond simple equal treatment. Indeed, a closer explanation of the content of the stipulations of this norm speaks for this as well as the determination of the relationships between this stipulation and other relevant provisions under constitutional law, especially § 67 of the Treaty of St Germain. The decision VfSlg 9224 /1981 is to be referred to, in which the Constitutional Court presumed a value judgement of the law-makers for the protection of minorities, taken from all the various norms for the protection of minorities under constitutional law (including § 68 (2) of the Treaty of St Germain), that altogether go include demands over and above equal treatment. Further, the national priority objective for § 8 (2) of the Federal Constitutional Law passed in the year 2000, which commits the Republic (the Federation, Länder and municipalities) “to respect, safeguard and promote the language and culture, continued existence and protection of the minority groups” is to be, in cases of doubt, used as a interpretation maxim. In the literature, Spielbüchler agreed that § 68 (2) of the Treaty of St Germain forces “the use of an appropriate proportion of the budgetary means for educational purposes at the wish of the minorities or their members above and beyond the general equality approach.” If one does not want to agree to the positions set out here, which assume an obligation for a positive support, then at any rate one can

deduce from § 68 (2) of the Treaty of St Germain a prohibition against discrimination concerning the obligation for support, meaning that no disadvantageous subsidies as compared to other institutions (here this refers to other music schools) can result.

Article 68 (2) of the Treaty of St Germain is directed at the federal and regional law-makers (as well as on municipal councillors as general representative bodies) who are responsible for the passing of the budgets, and is not immediately applicable for administrative authorities and the courts. Article 68 (2) of the Treaty of St Germain has to be implemented by the law-makers.

And so, the responsible law-makers have to more closely administer the obligations under constitutional law especially pertaining to §68 (2), namely to make an "appropriate proportion" available: This, especially in consideration of the previously mentioned judicature of the Constitutional Court that presupposes in general a "value judgement on the part of the law-makers in favour of the protection of minorities" in the pertinent constitutional norms (VfSlg 9224 / 1981): Special attention must be paid to the equality principles, especially in the evaluation of factual justifications of norms. Following this, the importance accorded to the protection of minorities by the law-makers demands a very differentiated consideration pertaining to regulations regarding the position of minorities within other social groups. The protection of members of minorities in comparison to members of other social groups could justify - or even demand - the privileging of minorities in certain situations. For this reason the provisions on minorities' protection must not be interpreted in a restrictive manner (VfSlg 12.245 / 1984). Furthermore, the national priority objective of § 8 (2) of the Federal Constitutional Law is to be taken into consideration in the interpretation.

Within the framework of the state administration, § 68 (2) of the Treaty of St Germain turns to the respective law-makers, who can devise the subsidies from public funds, for example for educational purposes, in the budgets of the Federal Government, the Länder and the municipalities. The addressees are the National Parliament for the budget of the Federal Government (Federal Finance Act), the regional assemblies for the budgets of the "Länder" (regional suggestions) and the municipal councillors for the suggestions of the municipalities (§ 117 (4) Federal Constitutional Law)

Within the framework of private sector administration (for example, administration of subsidies), the basic laws (fiscal standing) must be considered, here especially the principles of equality: Although the specially positioned subsidy precepts under constitutional law of § 68 (2) of the Treaty of St Germain and the expressed value judgements in favour of the minorities are to be incorporated. An unequal treatment of the Slovene minority in the framework of private sector subsidy administration on the side of the law-makers must be investigated along the lines of the principle of equality.

An expressed reference to the Slovene Music School is not to be found in the pertinent regional legal prescriptions of the Carinthian Music School Act and the laws concerning the Regional Music School Funding Act. Taking as a basis the results of the interpretation of § 68 (2) of the Treaty of St Germain, there arises an obligation under Federal Constitutional Law: namely, the regional government (Land) must set aside an appropriate proportion any public funds in the budget appropriated for "education" for the minorities for the purpose of "education". In answer to the issue at hand, the

subsidies for music schools are to be understood as pertaining to the area of “education”, as these have educational goals.

From a factual point of view, all the elements of statutory definitions of § 68 (2) of the Treaty of St Germain are fulfilled in the Regional Music School Funding Act: The regional music school tax as an exclusively regional tax according to § 1 (3) of the Regional Music School Funding Act represents public fund in the regional budget. These public funds are to be used **“for the expenditures of the music school in the region (Land)”**, that is for the purpose of education in the meaning of § 68 (2) of the Treaty of St Germain. Therefore, an appropriate proportion of these public funds – according to § 68 (2) of the Treaty of St Germain - should be set aside for the Slovene minority for educational purposes (here the Slovene music school). Both the music schools of the Carinthian music school system and the Slovene music school follow educational goals and their support is comparable in the aspect of “education” in § 68 (2) of the Treaty of St Germain.

The regional law-makers are obliged to fulfill § 68 (2) of the Treaty of St Germain and especially to make rulings regarding the ascertainment of the amount of the appropriate proportion of the public funds. Objective points of view for ascertaining the appropriate proportion are to be mentioned and the “value judgements of the constitutional law-makers in favour of the protection of minorities” (VfSlg 9224/1981) are to be taken into consideration. In the framework of the private sector administration (here the allocation of subsidies or covering the costs of the music school system in the framework of the private sector administration of the regional government), the equality principle of the law-makers is also to be considered. The special subsidy dictates of § 68 (2) of the Treaty of St Germain are to be incorporated with equality checks according to the principle of equality.

Further, the law-makers should have more specifically mentioned to whom the public funds in the name of the minority should be paid, as the Slovene minority, according to Austria law, is not a legal person that could be an agency with rights and duties. Article 68 (2) of the Treaty of St Germain does not however demand such an organization and refers to the actual organizational form of the minority as a group, which currently exists in the form of various minority group association and unions. A regional implementation ruling, therefore, could grant the subsidies to any association of the minority group (minority group organization; compare § 9 (2) Basic Law of Associations) that runs the Slovene music school.

The problem of legal implementation can be summarized as follows:

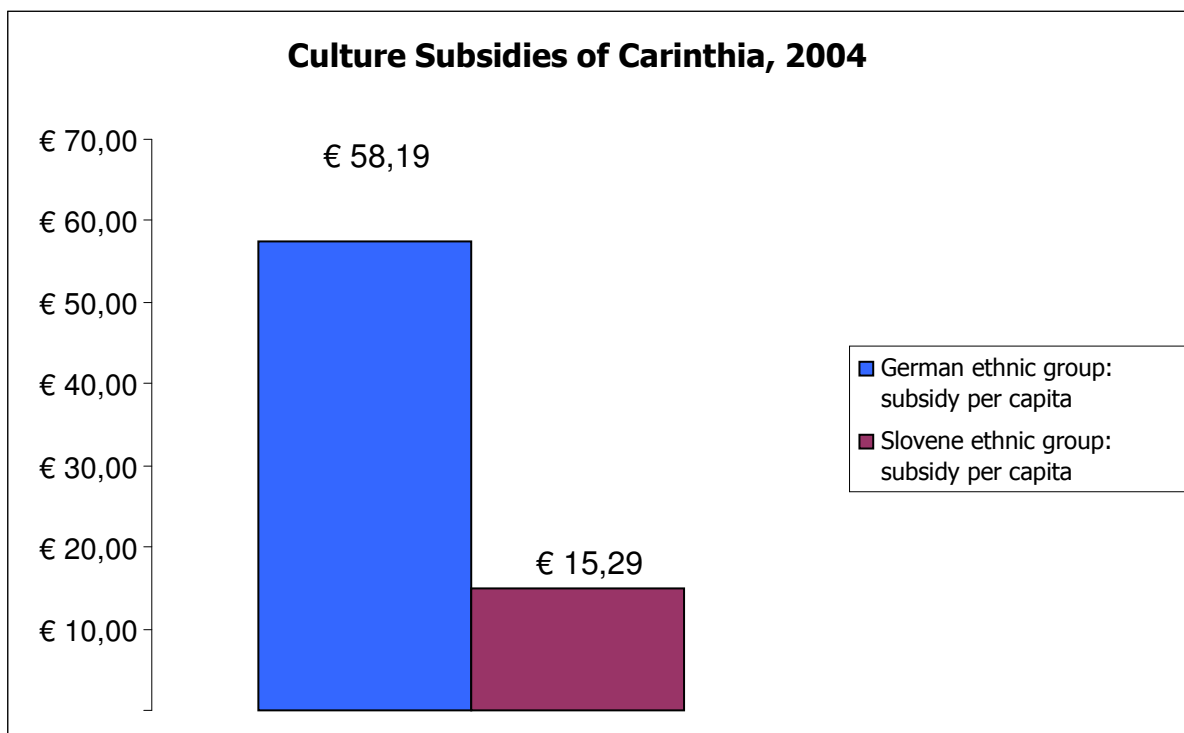
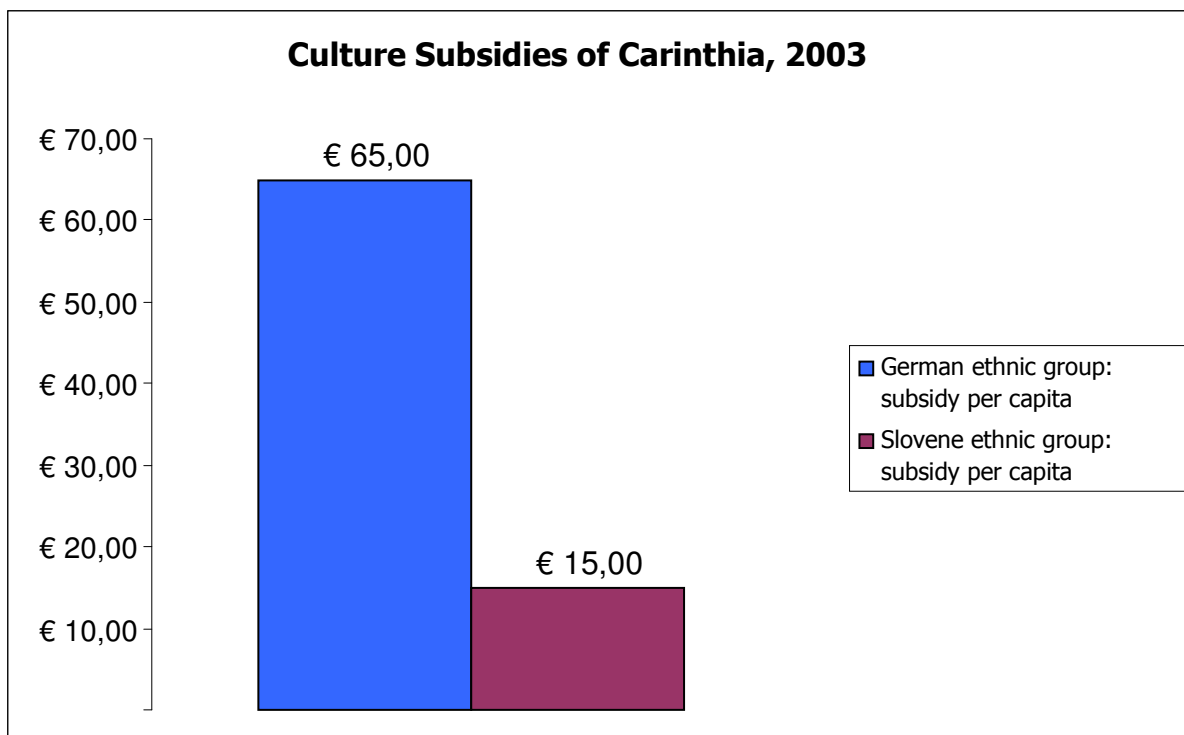
Article 68 (2) of the Treaty of St Germain defines the minority as a group and grants the group (material) demands (VfSlg 9224/1981). Regarding the legal implementation, it is problematic that the legal system does not recognize the minority as a legal person that could be an agency with rights and duties; the minority (a group of members of the minority) is understood *de lege lata* as a social entity; nor does § 68 (2) of the Treaty of St. Germain constitute the minorities as a legal entity, it does not demand this either. As demonstrated in section II, a (minority protection) oriented interpretation, in the meaning of the “purpose and aim” of the treaty, is to be applied to the actual organizational form of the minorities in Austria, to which the (material) demands for an appropriate proportion of public funds will have to be granted. The deficits in the

organizational forms of the minorities in Austria are easily demonstrated with such examples.

The constitutional principle implies an obligation under constitutional law for the law-makers to configure the constitutional, material demands from § 68 (2) of the Treaty of St Germain in such a way that they can also be implemented. Because the Austrian legal system does not constitute the minorities as legal persons (personal statutory body under public law), only certain "helpful ways for legal implementation" can be followed (for example, individual petitions according to § 140 of the Federal Constitutional Law against § 5 of the Carinthian Music School Funding Act; appeal of decisions according to § 144 (1 and 2) of the Federal Constitutional Law, and the proposal for an norm control through official channels according to § 140 of the Federal Constitutional Law), in order to bring these issues to the Constitutional Court and to enable an investigation on these measures. The chances of success of this kind of procedure are difficult to estimate.

Culture Subsidies

In 2003, "culture" was subsidized by the regional government with nearly 34 millions Euros, and in 2004, with nearly 32 million Euros. (Source: Culture Report of Carinthia, 2003 and 2004). According to § 68 (2) of the Treaty of St Germain, an appropriate proportion of the culture budget is to be accrued for the Slovene minority for their use and utilization. If one takes only the results of the population census as a basis for calculating "appropriate proportion" (with all the doubts about the objectivity of the census to determine the numerical strength of the minority groups), there are, according to the census of 2001, 2.5% of the Carinthians speak Slovene as their daily language and should have a adequate proportion of the culture budget. In 2003 this would have been 850,000 Euros and in 2004 it should have been 800,000 Euros. According to the Culture Report in 2003 it was actually 190,635 Euros and in 2004 actually 192,349 Euros (each including the subsidy for the Slovene music school). For the legal assessment see above.



Article 7 of the Austrian State Treaty of 1955

The Austrian State Treaty of May 15, 1955 went into effect on July 27, 1955. So the ten-year long period of occupation ended. Yugoslavia acceded to the State Treaty on the basis of § 37 of the Treaty by depositing a ratification certificate by the depositary, the Soviet government, on November 14, 1955. Thus it became an “associated state”. With the accession to the State Treaty, Yugoslavia relinquished for all time its territorial demands on Austria in exchange for the protection of the Slovene and Croat minorities and for the right to confiscate Austrian assets in Yugoslavia. The protection of the Slovene minority in § 7 of the State Treaty has a background of territorial demands by Yugoslavia on the Slovene ethnic areas of Carinthia and Styria.

In the explication of the petition of ratification of the State Treaty, the Austrian government wrote that the minorities’ provisions with constitutional character in § 19 of the Basic Law and section III of the Treaty of St. Germain are contained in it (§§ 62-29). At that time no one spoke about the derogation of one of the mentioned minorities’ provisions, instead their complementarily was emphasized. Accordingly, the State Treaty functions as *lex posterior*, that regulates *ex novo* and as *lex specialis* the situation of the Slovene minority in Austria, in so far as it goes beyond the level of § 19 of the Basic Law and the minority protection provisions of the Treaty of St. Germain.

In the 1990s, some Austrian politicians began to claim that the State Treaty is obsolete and a historical affair. They argued that the conditions have changed, that Austria is a member of the European Union and the Organization for Security and Cooperation in Europe and the Council of Europe, that the signatory powers of the Austrian State Treaty are not even the same (the break-up of the Soviet Union and Yugoslavia) and such things. The prevailing opinion is that unilateral declarations of a contracting state of a multilateral peace treaty are internationally irrelevant. They do prove, however, the continual tendency of politics to circumvent the fulfilment of the provisions of the State Treaty. On November 6, 1990, Austria informed the superpowers that it considers §§ 12-16 (military and flight clauses) and § 22 (13) (ban on new formation of German property) obsolete. In this unilateral act, Austria used the clause on changed circumstances (*clausal rebus sic stantibus*) according to § 62 of the Vienna Convention on Contract Law. Most superpowers agreed with the Austrian communiqué, but France and the Soviet Union specifically emphasized in an *aide memoire* that the Austrian State Treaty in its basic provisions maintains its importance for the preservation of peace and security in Europe. It is clear that the majority of the provisions in the Austrian State Treaty (on the preservation of the borders to the absolute protection of minorities to the obligation for de-nazification, to the maintenance and care of the graves and memorials of the Allied Forces) are determined for all time. Austria regained its independence under the conditions that it adheres to the above mentioned obligations permanently. For the record, the International Court up to now has never agreed to the annulment of a treaty on the basis of changing conditions. Internationally there are no admissible reasons for the suspension of the Austrian State Treaty as a whole or in its constitutive and indivisible parts, including the provision for the protection of the Croat and Slovene minorities. The Austrian State Treaty is and will remain an internationally valid treaty.

The Council of Slovenes in Carinthia /Rat der Kärntner Slovenen / Narodni svet koroških Slovencev and the Central Union of Slovene Organizations / Zentralverband Slovene Organizations / Zveza slovenskih organizacij in a joint memorandum on October 11, 1955, submitted a proposal to the Austrian Federal Government with concrete suggestions for the implementation of § 7 of the State Treaty. The essential points were geared toward national proportional representation and limited territorial autonomy:

- Benefit of equal rights for obtaining and leading public offices, functions and professions, that means, equality in the actual appointments to public authorities by the Federal Government, "Land", municipalities, chambers and professional organizations;
- On the basis of the admission of Slovene as an additional official language in the territory with Slovene or mixed-language population, the appointed public officials and employees in all administrative authorities, corporate bodies under public law and courts must have a command of both languages, those already appointed must bring a corresponding certification within three years;
- Construction of its own grammar school, its own teacher training institution as well as a special department of the school inspectorate in the Carinthian regional government, that would be independent in pedagogical, economic-administrative and personnel affairs;
- Equality in the treatment of employed workers in agriculture, trade, industry, etc, benefits of a relational proportion of the financial means of the state, the region, autonomous bodies, their businesses and institutions.

Only very little of these were actually realized. In 1957, the Slovene Grammar School in Klagenfurt / Celovec was founded. The implementation of the other treaty obligations, especially those pertaining to the official language and topography, were delayed.

Three paragraphs of §7 of the State Treaty were granted constitutional rank: 2 (rights in the area of the school system), 3 (official language, topography) and 4 (participation in cultural, administrative and court authorities). According to the interpretation of the then-Austrian government, these went beyond the previous constitutional rights.

Paragraph 2 They are entitled to elementary instruction in the Slovene or Croat language and to a proportional number of secondary schools; in this connection, school curricula will be reviewed and a section of the Inspectorate of Education shall be established for Slovene and Croat schools.

The members of the Slovene and Croat minorities are guaranteed the right to elementary instruction in their mother tongues. A complete implementation of this paragraph is questionable, although bilingual primary school instruction in the minority language is secured for the Carinthian Slovenes (but not the Styrian Slovenes) and the Burgenland Croats

in the Minority School Acts for Carinthia and Burgenland. There is, as well, a Federal Grammar School for Slovenes and a bilingual Federal Commercial Academy in Klagenfurt / Celovec, but in Burgenland there is only one single multi-lingual (German-Croat-Hungarian) Federal Grammar School in Oberwart / Zgornja Borta / Felsőőr. In the sense of a dynamic development of minority rights, it is be understood that the concept "elementary instruction" must also include kindergartens. At the time of § 7 of the

State Treaty this was not a problem; today, however, they are a general reality and a part of the educational process of children. For public kindergartens there are no legal provisions in Carinthia. Slovene is used in a few public kindergartens, but only by a resolution of the municipality. According to the Burgenland Kindergarten Act of 1989, Croat in addition to German is used as a language of education. The financing of private Slovene bilingual and multi-lingual kindergartens that were established by the Slovene minority group because of the lack of public ones, is still not completely secured. Concerning elementary instruction the question arises whether the abolition of the bilingual school system in Carinthia in 1958 was legally allowed. Because of the registration principle for Slovene instruction, Slovene is the only language that can be taught on the basis of the expressed wishes of the parents and thus the only language that is discriminated against. The question is open as to whether elementary instruction in the sense of §7 (2) includes no more than the first four levels of primary school. The minority group organizations argue that elementary instruction is equal to the duration of compulsory education, in Austria, 9 years. In the lower secondary schools, Slovene and Croat are optional subjects. A further problem is the appointment of monolingual headmasters to bilingual schools and the guarantee of continuance of the bilingual schools that due to the demographic developments no longer have the necessary number of pupils and have to be closed down or affiliated to another school.

Paragraph 3: *In the administrative and judicial districts of Carinthia, Burgenland and Styria with Slovene, Croat or mixed populations, the Slovene or Croatian language shall be accepted as official languages in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene or Croat language as well as in German.*

This clause states that if the Slovene or Croat languages are acceptable "in addition to German", it means that the Slovene or Croat language can be used next to the German without a translation in German. The members of the minorities have the right therefore to make written applications or petitions to courts or administrative organs in the Slovene or Croat languages, and the right to get the answers and decisions in their language. In actual fact however, this right is severely limited due to a lack of printed forms in Slovene or Croat and due to the lack of fluency in the minority languages on the part of the responsible officials. The non-implementation of the decision of the Constitutional Court in the year 2000 regarding official languages is also problematic. Even more problematic is the implementation of the second sentence of paragraph 3, article 7 regarding the topography and the implementation of the decision of the Constitutional Court in 2000. (see chapter on Judicature)

The wording of paragraph 3 does not differentiate between the conditions for official language use and the bilingual topography. According to the opinion of the Constitutional Court, in both cases it concerns "the recognition of the fact that a larger number of members of the minority lives in a geographical unit. Neither in the case of the official languages nor in that of bilingual topographical signs and descriptions does it depend on whether a member of the minority can express him or herself or find his/her way without such preferred institutions." (Ludwig Adamovich, former President of the Constitutional Court).

The interpretation of the concept "*topographical terminology and inscriptions*" is also controversial. Basically bilingual signs have to be on all public buildings and on signposts; also the names of streets and roads should be bilingual. However, insofar as the provisions concerning topography have been implemented at all, it has usually only been concerning place names.

An obligation for bilingual signs and designations in German and Slovene was investigated by Univ.Prof Dr. Dieter Kolonivits, using the example of the government building of the municipality of Feistritz ob Bleiburg / Bistrica nad Pliberkom.

Summary of the legal assessment by a.o. Univ.-Prof Dr. Dieter Kolonovits:

I. Concerning the bilingualism of the sign "Gemeindeamt / Amtshaus Beistritz ob Bleiburg"

1. According to the valid Topography Ordinance of Carinthia, Federal Law Gazette II 2006 / 245, that went into effect on July 1, 2006, the locality designation "Feistritz ob Bleiburg" is in any case a topographical designation for which the Slovene designation "Bistrica nad Pliberkom" is determined.

2. In the concrete case, the controversial question arises, whether the designation on government buildings which, besides the name of the authority or agency, refers to the locality of the seat (for example. Municipal Authority Feistritz ob Bleiburg) falls under the category of "signs and designations of a topographical nature" in the sense of § 7 (3.2) of the State Treaty of Vienna and the corresponding implementation clauses (especially § 12 of the Minorities Act and the Topography Ordinance for Carinthia). In practice, this concept is very narrowly interpreted and essentially is limited to place-name signs and guideposts. Designations on public buildings are officially not valid as topographical designations. The legal assessment on the other hand comes to the result that signs and designations on public buildings must be written bilingually. The argument for this interpretation is briefly summarized in the following.

3. Article 7 (3.2) of the State Treaty of Vienna guarantees, taking into consideration the comprehensive authentic foreign language texts, that the topographical terminology of the Slovene and Croat languages – beside those in the German language – are to be used in the pertinent "administrative and court districts" in the sense of § 7 (3,2). That means not only Slovene or Croat place-names (names of localities) but also other topographical designations (for example names of rivers, mountains, valley) are to be kept in the minority languages. As the concept of "designations of a topographical nature" is understood broadly, one cannot assume that the concept "signs of a topographical nature" that is systematically connected to it can be narrowly interpreted: Thus it concerns all the "signs" with topographical references, that is, for example, localities, rivers, mountains.

4. When the sign on a public building refers to the location of the building and this is a locality designation – as in Feistritz ob Bleiburg – in the sense of § 7 (3.2), there is no limitation in detail as to where the sign, assigned by the state, can be put up. The Constitutional Court in its decision in VfSlg 16.404 / 2001 concerned itself only the designation on place-name signs, but indicated that in addition to this "typical" case, other designations and signs of a topographical nature could be subsumed under § 7

(3.2) of the State Treaty of Vienna: according to a notation by Holzinger, for example, "on office buildings and on maps".

5. If the municipality approves a sign for the municipal building which contains the name of the locality "Feistritz ob Bleiburg", then this locality designation must also be in Slovene in any case: for example, "Municipal Office Building Feistritz ob Bleiburg / Bistrice nad Pliberkom".

6. The sign on a public building (for example, "Municipal Office Building Feistritz ob Bleiburg / Bistrice nad Pliberkom"), for the purposes of §7 (3.2), is to be seen as a unit. An interpretation that would carry out a division of the name, in order to eliminate the designation for the authority or agency (thus for example "municipal authority" of "municipal office building") from §7 (3.2) and to write it only in German, shows that it is extremely restrictive and goes against the principle recognized by the Constitutional Court, that from the purpose of the regulation, the minority protection provisions "may not be restrictively interpreted". The interpretation developed by the Constitutional Court for the "purpose and aim" of the signs according to § 7 (3.2) of the State Treaty of Vienna, namely that the general public should be shown that an eye-catching number of minority group members live here, demands that the signs "Municipal Building Feistritz ob Bleiburg" completely (also the word "Municipal Building") is to be announced also in Slovene. This is predestined to show the general public that Slovenes live in this municipality of the authority or agency. This is to be assumed in the same way as the Constitutional Court in continual judicature firmly represents the case of the place-name signs in the sense of the traffic ordinances.

7. Because § 7 (3.2) of the State Treaty of Vienna orders the use of signs in the German and Slovene languages without differentiation, it follows that the signs in the Slovene and German languages are to be equal. The signs on municipal buildings (for example "Municipal Building Feistritz ob Bleiburg") may not be discriminating in any way and in any case is to be arranged in the sense of support for the minority groups (compare §7 (4) State Treaty of Vienna; § 8 (2) Federal Constitutional Law). It is discriminating when the sign on the municipal building is arranged in such a restrictive manner that only the place name and not the whole designation in connection with the public authorities/ agencies (here for example, municipal authority or municipal building) is bilingual.

8. Both § 12 of the Minorities Act (Federal Law Gazette 1976 / 396) and § 1 of the Topography Ordinance for Carinthia (Federal Law Gazette II 245 / 2006) in their implementation of § 7 (3.2) of the State Treaty of Vienna refer to signs and designations that are put up by "local public authorities or other authorities and agencies under public law". Thus it is expressed that this is an obligation of the state and not of private persons. It is also clear that the signs and designation of a topographical nature in any case are more than the prominent "place-name signs" in the traffic ordinance. In the area of application of the topography ordinance there is no differentiation as to where the signs should be put up. Thus a topographical designation as a sign on a public building of the municipality is to be understood in the same way as a sign-board of the municipality.

II. Bilingualism of the sign "municipal authority" or "municipal building" in Feistritz ob Bleiburg

1. In the case that the municipality decides only on the sign "municipal authority" (Gemeindeamt) or "municipal building" (Amtshaus), the following arguments from

the provisions on the additional official languages in § 7 (3.1) of the State Treaty of Vienna and the implementation provisions are to be taken into consideration. In the connection between § 7 (3.1) and (3.2) (whereby bilingual signs basically are provided for in the same districts as the additional official language) and an interpretation of § 7 (3.2) concerning "purpose and aim" it follows that signs on municipal buildings also have an announcing effect in that they show that Slovene as an additional official language can be used before the respective authority.

2. According to the internationally offered interpretation (compare Article 31 of the Vienna Convention on the Law of Treaties) of § 7 (3.1) according to the principle of "good faith" and in light of its "purpose and aim", namely the preservation and nurturing of the minority language" there follows an objective legal obligation of the state, in this concrete case the legal entity of the municipality, to create the necessary legal and factual requirements for the possibility of an effective use of the additional official language before the respective authority. That needs also an effective information about the possibility to use the official language before a certain authority even before an individual procedure begins pending: This information can be rendered by a bilingual sign on the municipal building. Such an announcement does not go against the imperative of the use of the state language according to § 8 (1) of the Federal Constitutional Law. The legal obligations of the legal entity of authority to make such provisions (that the use of the language of a minority group is actually possible) is expressly recoded in § 13 (1) of the Minorities Act. The obligation for bilingual signs on the municipal building is constitutionally correct based on the simple legal level of § 13 (1) and (4) of the Minorities Act. A subjective right of the individual to a certain designation does not exist.

Official Language for the Carinthian Slovenes

The extent of the use of the minority languages in the courts and public authorities reflects the relationship of the public authorities to the national minorities and at the same time reflects their situation and social power in the settlement areas. The existence and the development of the minority depends on the use of their language in public life, especially on whether their language is recognized as an official language. The limitations of the minorities language to a "family and farm" language is the first step to full linguistic assimilation.

The right of members of minority groups to the use of the language dealings with public authorities is regulated by § 19 (2) of the Basic Law (Right to the use of the customary language in dealings with public authorities), § 66 (4) of the State Treaty of St. Germain (appropriate facilitation for the use of the minority language in the courts, whereby the use of a translator is provided for), and § 7 (3) of the State Treaty of Vienna (Use of the Slovene or Croatian languages as official languages in addition to the German language). In the explication of the government draft concerning the acceptance of the Austrian State Treaty, it states that § 7 (3) goes beyond the previous regulation of § 66 of the Treaty of St. Germain, as Slovene and Croatian in addition to German are allowed before the courts and public authorities, and that the provision that refers only to the

official languages needs no implementation legislation because it must be used in immediate application.

According to the Minorities Act (Federal Law Gazette 396 / 1976) and its resulting ordinances (Federal Law Gazette 307 / 1977), the Carinthian Slovenes have the right to use Slovene as an official language in 14 municipalities (of the 41 municipalities in the autochthonous settlement areas and in 3 district authorities. The same is true of the military headquarters in Klagenfurt, the office of the regional government, the revenue office (also in cases of appeal), the regional agricultural senate, the employment office and the district school inspectorate.

In the officially recognized bilingual municipalities, Slovene is allowed if applied for. That means that members of the minority group have to make an additional effort in order to exercise their right to use Slovene. This prevents many from exercising this right. Additionally civil servants and other state employees are not proficient enough in Slovene, so that there is a psychological barrier to break through if one wants to make use of one's rights.

Written documents of the community, announcements, etc. going through official channels are not written bilingually; likewise only rarely are bilingual forms available. A survey taken by *Naš tednik* in the year 2000 showed that half of the 14 recognized bilingual municipalities have no supply of bilingual forms and that in three, no public official had a command of Slovene either oral or written. Proof of this is in a statement of the Carinthian regional government in a case before the Constitutional Court. Should the Constitutional Court concede the case to the plaintiff, the regional government would request a year's period of time for the implementation of the decision because there is no qualified person with a knowledge of Slovene. In order to fully implement the provision of § 7 (3) of the Austrian State Treaty regarding official languages, there must be an appropriate number of public officers with a knowledge of Slovene employed in the pertinent authorities and courts.

The Slovene language is not allowed in many municipalities that should be designated bilingual, although there is registration for bilingual instruction, although there are Slovene cultural associations and savings banks, although there are bilingual kindergartens and although this municipality is classified as bilingual in the church administration. For a long time, the municipality of Eberndorf / Dobrla vas was such a case, until in the decision of the Constitutional Court (file V91/99-11) from October 4, 2000, it is now decisively bilingual.

Apart from that, the official language regulations defy all internal logic. Neighbors in the same locality can be under different regulations only because the municipal boundary cuts through the locality. And, it seems as if the official language regulations determined the bilingual municipalities more or less arbitrarily.

At the district and the regional ("Land") levels, applications for using Slovene as an official language submitted by persons from municipalities not officially recognized as bilingual are always refused and even decisions of the district authorities already made in the Slovene language have been suspended on the grounds that the use of Slovene was not allowed.

The Constitutional Court in its decision of October 2, 1999, clarified this situation; it said that "in the spirit of the objectives of the Minorities Act" in public authorities for which the Slovene language can be used as an official language in principle, Slovene can also be used by persons from municipalities not officially recognized as bilingual.

The much praised exception usually mentioned is the revenue office. This is also the only public office that issues forms and informational brochures in Slovene, available on request.

However, individual public servants or clerks break with the otherwise model practice. Here, too, there are cases where the steps of execution were threatened only because the public servant did not want to recognize Slovene as an allowed official language and so ignored the entries in Slovene. But the decisions about this remain in the competency of the individual officials of the revenue offices. There were even cases here that threats were made only because the official did not want to recognize Slovene as an accepted official language and so ignored the entries in Slovene. But here it concerns only exceptional cases.

Slovene as an official language has not been implemented, contrary to registry offices in smaller rural municipalities, for the registry office of the magistrate of the Carinthian capital city of Klagenfurt /Celovec as the largest of the registry offices in Carinthia.

At the national level, the situation is such that in practically all cases in the first instance of the centralized public authorities in Vienna, decisions are appealed. The minority group languages are in principle not accepted by the public authorities in Vienna.

In the area of the chambers and other representations of interest groups under public law, Slovene is not allowed. The Minorities Act limits paragraph 3 § 7 of the State Treaty of Vienna – in spite of the dominant legal opinion in the doctrines (the fiscal importance of basic rights) only to those areas in which the state has prerogative powers; the private sector administrations remain German-speaking. This limitation is for the legal subordinate especially problematic, as it is not clear for a lay person when an office has prerogative powers and when it acts in the private sector.

In the court system, the possibility to use Slovene as a court language extends only to three district courts (Bleiburg/Pliberk, Eisenkappel/Železna Kapla und Ferlach/Borovlje) as well as the regional court in Klagenfurt / Celovec when it concerns parties from the areas of districts courts mentioned above.

In the district courts of Völkermarkt/Velikovec, Klagenfurt/Celovec, Villach/Beljak und Hermagor/Šmohor, that together have jurisdiction over the largest part of the bilingual areas, Slovene is not allowed as a court language. The law-makers were not consistent regarding the regulations of Slovene as a court language. A member of the minority group from the community of Gallizien/Galicija has the possibility to speak Slovene in court, although this community is not officially recognized as bilingual. The citizens of the municipalities of Ludmannsdorf/ Bilčovs, Ebental/Žrelec, St. Jakob im Rosental/Šentjakob v Rožu und Rosegg/Rožek live in municipalities officially recognized as bilingual, but in the district courts they are not allowed to speak Slovene.

In numerous decisions, the Constitutional Court suspended parts of the Official Language Ordinance for Slovene as unconstitutional (see chapter "Judicature") and declared §7 (3.1) immediately applicable. An amendment (necessary in the sense of legal security) of the Official Language Ordinance for Slovene has not yet been passed.

Official Language for the Styrian Slovenes

Although § 7 of the State Treaty clearly anchors the rights of the Styrian Slovenes, no terms of the minority group protection clauses have been fulfilled to date. The existence of the Slovene minority in Styria has been denied by official regional "Land" politics for a long time and it is even said that the Styrian Slovenes slipped into the State Treaty by mistake and that for a nearly non-existent group such legal bases cannot be used. As an example of such an attitude, only one quotation from the former highest representative of Styria needs to be mentioned: On June 4, 1959, the then governor Josef Krainer, Sr. commented that the Styrians are very lucky that they do not have to fulfill any obligations of the State Treaty as the number of Slovene speakers is so small that they can be counted on one hand. Concerning the guaranteed rights in § 7 of the Austrian State Treaty, little has changed for the Styrian Slovenes, although regional governor Waltraud Klasnic visited the "Pavelhaus" for the first time in 2001, and furthermore the Styrian Slovenes were admitted to the Minorities' Advisory Council in 2004.

Official Language of the Burgenland Croats

According to the ordinance to the Minorities Act of 1976, citizens resident in the following municipalities have the right to use Croatian as an official language:

Hornstein/Vorištan, Klingenbach/Klimpuh, Osip/Uzlop, Siegendorf/Cindrof, Steinbrunn-Zillingtal/Štikapron-Celindrof, Trausdorf/Trajštof, Wulkaprodersdorf/Vulkaprodrštof, Zagersdorf/Cogrštof, Güttenbach/Pinkovac, Neuberg im Burgenland/Nova Gora, Stinatz/Stinjaki, Antau/Otava, Baumgarten/Pajngart, Draßburg/Rasporak, Neudorf/Novo Selo, Pama/Bijelo Selo, Parndorf/Pandorf, Frankenu-Unterpullendorf/Frankenava-Dolnja Pulja, Großwarasdorf/Veliki Borištof, Kaisersdorf/Kalištof, Kroatisch Minihof/Mjenovo, Nikitsch/Filež, Rotenturm an der Pinka/Verešvar, Schachendorf/Ěajta, Schandorf/Čemba, Weiden bei Rechnitz/Bandol.

Many municipalities with large numbers of Croats are not included in the ordinance, nor is the regional capital city of Eisenstadt included, where many Croats also live. The residents of the above-mentioned municipalities have the right to use Croat as an official language in district and regional administrative offices, as well as in federal offices located in Burgenland. The same is valid for other public authorities like the revenue office or the employment office, and further instances are similar to the Slovene situation in Carinthia. However, Croat can also be used in some administrative offices located in other cities, for example, the Revenue Office Headquarters in Vienna and at the Office of Standards and Calibration in Graz. Bilingual sets of forms are practically non-existent.

Topographical Inscriptions for the Carinthian Slovenes

In keeping with the Minorities Act of 1976, bilingual place names should only be installed in municipalities that have a Slovene-speaking population of at least 25%.

Bilingual topographical signs and designations according to the Topography Ordinance of 1977

Zweisprachige topographische Aufschriften nach der Topographieverordnung 1977



This clause was, however, reversed by the decision of the Constitutional Court of December 13, 2001, in which it determined that for the concept of “administrative and court districts with mixed population” a minority proportion of 10% “over a longer period of time” is sufficient. More about this issue is in the chapter on the problem area of the bilingual topography in Carinthia.

Paragraph 4: *Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall participate in the cultural, administrative and judicial systems in these territories on equal terms with other Austrian citizens.*

In judicial practice, this paragraph has not yet been made an issue. In the spirit of the Minorities Act, it is clear that the conditions for cultural life have to be the same for members of the Slovene and Croat minorities.

The provision of paragraph 4 must be seen in a causal relationship to the provisions of paragraph 3, which allows the Slovene / Croatian languages in the administrative and court districts of Carinthia, Burgenland and Styria with Slovene / Croat or mixed

populations. The use of Slovene /Croatian as a second official language must be guaranteed for pertinent administrative organizations and the organizations of other appropriate institutions. This causal relationship is emphasized in the same territorial reference ("...in the cultural, administrative and court institutions in these areas").

Paragraph 4 also entitles the Slovene / Croat minority groups not only to a non-discriminatory access to cultural, administrative and court institutions. Unequal treatment when utilizing such institutions would be forbidden by the general ban on discrimination in the Federal Constitution. The provision of paragraph 4 grants the right to participation in these institutions (argument: taking part...). A participation in cultural, administrative and court institutions "under equal conditions" only happens when, on the one hand, members of the minority groups are included on an equal basis in the structures of these institutions and, on the other hand, these institutions secure an equal set of services as for other Austrian nationals in their own languages. This obligation is directed not only at state institutions, but also to institutions of autonomous bodies and institutions fulfilling public responsibilities.

As the responsibility of the state, the regions (Länder), the municipalities, the autonomous bodies and institutions fulfilling public responsibilities exist in cultural affairs mostly in the subsidizing institution and activities, it is necessary to take into consideration the provision of paragraph 4 in connection to §68 (2) of the State Treaty of St. Germain, State Law Gazette 303 / 1920 (see above, § 68(2) State Treaty of St. Germain on the obligation for support on the part of the state, the regions and the municipalities).

The media is also to be considered as a cultural institution in the sense of paragraph 4. The Austrian Broadcasting Corporation likes to refer to itself as "the largest educational institution" of the country, because it has an explicit education responsibility to fulfill. The space accorded to the minority languages is decisive for their survival. The media of the minorities can only base itself on a very small cultural market and so need public support. The Constitutional Court implied "a value judgment of the constitutional law-makers in favour of minority protection" out of the very dispersed constitutional norms regarding the protection of minorities. The protection of minorities in contrast to members of other social group justifies and even demands that the minorities are privileged in certain areas (VfSlg 9224/1981). This principle is missing completely in the state media subsidies.

With the amendment of the Broadcasting Act (Austria Broadcasting Corporation Act, Federal Law Gazette I nr 83/2001), the Austrian Broadcasting Corporation (ORF) translated into law a special responsibility to the minority groups (§5). The ORF is obliged within the framework of its own programs to set aside an appropriate proportion of airtime for programs in the minorities' languages. From the evaluation of the protection of minorities under constitutional law it follows for the interpretation of § 5 (1) of the Austria Broadcasting Corporation Act that the minority groups are to be served with programs in the minorities' languages not only in proportion to their numerical strength but above and beyond that.

The ORF does not sufficiently comply with its responsibilities under public law regarding the service to the minority groups, especially not in its television programming.

For the Slovene minority in Carinthia, there is again - since March, 2004 – an all-day radio program in cooperation with ORF and two private radio stations. All other minority groups are served with programs in their mother tongues in a much smaller dimension, if at all.

A functional importance is to be ascribed to the legal claim according to paragraph 4 in the meaning of the right of group development. The provisions of paragraph 4 obviously refer to is the participation in community life, participation in the state. The only form of a direct involvement of the minority groups in the administration are the minority group advisory councils (§§ 3-7 Minorities Act). These cannot be seen as organs that guarantee the rights of political participation to the minority groups. They only have advisory functions, and what is missing even more is the lack of democratic legitimation of the minority groups advisory councils. They are, in fact, chosen and authorized by the Federal Government. The participation in the state demands organizational forms with which the minority groups can be constituted as legal entities and mechanisms of decision-making through which a representative intention of the minority groups can be determined and built upon, as well as participation in the legislative bodies.

Paragraph 5: *The activity of organizations whose aim is to deprive the Croat or Slovene population of their minority capacity or rights shall be prohibited.*

In connection with the implementation of the protection provision of the Austrian State Treaty, the inadequate implementation of de-nazification in Austria is mentioned as one of the main obstacles. In Carinthia as early as 1923, there was a national-socialist party with 16 local groups. In the 1930 regional elections,

it got 7.9% of the votes and so was the most successful of all the Austrian federal regions. During the Second World War there were 688,000 Austrian members of the NSDAP (National-Socialist German Worker's Party). After the war, Austria granted generous amnesty to the former Nazis. None of the large political parties refused them membership. As early as 1949, they were re-enfranchised, and at that time the Freedom Party was founded. After the signing of the State Treaty there was even greater tolerance for the former Nazis and war criminals. There are numerous examples of **the non-implementation of de-nazification** in Austria and the tendency towards national-socialism in Carinthia. A few of the more recent examples:

The case of Gross during the time of the EU-sanctions against Austria. (The case of a physician who took active part in crimes against children during World War II and afterward had a good career and was even given awards);

In the parade for the 80th anniversary of the plebiscite, the Carinthian Defense Fighters' Union put on their banners a black band with white letters "Our honor is loyalty" (the motto of the SS units in the Second World War);

In the hall of the Carinthia regional government frescos were discovered by the painter Lobisser from 1938 showing the Greater German ideology and the Third Reich as a continuation of the celebrations of the plebiscite;

The homepage of the Carinthian neo-Nazis ("German National Comradeship of Carinthia") propaganda is made for the struggle for a "German, national and free homeland" and for the "cleansing of ethnically, culturally and economically infected state" (2001);

In 1997, Fritz Schretter, the later chairman of the Carinthian Defense Fighters' Union (KAB), gave to a lady for her 84th birthday a bottle of "Führer" wine with a picture of Adolf Hitler on it;

At the beginning of 2006, the following SMS was circulated in Carinthia; "With the opening of this SMS you have just killed as Carinthian Slovene. Send this SMS to others in order to take part in a "Clean Carinthia";

In September, 2006, regional governor Haider started an advertising campaign "Carinthia will be monolingual" and sent a letter with the same content to the mayors of all the municipalities in southern Carinthia. Thus, the lowest point of political culture and highest point of incitation against the Slovene minority was reached. Haider's slogan "Carinthia will be monolingual" is similar to Hitler's order to his Nazi governor in Carinthia: "Make this land German!"

A few quotations:

"One cannot be satisfied that Carinthia remains free and undivided. This land will only be free when it becomes a German land"

regional governor Jörg Haider ("Profil" February 18, 1985)

"The political situation has (...) brought new responsibilities to the national powers in Austria. The best of these is the defense against all efforts to disassociate Austria from German nationalism."

regional governor Jörg Haider (Innsbruck party convention, September 14, 1986)

"Our soldiers were not offenders, but at best victims".

regional governor Jörg Haider on the Ulrichsberg, October, 1990, (quoted in "Profil")

"Well, that didn't happen in the Third Reich, because in the Third Reich they had orderly employment policies that not even your government in Vienna can bring about."

regional governor Jörg Haider in the Carinthian regional assembly (June 13, 1991)

"I said that the "Wehrmacht" soldiers enabled democracy in Europe as we know it today." **regional governor Jörg Haider ("Profil", August 21, 1995)**

"...that in these stirring times when there are still decent people who have character and stand fast for their convictions in the harsh headwinds and have remained true to their convictions. And that is the basis, my dear friends, that is passed down to us younger ones. And a people that does not honor its forefathers is doomed anyway.(...) We spend money for terrorists, for violent newspapers, we spend money on the unemployed rabble and we have no money for decent people."

regional governor Jörg Haider at the SS-veterans meeting in Krumpendorf /Kriva vrba (Sept. 30, 1995)

"The right of natives to their homeland is stronger than the rights of foreigners to family life. That's the reason we should renounce the European Human Rights Convention"
regional governor Jörg Haider (Salzburger Nachrichten, October 6, 1995)

"If one is called Adamovich, the first question to ask is whether he has a proper residency permit."

regional governor Jörg Haider on the person of former Constitutional Court President Ludwig Adamovich (February, 2002)

"And then when the Fuhrer came and he began with the various construction ideas or road-building – the "Autobahnen" are from that time – that gave the people hope."

FPO-Member of Parliament Wolfgang Zanger on November 7, 2005

"Austria was supposedly liberated from Facism and tyranny in 1945."

FPO-Member of Parliament Ewald Stadler at a solstice celebration, 2002

"The constitutional state is one thing, a common public feeling ("gesundes Volksempfinden" is another."

regional vice-governor Gerhard Dörfler (BZÖ) (Kärntner Tageszeitung, December 30, 2006)

"The name Korinek stands for legal filth"

Stefan Petzner, BZÖ national party chairman representative, on the person of Constitutional Court President Karl Korinek

"Of course it was very impressive , what they had for an economic program."

BZÖ-Member of Parliament Veit Schalle on the Nazi era (September, 2006)

"I would like to end my address with a greeting, that is really our old greeting, not the "Good luck" (Glück auf") of today, no, I geet all of you with an invigorating "Heil" for the future!"

Walter Sucher at the FPÖ Party convention in May, 2006

The Carinthian Homeland Service (Kärntner Heimatdienst – KHD) and the Carinthian Defense Fighters' Union (Kärntner Abwehrkämpferbund – KAB) are still active, although they are responsible for innumerable conflicts and their activities are clearly geared to the assimilation of the minority group. Here it does not concern just an organization that is hostile to minorities, but rather a broad palette of measures, acts, created situations that are the reason for the very advanced state of the assimilation process. Thus, at least partially, there is a violation of § 7 (5) of the State Treaty. The region of Carinthia nevertheless grants the groups of the KHD and KAB regular financial support. Similarly, Austria recognized the KHD and KAB – under the disguise of "homeland associations" - as equal negotiating partners in minority issues in all aspects of the Slovene minority group.

Minorities Group Act of 1976 (Federal Law Gazette 396 / 1976) as implementation law for the international provision for protection under constitutional law.

The Austrian Parliament passed the Minorities Group Act (Federal Law Gazette, nr. 396/1976) according to an agreement among the parties represented in Parliament **(the representative organizations of the minority groups were not included !!!)** on July 7, 1976 together with an amendment to the Population Census Act, that would allow a census "of a special kind". The real purpose of the law-makers was to limit persons and territories included in the protection of minorities of § 7 of the State Treaty.

The Minorities Group Act was passed above the protests of the minority group organizations and without any consultation with the signatory powers of the State Treaty. Before the final wording of the law was fixed, the Yugoslavian government sent the Austrian government an "aide memoire" on July 1, 1976, in which it said that making the much reduced minority rights of the Slovene and Croat minority groups dependent on the ascertainment of their numerical strength was an essential deviation from the spirit and word of the State Treaty. With such a procedure the results of forced assimilation and de-nationalization would be confirmed. Austria, on the other hand, emphasized the quality of the Minorities Act in that it has the obligation to protect the existence of the minority groups and their languages, that it provides the basis for financial support, that it provides for the establishment of minority group advisory councils as a form of representation and co-determination in minority group concerns, and that it brings together in one law all the Austrian legal obligations derived from the Treaty of St. Germain of 1919 and the Austrian State Treaty. However, the Minorities Act does not solve all the issues brought up by the State Treaty. Among other things, it does not include any clauses concerning the school system, the media nor about organizations hostile to minorities, which are forbidden by paragraph 5 of § 7. In a similar vein, concerning basic issues of the protection of minorities as in § 7 of the State Treaty such as the jurisdiction of the official language and bilingual topography, the Minorities Act leaves these up to government ordinances. Exactly in these two issues, the Minorities Act makes the percentage proportions of minority group members in any one area a condition for exercising these rights.

An especially problematic issue in the estimation of the minority group organizations right from the beginning was the 25% clause as a condition for bilingual place name signs. This clause has in the meantime been reversed by a decision of the Constitutional Court of December 13, 2001. The minority group representatives have always maintained that the terms of article 7 referred to a well-known area that did not have to be newly defined. In the case of Carinthia, this is the jurisdiction of the Minorities School Ordinance of 1945. And so, according to generally valid legal basic principles, it should be clear that the State Treaty is to be implemented on the basis of the situation at the time of its becoming effective and in the areas of jurisdiction of that time. The Minorities Act is questionable regarding topographical inscriptions because it limits bilingual topographical names to objects of public institutions and does not include other objects like shops and businesses, tourism or industries.

Concerning the use of the Slovene and Croat languages in public offices, the terms of § 7 (3) of the State Treaty are immediately applicable. The Minorities Group Act, however, maintains that for public offices and institutions in which the language of the minority group is accepted as well as German, implementation ordinances have to be issued. Nor

does the Minorities Act provide for civil servants to be proficient in the minority languages. The use of the minority languages is to be only an exception; and for that reason anyone who wants to use the minority language in any proceedings has to inform the authorities separately. The law provides for the obligatory use of translators, as if referring to foreign nationals rather than autochthonous residents whose rights are guaranteed by the State Treaty. In the mixed population areas laid out by the State Treaty, there is, thus, no general bilingualism.

Because of the principle of quantifying the minority groups, which is not provided for in the State Treaty, the minority groups are at the mercy of continual counting and the determination of their rights are based on problematic statistical data, such as in the Austrian census with the questions about language for everyday life.

The critical evaluations at the time of the passing of the Minorities Group Act have proven to be justified to a great extent after three decades. The criticism about limiting the rights of minority groups to certain jurisdictions (the 25% clause), which was not accepted by the government and has since been reversed in several decisions of the Constitutional Courts in 2000 and 2001, 2005 and 2006, was thus justified. The Constitutional Court decided specifically that even a 10% proportion of Slovene or Croat speakers is sufficient for defining an area or individual municipalities or localities as areas of mixed population. And in these areas the respective minority group language is to be used as an official language and a topographical language. The Minority Groups Advisory Councils to the Federal Chancellery that were created by the Minorities Group Act are under the clear influence of the Austrian Federal Government. It determines namely, which councils are to be constituted, how many members they should have, and the government even nominates half of the members, and designates which minority group organizations will be asked to suggest the other half; whereby the Federal Government actually nominates and installs them. The government is not obliged to act on the report of the council, only to hear it, but even that is widely ignored. The Minority Groups Advisory Councils, which as organs of co-determination should represent a great accomplishment for the minority groups, have been transmuted into instruments of the federal government for dominating those groups. The opinions of the councils have not been implemented, unless it concerns the distribution of financial subsidies. At the same time, assimilation is continuing, something that is ironically confirmed by the results of the census itself.

The proficiency in the minority languages is becoming very low, which can be seen in the data on the knowledge of the language of the children at entry into primary school. All this shows that the Minorities Act does not sufficiently secure the continuance of the minorities and that it needs amendments, as implied earlier. Amendments to the Minority Act are also necessary for the implementation of decisions of the Constitutional Court in the connection with official language (nr. V 91/99-11) and topography (nr. G 213/01-18). Further reasons are the development of international standards for the protection of minorities in the last decades and the adaptation to general social developments.

In brief, with the Minorities Group Act the protection of minorities is no longer considered an obligation of Austria under its own State Treaty.

5.) (Non-) Implementation of the Recommendations of the Advisory Committee

The resolution of the Committee of Ministers of the Council of Europe regarding Austria [ResCMN (2004)] contains the conclusions and recommendations of the Advisory Committee in the first monitoring process. In this chapter, the extent to which Austria has implemented these recommendations will be presented.

Recommendation of the Advisory Committee: "Austria has made particularly commendable efforts to implement the Framework Convention in respect of the Slovenes and Croats living in the *Länder* of Carinthia and Burgenland, notably in the field of media and education. Furthermore, important legal guarantees, both at constitutional and sub-constitutional level, have recently been adopted to complete the legal and institutional framework for the protection of national minorities, a matter of particular significance for Hungarians, Czechs, Slovaks and Roma."

At the constitutional level, the Austrian Parliament passed the provisions for national policy objectives ("Staatszielbestimmung") of § 8 (2) Federal Constitutional Act (B-VG) (Federal Law Gazette I 68/2000). The provision for national policy objectives (Staatszielbestimmung) is a typical legal instrument in German law. These provisions are found particularly in the areas of social, agricultural and environmental concerns. In April, 2000, the Federal Government presented a draft for a provision for national policy objectives (Staatszielbestimmung) for minority groups to the Federal Parliament without consultation or agreement from any of the representative organizations of the minority groups:

"The Republic of Austria (Federal Government, "Länder", and municipalities) is committed to their linguistic and cultural varieties..."

The suggested wording was unacceptable to the minority groups because it contained no reference to their protection. A further surprise was the intention to delete § 19 of the Basic Law (StGG). The Austrian Centre for Ethnic Groups had suggested a revised formulation of § 19 of the Basic Law instead of the provision for national policy objectives (Staatszielbestimmung) (see previous chapter). Even the Advisory Council for National Minorities established within the Federal Chancellery had rejected the wording as well as the deletion of § 19 of the Basic Law (StGG). In the final text of the provision for national policy objectives (Staatszielbestimmung) of § 8 (2) then at least a second sentence was added: **"The language and culture, continued existence and protection of these ethnic groups are to be respected, safeguarded and promoted."** The additional text of the provisions for national policy objectives (Staatszielbestimmung) § 8 (2) Federal Constitutional Act (B-VG) provides at the very least an objective measurement for law-makers and for the interpretation of laws also at the administrative level. Article 19 of the Basic Law (StGG) was not deleted.

The provision for national policy objectives (Staatszielbestimmung) should awaken in the majority of the population a responsibility for the assistance and preservation of the minority groups and so contribute to the safeguarding of their population size. The provision for national policy objectives (Staatszielbestimmung) does not guarantee any subjective rights; it does not give anything more to the minority groups than they already have through the practice of judicature based on value judgments in favour of the minority groups in the decisions of the Constitutional Court, number 9224/1981. The representative organizations of the Austrian minority groups saw, however, the implications of the provision for national policy objectives (Staatszielbestimmung) as a legal maxim that would be followed up by concrete measures. In practice, the provision for national policy objectives (Staatszielbestimmung) for § 8 (2) of the Federal Constitutional Act (B-VG) due to its programmatic nature, has not developed any legal effect. The Constitutional Court has not used it in any of its decisions on official languages and topography – not even as a basis for interpretation – since it has been in effect.

In the year 2000, 45 years after the Austrian State Treaty and 24 years after the Minorities Act of 1976, the Federal Government – obviously under the pressure of the closer supervision of the 14 member states of the EU – issued the following ordinance for Burgenland for the implementation of the constitutional decisions:

Ordinance of the Federal Government on defining the territorial areas in which topographical signs and designations are to be put up not only in German but also in Croatian or Hungarian. (Federal Law Gazette II No. 170/2000),
(The Topographical Ordinance Burgenland (Federal Law Gazette II No. 170/2000) went into effect on 22 June 2000.)

For Burgenland, municipal signs for 48 bilingual German-Croatian and 4 bilingual German-Hungarian municipalities or places were designated. As in the corresponding ordinance for Carinthia in 1977, this decree limited topographical indications to municipal signs and directional signs under traffic ordinances. (see chapter 2). In Burgenland, however, there are individual municipalities that have also put up bilingual street signs and public information as well as bilingual signs on public buildings. The ordinance was issued previous to the decision of the Constitutional Court regarding bilingual municipal signs in Carinthia (G 213/01, V 62/01, B2075/99, and thus is based on the legal situation before the suspension of the 25%-clause in § 2 Minorities Act of 1976. Because of the suspension of the 25%-clause, the ordinance quoted above has a legal impact on Burgenland and should be adjusted to the legal interpretation of the Constitutional Court, which has not yet happened. Because of the settlement structure of the Croatian and Hungarian minority groups in Burgenland, the discrepancy between the legal situation before and after the decision of the Constitutional Court was much smaller than in Carinthia. Actually the topographical ordinance for Burgenland on the basis of the guidelines developed by the Constitutional Court (10% proportion of population averaged over a longer period of time) would demand 4 additional bilingual municipal signs in German-Croatian.

Ordinance of the Federal Government designating the courts, administrative authorities and other agencies before which the Hungarian language is admitted as an official language, in addition to the German language (Federal Law Gazette II No. 229/2000 in the version of Federal Law Gazette II No. 335/2000)

The Burgenland Hungarians became dangerously isolated after World War II as a result of the political changes in Hungary and the Iron Curtain. School instruction in Hungarian, strongly restricted during the Nazi era, has not been significantly revitalized. Industrialization and mechanization have contributed significantly to changes in the traditional rural life-style making way for commuting and mobility. Because the Burgenland Hungarians have no public media of their own, the German language through the press, radio and television has unrestricted access in the families, resulting in bilingualism in the initial stage, but at present, the use of the German language is predominant for them.

As opposed to the corresponding ordinances concerning the use of Slovene or Croatian as official languages, the use of Hungarian is not explicitly restricted to Austrian citizens, but is specifically accorded to citizens of a contracting party to the treaty on the European Economic Municipality. Namely in the municipalities of Oberpullendorf/Felsőpulya, Oberwart/Felsőőr, Rotenturm an der Pinka/Vasvörösvar und Unterwart/Alsőőr, Hungarian can be used as an additional official language. In offices of state and local authorities, the citizens of these bilingual municipalities have the right to use the Hungarian language as an official language, as well as in offices of the federal authorities in Burgenland. The same is valid for offices like the tax authority and the state employment office; other authorities can also be included on the basis of similar issuances for "Slovenes in Carinthia". However, the Hungarian language can also be used in certain administrative authorities in Vienna (for example, the state tax office in Vienna). The use of the Hungarian language is not really practicable and is rarely used in written form, because the list of forms in Hungarian is practically non-existent and very few public servants speak Hungarian.

Even today the minority groups of the Czechs, Slovaks, Roma and Styrian Slovenes do not have the possibility to use their own languages as official languages, and no topographical indications exist in their languages.

Protection of the Roma

To protect and further develop the linguistic and cultural identity of the Roma in Austria, a considerable further development of the social acceptance of the Roma and the creation of productive framework for the preservation of the work of the minority group are necessary. Concepts for simply sponsoring projects of the organizations of the minority group representatives threaten the hard-won progress made over decades.

The association "Roma in Oberwart" has been recently denied the further remuneration of a manager and so the continuance of the minority group work has been made impossible. The idea of paying on a hourly basis or 15% of a professional manager in the association "Roma in Oberwart", as suggested by the subsidizer, leads one to doubt the serious willingness for the preservation of this central institution of the Roma in Burgenland. Thus indirectly, internationally acclaimed projects are threatened, like extra-curricular tutoring, the preservation of culture and language as well as the extra-curricular instruction in the Romany language. To continue extra-curricular tutoring, for example, urgent renovations and additions to the building of the association's facilities are necessary.

The Association of Roma Services suffers under the same structure of subsidies. This association has played a key role in initiating the use of the Romany language as a language of instruction in the schools as well as with the Roma Bus that is used outside of Burgenland too.

The adult education centres for the Roma has one single employee whose wages are financed neither by the Austrian adult education programs nor by the Federal Chancellery, The minimal subsidies from the Federal Chancellery may be used only for language courses, whereby the expansion of adult courses – as offered by other adult education centres – is thus prevented.

With Burgenland's Minorities School Act of 1994, the introduction of the Romany language as a language of instruction was made possible. A further development of these provisions and the creation of similar legal directives, above all in Vienna and Lower Austria, would be urgently necessary to help those Roma families living in these areas for the care and preservation of their minority language.

Twelve years after their official recognition, the structure of associations for the minority group of the Roma is still in the beginning phase. The establishment of new associations has been thwarted by the strict financial corset of the subsidies for minority groups, whereby the founding of a new association automatically means a cut in the subsidies for the more established associations. The creation of a differentiated structure of associations for the Roma is thus effectively prevented. The minority group subsidies from the Federal Chancellery has to carry the responsibility for this situation, otherwise the minority group of the Roma will remain on the level of the last decades and a further development is *de facto* suspended.

Recommendation of the advisory committee: "Despite steps to support the Slovenian minority of Styria, there remains a need for considerably more determined measures from the authorities to help this municipality to preserve its identity, notably in the field of media and participation in public life."

The "Article VII- Cultural Association for Styria - Pavelhaus", is the representative association in the region of Styria of the minority group the Styrian Slovenes. After decades of political work, there is now a representative of the Styrian Slovenes in the Slovene Minority Group Advisory Council of the Federal Chancellery, but, as is usual elsewhere, there are no representatives of the political parties in the regional parliament nor from the church in Styria in the Advisory Council.

After decades of non-recognition, a breakthrough occurred with the founding of the Article VII - Cultural Association for Styria /Društvo člen 7 za avstrijsko Štajersko in 1988. The association kept reminding about the "forgotten minority", fought for the rights already anchored in the State Treaty and initially had to fight against strong resentments, for the usual policy had been to deny their existence altogether and speak of a "mistake" in the State Treaty. The usual linking of the issue of minorities in Austria and Slovenia hindered the process of recognition that was begun only after the political changes in ex-Yugoslavia and the independence of Slovenia.

In 1995, the association bought a farmstead in Laafeld /Potrna near Bad Radkersburg / Radgona, that was subsequently renovated and restored with assistance from Vienna and Ljubljana. In 1998, it was officially opened by Heinz Fischer who was at that time president of the Austrian Parliament. The association sees this cultural house on the one hand as a meeting place between Slovenia and Austria as well as a cultural meeting place for the mono-lingual and multi-lingual local population.

The house was named after Avgust Pavel, who was born in the neighbouring village of Cankova and whose family lived in the house for a few years. Pavel grew up tri-lingual – Slovene, Hungarian and German. He studied in Budapest, later as poet, linguist, anthropologist was professor on the University of Szeged and was director of a museum there. His main goal was to act as a link between Hungary and Slovenia. His well-lived principle of multiple identities was reason enough to dedicate his name for the cultural house.

On the occasion of the Slovenia joining the EU on May 1, 2004, the newly renovated and expanded museum of minority groups in "Pavelhaus" was opened. In addition to the exhibits on the history of the Styrian Slovenes, the idea of the exhibition was expanded to include all of the living minority groups in the area of Bad Radkersburg /Radgona of the past and present.

The three-country corner of Austria.-Slovenia-Hungary is well-known for its rich cultural substrata and lives from its minority, linguistic and religious multiple coding, which has left its mark on and enriched the area.

Besides the Slovenes, exhibit pictures are dedicated to the Roma in the Upper Mur region as well as the German speakers in Apače /Abstall and the Gottschee group. To complete the overview of all living minorities in the border area of Styria-Slovenia-Hungary, additional exhibit pictures were dedicated to the multifaceted life of the Jews in the Upper Mur region. Beginning in 2004, the exhibit has been continually expanded by interviews with people who tell their various personal stories and thus, on the one hand, create a link to the present and, on the other hand, create a lively presentation of recent history.

Through its offerings of numerous events, exhibitions, workshops, symposia of its own, the "Pavelhaus" has developed from its modest opening to an international meeting center with international partners, whereby its self-definition lies clearly in multiplicity. A major thematic area is working through recent and most-recent historical topics; modern art with social-political messages takes on an important area of the programming as well.

The association publishes a semi-scientific annual journal. Further, since 2003, it has published a scientific series concerning the history of the border area, cultural studies, name research etc. In the same year, the first volume of a catalogue series was published, which is dedicated to modern themes in international creative art as well as to documenting the summer and Styrian fall ("Steirischerherbst") exhibitions. In 2005, the publication of a literary series was begun.

The Slovene minority in Styria, measured according to its own challenges and backlog of demands, gets far too little of the minority group subsidies.

A further important goal for the Article VII - Cultural Association is to accelerate instruction in Slovene that is primarily an optional subject. Only in the middle school in Arnfels/Arnež is Slovene an obligatory optional subject. About 200 pupils take advantage of learning Slovene as an optional subject annually

At any rate it must be stated clearly that still not a single part of the rights derived from § 7 of the State Treaty specifically granted to the Styrian Slovenes has been fulfilled.

RECOMMENDATION OF THE ADVISORY COMMITTEE: "There is scope for improvement in the media sector, in particular concerning the creation and/or development of radio and television programmes for the Czech, Slovak and Hungarian minorities."

The legal basis for the free and equal use of minority group languages in the media are § 19 of the Basic Law (StGG) and § 66 (3) of the Treaty of St Germain of 1919; § 7 (1) of the Austrian State Treaty of 1955 explicitly gives the right to the press in their languages to the Slovene minority in Carinthia and Styria as well as to the Croat minority group in Burgenland.

In the relationship of the national minority to the rest of the population, the usual equal treatment is not sufficient. This is due to the fact that members of national minorities, put simply on equal footing with the majority in certain areas of life - like in the media – have been assimilated. Thus it has been the continual judgment of the Constitutional Court that the protection and special assistance for members of a minority group and their institutions as opposed to other social groups can be used to justify or even to demand special treatment of the minorities in certain issues. (for example, file nr. VfSlg 9224/1981 etc.).

The area devoted to minority languages in the media is decisive for their continued existence. The minority media can only rely on a very narrow cultural market and so they need public assistance. In the European Charter for Regional and Minority Languages – ratified by Austria in 2001 – the European Parliament created new international minimal standards in the sector on the media supply services to language minority groups. Especially in situations where radio is a public service as in Austria, where in §1 (3) of the Federal Constitutional Act (B-VG) on securing the independence of the radio is specifically stated, the Charter lays out very exact responsibilities. According to the Explanatory Report on the Charter, the signatory states are obliged to guarantee the existence of at least one radio station that exclusively or mainly broadcasts in the minority language. Of the various mass media, radio is the one media that allows the easiest access even in a minority language with limited distribution. For this reason and for this point, a very precise obligation can be demanded from the states.

In 1998, two private radio stations were founded in Carinthia – the bilingual Radio AGORA and the Slovene radio DVA. Until 2001, they both broadcasted alternately on the same frequency 24 hours daily. For the first two years they received an annual subsidy from the Austrian government in the amount of Euro 363.000 each, in the year 2000, only half of that and in 2001, the subsidy was completely stopped. After the change in government in 2000, the new government decided that in the future the Federal Chancellery would no longer be responsible for the support of the private minority group radio stations, but rather the Austrian Broadcasting Corporation (ORF) would take over this responsibility. In this new situation, the first contracts between the ORF and the minority group radio stations in Carinthia were completed and in July, 2001, the pilot project "Minority Group Radio in Carinthia" began. In the cooperation between the ORF and the private radio stations of the Slovene minority group, the existing infrastructure and resources could be used and so considerable costs were reduced. The project however was short-lived. The management of the ORF ended the cooperative project "Minority Group Radio in Carinthia" at the end of 2002 due to, as was stated, the tight budget situation. The political context of the place name issue and that of the unsuccessful "consensus conference" called by the Federal Chancellor Schüssel is clearly evident. In an interview in the "Kärntner Woche" newspaper, regional governor Jörg Haider explained that he wanted to counteract those voices in the

Slovene minority group that demand the implementation of the decisions of the Constitutional Court regarding bilingual place name signs. To quote exactly he said: "I have already taken the first steps in that I have turned off Radio Dva". After the failure of the "consensus conference", Chancellor Schüssel also declared that there would be no attempts to continue minority language radio stations in Carinthia.

With the **amendments to the Austrian Broadcasting Corporation Act (ORF-Act, Federal Law Gazette I Nr. 83/2001)**, special instructions to Austrian Broadcasting Corporation (ORF) concerning minority groups were laid down in § 5 (1) and (2):

Section 5. (1). In the framework of those programmes distributed under Section 3, reasonable programme shares must be provided in the languages of those national minorities which are represented by a National Minority Council. The scope or the programme share shall be laid down in the annual programme broadcasting plan following a consultation with the Audience Council.

(2) The Austria Broadcasting Corporation may also partly comply with its mandate under paragraph 1 in that it emits programmes under paragraph 1 following a contractual agreement with other broadcasters in the areas of autochthonous minorities in Austria (paragraph 1) by using the transmission capacities allocated to these broadcasters. The scope of programmes broadcast in such manner shall be counted towards the programme shares listed under paragraph 1 as decided by the Board of Trustees at the proposal of the Director General following the consultation of the Audience Council. Similarly, the Austrian Broadcasting Corporation may participate in the creation and production of programmes by other broadcasters which distribute a separate programme geared to the needs to the national minorities.

According to the explanatory report to the ORF amendments (government draft, file nr. 634 dBlg XXI.GP) to §5, the ORF has to create and broadcast specific programs in the language of those minority groups represented in the National Minorities Council and to take strong consideration concerning the interests of these minority groups in its entire programming. The ORF can partially fulfill this stipulation in that it can enter into a contractual agreement with a private organizer who serves the minority group. The agreement must stipulate that ORF programs can be broadcast over frequencies assigned to the private organization. The proportion of the programs broadcast in this way can be deducted from the number of its own programs created under §3, whereby care must be taken that the programs under §3 contain the appropriate proportions. Furthermore, the ORF can cooperate with other radio broadcasters who create special programs for the minority groups.

Article 5 defines the special stipulations that the ORF has to fulfill in the light of its public service mandate. It concerns a special ruling to the public service mandate defined in §3 and §4. Accordingly, the ORF as a public service radio institution is obliged to broadcast an appropriate proportion of its programming also in the language of the minority groups (represented in the National Minorities Council) as intended in its public service provisions. This obligation can be partially fulfilled in that it enters into contractual agreements with private radio broadcasters – in Carinthia Radio Agora and Radio Dva. Such legal obligations to those minority groups recognized in Austria (those having a member in the National Minorities Council) go over the previous public service provisions of the older radio laws. This can be seen especially in the explanatory comments wherein the lawmaker rules that

the ORF in its entire programming has to **more strongly** take consideration of the interests of the minority groups. The ORF is thus obliged by the lawmaker within the framework of its public service provisions to do more for the minority groups than was previously done. The ORF can, however, fulfill (partially) these obligations by cooperating exactly as it had done with Radio Agora and Radio Dva , namely, to enter into contractual agreements to enable the use of the frequencies of these private broadcasters to broadcast programs in the Slovene language.

The Austrian Broadcasting Corporation (ORF) - as a company financed by public fees – has a public service mandate to fulfill that makes its programming very different to that of private radio stations (§4 (3), ORF Act – also see the bulletin of the commission on the use of regulations concerning state subsidies to public radio companies). The ORF has to offer a differentiated and varied complete programming for everyone. An hour of programming or less per day in the language of the minority groups is in no way sufficient to take care of the needs and considerations of the minority groups. Thus, in Carinthia and in Burgenland private radio licenses were awarded to minority group radio stations that also have a certain service conditions to fulfill for the minority groups.

There is, however, no obligation to contractual cooperation with private minority group radio stations in the ORF Act. But in this case, the ORF must fulfill its obligations to the minority groups in that it offers more than its own daily hour-long program by offering additional programs in the language of the minority groups through the private minority group radio stations. ("can partially fulfill its obligations....")

The fact that the ORF had made such cooperation agreements with the minority group radio stations before the amendments to the law that were then anchored in the law leads to the assumption that the lawmaker intended primarily that the ORF would use the frequencies of the private radio stations for additional programs in the language of the minority groups.

In Carinthia, the ORF entered into a new cooperation agreement with the private radio stations Radio DVA and Radio AGORA at the end of 2003. This cooperation - based on §5 (2) of the ORF Act - began officially on March 21, 2004. From that time on, the ORF has been broadcasting Slovene language programs 8 hours daily over the frequencies of Radio DVA and Radio AGORA. The rest of the broadcast time is run by Radio DVA and Radio AGORA. ORF pays a contribution to Radio DVA and Radio AGORA, but there are no state subsidies. In addition ORF broadcasts in its own radio station (Radio Kärnten) a Slovene program every Wednesday from 21:03 to 22:00 as well as a bilingual program every Sunday from 6:00 – 7:00am. With this variety of programming, the ORF completely fulfills its programming obligations to the Slovene minority group in Carinthia.

This is not so for the other Austrian minority groups nor for television broadcasting.

OVERVIEW OF THE ORF PROGRAMS IN MINORITY GROUP LANGUAGES

Burgenland – Croatian

Radio: Mo-Fr daily, approx. 2 minutes of news after the noon news journal

Mo – Sun daily 18:15 to 18:55, a 40-minute informational program

TV: every Sunday 13:30 – 14:00, a 30-minute informational program “Dobar dan Hrvati”; repeated in regional and nationwide broadcast every Monday at 3am.

Burgenland - Hungarian

Radio: Mo – Sun daily from 18:55 to 19:00, 5-minutes of mostly news,

Daily at 19:30 a 20-minute informational program regional broadcast

TV: up to 6 times annually a 25-minute informational program “Adj’ Isten magyarok”, mostly on holidays at 13:05 broadcast regionally, no nationwide repetition.

Burgenland – Hungarian/Croatian/Romany

Radio: every Monday from 20:05 to 21:00 informational program, regionally broadcast

TV: 4 times annually on a Sunday from 14:20 – 14:55 informational program “Servus/Szia/Zdrava/Deltuha”, regional broadcast

Carinthia – Slovene

Radio: every Wednesday frp, 21:05 – 22:00 informational program, regional broadcast every Sunday from 6:00 – 7:00am bilingual morning program

8 hours daily from 6-10am, from 12-13:00 and from 15:00 – 18:00 on frequencies of the private Radio Dva/Agora. (financial contribution for programming by DVA/AGORA)

TV: every Sunday, 13:00 to 14:00 informational program “Dober dan Koroska”, regional broadcast repeated nationwide on every Monday at approx. 3am.

Czech

Radio: weekly 30 minutes informational program after 20:00 on MW 1476 frequency

TV: no programming

Slovak

Radio: weekly 30 minute informational program after 20:00 on MW 1476 frequency.

TV: no program offerings

Styria – Slovene

No program offerings

All in all, the program offering of the ORF in minority group languages – with the exception of the Slovene radio programming in Carinthia – does not represent any acceptable proportion within the entire program offerings of the ORF. And particularly it does not sufficiently fulfill the obligations coming from Convention of the European Parliament (Framework Agreement on the Protection of National Minorities and the Charter on Regional and Minority Languages). § 5 (1) of the ORF Act is one part of the fulfillment of the constitutional provisions for the respect, security and support of languages, culture, size and preservation of the minority groups (§ 8 (2) of the Federal Constitutional Act). From § 5 (2) of the ORF Act, it is clear that the ORF can fulfill its obligations only with contracts “with other radio broadcasters in the areas where the autochthonous minority groups live (paragraph 1)”, but not with contracts with radio broadcasters in other areas. Thus it is the

purpose of §5 (1) of the ORF-Act to provide the autochthonous minority groups with Austrian radio programs in their own languages and in their own areas of settlement.

How much broadcast time for which minority group in which programs is appropriate is not easily answered because of the inexact wording "appropriate proportion". However the legal stipulations indicate that preferential treatment, or generous interpretation in favor of the minority groups should be offered.

From the very beginning of the discussion about § 5 of the ORF-Act it can be seen, however, that an improvement of service to the minority groups with programs in their own minority languages should be achieved. With the changes to the ORF-Act effective Jan 1, 2002, "*special provisions*" for the minority groups in reference to programs in the minority group languages as a proportion of the entire ORF programming were designated in § 5 of the ORF Law. *Explicitly* and in particular, possibilities for cooperation between the ORF and private radio broadcasters regarding programs for the minority groups were legally anchored. In the explanatory commentary (file nr. RV, 634 BlgNR XXI. GP), it is especially mentioned that the ORF has to more strongly reflect the interests of the minority groups in its entire programming. In the report of the constitutional committee (file nr. 719 BlgNR XXI, GP) the "increased demands of the autochthonous minority groups are to be taken into consideration" were explicitly emphasized and adhered to that "here the ORF has to offer special public service programming also in cooperation with private radio broadcasters (minority group radio broadcasters)".

This special provision means actually a very important contribution in favour of service to the minority groups (parliamentary inquiry 4192/AB XXI.GP), because these legal obligations to those minority groups recognized in Austria clearly goes above and beyond the previous provisions as stated in the previous Austrian Broadcasting Corporation Act. Thus it cannot be assumed that compared to the time before the special provisions of § 5 of the ORF-Act went into effect the same amount of broadcasting is appropriate. Only through a clear improvement in these services – as in Carinthia with the beginning of the cooperation project "ORF_Radio Dva-Agora" on March 21, 2004 – would the aim of the lawmakers and the purpose of the provisions be fulfilled.

Respecting the consideration of the minority groups is only appropriate if the broadcasting can actually be received on terrestrial waves.

The broadcasting of radio programs in Czech and Slovak languages on the frequencies MW 1476 does not fulfill the stipulations of § 5 of the ORF-Act, whereby the ORF has to fulfill its obligations "within the programs mentioned in § 3, or in the form of cooperation with private radio stations (servicing the minority groups). The broadcasting of the station "Radio 1476" *de facto* excludes the public. The level of awareness about this station is extremely low. "Radio 1476" broadcasts only Monday to Friday from 18:00 to 00:08, Saturday and Sunday from 18:00 to 0:05 (source: <http://1476.orf.at>). Many ordinary radio receivers cannot pick up signals on MW frequencies. Some radios, which could receive MW frequencies, have a digital receiver dial that does not allow a variable settings for reception. If the frequencies can be adjusted only in jumps of 10 kHz then the reception is very poor because an exact setting to 1476 isn't possible. The quality of reception of MW is worse than UKW and is no longer in keeping with today's usual standards.

All these characteristics make "Radio 1476" - in spite of its being a medium for conveying some engaging contents – a second class medium. The broadcasting of minority group

language programs exclusively on "Radio 1476" is from the beginning inappropriate in the meaning of § 5 (1) of the ORF-Act. The ORF is moreover obliged to broadcast programming for minority groups in those programs "with which it provides for everyone who has radio and television receivers within the federal territory equally and constantly".

To put it bluntly: the special provision in § 5 (1) of the ORF-Act can certainly not be fulfilled by putting programming on a broadcasting frequency that no one is bothered by because no one listens to it.

Further, television program offerings in minority languages are absolutely not sufficient. Without a doubt, television has been the most important media for decades. The recipients usually pay more attention to television than radio. The ORF spends far more money for its television programs – also from the monthly fees of the recipients – than for its radio programs. Approximately 97% of Austrian households have a television set. The fee collecting agency (GIS GmbH) reported that at the end of 2004, 3,180, 694 television recipients paid fees (<http://members.orf.at>).

Thus the ORF cannot completely ignore its television programming in the provision for appropriate service to the minority groups. The total omission of television programs in the Slovak and Czech languages is thus clearly not appropriate according to §5 (1) of the ORF-Act. The amount of television programs in Croatian, Roman, Slovene and Hungarian is also not appropriate according to §5 (1) of the ORF-Act. The amount of television programming in Slovene for the Styrian Slovenes is also not appropriate because of the timing – at 3:00 in the morning.

For the evaluation of the legal issues at hand, reliance on the numerical strength of the minority group cannot be the only and decisive criteria. Also and above all the constitutional aspects of the protection of minority groups and the acceptance of the minority group programs (actually a causal relationship) by the recipients must be taken into consideration as well. To illustrate this point, a survey of the viewers and listeners done by the ORF itself can be used: according to the ORF (source: <http://www.orf.volksgruppen.at/kaernten> Nov. 13, 2001) the broadcasts of the previous Sunday for the minority group programs "Heimat, fremde Heimat", "Dober dan Koroška" (Carinthia) and "Dobar dan Hrvati" (Burgenland) were "recently the most viewed program in the broadcast time between 13:30 and 14:00. "Heimat, fremde Heimat" even had nationwide 22% of the viewers- The programs in Carinthian and Burgenland even reached a level of 40% of all television viewers. The viewers gave it the above average evaluation of 4.3 (with 5 as the highest grade)."

The judgments of the Constitutional Court, from which value judgments in favor of minority protection can be deduced from the minority protection decisions in general and the provision for national policy objectives (Staatszielbestimmung) that finally were made at about the same time as the amendments to the ORF-Act with its §5, demand an interpretation that is not restrictive but rather in favor of the stipulations for the protection of minority groups.

Because the Republic of Austria does not as such have a state-run radio-television service, the provisions concerning the protection of minority groups can only be understood to apply to the radio-television service to which the state has given over those duties and responsibilities. This means the Austrian Broadcasting Corporation (ORF), as expressed in the fact that the ORF has a public service function to fulfill and so is authorized to collect radio-television fees. § 1 (3) of the Federal Constitutional Law (B-VG) concerning the

guarantee of independence of radio-television service states: "Radio-television is a public service" In this sense, the radio-television company must fulfill those stipulations which the state is obliged to fulfill concerning the respect of the rights of its diverse minority groups.

So in this sense, §5 of the ORF-Act cannot be understood as purely the formulation of a goal, but rather as part of a definition of the public service stipulations of the ORF by the lawmakers. Exactly with this clause the lawmakers undertook to enforce the already mentioned constitutional and international stipulations concerning the protection of minority groups in the area of the ORF. Those obligations, which the Republic of Austria has in terms of radio-television service for the minority groups, have thus been transferred to the ORF. And as already mentioned, to fulfill these obligations the ORF is authorized to collect fees and, in order to fulfill these new provisions those fees were increased – with additional programming for the minority groups explicitly given as a reason.

In Austria, radio-television is a "public service" (§1 (3) of the Federal Constitutional Act (B-VG) on the guarantees for independence of radio-television.) The Austrian Broadcasting Company (ORF) has the privilege to collect programming fees. This privilege – as the only broadcaster authorized to do so – is justified by the costs for fulfilling a public service. Thus it is necessary to clearly define these public services and to carry them out. This follows from the municipality law's ban on assistance. In Rz49, the bulletin on the use of directives for state assistance for the financing of public service radio-television companies, the European Commission charged the member states to a "clear and exact definition of the public service assignments".

The public service assignments (§3 to §5 of the ORF-Act) determines the goals of the programming of the ORF and justifies first the fulfillment of these provision by charging program fees. The ORF is authorized to collect program fees only to the extent that on the basis of a frugal administration" the "legal provisions of radio-television can be fulfilled in a cost-effective manner" (§31 (1) ORF-Act). In connection with the determination of the acceptable amount of the program fees, the amount of programming that fulfills the public service assignments is of decisive importance. As long as the ORF does not fulfill or insufficiently fulfills its public service programming, the justification for collecting program fees is to be questioned.

RECOMMENDATION OF THE ADVISORY COMMITTEE: "Notwithstanding recent positive judicial developments at the level of the Constitutional Court, there is a need to encourage further the use of minority languages in relations with administrative authorities in Carinthia and Burgenland, notably as concerns the Hungarian language. Furthermore, serious problems remain as regards the display of bilingual topographical indications in the municipalities concerned in Carinthia. These problems might negatively affect the harmonious coexistence between persons belonging to the Slovene minority and persons belonging to the majority unless increased efforts are made to promptly identify practical solutions in consultation with the Slovene minority."

Official Languages

The Constitutional Court in several decisions (see the chapter Judicature) suspended parts of the official language ordinances as unconstitutional and declared § 7 (3.1) immediately

applicable. An amendment of the ordinances (necessary in the sense of legal certainty) regarding the allowance of Slovene as well as Croatian and Hungarian languages in administrative authorities and public offices has not yet been passed.

In Carinthia, the Official Language Ordinances have remained unchanged even after the respective decision of the Constitutional Court of October 4, 2002 (file 91/99). Due to the deletion of the word "Sittersdorf" in § 2 (2.3) of the Official Language Ordinance for Carinthia, the Constitutional Court in the above mentioned decision extended the scope of the use of Slovene in administrative authorities and public offices to the entire political district of Völkermarkt /Velikovec. § 7 (3.1) of the State Treaty is to be immediately applicable in the district of Völkermarkt / Velikovec. The Constitutional Court declared that § 7 (3) of the State Treaty was immediately applicable and as a result of the suspension of parts of the Official Language Ordinance the municipality of Eberndorf /Dobrla vas had to immediately apply § 7 of the State Treaty thus allowing the use of the Slovene language as an official language. The Federal Government was given a half-year transition period in which to amend the Official Language Ordinances. However, nothing has been done, a situation that calls into question the constitutional legality of Austria.

The decision should have made the Federal Government as lawmakers take action. It was clear that the decision pertained not only to Eberndorf / Dobrla vas, but also to numerous other similar municipalities. In the district of Völkermarkt /Velikovec alone, according to the relevant census of 1991, the municipalities of St. Kanzian / Škocjan, Gallizien / Galicija and Diex / Djekše had Slovene-speaking populations of over 10%, and so in these municipalities Slovene as an official language would have to be allowed. In the district of Völkermarkt /Velikovec, the municipalities could still act on the immediate applicability of § 7 and allow Slovene as an official language without changes in the ordinance – but as far as we know, with the exception of the municipality of Eberndorf /Dobrla vas, this has not been done. Regarding the municipality of St. Kanzian / Škocjan, there are currently (summer, 2004) cases pending.

In the political districts of Klagenfurt-environs / Celovec-dežela, Villach-environs / Beljak-dežela and Hermagor / Šmohor, the immediate applicability of § 7 still stands in opposition to the Official Language Ordinance, as the Constitutional Court suspended only those parts of the ordinance pertaining to for the district of Völkermarkt /Velikovec. It is clear that with analogous grievances in the other districts of Carinthia in which there are municipalities with Slovene-speaking populations of about 10%, the stipulations of the official language ordinances for these districts will also be suspended.

The Constitutional Court left open the period of time in which it would consider the requirements of the proportion of the population that is Slovene-speaking. – it mentioned only a longer period of time, It is, however, very likely that for example in the municipality of Köttmannsdorf /Kotmara vas Slovene as an official language would have to be allowed even though the municipality in 1991 had "only" an 8% Slovene-speaking population whereby 20 years before there was more than 20%. Similar reckonings would bring similar results for many other municipalities, whereby the problem of the so-called "old municipalities" – in the 1970s many small municipalities were consolidated into large municipalities - has been given little attention, nor has the problem of the so-called "Windischen" been dealt with.

In spite of these imprecise formulations that actually demand clearly defined rules, the Federal Government to this day has not found it necessary to amend or change the ordinances. It is better to take the chance that in the case of new grievances the Constitutional Court will make the decisions. It is not exactly a positive quality in the handling of minority group rights, when it is left up to the members of minority groups themselves to have to test the laws to see which rights will be granted to them and which not.

The official language regulations for municipalities in the political districts of Klagenfurt-environs / Celovec-dežela and Villach-environs / Beljak-dežela continues to be unconstitutional, as in all the municipalities in which the requirements for allowing Slovene as an official language are fulfilled, the current ruling does not allow it and all these municipalities refuse to implement the decisions of the Constitutional Court. An example from St. Kanzian /Škocjan is typical: The requests for notices for public fee assessments in the Slovene language were not acknowledged and instead a collection agency was contracted to threaten the applicant with distraint.

The current ruling on court language, in which Slovene is only allowed in the district courts in Ferlach / Borovlje, Eisenkappel / Železna Kapla and Bleiburg / Pliberk is unconstitutional. The Slovene language would also have to be allowed as a court language in the district courts in Völkermarkt / Velikovec and Villach /Beljak, at the very least for the former jurisdictions of the district courts in Eberndorf /Dobrla vas and Rosegg / Rožek, and probably also for the former jurisdiction of the district courts in Völkermarkt /Velikovec and Arnoldstein / Podklošter. Regarding the district courts in Klagenfurt /Celovec, the Constitutional Court decided that the non-allowance of Slovene does not contradict the State Treaty because there have been no changes to the borders of the court jurisdictions. Through this ruling, however, numerous Carinthian Slovenes, even in those officially recognized bi-lingual municipalities of Ludmannsdorf / Bilčovs and Ebental / Žrelec have had the possibility to use Slovene in the courts taken from them.

A special problem in the area of jurisdiction is to mention that the computer programs used by the courts cannot easily use the Slovene letters č, š, and ž. The same goes for the area of administration. Thus many Slovene proper and family names are not written correctly, and in the case of land title registers the old Slovene appellations are threatened with complete extinction.

In the case of filling out forms for official identification cards and documents, the authorities refuse to use the bilingual appellation for place of birth and place of residence.

BILINGUAL TOPOGRAPHICAL DESIGNATIONS IN CARINTHIA

"The Constitutional Court Reverses the "place-name sign regulations" of the Minorities Act as Unconstitutional

The Constitutional Court reversed the terms of the Minorities Act in which bilingual topographical designations shall be put up only in places with more than a 25% proportion of members of the Minority group, on the grounds of its violation of the constitutional terms of § 7 of the State Treaty of Vienna.

According to this constitutional decision, in the administrative districts of Carinthia with mixed populations, topographical designations in Slovene and German are to be put up. It is totally out of the question – said the Constitutional Court in its decision – that these State Treaty terms can be understood to mean an implementation quota of 25%. The Constitutional Court primarily referred to the history leading up to the State Treaty, from which can be understood that the terms would not demand such a high quota for minorities. Based on the international practice for providing for minority group rights, in which quotas ranging from 5 to 25%, - 30% at the very most - would be relevant, minority quotas in the upper range shall not be taken into consideration for the interpretation of the State Treaty.

The Constitutional Court supported its decision on the unconstitutionality of the Minorities Act. Topography ordinances, in so far as they do not assign bilingual place name signs for the village of St. Kanzian am Klopeiner See, have to be reversed as illegal. The Constitutional Court assumes that a locality like St. Kanzian am Klopeiner See in the municipality of the same name has a minority percentage of more than 10% based on the results of population census over a longer period of time, and so it is qualified as a "locality with mixed population", according to § 7 of the State Treaty.

For the same reason, the Constitutional Court also reversed the above mentioned ordinance of the administrative district of Völkermarkt, but only in so far as it provides for monolingual German place name signs, not however regarding the defining a locality border for road traffic ordinances.

The Constitutional Court set a time of one year for the taking effect of the suspending decision, in order to enable the passing of substitute clauses in the Minorities Act and in the topography ordinances conforming to the Constitution. Within that time period, the regulations are unassailable. This has the effect that up to this point in time, all place-name signs - and thus all the resulting speed limits – would maintain their validity.

The complete text of the decision can be found on the home page of the Constitutional Court under the file numbers "G 213/01" and "B 2075/99."

This is the wording of the press release of the Constitutional Court to the so-called "place name signs" decision of December 13, 2001. The expected high court decision resulted in a storm of anger on the part of some Carinthian politicians, in which there was no lack of underhanded attacks on the Constitutional Court. The regional governor Jörg Haider called it "an early carnival decision". At the same time he also said that on

his part there is no willingness to put up additional place name signs (this he repeated often also during the Carinthian parliamentary elections in 2004, in which he campaigned on the promise that there would be no additional place name signs as long as he was governor); the terms of the ordinance of 1977 emanating from the Minorities Act of 1976 would be fulfilled, and that is enough. The Constitutional Court proved yet again with this decision, said Haider, that it is a politically motivated court. He also threatened to initiate a minority census and a referendum about installing additional bilingual place name signs (and even removing existing ones). For introducing such a referendum, the Carinthian Freedom Party (FPÖ) began to collect signatures, but a referendum was not carried out.

Although well-respected constitutional lawyers said otherwise, Haider contested any kind of activity to implement the decision of the Constitutional Court, whereby his party always seconded his decisions. A clear rejection of the Constitutional Court decision and of the installing of additional bilingual place name signs was supported by the Carinthian Homeland Service (Kärntner Heimatdienst - KHD) and the Carinthian Defense Fighters' Union (Kärntner Abwehrkämpferbund - KAB).

At the same time the regional governor Haider demanded that the President of the Constitutional Court at that time, Ludwig Adamovich, resign and then at a party event of the FPÖ asked, "whether someone with such a name even has a valid residency permit."

The list of attacks on the Constitutional Court and the decision issued on the bilingual topographical designations continued for a long time. The fact is that those responsible for the verbal attacks (mostly from the Freedom Party) in spite of their rudeness remain unpunished. While the decision on place name designations in Burgenland produced positive reactions by all political parties, in Carinthia it has escalated to a continual object of dispute. This has a previous story behind it that culminated in the attack on the place name designations of 1972.

Article 7 of the State Treaty was not implemented for a long time after the treaty went into effect, especially those terms concerning bilingual topographical signs and designations. In 1971, the Austrian government under Chancellor Bruno Kreisky decided to implement the terms of § 7 concerning topography. Then the Carinthian Governor Hans Sima announced in the Regional Assembly of Carinthia in November, 1971 that appropriate measures would follow, without a special census for minorities. The installment of the bilingual place-name signs would be based on the population census of 1961 and follow a 20% clause. This would mean 205 place-name signs in 36 municipalities, which was to be carried out in 1972. In the spring of 1972, the atmosphere in Carinthia had become so critical that a delegation was sent for negotiations and fliers agitating against the bilingual signs were distributed.

In the night of September 20-21, 1972, the first bilingual place-name signs were installed, and only 24 hours later the first actions were taken to damage and dismantle them. In the following days more bilingual place-name signs were installed that were subsequently torn down or taken away in a kind of pogrom attack on the signs. The police let most of the attackers go; of the charged persons, none were found guilty, although federal property had been destroyed and the law had been clearly broken.

As a result of this attack, on September 25, 1972 Federal Chancellor Kreisky was insulted and called names like "Jewish pig" ("Judensau") and "Pig Jew, I'll cut your throat!" ("Saujud, ich schneid dir die Gurgel durch") in front of the Chamber of Workers in Klagenfurt/Celovec. The Carinthian Governor Sima was attacked with eggs and tomatoes at a public meeting.

As a result of this "attack on place-name signs", that has no comparisons in recent Austrian history, the Federal Government established a "Commission for the Study of the Problems of the Slovene Minority Group in Carinthia", that worked out the Minorities Act of 1976. This Act provided for a 25% implementation quota in the determination of installing place-name signs – exactly the term that the Constitutional Court reversed as unconstitutional in 2001. Of the 205 places that should have gotten bilingual place-name signs in 1972, only 91 were left after the Minorities Act and an appropriate ordinance in 1977. The Minorities Act also provided for a secret ascertainment of mother languages that was carried out in November, 1976, but was generally boycotted by the Slovene population so that results were useless for any purpose.

The Decision on Place-Name Signs of December 13, 2001

On September 6, 1994, the Slovene lawyer Rudi Vouk drove from his office in Klagenfurt / Celovec to Eberndorf / Dobrla vas, where he has lived since his childhood. In the neighboring municipality of St. Kanzian / Škocijan he was stopped because he was driving 65 kilometers per hour instead of the allowed 50. It concerns a straight piece of road where daily hundreds of cars are speeding along a 65 km per hour. It was purely accidental that he was stopped, but he did not want to pay the required fine on the spot. More than 7 years later, on December 13, 2001, the decision concerning this test case was handed down by the Constitutional Court, which effectively reminded Carinthia and all of Austria again about the vehemently turbulent and unsolved issues of Carinthia's place-name designations.

Following is a text by Rudi Vouk about this case, published in the collection of essays, „Ortstafelkonflikt in Kärnten – Krise oder Chance" by the Braumüller Verlag.

In June, 1990, I finished my law studies at the University of Vienna and returned to Carinthia. Here I took over the position of secretary of the "Unity List" on an honorary basis. In this function I was often a member of delegations of various organisations of the Slovene minority group in discussions with the political parties in Parliament.

An important topic at these discussions was for us the request for the legal right to file class action suits for the minority group organisations. We argued that while it is evident that minority group rights have not been implemented, it was very difficult and costly for an individual at his own risk to get the right of appeal for enforcing minority rights. In some cases, including those of the bilingual place name signs, it is even impossible. Therefore, it is necessary to grant the representative organizations of the

minority groups the right to file class action suits, similar to what the consumer organizations have regarding consumer protections issues.

We found very little sympathy for our request, despite the fact that there was little to challenge about our argumentation, especially concerning bilingual topography. The only exception was the former head of the parliamentary club of the Austrian People's Party (ÖVP), Dr. Andreas Khol. He explained that it was not true that there was no possibility to enforce bilingual topographical designations. One could speed through a locality and then claim that the village sign, which is at the same time a traffic sign for reducing the speed limits, was not duly displayed. At the time we felt the suggestion was not very practicable and we were rather angry about the rejection of our request for the right to file class action suits using such flimsy hair-splitting arguments. Club chairman Khol repeated this suggestion later in a public discussion in Tainach/Tinje, whereby his idea was not taken very seriously there either.

Legally the idea was logical; the problem was to find out whether legal practice would function the way the theory implied it would.

About two years later, as I was driving through St. Kanzian / Škocjan I was stopped by the police – that is when I remembered this legal situation. And that is the reason why I refused to pay the fine immediately.

Stages of Appeal and the Logic of the Appeal to the Constitutional Court

The long procedure through the courts began:

- *issue of citation of penalty*
- *petition to serve the citation in the Slovene language*
- *delivery of the citation in Slovene*
- *filing the objection*
- *sentencing*
- *appealing the sentence*
- *ruling of the Independent Administrative Senate of Carinthia*

At this point came the first delay in the process, which explains the 7-year length of the procedures. The Independent Administrative Senate of Carinthia declared the previous decisions null and void and ruled that the original citation of penalty had been legally binding all along. This, because as a citizen of the municipality of Eberndorf / Dobrla vas, I had no right to use the Slovene language at the district administration of Völkermarkt / Velikovec, because at that time Eberndorf / Dobrla vas was not a designated bilingual municipality according to the Official Language Ordinance. Because I had no right to use Slovene, the appeal against the issue of citation was not ascertained within the normal time period, and so the procedure should have ended with the initial issue of citation as legally binding.

Appeals against this decision were brought to the Constitutional Court in 1996, and the Constitutional Court reversed the decision in 1999. While this decision was a directive to the issue of official languages, the Court did not take up the core issue of bilingual topographical terminology and designations.

The Constitutional Court did decide, however, that in situations involving authorities where there is a right to use minority languages, everyone has the right to use that language. In this particular case, the use of the Slovene language was allowed at the district authorities of Völkermarkt / Velikovec because at that time the district authority had jurisdiction over the designated bilingual municipalities of Neuhaus / Suha, Bleiburg / Pliberk, Feistritz ob Bleiburg / Bistrica nad Pliberkom, Globasnitz / Globasnica, Sittersdorf / Žitara vas and Eisenkappel / Železna Kapla. The Constitutional Court argued that if the district authority of Völkermarkt / Velikovec was able to use Slovene as an official language for these municipalities, there is no reason that it cannot use Slovene in the case of citizens of other municipalities.

However, the Court managed to avoid very elegantly the question of whether the municipality of Eberndorf / Dobrla vas – the particular case here – should be a bilingual municipality or not. This decision however had enormous precedence effect. On the basis of this decision, for example, it is clear that the regional ("Land") government of Carinthia when it has jurisdiction in the court of first instance, or even the revenue office, has to use Slovene as an official language regardless of where the applicant lives, because these authorities have jurisdiction over designated bilingual municipalities and therefore must be able to conduct their services in Slovene as an official language. As a result of this decision they would have to accept Slovene as an official language also in cases where the applicant lives in Klagenfurt / Celovec even though the Carinthian capital is not an officially designated bilingual municipality.

After this decision, the Independent Administrative Senate of Carinthia issued another decision, this time also in Slovene, in which my appeal was dismissed as unfounded. Thus, a second time I filed an appeal with the Constitutional Court. This time the question of bilingual topographical designations would be directly taken up.

To summarize briefly:

In the complaint, I stated that I did not question the fact that I had driven through St. Kanzian / Škocjan at the speed of 65 km per hour. On the straight piece of road where I was stopped, this speed is not unreasonable because it is an easily visible road sufficiently wide and with a sidewalk for pedestrians. My penalty is admissible on the basis of this chosen speed only because I broke the prescribed speed limits. The prescribed speed limit can be seen in the place-name sign "St. Kanzian" (§17a and 17b of the Road Traffic Ordinance), because such signs declare the boundaries of the locality and at the same time prescribe a speed limit of 50 km per hour. In the legal sense these place-name signs are in effect an ordinance.

Ordinances must be proclaimed in due order. If they are not proclaimed in due order, they have no validity. On the basis of the constitutional terms of § 7 (3) of the State Treaty of Vienna, the locality of St. Kanzian / Škocjan should have bilingual place-name signs. They were however only in one language, German; they were therefore not proclaimed in due order and therefore in my argumentation they were not valid, and thus the speed limit reduction to 50 km per hour was not validly prescribed. The road conditions would allow a speed of 65 km per hour and therefore there was no valid reason for my fine.

St. Kanzian / Škocjan - a bilingual village

To establish that St. Kanzian / Škocjan should have had bilingual place-name signs, I put forth the following argumentation – here summarized briefly:

The municipality of St. Kanzian/Škocjan had a 50% Slovene-speaking population in the last census before the Austrian State Treaty, and in the first census after 1955 this percent was decidedly over 15%. The terms of § 7 (3) of the Austrian State Treaty should have been implemented in the year 1955, and therefore only those percentages that were given at that time can be the basis for implementation.

It is not permissible to wait until the percentage of the Slovene-speaking population has dropped exactly because of the lack of implementation of minority rights, and then to say that the implementation of minority rights is no longer necessary because of the diminishing proportion of the population.

If one takes into consideration the minority proportions in the municipality of St. Kanzian / Škocjan at the time of the signing of the Austrian State Treaty, then the proportion of the Slovene-speaking population in this municipality was in any case over 25% and so the village of St. Kanzian / Škocjan had to have bilingual place-name signs even according to the declaration of the Minorities Act of 1976 with its 25% implementation quota.

Even if you consider the so-called "petrification principle", it is irrelevant whether the 25% clause of the Minorities Act is even constitutional, because St. Kanzian / Škocjan in this method of interpretation would have had to have bilingual place-name signs in any case.

The 25% Quota

If one wanted to test the constitutionality of the 25% quota of the Minorities Act, it would soon be clear that it is unconstitutional. 25% is perhaps a "relatively high proportion" of minority group members as originally stipulated by the British suggestion for the formulation of § 7 of the Austrian State Treaty. This suggestion was clearly deleted and replaced by the Soviet suggestion that had no such stipulations. This means that the signatory nations of the Austrian State Treaty decided against a "relatively high proportion" of minority group members as a precondition for certain minority group rights, and instead proceeded on the assumption of "administrative and judicial districts with Slovene or a mixed population". One could claim that these "administrative and judicial districts" were assumed to be known and that they corresponded to the jurisdiction of the minority school system.

Even if one had to first prove that the municipality of St. Kanzian / Škocjan is one with a "Slovene or mixed population", the result would be positive. In the last census in 1991, the locality of St. Kanzian / Škocjan had a 16% Slovene population. This percentage qualifies at the very least for the designation "mixed language" municipality. International comparisons show that in those countries with favourable minority protection, percentages of 5% are sufficient, and sometimes even less.

The Constitutional Court had already handed down a decision – this time in a case involving official languages concerning the Croats in Burgenland. – in which it said that in the case of the regional capital of Eisenstadt / Železno, the Croatian-speaking population did not even make up 5% of the population, and that percentage was too small. Thus the opposite argument, that with a proportion of more than 5% of the population speaking a minority language – in this case Croatian – that language should be accepted as an official language.

The conditions for bilingual topographical signs and designations and bilingual official languages are completely identical.

If however the "25% clause" of the Minorities Act is unconstitutional, then of course the topographical ordinance in those sections pertaining to the district of Völkermarkt / Velikovec are also unconstitutional as well as the ordinance that determined the place-name sign of St. Kanzian / Škocjan. The Constitutional Court requested the Federal Government, the government of Carinthia and the administrative district officers of Völkermarkt / Velikovec to file counterarguments, and these counterarguments were filed.

Official Language Recognition of the Constitutional Courts

In the meantime, in the year 2000, a decision of the Constitutional Court was issued pertaining to official languages. Since the Constitutional Court elegantly avoided the question in 1999, as to whether the municipality of Eberndorf / Dobrla vas should be a bilingual municipality or not, in the year 2000, it decided clearly and positively. In this decision of the Constitutional Court, a municipality with about a 10% Slovene-speaking population would qualify at any rate as a mixed language municipality on the basis of § 7 (3) of the Austrian State Treaty. Therefore in such municipalities the Slovene language is to be accepted as an additional official language. As, however, according to the Official Language Ordinance Slovene was not permitted as an official language, the Constitutional Court reversed those terms of the Official Language Ordinance on the basis of their being unconstitutional. The Court ruled that § 7 (3) of the Austrian State Treaty is directly applicable and as a result of the reversal of parts of the Official Language Ordinance, the municipality of Eberndorf / Dobrla vas had to accept the use of Slovene as an official language in direct application of § 7 of the Austrian State Treaty.

The Federal Government would be allowed a time limit of 6 months to make various changes of the Official Language Ordinance to comply with the Court. This judgement should have made the Federal Government - as the law-maker - go into action. It was clear that the judgement was not only important to the municipality of Eberndorf / Dobrla vas, but also pertained to numerous other comparable municipalities. In the district of Völkermarkt / Velikovec alone, in the relevant population census of 1991, the municipalities of St. Kanzian / Škocjan, Gallizien / Galicija and Diex / Djekše had Slovene-speaking population proportions of -over 10%, so that in these municipalities the use of Slovene as an official language also had to be accepted. In the district of Völkermarkt / Velikovec, the municipalities could act on the "direct application" of § 7 and authorize the use of Slovene as an official language even without the changes in

the ordinance. But, as far as we know, none of them have done so, with the exception of the municipality of Eberndorf / Dobrla vas. Now, in the summer of 2004, there are again cases pending concerning the municipality of St. Kanzian / Škocjan.

In the political districts of Klagenfurt Land/Celovec dežela, Villach Land/Beljak dežela und Hermagor/Šmohor the direct applicability of § 7 still stands in conflict with the Official Language Ordinance, because the Constitutional Court reversed only those sections referring to the political district of Völkermarkt/Velikovec. It is clear that in the case of similar complaints in the other districts of Carinthia, in which there are municipalities with a Slovene-speaking population of about 10%, the terms of the Official Language Ordinance will also be reversed.

The Constitutional Court did not set a specific point in time in which to assess the proportion of the Slovene-speaking population – the Court spoke only about "a longer period of time". It seems to be quite probable that, for example, Slovene as an official language should be accepted also in the municipality of Köttmannsdorf / Kotmara vas, even though in 1991, the municipality had "only" an 8% proportion of the population as Slovene-speakers – because the corresponding percentages 20 years before were higher than 20%. This same situation goes for many other municipalities, even though the issue of the so-called "old municipalities", which were joined to create larger municipalities in the 1970s, was not taken into consideration, nor was the issue of the so-called "Windischen", speakers of a Carinthian-Slovene dialect.

In spite of these imprecise formulations that actually demand clearly defined rules, the Federal Government has yet to find it necessary to take action to change the ordinances. They think it would be better to have a new case with a new complaint so the Constitutional Court would have to make a new ruling. It is not exactly a positive aspect of the treatment of minority rights, when it is up to members of the minority group themselves to "test" the legal possibilities to see what rights will be granted to them or not. After the court's decision on the issue of official languages, there was a high probability that the decision on the issue of the place-name signs would not end up differently. Both the official language and the topographical signs and designations are mentioned in the same paragraph of § 7 of the Austrian State Treaty with the same definition of jurisdiction applying to both. Therefore one could have expected that after the decision on the official languages, those responsible would begin to look for appropriate solutions for the issue of place name signs.

The Judgement on Place Name Signs and its Results

However nothing of the sort happened. In July, 2001, the resolution came from the Constitutional Court that it would review the constitutionality of the 25% quota of the Minorities Act, the Topography Ordinance and the "place-name signs of St. Kanzian / Škocjan". The Constitutional Court issues such a resolution only if it seriously doubts the constitutionality of a ruling. For all practical purposes, there has hardly ever been a case in which, after such a review by the Constitutional Court, the stipulations under examination have not been reversed. If it had not been clear to all those concerned in the fall of 2000, then it must have been clear by summer 2001, at the very latest, that with all probability a decision on the place-name signs would be issued. But this

seemed to be no reason for either the Federal Government or the Carinthian "Land" government to take action, so to say, to find a preventative solution.

Then on December 13, 2001, when the - expected – decision on the place name signs was issued, everyone acted totally surprised, as if out of the clear blue sky the Constitutional Court had upset the "Carinthian peace". In actual fact, it has been known for decades that the current ruling did not conform to the Austrian constitution and that this ruling in all probability would be reversed by the Court.

In the public discussion – especially thanks to the regional governor Dr. Haider – the Constitutional Court was reviled as being a "debtor's agent" of radical Slovene demands; the President of the Court found himself to be the object of verbal attacks the likes of which have not been seen in recent Austrian legal history. Carinthian politicians spoke about the "absolute nullity" of the Court decision, which induced the Constitutional Court to include in its Progress Report of 2001 (GZ 2001/1-Press/2002/ pp. 3-4) the following comment: "The most subtle concept of 'absolute nullity' was gravely misused. The misconception that a politically untimely decision of the Constitutional Court is null and void if only one expert is needed to find the decision legally wrong, implies not only a "kick in the face" of the legal system but could just as easily serve as a theory for a coup d' etat." Most of these verbal attacks speak for themselves and their low standards needs no further comment. However, the impression could have been made here that the Constitutional Court found my argumentation legally correct and totally ignored the arguments of the Federal Government and the Carinthian government. This impression is not the case. To my regrets the Constitutional Court did not support all of my arguments at all and indeed left numerous questions open:

- I argued that the signatory powers of the Austrian State Treaty acted on the assumption of a known bilingual area in Carinthia and that this area was identical to the areas where there was a bilingual school system. If this were the case, one would not even have to talk about percentages at all, but rather only define the areas in which all the children were taught in both languages at the time of the signing of the treaty – in that area Slovene would have to be accepted as the official language and in that area bilingual place-name signs would have to be accepted as well. This argumentation was ignored by the Constitutional Court. Moreover the Court assumed that one has to first identify the territories meant in § 7 (3) of the Austrian State Treaty.*
- My arguments were based on the "petrification principle". The terms of the treaty should have been implemented in 1955, therefore only those minority proportions that existed at that point in time should be used as a basis. This would mean that the results of the census of 1951, perhaps also those of the census of 1961, could be used. This question was left open by the Constitutional Court. It listed in detail all the results of population censuses since 1951, but then merely proclaimed that a "longer period of time" should be taken into consideration. What should be understood by "longer period of time" was left open. Thus, it has still not been clarified whether it is sufficient for any one area to have had more than a 10% Slovene population between 1951 and 1971, or whether current population censuses carry more weight compared to earlier censuses. The former would be very problematical in my opinion because then*

minority rights could be lost by the passing of time alone and by the decision of others to become assimilated. A present-day 60-year old Slovene from the municipality of Egg / Brdo in the Gail valley would have had the right to bilingual place-name signs in his home municipality in 1955, because at that time over 50% of the population in the municipality were Slovene-speaking. This right he still would have had in 1971, but sometime over the following years he would have lost this right, although he is still a member of that minority group. The Constitutional Court left this question open: whether minority rights in this sense were allowed to be "elastic" or, whether – as in my argumentation – minority rights once laid down have to be adhered to. Otherwise it could happen that exactly because of the non-implementation of minority rights the assimilation of the minority group proceeds at a rapid pace, which finally results in the disappearance of the group altogether due to quicker assimilation. As a result, those who were instrumental in preventing the implementation of minority rights would be rewarded, and those futilely waiting for implementation of these rights would be punished.

- *Thus I argued that based on the clear wording of § 7 (3) of the Austrian State Treaty, the jurisdiction for the official language ordinances is the same as that for topographical signs and designations, whereby the phrase "administrative and court districts" is to be understood as referring to the municipality as the smallest administrative unit, and especially includes "old municipalities" as they existed in 1955. Lower than the municipality level, there is no administrative authority and also no clearly defined territorial borders indicating where a piece of property belongs. If it is clear that a particular municipality is a mixed language municipality in this sense, then bilingual topographical signs must be authorized for the entire area of the municipality. This argumentation was also not given validity by the court. It decided that concerning the topographical ruling the phrase "administrative and court districts" can also be understood as applying to individual localities in the municipality. To explain this decision, the court said that within a mixed-language municipality the minority groups live in different densities and so it is possible that localities with a high percentage of Slovene-speakers neighbour on a locality in which there are either no Slovene-speakers or only very few.*

I do not consider this argumentation very convincing. If the lawmakers use the phrase "administrative and court districts" it must be assumed that they assumed a minimum of administrative organization. Individual localities do not have such a structure; they have neither their own offices nor their own jurisdiction. In addition there is another problem that, in my opinion, the Constitutional Court was not aware of: that § 7 (3) of the Austrian State Treaty does not only refer to place-name signs. The terms of the treaty refer to "topographical signs and designations". This includes much more than place name signs; signposts, names of plains and meadows, designations for waters and mountains – the terms of the treaty means general topographical designations. It does not mean only the place-names on signs, but rather the designation of places on maps, land registry, registry regions etc. To define where bilingual designation are to be planned or not, clear territorial boundaries are essential. An example: Steinerberg / Kamenska gora is a small mountain situated between the localities of St. Veit im Jauntal/ Šentvid v Podjuni und Stein im Jauntal / Kamen v Podjuni. St. Veit / Šentvid

has a Slovene population well over 10%; Stein / Kamen well under 10%. Which locality should then be relevant for the naming of the Steinerberg / Kamenska gora?

Another example: at the foot of the Mittagskogel / Jepa there are many localities in which a large part of the population is Slovene-speaking, but also localities in which there are hardly any Slovene-speakers. Can the "Mittagskogel" be called "Jepa" or not? In addition to this there is also the problem of smaller localities with varying minority proportions. In a locality with only 50 inhabitants, the proportion of Slovene-speakers could be well over 10% for one or the other census if, for example, in Slovene-speaking families more children are born than the average, or could fall under 10% when the older inhabitants die off. With a point of view reflecting only localities, a potential conflict is unnecessarily brought into these villages – whether they are bilingual or not. At the municipality level or at the very least on the level of land registry municipalities having a territorial reference, these decisions could be made in a more neutral manner.

The Constitutional Court, however, decided otherwise and this has to be accepted. The basis for solutions put forth by the Constitutional Court is, in my opinion, unpractical and contains a potential for new conflicts. It has already been argued based on the decision on place-name signs that localities with fewer than 100 inhabitants cannot have bilingual signs; because of reasons of data protection, it is not allowed to make public how high the percentages of the Slovene-speaking population in these localities actually is. Should such localities be situated in a mixed-language municipality, then in my opinion the decision should go in favour of the minority group, in that an adequate proportion of the Slovene-speaking population exists and data protection necessities should not be interpreted to the disadvantage of the minority. It should be mentioned, however, that the basis for solutions of the Constitutional Court also brings some advantages: If a municipality as a whole does not have the necessary proportion of Slovene-speaking inhabitants, but individual localities in the municipality do have, then according to the decision of the Constitutional Court these localities have to have bilingual place-name signs. This would not be the case if the Constitutional Court had followed up on my line of argumentation.

The reaction of the Carinthian politicians to the decision on place-name signs was inferior. I was accused of using the argument that I could not read the place-name sign of St. Kanzian / Škocjan. Although the decisions of the Constitutional Court in previous years has proven the opposite, it was said that the terms of § 7 have long been implemented and much more.

Furthermore, the Constitutional Court was reproached on the basis that it should not have been allowed to review the issue of the place-name signs from the test case without having even remotely considered the questions of precedence. The Constitutional Court was also criticized for not reversing the ordinance about the terms of the Slovene place-names, although this ordinance is not wrong, only incomplete.

The Freedom Party of Austria (FPÖ) initiated a campaign to gather signatures for launching a plebiscite to prevent authorizing more bilingual place-name signs. Thus, one could finally ask whether the Freedom Party of Austria (FPÖ) should not itself be forbidden – § 7 (5) of the Austrian State Treaty states that organizations that want to deprive the Slovene or Croat minority population of their rights are to be prohibited.

In no phase of this period did any Carinthian politicians undertake even the most modest attempt to explain the legal situation to the people and to acquaint them with it. In this question, the legal system was consciously and purposefully "kicked in the face".

Thank God that a large part of the Carinthian population does not fall for this emotionalization of the situation. Polls have shown that a relative majority have no problems with bilingual place-name signs; for a third it does not make any difference; only a minority was against it. Also here, the neglect on the part of Carinthian politicians is evident: If even a half-hearted attempt had been made to explain the backgrounds to the issues and to encourage understanding about it, a solution to the issue of the place-name signs would have been possible without any problems and with high approval of the Carinthian population.

The Consensus Conference

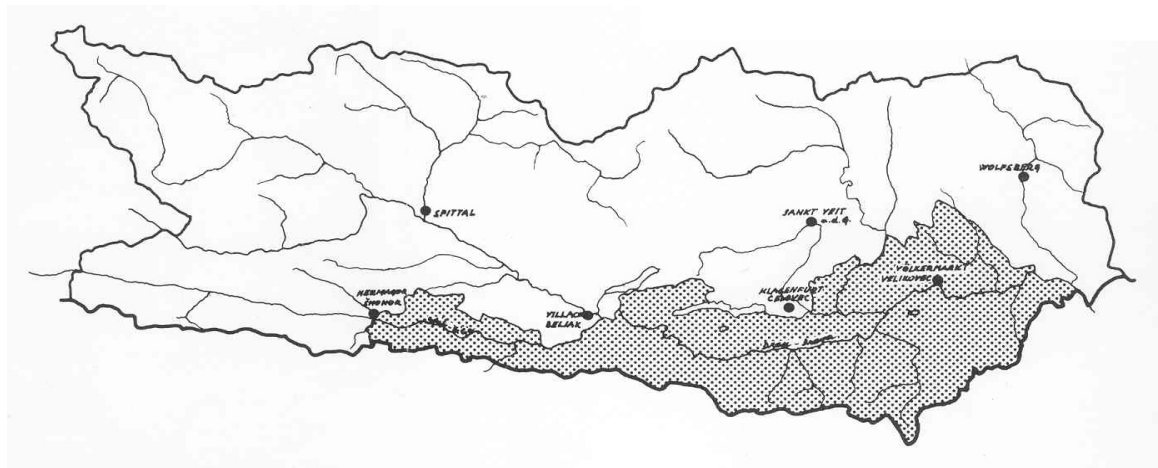
Following the decision of the Constitutional Court of December 13, 2001, which saw the a great upsurge of anger in part of the political landscape in Carinthia and the fronts seemed more entrenched than ever, Federal Chancellor Wolfgang Schlüssel initiated a so-called consensus conference as a forum for resolving the present issue. The consensus conference met for the first time on April 25, 2002. Among those invited were representatives of the Austrian Federal Government, the regional Carinthian government, those political parties represented in the Federal Parliament and the regional assembly, as well as representatives of the Council of Slovenes in Carinthia, the Central Association of Slovene Organizations, as well as representatives of the Carinthian Homeland Service (KHD) and the Carinthian Defense Fighter's Union (KAB). However, no representatives of the Unity List Einheitsliste / Enotna lista were invited, although it has more than 50 directly elected representatives serving in bilingual Carinthian municipal governments. The consensus conference, however, ended on September 11, 2003 without a result, because the suggested solution could not be accepted by either of the Slovene organizations. This offer included an increase in the number of place name signs (92 in designated localities according to the ordinance of 1977) to 148 signs, and a financial package of undisclosed amounts. Then, as a counter-move, the federal and state government demanded from the Slovene organizations a declaration that § 7 of the State Treaty was thus fulfilled. So, the place name decision of the Constitutional Court was not implemented by December 31, 2002 – which was the date set by the court.

Suggestions of the Carinthian Slovenes for the Implementation of the Topography Decisions of the Constitutional Court

The suggestions of the coordination committee of the Carinthian Slovenes (between the Council of the Slovenes of Carinthia and the Central Association of Slovene Organizations) of the year 2002 that provided for a compromise in the installation of bilingual signs in 394 localities:

According to the Carinthian Slovenes, this area is identical to the area of the Minority School Ordinance of 1945 – that is, the area in which between 1945 and 1958 all children in primary school would have been taught in both languages, or should have been.

Das autochthone Siedlungsgebiet der slowenischen Volksgruppe
Autochthonic settlement areas of the Slovene ethnic group



This area is practically identical to that area for which Heinrich Himmler, SS-Reichsführer, issued the order (copied below) to initiate the dispossession and deportation of approximately 300 Slovene families in April, 1943.

Feidkommandostelle, den 6. II. 1943
Der Reichsführer-SS
Reichskommissar für die Festigung
deutschen Volkstums
C-6/10 Wir./Sz.

**Allgemeine Anordnung
Nr. 21/43/C
über
die Bestimmung eines Siedlungsbereiches
im Reichsgau Kärnten**

Auf Grund des Erlasses des Führers und
Reichskanzlers vom 7. 10. 1939 über die
Festigung deutschen Volkstums ordne ich
an:

1.) Ich erkläre das gemischtsprachige
Gebiet im Reichsgau Kärnten zum
Siedlungsbereich. Dieser Siedlungs-
bereich umfaßt folgende Gemeinden:

a) im Landkreis Wolfsberg:

Lavamünd
Legerbusch
Leifling bei Lavamünd
Schwabegg bei Bleiburg

b) im Landkreis Völkermarkt:

Bleiburg
Diex
Ebendorf
Eisenkappel
Feistritz ob Bleiburg
Gallizien, Kärnten
Globasnitz
Griffen
Haimburg bei Völkermarkt
Loibach bei Bleiburg
Moos bei Bleiburg
Pusteritz
Ruden, Kärnten
Rückersdorf bei St. Veit, Jauntal
St. Kanzian, Jauntal
St. Peter am Wallersberg
bei Völkermarkt
Sittersdorf bei Miklauzhof
Tainach, Kärnten
Vellach bei Eisenkappel
Völkermarkt
Waisenberg

c) im Landkreis Klagenfurt:

Ebenthal, Kärnten
Feistritz im Rosental
Ferlach
Grafenstein
Hörtendorf
Keutschach
Köttmannsdorf über Klagenfurt
Ludmannsdorf bei Feistritz im
Rosental
Maria Rain
Maria Wörth
Mieger bei Grafenstein
Oberdörfel bei Feistritz im Rosental
Ottmanach bei Pischeldorf, Kärnten

Poggersdorf bei Grafenstein
Radsberg bei Ebenthal
St. Margarethen im Rosental
St. Thomas bei Pischeldorf
Schiefling am See
Unterferlach bei Ferlach
Viktring
Weizelsdorf im Rosental
Windisch-Bleiberg bei Unterbergen
Zell bei Ferlach

d) im Landkreis Villach:

Arnoldstein
Augsdorf
Emmersdorf
Feistritz an der Gail
Finkenstein bei Müllern
Hohenthum bei Maglern
Köstenberg
Ledenitzen
Lind ob Velden
Maria Gail
Rosegg
St. Jakob im Rosental
Velden am Wörthersee
Wernberg

e) im Landkreis Hermagor:

Egg bei Hermagor
Görtschach
St. Stefan an der Gail
Vorderberg

Der Siedlungsbereich ist in der bei-
liegenden Karte in schwarz angelegt.
Diese Karte bildet einen Bestandteil
dieser Anordnung.

2.) Die Bereichserklärung verfolgt den
Zweck, das deutsche Volkstum in
diesem Gebiet

durch Umsiedlung volkspolitisch
unzuverlässiger Menschen und
Ansiedlung bewährter deutscher
Menschen, insbesondere auch
durch Seßhaftmachung von Umsied-
lern aus dem Ausland
unter planmäßiger Neuordnung der
Eigentumsverhältnisse

zu festigen.

3.) Die Bereichserklärung hat insbeson-
dere die Wirkung, daß Grundstücke
im Siedlungsbereich in entsprechen-
der Anwendung des Landbeschaf-
fungsgesetzes für Zwecke der Wehr-
macht vom 29. 3. 1935 (RGBl. I S. 467)
und seiner Durchführungsbestimmun-
gen in Anspruch genommen werden
können.

Die nach diesem Gesetz der Reichs-
stelle für Landbeschaffung obliegen-
den Aufgaben übertrage ich für diesen
Siedlungsbereich dem Reichsstatt-
halter im Reichsgau Kärnten. (...)

gez. H. Himmler

Quelle: National Archives, Washington,
Microcopy N.T.-81/266/2384254-7.

Even the regional Carinthian government obviously had the same idea that, according to § 7 (3) of the State Treaty of Vienna, the Slovene and mixed-language districts were meant as those of the minority school area in Carinthia. This can be understood from the Newole-Ordinance of 1955 regarding the allowance of Slovene as an official language in all the municipalities of the minority school area. This Newole-Ordinance was specifically renewed in 1968 as the so-called Hauer Ordinance.

HAUER-ERLASS - The Hauer Decree

Decree of the Carinthian "Land" Directorate on August 19, 1968 (file nr. Zi.-Präs – 120012168, concerning the admission of the Slovene language as an official language

To the District Administrators of Hermagor, Villach, Klagenfurt, Völkermarkt

To the Director of the District Agrarian Agency Klagenfurt, Villach

To the Director of the Inspectorate for Agriculture and Forestry

With reference to the purpose of the decree of August 8, 1955 (file nr. Präs-3734/11/55), the decisions of Article 7 (3) of the State Treaty of Vienna will be remembered, whereby in the administrative and judicial districts of Carinthia will Slovene or mixed-language populations, the Slovene language in addition to German is to be allowed.

Concerning oral allegations in the Slovene language a translator is to be consulted if necessary.

Written petitions in Slovene are to be translated into German at the expense of the public office.

With the German handling of the petition send to the petitioner a translation in Slovene, produced at the cost of the office, is to be included.

For notice to all the departments of administrative agencies; Concerning the receipt of and handling of written petitions in Slovene, these procedures are in effect for all operational areas.

Dr. Hauer eh., Director of Carinthian Government Offices

Recommendation of the regional governor of Carinthia on September 3, 1968 (file nr. LH 109/141Tä11968) concerning the implementation of Article 7 (3) of the Austrian State Treaty on minority language as administrative official language:

I am sending you a copy of the decree (file nr. Präs-1200/2/1968, from August 19, 1968) which has been sent to all regional government agencies at my direction. To fulfill the spirit and letter of the Austrian State Treaty, which ultimately means the international basis of our existence, I would suggest the use of an analogous procedure also in the area of the municipal administration.

Regional Governor: gez. Sima

Sent to the mayors of 52 municipalities in mixed-language southern Carinthia:

In administrative district Hermagor/Politični okraj Šmohor:

1. Egg/Brdo (1951 zu 59% slowenisch- bzw. doppelsprachig)
2. Görttschach/Goriče (58)
3. Hermagor/Šmohor (unter 5)
4. St. Stefan an der Gail/Stefan na Zilji (unter 5)
5. Vorderberg /Blače (55)

In the administrative district Villach Land/Politični okraj Beljak-Okolica:

1. Arnoldstein/Podklošter (9)
2. Augsdorf am Wörthersee/Loga vas (48)
3. Feistritz an der Gail/Bistrica na Zilji (54)
4. Finkenstein/Bekštanj (25)
5. Hohenthurn/Straja vas (27)
6. Köstenberg/Kostanje (40)
7. Ledenitzen/Ledince (38)
8. Maria Gail/Marija na Zilji (17)
9. Nötsch im Gailtal/Čajna (unter 5)
10. Rosegg/Rožek (32)
11. St. Jakob im Rosental/Šentjakob v Rožu (63)
12. Velden am Wörthersee/Vrba ob Vrbskem jezeru (unter 5)
13. Wernberg/Vernberk (20)

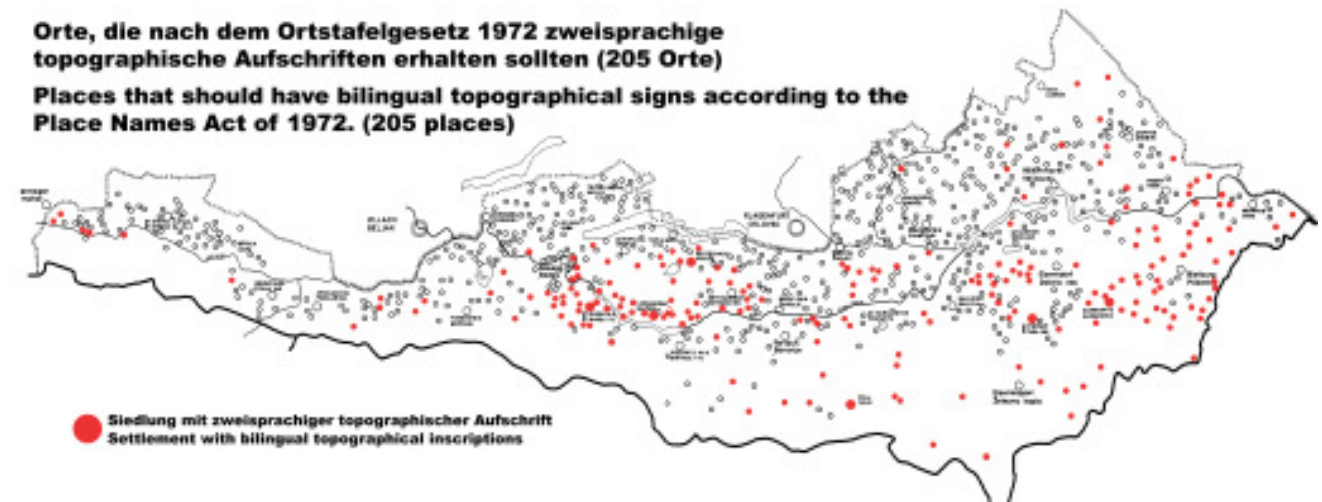
In the administrative district Klagenfurt-Land/Politični okraj Celovec-Okolica:

1. Ebenthal/Žrelec (16)
2. Feistritz im Rosental/Bistrica v Rožu (47)
3. Ferlach/Borovlje(25)
4. Grafenstein/Grabštanj (7)
5. Keutschach/Hodiše(60)
6. Köttmannsdorf/Kotmara vas(46)
7. Ludmannsdorf/Bilčovs (85)
8. Maria Rain/Žihpolje (11)
9. Mieger/Medgorje (91)
10. Poggersdorf/Pokrče (unter 5)
11. Radsberg/Radiše (52)
12. St. Margarethen im Rosental/Šmarjeta v Rožu (77)
13. Schiefeling am See/Škofiče (39)
14. Viktring/Vetrinj (unter 5)
15. Weizelsdorf/Svetna vas (69)
16. Windisch Bleiberg/Slovenji Plajberk (81)
17. Zell/Sele (95)

In the administrative district Völkermarkt/Velikovec:

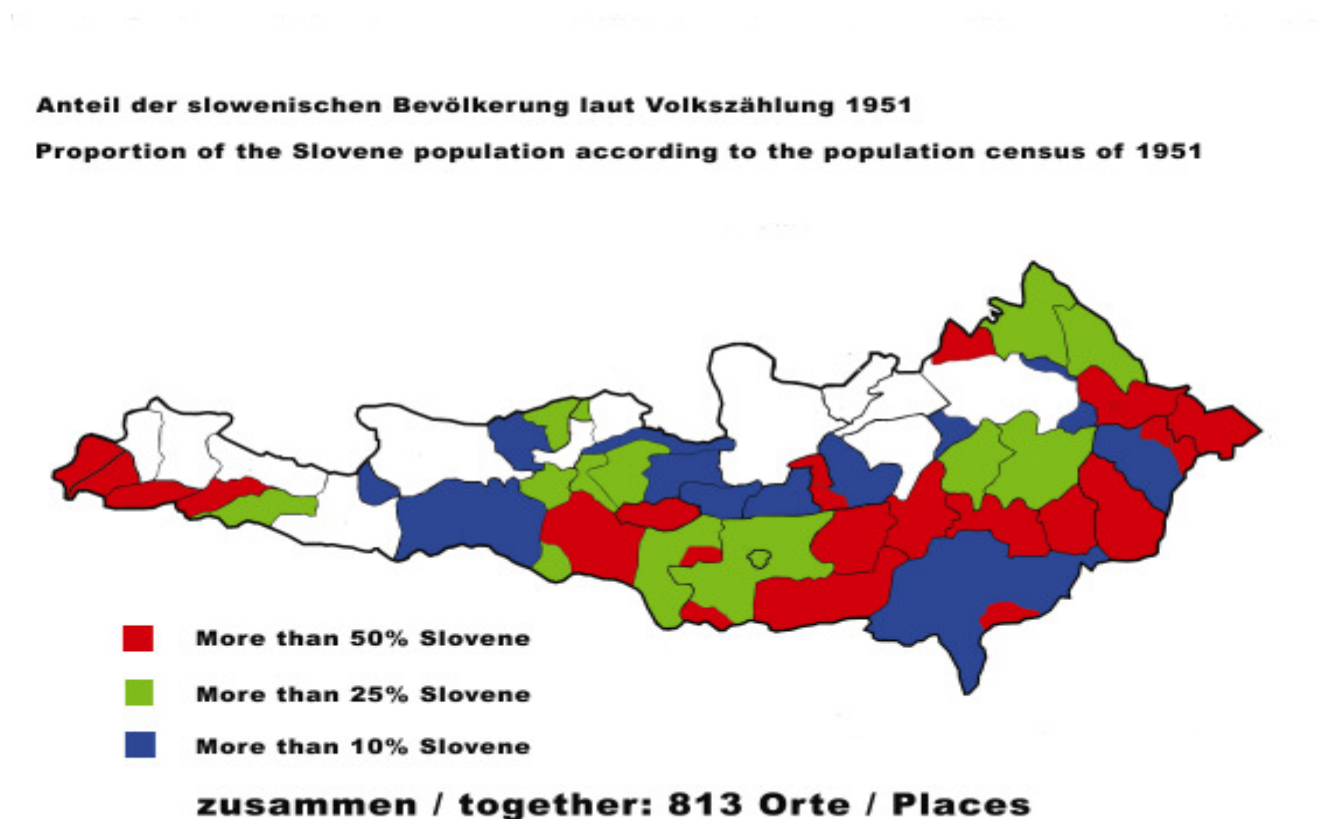
1. Bleiburg/Pliberk(55)
2. Diex/Djekše (47)
3. Eberndorf/Dobrla vas (48)
4. Eisenkappel-Vellach/Železna Kapla- Bela (54)
5. Feistritz ob Bleiburg/Bistrica nad Pliberkom (83)
6. Gallizien/Galicija(80)
7. Globasnitz/Globasnica (89)
8. Griffen/Grebinj (34)
9. Haimburg/Vovbre (20)
10. Neuhaus/Suha (80)
11. Ruden/Ruda (52)
12. St. Kanzian am Klopeiner See/Škocjan (49)
13. St. Peter am Wallersberg/Šentpeter na Vašinjah (62)
14. Sittersdorf/Žitara vas (84)
15. Tainach/Tinje (11)
16. Völkermarkt/Velikovec (8)
17. Waisenberg/Važenberk (21)

Even the Topography Ordinance of 1972 tried to accommodate at least one locality with bilingual designations in each of the municipalities in the area.



That the minority school area of Carinthia was referred to in § 7 (3) of the State Treaty of Vienna as the Slovene or mixed-language area was also confirmed by the population census. The results of the census of 1951 showed that with only 6 exceptions all the municipalities had more than a 10% Slovene population, and a larger part (32 "old" municipalities) of the municipalities in questions had a Slovene majority or more than 40% Slovene population.

Population Census of 1951



According to the decision of the Constitutional Court, whereby 10% Slovene population is sufficient for qualifying an area as bilingual, had the State Treaty of Vienna been implemented immediately in 1955, everywhere and in all of the minority school area bilingual topographical signs would have been put up. This would have affected approximately 800 localities. Thus, it is not totally unfounded to demand the installation of bilingual signs in these 800 localities, as the failure of the Republic of Austria to implement minority rights should not negatively affect the minority group.

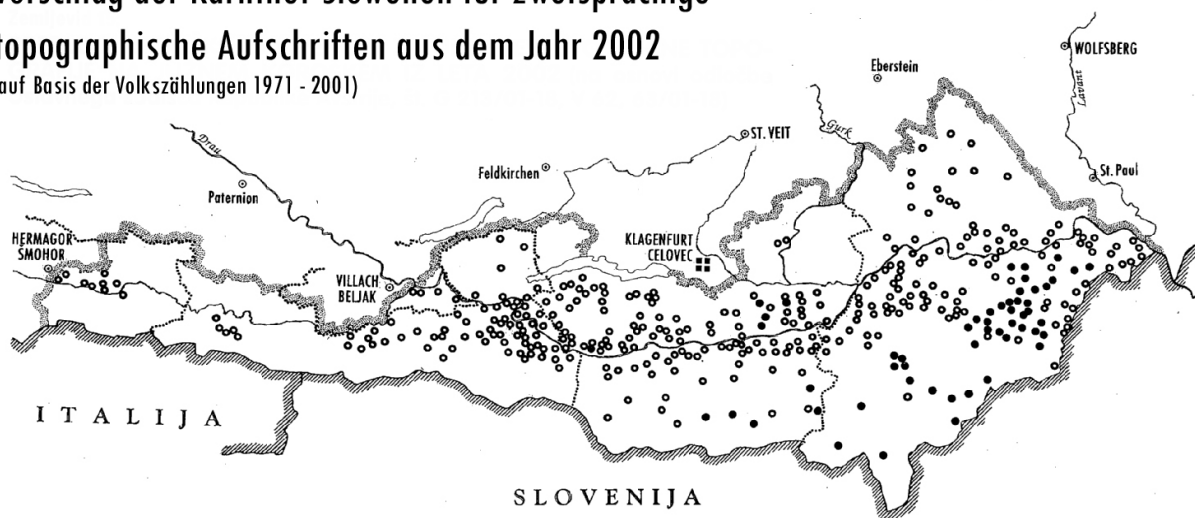
The suggestion proposed by the Carinthian Slovenes to regulate the bilingual topographical designations in Carinthia is based on the results of the various population censuses. However, it must be made clear that these results were manipulated to the disadvantage of the Slovene minority group.(see Chapter 2) That is already an important concession in the offer of a compromise, because as such the obvious manipulation of the census to the disadvantage of the Carinthian Slovenes is being accepted.

The proposal of the Carinthian Slovenes is based on the results of the census beginning with the census of 2001 and going back to the census of 1971. The census of 1961 and 1951 were not taken into consideration. But if these two censuses were used as a basis, then one would come to about 800 localities for bilingual signs, whereby the proposal actually calls for about half of these localities, namely 394. With this proposal, then, the Carinthian Slovenes are ready to relinquish their claim to half of the localities that would have had to have bilingual signs had § 7 of the State Treaty been implemented in 1955. A still greater disclaimer cannot be expected from the minority group. Just the opposite: a more generous solution should go beyond this proposal and so make allowances to the idea that by the delay in realizing their rights through the failure of the Republic of Austria, the minority group has suffered a great loss.

Suggestion of the Carinthian Slovenes for bilingual topographical designations in 2002

Vorschlag der Kärntner Slowenen für zweisprachige topographische Aufschriften aus dem Jahr 2002

(auf Basis der Volkszählungen 1971 - 2001)



The proposal of the Carinthian Slovenes is a compromise offer, factually sound, easy to duplicate and verifiable. It was clear that numerous disadvantages were involved in order to reach a solution. The 394 localities in the whole area still today have a Slovene-speaking population of 20%, in 1971 it was 25%. This is the only concretely formulated proposal, those opposed to a ruling limit themselves to just rejecting it without any factual reasons. In a clear matter-of-fact discussion coupled with relevant information for the people, one would come to a quick solution, that a ruling based on the proposal of the Carinthian Slovenes is legally clear, relating to the circumstances and would serve to positively influence the living together in the region. Carinthia could add herself to the long list of European regions in which public bilingualism - also in the form of bilingual signs – is no longer a problem.

Finally the treatment of the bilingual topographical signs is not only a right of the Carinthian Slovenes, but primarily a common Carinthian heritage, a common Carinthian cultural history that should be preserved and respected independent of language affiliation.

In spring of 2005, due to the upcoming 50th anniversary of the Vienna State Treaty, a new attempt at a consensus conference was begun. The solution suggested by Federal Chancellor Wolfgang Schüssel was the placement of bilingual place name signs in 158 localities (91 localities from the Ordinance of 1977 and 67 new ones). A consensus was not reached this time either. The suggested solution would not comply with the topography decision of the Constitutional Court, but even this suggestion was sabotaged by the Carinthian Defense Fighters Union (Kärntner Abwehrkämpferbund / KAB) and the FPÖ / BZÖ political parties. They insisted on their point that no new bilingual place name signs over and above those stipulated in the Ordinance of 1977 be put up. In addition to all this, regional governor Jörg Haider conducted a public opinion poll on the question of whether bilingual place-name signs should be put up in localities with a minority percentage of 15% or 20% and these only on the basis of the last census of 2001 (note: the Constitutional Court determined the census of 1971 as the basis), or whether no additional bilingual signs should be put up. This action was in crass contradiction to the Constitutional Court decisions, but above all, affairs that are being decided upon by courts, according to § 491 of the Federal Constitutional Law are not issues for public opinion polls.

The political agitation of regional governor Haider is directed ostensibly against the Slovene minority, the real goal of the attacks are however the Constitutional Court and the constitutional state. Regional governor Jörg Haider (BZÖ) said in a interview with the *Kleine Zeitung* (edition of February 21, 2006) literally: ***"In reality it's the Constitutional Court that is in the limelight. What we Carinthians are doing is a contribution to restructure an attempt to unhinge the constitutional state. I am optimistic that we will come to a solution to which the population can say "yes" to. We will turn this right in the beginning to a basic debate about the Constitutional Court"***

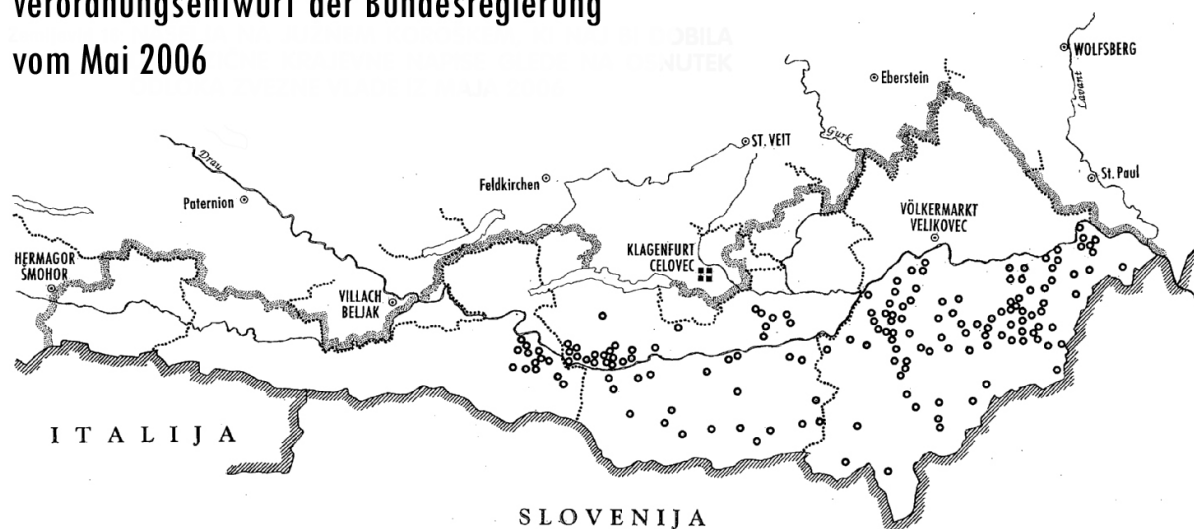
In May, 2006, the Federal Government presented a "Draft of an Ordinance concerning the Designation of Parts of Territories in which Topographical Designations and Signs in German as well as in the Slovene language shall be put up (Topography Ordinance for Carinthia)" for assessment.

Short Analysis of the Topography Ordinance for Carinthia of May 11, 2006

The ordinance draft contains the installation of bilingual place name signs in 158 localities (91 localities from the Ordinance of 1977 and 67 new ones). A systematic, in the sense of the judicature of the Constitutional Court – 10% Slovene population over a longer period of time – was not recognizable in the draft.

Ordinance Draft of the Federal Government of May, 2006

Verordnungsentwurf der Bundesregierung vom Mai 2006



* The commentary explains further: *"A precondition for the topographical appellation to be used at all however is that the sign would be allowed under the statutory provisions, especially in the traffic ordinances. A place name sign, for example, is not to be put up if the locality does not have a built-up area of settlement."* This is crassly wrong and in clear contradiction to the constitutional provisions of § 7 (3) of the State Treaty of Vienna. According to that "Signs and designations of a topographical terminology" would be composed in both languages. Even clearer is the meaning in the authentic versions of the State Treaty in English, French and Russian: "topographical terminology", "terminologie topographiques" and "топографическая терминология"

* The Ordinance should go into effect "at the end of June 30, 2006" (that an ordinance becomes effective at the end of a date is rather curious in itself), but the transition period for its implementation was put off until December 31, 2009. The commentary explains further: *"Within this transition period, measures could be taken that are appropriate to support the acceptance within the relevant population group and to make possible a broad process of opinion formation."* 51 years have gone by since the signing of the State Treaty, from the decision of the Constitutional Court in 2000,

another 9 years should elapse before the installation of a bilingual place name sign in the case of St. Kanzian /Škocjan.

* An important point was the incompleteness of the place name directory for bilingual designations. The criteria laid down by the Constitutional Court – namely, a 10% proportion of Slovene-speaking population over a longer period of time – were disregarded. A few examples of localities not considered:

Blasnitzbert / Plaznica, currently 69% proportion of Slovene speakers

Lanzendorf / Lancova 47.8%

Pudab / Pudab 65.4%

Kristendorf / Kršna vas 35.9%

Moosberg / Kajže 55%

Rabenberg / Šentjanše Rute 45%

Sagerberg / Zagorje 49%

*According to the population census of 2001, 225 localities have over 10% Slovene population; in 1991, there were 283 localities and in 1971, (this period of time is critical for the Constitutional Court) there were 394 localities.

* Special difficulties arose due to the absence of some localities on the list, with reference to those where cases were pending before the Constitutional Court. These were Edling / Kazaze (12.6%, 2001), Buchbrunn / Bukovje (13.6%, 1991) and Mittlern / Metlova (14.7%, 1991) in the municipality of Eberndorf / Dobrla vas. If the Constitutional Court stands by its decisions, these place name signs would also be annulled. – and with that, the entire new Topography Ordinance with its exhaustive list of localities (this then actually happened with the decision of December, 2006).

* A special problem arose concerning the absence of the municipality of Rosegg / Rožek in the Topography Ordinance. In this municipality, Slovene as an official language has been allowed in administrative authorities and public offices since 1977. According to the clear wording of § 7 and the similarly clear judicature of the Constitutional Court, the areas in which Slovene as an official language is allowed and the areas for bilingual topography are one and the same. If one began a court case concerning the locality of Frög / Breg (which has a place name sign in the meaning of the traffic ordinances), this case would be won – this locality had over 10% in 2001, and in 1991, 15.7% Slovene population.

* In the Carinthian discussion, the argument occasionally pops up that in localities with a population of less than 30 people, the percentage of the Slovene population cannot be ascertained due to data privacy laws, and therefore for such localities no bilingual signs or designations can be used. It is not acceptable that a constitutionally guaranteed right would be invalidated by calling on data privacy laws. Members of minority groups in small localities also have a right to a bilingual address. If the data privacy laws are to be problematized at all, then it should be that in municipalities eligible for bilingual topographical signs, all localities with fewer than 30 people should automatically have bilingual signs and designations.

The Federal Government did not approve the ordinance draft. Regional governor Jörg Haider and the BZÖ party demanded a constitutional legal ruling for the topography issue. The form of the constitutional ruling should include a new provision that would remove legal control from the Constitutional Court. Limiting the rights of minority groups as in § 7 of the Austrian State Treaty by a constitutional ruling would mean a revision of the State Treaty. Nevertheless, Federal Chancellor Wolfgang Schüssel and the Austrian People's Party swung over to the course set by regional governor Jörg Haider and the BZÖ.

The Proposition of the Austrian People's Party (ÖVP) and the Union for the Future of Austria (BZÖ) for a Constitutionally legal Regulation of Bilingual Topography

In the summer of 2006, both the ÖVP and the BZÖ brought separate propositions for a constitutionally legal regulation of bilingual topography into the Parliament, that in the course of the parliamentary discussion was fused together into a "complete change to the proposition for amendment". In detail, the ÖVP-BZÖ proposition called for bilingual topographical signs and designations to be put up in localities

- * in which after the last census more than 30 Austrian citizens have their main place of residence, and
- * in which the proportion of those citizens with their main place of residence, the members minority groups in the last 2 censuses average at least 15% at the municipality level and at least 10% at the locality level.

The commentary explains that: "Signs and designations of a topographical nature (topographical signs) are especially the mandatory place name signs and "end of locality" signs, but also other mandatory signs that indicate local situations or conditions as long as they are put up in the locality and indicate localities included in the ordinance. Signs and designations are not for specifying a type of public office or local specification (for example, municipality office xy) nor for names on maps. As in the effective § 12 (1.1) of the VoGrG, or the Topography Ordinance for Burgenland (Federal Law Gazette II Nr. 170/2000), and the Topography Ordinance for Carinthia (Federal Law Gazette II Nr. 245/2006), § 2a is explicitly valid only for such topographical signs and designations, which can be put up by local authorities or other authorities and institutions of public international law; signs and designations put up by private companies like the Austrian Trains or the Austrian Postal Corp. are for these reasons not included in the area of application of the stipulations, and thus also, even if the locality in question is named in an ordinance on the basis of § 2, it is not obligatory to put up bilingual signs."

The ÖVP-BZÖ proposition contained a so-called "opening clause". Accordingly, by an ordinance of the Federal Government additional areas could be designated within the autochthonous settlement areas of a minority group in which bilingual topographical signs can be put up, if

- * the proportion of the population that has their main residence registered in the locality in question is at least 10% minority group, and
- * at least 10% of the persons who have registered their main residence in the locality in question and are eligible to vote for the municipality council demand a decree for such an ordinance in a petition to the Federal Government.

The petition would have to first be proposed to the regional government in question and they would pass it on to the Federal Government. Before the ordinance would be declared, the regional government in question, the municipality in question and the National Minorities Council in question would be heard. And then the Federal Government can decide. Thus, considering the situations in the municipalities in question, the results of the hearing process to be taken into consideration, actually means the right of veto on the part of the municipality and the regional government.

The ÖVP-BZÖ proposition did not get the necessary two-thirds majority in cases of constitutionally binding rulings, the SPÖ and the Greens voted against it.

Short analysis of the ÖVP-BZÖ proposition for a constitutionally binding ruling on bilingual topography

Double obstacle of 15% + 10%

On June 26, 2006, the Constitutional Court confirmed that in localities with 10% Slovene population bilingual signs are to be put up. Thus the Constitutional Court decided to check whether the localities of Dellach/ Dole in the municipality of Hermagor / Šmohor, Buchbrunn /Bikovje and Edling /Kazaze in the municipality of Eberndorf/ Dobrla vas as well as in Hundsdorf /Podsinnja vas in the municipality of Feistritz in Rosental /Bistrica v Rožu are entitled to bilingual signs. In December, 2006, the decisions were passed down for these cases (see Chapter I). In the intended new regulations, however, a new 15% obstacle at the municipality level was provided for; municipalities having less than a 15% Slovene population would thus be completely disregarded.

A commentary on this situation by Univ.- Prof Mag. Dr., Bernd-Christian Funk, University of Vienna, titled "Legal Analysis of the Carinthian conflict concerning topographical signs" is added here:

Evaluation of a Federal Constitutional Ruling Calculated on the Proportion of 10% for Municipalities and 15% for Localities

Under discussion and in preparation is a federal constitutional ruling that plans the installation of bilingual topographical signs as name signs for municipalities with a minimum of 10% Slovene population and name signs for localities with at least a 15% Slovene population in those municipalities.

The percentages are coupled as a double hurdle: In order for bilingual name signs to be installed, the population in the whole municipality concerned must reach the 10% mark. If that is not the case, then bilingual signs for that municipality and its localities are completely barred, also in those localities in which the 15% mark is reached.

It is planned that the percentages should be determined on the basis of the population census of 2001 and used as a basis for the ruling. (.....)

A simple legal ruling concerning the proposed content is for various reasons not included in the constitutional spectrum indicated in the judicature. The coupling of the topographical basis of municipality / locality with proportions of 10% / 15% is not in

agreement with the "basis of the topographical provisions regarding localities" as postulated by the Constitutional Court. This coupling could lead to the situation that bilingual signs in localities with a proportion much higher than 10% would not be implemented due to the "municipality hurdle" and the "all-or-nothing"-principle that is in contradiction not only to the State Treaty guaranteeing minority rights, but also to the general principle of equality in the constitution.

Additionally, municipality borders, as well as those of localities governed by rules regarding the organization of municipalities, could be changed or manipulated to the disadvantage of the minority group. The planned coupling leads to unconstitutional results (authorizations for planning changes) and is conceptually unconstitutional.

Equally unconstitutional would be a static reference to the results of the census of 2001. This is not in keeping with the observation "over a longer period of time" as demanded by the Constitutional Court and thus lies outside the judicially defined "spectrum".

A ruling by constitutional law is planned (also the first variation of the referendum with 2 sub-variants.). Can something that would be unconstitutional as a simple ruling be legitimated through a special constitutional ruling? A gauge for that answer is the so-called "construction" of the Federal Constitution. Minority group rights are an essential part of the democratic principles of the Constitution. They are not at the disposal of formal constitutional rights, especially if a limitation of such rights opens the door to manipulation and in a specific combination (here in the form of coupling) can lead to discriminatory denial of rights, and indeed is programmed to do so.

Minority discrimination lies outside the area of authority of the Constitution. Legally it could not even be legitimized even by a procedure of "complete change" of the Federal Constitution.

Even if one sees these considerations of dogmatic views in a reserved manner, what remains valid - even in the case of new constitutional law rulings - is the objection to its being contrary to international law -- both relating to the guarantees of the State Treaty as well as relating to the prohibition of making the protection of minorities dependent on political decisions of the majority.

Vienna, February 22, 2006

Not even 25% is enough

Because there are no reasons why in the case, for example, of St. Primus / Št.Primož, there should be no bilingual place name signs, an exception was made: if in localities in a municipality in which the minority group proportion lies under 15% but in which more than an third Slovenes live they can have a bilingual place name sign. It does not get much more absurd: the 25% clause was repealed by the Constitutional Court because it was too high – and now, although not explicitly stipulated, a 33% clause should be adopted! On the basis of this exception, St. Primus / Št.Primož, Mökriach / Mokrije, Waidisch / Bajdiše and Techelweg / Holbiče would get bilingual place name signs. However, not even 33% is enough – there are that many Slovenes living in St. Veit in Jauntal / Šentvid v Podjuni, St. Johann im Rosental / Šentjanž v. Rožu, Petschnitzen / Pečnica, Unterferlach / Spodnje

Borovlje in the municipality of Finkenstein / Bekštanj or in Raun / Ravne in the municipality of Rosegg / Rožek.

No bilingual place name signs in small localities

In a constitutionally binding ruling, it was to be stipulated that in localities with less than 30 inhabitants, there would be no bilingual signs. So there would be no such signs, for example, for Schattenberg / Senčni kraj and Grablach / Grablje, where the Slovene minority group showed a majority of the population in the census of 1991 (in 2001, there were no percentages given), nor in Plasnitzen /Plaznica with a Slovene proportion of 69% or in Tshedram / Ščedem with a Slovene proportion of 64%, etc.

Sealing the results of the politics of assimilation

The fact is that § 7 of the Austrian State Treaty should have been implemented in 1955. Instead of attempting to compensate for the damages suffered by the minority groups throughout 50 years of not fulfilling their due rights, the new regulation of the topography issue merely considers the average results of the last 2 population censuses. So, localities like Gablern / Lovanke that at the time of the signing of the State Treaty had a proportion of Slovenes of 90%, and Dieschitz / Deščice - 79%, Achomitz / Zahomc - 79% etc. get no bilingual signs, whereby of course all of the localities today have Slovene proportions under 10%. Taking only the current situation into account means nothing more than honouring the politics of assimilation.

No Guideposts

Whoever thinks that at least the guideposts to Bleiburg / Pliberk, Bad Eisenkappel / Železna Kapla or St. Jakob / Št.Jakob would be bilingual is very wrong. Bilingual guideposts can only be put up in bilingual localities. Because the guidepost to Bleiburg / Pliberk does not of course stand in Bleiburg / Pliberk, but rather somewhere on a road outside of Bleiburg / Pliberk or, for example, in "German" Eberndorf / Dobrla vas, there are only purely German language guideposts.

Transition period till 2013

Even if a new regulation would be decided upon, there is no obligation in the beginning to actually put up bilingual place name signs. At the constitutional level it should only be decided that the new ordinance concerning bilingual signs and designations has to be issued by the end of 2009. In this new ordinance then there would be a transition period of 42 months for the installation of the bilingual topographical designations. That means that in the worst case, putting up bilingual signs can be put off until June 30, 2013 – and while this would be decided on the constitutional level, no one would have the possibility to file a grievance.

The Constitutional Court would be excluded

Filing grievances with the Constitutional Court would no longer be possible. Till now, the Constitutional Court made decisions based immediately on § 7 of the State Treaty. If someone filed a grievance in the same way as is possible now, the Constitutional Court would have to disallow it. Because the whole regulation at the constitutional level would be approved, the Constitutional Court would have to use the new constitutional provision and according to these provisions the grievance would have to be disallowed. In other words, within the Austrian legal system, it would no longer be possible to file grievances concerning bilingual topographical signs anymore.

The "Opening Clause" would forever prevent additional bilingual signs and designations

The government argued that the "opening clause" would make additional bilingual signs and designations possible. That was the biggest lie of the whole debate. The opening clause, as it is

codified in the government's proposition, would in fact prevent for all time additional bilingual signs and designations.

At the constitutional level, it should be codified that for localities which showed less than 10% proportion of Slovenes in the last census, these would not have the possibility to suggest having bilingual signs. Even if the majority of the local inhabitants wanted a bilingual signs they would not be allowed to demand it. For localities that had at least a 10% proportion of Slovene-speaking population in 2001, one would have to wait till 2010 and then have to collect signatures from 10% of the population. To repeat: according to the judicature of the Constitutional Court these localities have to have bilingual signs now. But, even if the signatures were collected, the Federal Government would have to put up bilingual signs only if the municipality and the regional government agreed. Those who know the situation in Carinthia know that in this process acquiring additional bilingual signs would be absolutely impossible. So that no future government, in which perhaps the Greens would have seats, would come up with the idea of changing the rulings of making permanent the result of 50 years of anti-minority policies, the new ruling should have constitutional rank. Instead of the constitution securing the protection of minority groups, the constitution should rather guarantee that improvements in the protection of minority groups would never be possible.

Threat to the Official Language and the School System

It must clearly be pointed out that with bilingual topography and with the possibility to use Slovene as an official language, it concerns one and the same area as it is stipulated in § 7 of the State Treaty and is emphasized by the Constitutional Court. If one limits the geographical scope for bilingual designations that can logically lead to the same thing with the use of official language. Thus, the possibility to use Slovene as an official language in the municipalities of St. Margarethen im Rosental / Šmarjeta v Rožu, Feistritz im Rosental / Bistrica v Rožu and Rosegg / Rožek would cease to apply, whereas this right in the current ordinance is clearly stipulated. Also in the municipality of Eberndorf / Dobrla vas, St. Kanzian / Škocjan, Gallizien / Galicija and Diex / Djekše where at the moment this possibility exists on the basis on Constitution Court rulings. If the criteria of 15% proportion of Slovene-speaking population at the municipality level is also used for official language, then the possibility to use Slovene as an official language in the municipalities of Neuhaus / Suha, Ebenthal / Žrelec and Ferlach / Borovlje would also cease to apply.

If this criteria was also used regarding the possibility to use Slovene in the courts, one would have to close down the district court in Ferlach / Borovle as well as the court district for Klagenfurt / Celovec and even the inhabitants of Zell / Sele (90% Slovene population) would have the possibility to use Slovene in the courts taken away from them.

Regional governor Haider has publicly stated that the issue of the bilingual signs is only a proxy war; in reality, the issues are the school system and the church. One shouldn't then wonder if Haider soon comes with the demand that the possibility to register for bilingual

instruction in the schools be restricted to those municipalities that have bilingual designations and signs.

UNIV-Prof Dr. Heinz Mayer wrote in a commentary in the "Falter" magazine, July 12, 2006;

Just in time for the elections in the fall, the Federal Government promised help; a "historical" compromise was found, the Federal Chancellor declared again and again; a final and durable solution had been found. With his joy over this, he even got the Social Democrats enthused about it..... they are needed for a two-thirds majority, presumably to secure a durable solution. **This is not true: a constitutionally legal ruling – and thus a two-thirds majority – is needed because one wants to dramatically reduce the responsibilities and duties resulting from the constitutional stipulations of § 7 of the State Treaty of Vienna.**

A minority group proportion of 10 percent in a locality would not be enough, additionally a 15 percent proportion in the whole municipality is necessary, or in the locality itself a 33 percent proportion is necessary. At the request of a 10 percent minority, a bilingual place name sign can be put up, but only if many authorities – which ones are not yet defined – agree; this is the "opening clause". **This clause does not grant any enforceable entitlements, but rather degrades the minorities to the status of beggars. They are allowed to verbalize a wish, but whether this will be fulfilled or not, is a decision of the government at its own discretion.** The Slovene representatives have also expressed their impression that they are being tricked. And all these decisions should not be implemented immediately, but rather by the end of 2009.

This is the "historical" solution: for more than fifty years not to fulfill the responsibilities and duties of the State Treaty, and then first reduce them by a constitutional stipulation and finally postpone them for another 3 years. Constitutionally this is allowed. It is, however, exactly this kind of politics that in the last decades has produced a situation in which, parallel to the Federal Constitution, more than a thousand such "constitutional satellites" are in orbit. These laws, labeled by the President of the National Parliament Andreas Khol some time ago as "constitutional rubble", result in a considerable degeneration of the constitutional law, because they are hardly oversee-able anymore. **Often they have served to circumvent the Constitutional Court.**

It is a crass deception of the public when the Josef Cap, head of the parliamentary club of the SPÖ binds their agreement to the condition that the State Treaty and the decisions of the Constitutional Court are to be respected. If that were the case, then one wouldn't need a constitutional law, nor would the agreement of the SPÖ be necessary. The agreement of the SPÖ is needed exclusively and exactly because responsibilities and duties of the State Treaty are to be restricted and the decisions of the Constitutional Court eroded. That even the Federal President finds this positive is shocking."

Heinz Mayer is professor at the Department of Constitutional and Administrative Law at the University of Vienna and was head of the advisory committee for the constitutional convention.

Constitutional Court picks apart the Place Name Ruling piece by piece

In a further decision of December 12, 2005 (V 64/05-11) regarding the place name signs in Bleiberg / Pliberk and Bleiburg-Ebersdorf / Pliberk-Drveša, the Constitutional Court confirmed its continual practice of stipulating the minority percentage of 10% over a longer period of time and determined as well that the administrative district authority has a legal obligation to put up bilingual place name signs. For the implementation of this decision the date of June 30, 2006 was set.

The Constitutional Court is clear about what it means by "longer period of time". In the decisions on the use of official languages of October, 2000, as well as in the place name signs decision of 2001 and 2005, the Constitutional Court used the previous 4 or 5 population censuses, so that its decisions were based on the minority percentages of the last 4 decades. Thus it can be assumed that for the Constitutional Court, the minority percentages of the last 4 decades are decisive.

Regional governor Jörg Haider used all sort of means to sabotage the implementation of the decisions of the Constitutional Court. Haider and regional traffic commissioner Gerhard Dörfler (BZÖ) ordered the district administrative authority, which is bound by directives of the Constitutional Court, to allow a new decree of a traffic ordinance, in order to relocate the place name signs and again put up German-only signs. They announced that all future decisions of the Constitutional Court would be handled in that way. Later small Slovene place names were added to German monolingual signs. The people's advocate filed a grievance to the Constitutional Court.

The Council of Slovenes in Carinthia also supported further grievances filed concerning bilingual topographical signs and designations. Here it concerns cases of self-reporting by members of the minority groups who were speeding in localities. Due to the lack of possibility to file class-action suits on the part of the representative organizations of the minority groups and for an individual right of members of the minority groups to bilingual topographical signs and designations, cases of breaking the traffic laws by speeding are the only way to fight the unconstitutional topography ordinances at the level of the courts. The President of the Constitutional Court, Karl Korinek, commented on this: "It is unworthy of a constitutional state when national-political issues like the protection of minorities have to be decided little by little by means of traffic violations."

The Constitutional Court decided on the pending cases in December, 2006, and confirmed its previous judicature (see Chapter I - Judicature)

The Constitutional Court in its consistent judicature assumes that § 7 (3.2) of the Austrian State Treaty concerns a standard of objective rights. This means, in other words, that it is not an immediately practicable and enforceable constitutionally guaranteed right (in the meaning of § 144 (1), Federal Constitutional Act [B-VB]). Consequently the Constitutional Court assumes that there is no subjective right to the installation of topographical signs and designations in German and Slovene. Obviously there is a deficit here in legal protection. Thus, in line with the judicature, there is neither an individual right nor a collective right to enforce the objective legal decisions that would allow the putting up of bilingual topographical signs and designations, namely § 7 (3.2) of the State Treaty.

It must be mentioned however, that it was the Austrian Federal Government that on November 24, 1991, presented a draft of an additional protocol to the European Human Rights Commission on the protection of minorities, in which § 7 was suggested, and that every minority group and its members in a minority group region, should have "the right to put up topographical signs, guideposts, signs and designations and similar occurrences of means to information in the minority group language." This documents that from the national-political viewpoint, it was seen to be necessary to create an individual as well as a collectively (!) enforceable right to the installation of topographical signs.

Regional governor Jörg Haider and his vice-governor, regional commissioner Gerhard Dörfler (both BZÖ) and public officials of the district administrative authority have been issued citations for their roles in the non-implementation of decisions of the Constitutional Court. After the change in government (in January, 2007) pre-investigations were initiated on possible misuse of public authority. The office of public prosecutor in Klagenfurt /Celovec also initiated an investigation against regional governor Jörg Haider and regional commissioner Gerhard Dörfler as well as public officials of the district administrative authority of Völkermarkt /Velikovec, in whose immediate area of competence lies the ordering and putting up of place name signs. There is suspicion of the indictable offence of misuse of public authority, as was explained by the head public prosecutor, Gottfried Kranz.

The text of the law of § 302 (1)of the criminal code says verbatim: *"A public official who knowingly misuses his authority in the name of the state, the region, a municipality organization, a municipality or another person of public international law, as whose organ he is in abiding by the law, with the intention of depriving someone else of their rights is to be punished with imprisonment for 6 months to 5 years."*

The action of the justice department on the suspicion of abuse of power is based on a number of grievances filed regarding the non-implementation of the decisions of the Constitutional Court- Among those is a one filed by the Green Party.

The investigation concerning the suspicion of abuse of power is also connected to the moving of the place-name signs in Bleiburg / Pliberk and Ebersdorf / Dveša vas. Regional governor Haider and regional Commissioner for Traffic Dörfler had ordered the moving of the signs a few meters, which was a clear circumventing of the decision of the Constitutional Court, and even physically moved it themselves. The examining magistrate now has to lead an investigation and question witnesses. Only when the results are issued can the office of the prosecuting attorney decide whether it will come to an indictment or not.

In January, for the first time, the Constitutional Court threatened regional governor Jörg Haider (BZÖ), regarding the place name issue, with a petition of execution to the Federal President. As a reason for this threat to action, the Constitutional Court gave Haider's refusal to announce the Court's place name decision of December 13, 2006. In a written letter, Constitutional Court President Karl Korinek gave the governor a final date of February 23, 2007. To circumvent the putting up bilingual signs, regional governor Jörg Haider and his regional Traffic Commissioner Gerhard Dörfler (BZÖ) had issued small additional signs in Slovene to be attached instead of bilingual place-name signs in Bleiburg / Pliberk and Ebersdorf / Dveša. The Constitutional Court declared this action illegal in a decision delivered on December 28. In this decision of the highest court, parts of the ordinance were rescinded that concerned attaching small additional signs with the Slovene names to the

place-name signs of Bleiburg / Pliberk, Ebersdorf / Dveša and Schwabegg / Žvabek. A second reminder by the Constitutional Court at the beginning of February announced that "If no issuance is forthcoming by February 23, an execution order by the Constitutional Court to the Federal President regarding the issuance is to be reckoned." Such a procedure by the Constitutional Court is unprecedented in Austria.

Immediately after the issuance of the decision – with the official issuance the decision is formally effective (which happened on February 21, 2007 in the Regional Law Bulletin) – bilingual place-name signs would have to be put up. Regional governor Haider wants to continue boycotting this. In the ORF Parliamentary program "Hohes Haus" on February 18, 2007, Haider said literally: "The Constitutional Court did not suspend the ordinance, but only a few parts of it, that is, the concept of the "additional sign" was revoked, so that it is relatively easy for us in that this ordinance cannot be contended anymore. All we will do is screw the small additional sign onto the place-name sign in the blue-area so to say. With that we sufficiently fulfill the law. And I think it is a sensible way because the people have actually accepted the small additional sign very well." This announcement was then implemented by the road maintenance administration on February 22, 2007.

For the former president of the Constitutional Court, Ludwig Adamovich, this is another example of discrimination. Adamovich said in the program "Hohen Haus"- "The obvious meaning of the protection provisions of § 7 of the State Treaty is that the co-equality of both languages is to be protected. And if you use different sized letters, then this is not the case."

Regional governor Haider does not see the allegations of discrimination against the minorities: "I think that every member of a minority also speaks the language of the nation. That is German. So, there is no discrimination. Finally using this way we make the Constitutional Court happy that the little sign is moved up a little, but basically things will stay the way they are now."

Because of the tenacious refusal of regional governor Jörg Haider to implement the decisions of the Constitutional Court regarding bilingual topographical signs and designations, the Greens in the Austrian Parliament demand of the Federal Government to begin impeachment proceedings against regional governor Jörg Haider. Legal experts hold impeachment proceedings for possible and appropriate. Here a commentary by Clemens Jabloner, President of the Administrative Court, in the daily newspaper "Der Standard":

The Place-Name Signs and the Responsibility of Politics
Legal recommendations on the latest provocations – "commentary by others" by Clemens Jabloner

At the moment everywhere there is talk that under constitutional law there is no way to restore Carinthia to constitutional state of affairs. In my opinion, however, on the basis of the current Federal Constitution effective measures could be taken:

According to § 11, (1.4) of the Federal Constitutional Act (B-VG) the traffic ordinances (StVO) are enforced by the regions independently. The Federal Government can hold the governor of Carinthia to responsibility however only in affairs directly concerning the Federal

Administration. One must understand admittedly that this latest situation concerns the enforcement of an international obligation, namely § 7 (3.2) of the State Treaty of Vienna.

The resulting obligation of these provisions, to put up bilingual place-name signs, is according to the Constitutional Court for immediately applicable.

In the sense of a material transformation of an international obligation, it can be added to the comprehensive body of legislation of the traffic police, a situation that occurs often in the Austrian legal system. It then follows that – as soon as place-name signs are to be put up according to the traffic ordinance, then these are to be bilingual.

Thus the constitutional standards of § 16 (4) and (5) of the Federal Constitutional Act become pertinent. According to paragraph 4, the regions are obliged to take measures that in their independent sphere of action would be necessary to implement the State Treaty. Should a region not take such measures in due time, then the competence for such measures goes to the Federal Government, especially for decrees of necessary laws.

Suit against Haider

According to paragraph 5, the Federal Government has the right to oversee the implementation of international treaties, also in such cases that belong to the independent competence of the "Länder". Here the Federal Government has the same rights over the "Länder" as in situations of indirect federal administration (§ 102 Federal Constitutional Act).

In my opinion, both authorizations have the same goal: paragraph 43 allows the competence for making decrees for implementation ordinances on the basis of the traffic ordinances to go to the Federal Government. In the present constellation – the competency of the district administrative authority is explicitly written down – this results in a change in the organizational competency.

For this, paragraph 5 can be used. It can effect the change from the regional implementation (according to § 11 Federal Constitutional Act) to the indirect federal administration (§ 102 (1) Federal Constitutional Act). The reference to § 102 is important, because all constitutional rulings that might pertain to indirect federal administration are applied (in the opinion of, for example. Ludwig Adamovich (1927). Also § 103(1) Federal Constitutional Act (B-VG) is pertinent here:

Specifically, the authorization of the responsible Federal Chancellor to implement the installation of bilingual place-name signs by a directive to the governor.

As a further consequence, § 142 (2) lit-e of the Federal Constitutional Act can also be resorted to, whereby the Federal Government can file suit against a governor in the Constitutional Court for not obeying a directive. Whether this path will be taken is, of course, a political decision.

Article 16 (already quoted above) offers, however, an alternative possibility, namely, that the Federal Government itself creates the necessary general legal basis. In this connection § 11 (3) Federal Constitution Act can be referred to, for which stipulations the Federal Government takes upon itself for the implementation ordinance for the traffic ordinances.

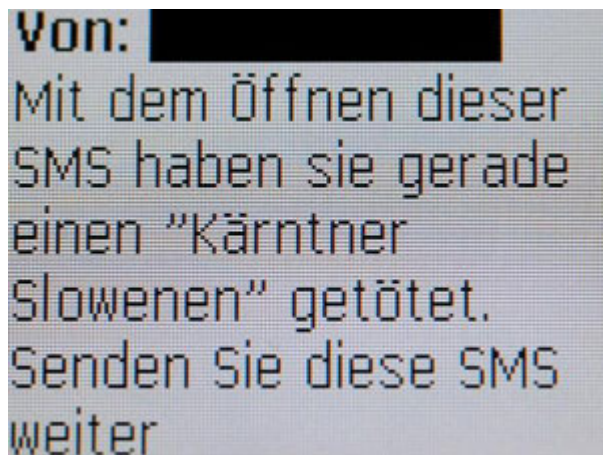
The Federal Government can make use of these competencies insofar as international obligations are complied with.

Actually, the Federal Government (the transportation minister) could have carried out its right of supervision over independent implementation in the regions. In this framework no directives could be issued, but however, appropriate pressure could be applied to the regional government.

(Der Standard, printed version Jan 17, 2007)

Regional governor Jörg Haider demanded a determination of the minority group on the basis that the municipalities had to be ascertained for topographical signs and designations. In the ORF parliamentary report "Hohes Haus" on February 18, 2007, Haider substantiated this demand for a determination of the minority group, preferably with a listing of the members of the minority group by name. (concerning the problem of determining the numerical strength of the minority group, see above)

Place-name sign metamorphosis (source: APA)



February 1, 2006: An SMS message that is going around in Carinthia at the moment, directed at the Slovene minority group causes excitement. An anonymous "Action (for a) Clean Carinthia" is sending the message that says with the opening of the SMS the receiver has "just killed a Carinthian Slovene". The agency for the protection of the constitution is investigating on the grounds of suspicion of inciting violence.



February 8, 2005: The regional governor Jörg Haider and regional traffic commissioner Gerhard Dörfler moving the place-name sign for Bleiburg / Pliberk



June 9, 2006. The members of the European Parliament (from left): Slovenia's former Minister President Lojze Peterle, Mojce Drčar-Murko, Jelko Kacin, Karel Smolle, Csaba Sandor Tabajdi, Slovene functionary Rudi Vouk, Dominik Pipp, SPE party leader Hannes Swoboda and Ljudmila Novak on the occasion of a "Fact-Finding.Mission" concerning the Carinthian Place-Name Conflict, in Glainach /Glinje.



July 5, 2006: Regional Commissioner for Transportation Gerhard Dörfler with the production of the bilingual place-name signs for the southern Carinthia localities of Ebersdorf /Drveša and Bleiburg / Pliberk



August 25, 2006: regional governor Jörg Haider mounting an additional sign with the Slovene name "Pliberk" onto the place-name sign "Bleiburg" in Carinthia



November 22, 2006: regional governor Jörg Haider and Vice-Governor Gerhard Dörfler taking down the bilingual place-name sign of Schwabegg / Žvabek



February 18, 2007: Regional governor Jörg Haider (right) with a "Carinthian place-name sign" during the traditional carnival parade through the carnival stronghold of Villach / Beljak



February 22, 2006: The hotly contested place-name sign of Bleiburg/Pliberk in the southern Carinthian district of Völkermarkt / Velikovec has a new face since this morning: the small additional sign with the Slovene name under the German name sign is now mounted within the blue field of the sign.



In the government's program for the XXIII legislative period, under the topic "minority groups" it is written:

The ruling for the implementation of the place-name sign decisions of the Constitutional Court should be secured on a constitutionally legal basis with the broadest possible consensus with the minority groups on the basis of the suggestions up to now. Whereby, for the localities within the autochthonic settlement areas of the minority groups, an opening clause shall be provided, by which on the basis of a petition of a certain percentage of the population additional bilingual place-name signs can be put up. This ruling will be implemented by the summer of 2007."

Regional governor Jörg Haider used this as an occasion to threaten obstruction yet again. Addressing Alfred Gusenbauer before the swearing in of the new government, Haider said: "If he wants to be the future chancellor and always feels like he is Kreisky's heir, he should study history and take note that once Kreisky had to escape from this region through the back door of a meeting hall because the inhabitants did not agree with his policies."

On the political dimension of this statements, here is a contribution by Lisa Retzl in the newspaper *Der Standard*:

Memory Work with Jörg Haider

Stop laughing, or your laughter could be choked off - a commentary by another, by Lisa Retzl

When the Carinthian governor recommends to the representative in government the study of the events of the attack on the place-name signs in 1972 as a "lesson in history", one should take this recommendation very seriously.

There it is: the rare situation in which one - at least outside of Carinthia where Haider has moved into the arena of political meaninglessness - should take Jörg Haider actually at his word and quickly stifle the laughter about the gubernatorial place-name psychosis in the south of Austria. Because, and why not, the laughter can catch in your throat and choke you.

Most recent occasion: Whoever tries again in this republic to "divide up" Carinthia on the issue of the constitutionally guaranteed right of the Carinthian Slovenes to bilingual place-name signs with a "solution from the outside" without asking the Carinthian majority population whether they would even want the implementation of this constitutionally guaranteed minority right, those people Haider threatens with the return of not-so-distant times:

Warning about riots

"Gusenbauer should," declared Haider in the week before Christmas, "if he wants to be the future chancellor and always feels like he is Kreisky's heir, study history and take note that once Kreisky had to escape from this region through the back door of a meeting hall because the inhabitants did not agree with his policies." Thus a warning: about a possible repeat of these riots, which mark a singular break with Austria's constitutionality in the history of the Second Republic.

Learning from History

To help the country to learn more easily from history, a short review of the events of the fall of 1972 is necessary: On July 6, 1972, the SPÖ government approved the so-called "place-name act" with a view to implementing the Austrian State Treaty, § 7, according to which bilingual place-name signs should be put up in 205 localities in 36 municipalities. In the Carinthia daily press, one would read as a result that the act was passed "overnight".

"People, arise – a riot is breaking out!"

In the FPÖ paper "Kärntner Nachrichten", July 8th edition, they were already thinking out loud "whether the Carinthian residents over generations would permit this to happen." Close to the circles of the Carinthian Defense Fighters Union (KAB) as early as April 22, 1972, a solution was proposed just in case: "Let's try it again with collecting signatures and if that doesn't help, then

"People stand up – a riot is breaking out." In the autumn, the Carinthian daily press would refer to the violence that was previously announced and then actually breaking out during the events without exception, as "spontaneous rising up" and "a just cause of the peoples anger".

In September, 1972, the house of Janez Wutte, the later head of the union of partisans was attacked by thrown stones. Further attacks on Carinthian Slovenes whose houses were encircled by motor vehicles at night to make them fear that the Nazis had come to take them away again; attacks on school children of the Slovene High School; in front of the house of the Central Association of Slovene Organizations a bomb damaged 2 cars...

Death to the Partisans and Swastikas

Distributing flyers and graffiti on houses: "Death to the Partisans, death to the Slovenes October 10", "Haul the homeland traitors back over the Karawanken" "There is no Slovene Carinthia" "Tschuschn, shut up", painted swastikas.

By October 10, 1972, according to the reports of the "Kärntner Volkszeitung" more than 120 attacks on bilingual place-name signs had taken place.

Attacks on the SPÖ Governor Hans Sima and his wife Lia with rotten eggs, tomatoes and broken place-name signs, in front of laughing policemen who did not stop the violence - and all this with cameras running: night-time shouting choruses in front of their private apartment.

"Judensau – Jewish pig"

Kreisky was insulted with "Jewish pig" and with "pig jew, I'll cut your throat". When Kreisky attempted to reach his car from the exit of the regional government building, 6 injured policemen were the result. In the edition of "Profil" of June 13, 1983, Kreisky remembered these events in Carinthia: "They came at me with broken place-name signs. Pure Nazis. Thousands of people" and he called these event in Klagenfurt / Celovec as "the largest Nazi-ist demonstration since the war."

All this can be found in detail in the documentation to the place-name riots that was commissioned by regional governor Sima in 1972 – from which the choice of texts above is taken – published by the office of the Carinthian Regional Government, 1973/ beginning of 1974. Also, the destruction and dismounting of the place-name signs lasted so long until simply no more were put up.

Accessible only to a small circle

However, after the coup against Governor Sima by the right-wing of the Carinthian SPÖ, this 200-page long manuscript was never published, and today it is some private collections or in archives and in general is accessible only to a small circle of historians.

A publication of these materials would be very helpful for "learning from this history". Especially in combination with research work that up to now has been extremely rare. For, yes, the place-name sign riot really is a study – about how close verbal and physical violence lie, how quickly laws made democratically can be pushed aside with violence and how simply the rule of law can be abandoned.

Haider warns about all of this when he threatens this republic about a renewed "interference" in the place-name sign issue. And they should be wary – as long as rule of law and democratic structures are still on the agenda of the future government - not to make the same mistakes again: to abandon rule of law and the Austrian constitution in the face of the violence of a self-proclaimed Carinthian "homeland loyalist".

(Der Standard, printed version, December 30-31, 2006)

Regional governor Jörg Haider demanded a determination of the minority group on the basis that the localities had to be ascertained for topographical signs and designations. In the ORF parliamentary report "Hohes Haus" on February 18, 2007, Haider substantiated this demand for a determination of the minority group, preferably with a listing of the members of the minority group by name. (for the problem of determining the numerical strength of the minority group, see above)

An Exkursus:

The Legal Succession of Slovenia and Croatia to the Austrian State Treaty

The question of whether Slovenia and Croatia can, under international law, have the right to be legal successors of the former Socialist Federal Republic of Yugoslavia to the Vienna Treaty for the Re-Establishment of an Independent and Democratic Austria of May 15, 1955 (Austrian State Treaty) has taken a new controversial political turn in light of the newest controversies regarding the bilingual topography in Carinthia in this 50th anniversary year. Austria's President of the Parliament, Dr. Andreas Khol said in an interview with the Slovene daily newspaper "Delo" that, from the Austrian standpoint, Slovenia is not a successor state of Yugoslavia to the State Treaty and, therefore, on this basis it is not possible to talk about the protection of minority rights.

The Republic of Slovenia has the contrary point of view. And the legal expert Professor Dr. Borut Bohte, head of the Department of International Law at the University of Ljubljana, also has the opposite point of view: Slovenia does not intend to claim this right, but it does have the right of accession. The question concerning Croatia can be evaluated on the same basis.

Excerpt from a letter to the editor by Professor Dr. Borut Bohte on the controversy of Slovenia's legal right as successor to the Austrian State Treaty, published on February 23, 2005 in the Slovenian newspaper "Delo".

First of all, a clarification on the basis of international law is necessary to differentiate between the legal institutions in general international law and treaty law, that is, the accession to international treaties (the Vienna Convention on the Rights of International Treaties of 1969) and to international succession of nations according to the right of succession (Vienna Convention on the Succession of Nations in Treaties of 1978). Slovenia does not want to catapult itself arbitrarily in any way as a successor nation to the Austrian State Treaty as a new contractual party. But, according to general international law, it does have all the rights as a successor nation to the now disbanded Socialist Federal Republic of Yugoslavia to assume treaty status as a successor nation to the Austrian State Treaty. That predecessor nation was named an "associated power" on the basis of § 37 of the State Treaty by the treaty partners. As such it fulfilled all the necessary conditions stated in § 37 of the State Treaty – as member of the United Nations, as member of the anti-Hitler coalition, and on May 8, 1945 was at war with Germany, as stipulated in § 37 of the State Treaty, and as such had the status of a "united nation" according to the Moscow Declaration of 1943. Slovenia was at that time a part of Yugoslavia that had fought as an ally on the side of the United Nations against Hitler-Germany and its allies, and therefore it cannot be said that the conditions of § 37 are not fulfilled.

Slovenia, however, does not claim accession to the State Treaty, but rather has a right to succession. Such a succession does not mean an arbitrary candidacy to a new original treaty- status of the successor nation. According to general international law, the essence of the legal institute of nation-successors, or succession itself, is the entry of the successor nation into the legal relationships of the preceding nation (Vienna Convention on the Nation Successor in Questions of National Wealth, National Archives and National Debt of 1983). In the doctrine of international law, concerning multi-lateral international treaties, the continuity principle has primacy over the tabula-rosa principle;

this has been confirmed by the praxis of nations and the procedures of the depository nations of international treaties.

Of the fundamental reasons for the necessity of a Slovene succession to the State Treaty, one is - the most important fact from the legal point of view - that Slovenia is the only successor nation of the former Socialist Federation of the Republics of Yugoslavia that has a common border to the Republic of Austria. In this aspect, the State Treaty has the character of a territorial treaty due to the recognition of the borders of January 1, 1938 in § 5 of the State Treaty, for which in international law the principle of automatic succession in the case of successor nations is valid unless the nations concerned have otherwise explicitly made other agreements. In addition, to judge the right of Slovenia to be a successor nation to the State Treaty, the fact is relevant that, as a result of these borders to Carinthia and Styria, there is a Slovene Minority minority as defined in § 7 of the State Treaty with clearly defined internationally recognized absolute minority rights.

The Republic of Slovenia as their mother nation has all the rights and duties as a protector power to look after their protection as well as the complete fulfillment of their stated rights in § 7, which has never been completely or even "seriously" fulfilled. This is valid not only for the most obvious example of topographical designations, which, according to the relevant judgments of the Constitutional Court, Austria has not fulfilled. Among other things, the complete fulfillment of the rights of the Slovene minority group relating to the school system, [§ 7 (2)] and relating to the equality of the Slovene language and the use of Slovene as a second official language in courts and administrative bodies in the administrative and court districts with Slovene or mixed populations [§ 7 (3)] is still missing.

It must also be mentioned that Austria has also not completed its obligation of de-Nazification, which has a negative effect on the Austrian obligation in § 7 (5) of the State Treaty (prohibition of organizations or such activities hostile to minorities). According to § 19 of the State Treaty Austria also the obligation to protect and care for memorials and gravesites of those who fought against Nazism, an obligation to which Slovenia can not be oversensitive, and this also has not been fulfilled. The rights of the Slovene minority in Styria have been completely ignored.

On the basis of all the reasons stated so far, the statement of Professor Rotter that the defined rights of the Slovene minority in § 7 has no connection with Slovenia at all is absolutely intolerable. Exactly because of this, it is important and necessary, in my opinion, to send formal notification of the Slovenian succession to the State Treaty to the Russian Federation as depository of the State Treaty, a country that itself automatically assumed succession to the State Treaty as well as the role as depository from its predecessor state the Soviet Union. And I must add that the Czech Republic recently sent notification of its accession to the Austrian State Treaty to the Foreign Ministry of the Russian Federation which in turn notified all the treaty nations of the Austrian State Treaty—including the Republic of Slovenia, which I hold to be in substance a very important act, implying recognition.

As successor state and according to the state treaty entitled as such, and as a protecting nation, Slovenia could when necessary employ all diplomatic means to

protect the Slovene minority – whether bilaterally with the appropriate Austrian authorities or internationally at the levels of European regional or general level within the framework of current contractual control mechanisms for the protection of minorities. It would also be possible to consider using the mechanisms of the courts of arbitration for a peaceful resolution of conflicts relating to the interpretation or fulfillment of the State Treaty if the conflict cannot be solved using diplomatic means, as specified in § 35 of the State Treaty.

*In conclusion I would like to emphasize that the Republic of Austria has an international obligation to fulfill all the terms of the State Treaty, which in international law relating to protection of minorities, if compared to the European minority treaty protection, is a *lex specialis*, according to the basic principle of international law *pacta sunt servanda*. Also, the neighboring Republic of Italy should be reminded more decisively of its relationships to succeeding international treaties regarding the Republic of Slovenia and the Slovene minority in the Republic of Italy. International law is the strongest tool and weapon Slovenia has in international relations, including its relationships to its neighboring countries. One must only become more conscious of it and more courageous in using it.*

Recommendation of the advisory committee: " In the field of education, consideration should be given to reinforcing the existing opportunities for being taught Hungarian, Czech and Slovak or for receiving instruction in these languages, particularly in the city of Vienna where greater attention also needs to be given to the situation of the Croats. Concerning education available for the Slovenian and Croat minorities, there is scope for improvement as regards the transition from bilingual primary to bilingual secondary schools."

On the constitutional level, the following provisions guarantee the minority groups an equal access to education: § 19 of the Basic Law on the general rights of citizens, (Imperial Law Gazette, RGBL. 1867/142, § 67 and 68 (1) of the State Treaty of St. Germain, Federal Law Gazette 1920/303, and explicitly only for the Croat and Slovene minorities in Burgenland, Carinthia and Styria - § 7 (2) of the State Treaty of Vienna, Federal Law Gazette 1955/152. For the Slovene minority in Carinthia, the constitutional provisions of § I b (7) of the Minorities School Act for Carinthia (MindSchG f Ktn) of 1959, Federal Law Gazette 101, as well as for the Croat and Hungarian minorities in Burgenland, § 1 of the Minorities School Act for Burgenland (MindSchG f Bgld) of 1994, Federal Law Gazette 641. Through these provisions, the members of the minority groups are constitutionally guaranteed the right to instruction in their own languages.

In detail, § 19 (33) of the Basic Law provides that in the regions where there several minority groups live, state schools have to be so organized that each of these minority groups have the necessary means to education in their own language; there can be no compulsion used to learn a second language of the area. This provision includes (in connection with paragraph 2 *leg cit* , which mandates the equal status of the usual

languages of the area and an obligation for positive support) the right to instruction in the minority language in corresponding primary schools, whereby this instruction may not be coercive.

§ 67 of the Treaty of St. Germain accords Austrian citizens belonging to a minority with its own language the right to establish, administer and inspect schools and other educational institutions at their own cost with the entitlement to use their own language at their own discretion. Thus § 67 exclusively concerns the right to establish private schools and educational institutions. This right is, however, anchored in § 17 (2) of the Basic Law (StGG) and applies to all citizens and so does not include a specific special rights that would assist the continuance of minority groups.

Article 68 (1) of the Treaty of St. Germain concerns the public school system and obligates the Austrian government to guarantee appropriate means in cities and districts, where a relatively considerable number of Austrian citizens live who speak another language than German, so that in the primary schools children can have instruction in their own language. Additionally, § 68 (1) of the State Treaty of St. Germain allows the teaching of the German language as a compulsory subject.

Article 7 (2) of the State Treaty of Vienna is considered to be the main ruling on the protection of minorities regarding the school system. This contains rulings on the rights of members of the Croat and Slovene minorities in the regions of Burgenland, Carinthia and Styria. This grants "the Austrian citizens of the Slovene and Croat minorities in Carinthia, Burgenland and Styria" the "right to primary instruction in the Slovene or Croatian language" and to a "corresponding number of middle schools". Further it provides that "school curricula be checked through" and "a department of the school supervisory board for the Slovene and Croatian languages" be established. "Primary instruction" means in this case compulsory school instruction for 6-14-year olds. Article 7 (2) of the State Treaty of Vienna guarantees the right to Slovene or Croatian and – additionally – a bilingual elementary instruction (in the German language and the respective minority language). This right must be fulfilled in public schools. Article 7 (2) of the State Treaty of Vienna contains at any rate an institutional guarantee of the existing minority schools; in addition it seems to allow for a basic right with proviso as the form for the establishment of new educational institutions. Primary instruction in the respective minority language is, according to its historical development and the original wording, is to be accorded in the entire regions of Carinthia, Burgenland and Styria. According to the decisions of the Constitutional Court (file nr. VfSlg 12.245/1989) an increased guarantee exists in the "autochthonic" settlement areas of the minorities according to which a primary school in every municipality is to be established (guarantee of school location), whereas in the other areas of the region the establishment of such schools is dependent on "sustainable need".

Article I b (7) of the Minorities School Act for Carinthia (Federal Law Gazette 1959/101 and §1 of the Minorities School Act for Burgenland (Federal Law Gazette 1994/641 guarantee on the one hand the constitutionally guaranteed right to instruction in the minority languages and on the other hand accord a right to voluntary participation in instruction in the minority language (so-called "parents' right"). Article I b (7) Minorities School Act for Carinthia accord specifically a right to instruction in the Slovene language (exactly: the use of the Slovene language as a language of instruction or instruction of the Slovene language as a compulsory subject); furthermore it provides that this right is guaranteed to the pupils

should this be **the expressed wish of his or her legal representatives**; a pupil can only be retained to use the Slovene language as a language of instruction or as a compulsory subject only on the wish of his or her legal representative. § 1 Minorities School Act for Burgenland in paragraph 1 accords the members of the Croat and Hungarian minorities the right to use the Croatian or Hungarian languages as the language of instruction or to learn it as a compulsory subject. In paragraph 2 it stipulates that a pupil cannot use Croatian or Hungarian as a language of instruction **against the expressed wish of his or her legal representative**.

The Austrian code of law guarantees **the right to their own minority schools for the members of the Croat and Hungarian minorities in Burgenland and the Slovene minority in Carinthia (but not for the Slovenes in Styria and the minority groups in Vienna)**. The so-called "Minority School Entitlement" can be understood as a complex of stipulations and provisions, built on the general Austrian school laws that make special consideration for members of minorities and so accord them special legal status. This happens firstly in the way that the language of the minority is used as a language of instruction. All school subjects are basically taught in the language of the minority and in the national language. Besides this – ideal – bilingual instruction model, other models are possible in which the minority language is intended as the only language of instruction or in which this is only taught as a subject itself (language instruction). The positive Austrian minority school entitlements accept all three models. A further complex of stipulations of the minority school entitlements are provisions concerning the external organization of the schools (that is, the establishment, maintenance, number of pupils per class, specification of school district boundaries etc.), that should guarantee the availability of the school in which the minority languages are taught under amenable conditions.

CARINTHIA

Kindergartens

Kindergartens are becoming ever more important in their functions of supplementing the bilingual training of the children in the family and so to make possible and easier the continuing attendance in a bilingual school.

The Carinthian Kindergarten Act (Regional Law Gazette Nr. 86/92) does not in the slightest make concessions for the fact that there is a Slovene minority group in Carinthia. The only provision in favor of the minorities is in § 22 (1) which provides for the subsidies to bilingual private kindergartens.

The necessity of establishing a bilingual pre-school education is indicated by the alarming information about the knowledge of Slovene at the entrance level of the bilingual primary schools. The very differing knowledge of Slovene brings great problems to the teachers regarding the implementation of bilingual instruction. Establishing a bilingual pre-school education would improve the poor Slovene knowledge in the entire area of the bilingual school system. At the moment there are kindergartens only in about one-third of the municipalities in the area of the bilingual school system, and in less than half of the

municipalities are there bilingual groups in the public kindergartens. The other bilingual kindergartens are privately run. The municipalities are responsible for public bilingual kindergartens, but they are not obliged to have them, as they come under the area of the municipality administration of the private sector. However to facilitate continuity in education, the Carinthian Kindergarten Act should oblige the municipalities to offer a bilingual education in kindergartens if the need is there (as in area of primary schools).

There is not a single public kindergarten that has offered the possibility of a bilingual kindergarten education through the decades. Because in the municipality kindergartens no bilingual classes are offered, private bilingual kindergartens were founded at considerable expense:

Private Kindergartens	founded in	capacity
Convent of the „Šolske sestre“- St. Peter/Šentpeter	1946	50 places
KG „Naš otrok“ – Klagenfurt / Celovec	1978	35 places
KG „Pika“ – St. Primus / Šentprimož	1979	25 places
KG „Sonce“ – Klagenfurt / Celovec	1984	50 places
KG „Minka“ – Schiefling / Škofiče	1985	25 places
KG „Jaz in ti“- Ferlach / Borovlje	1997	50 places
KG „Ringaraja“ - Ledenitzen / Ledince	1998	25 places
KG „Mavrica“ – Eberndorf / Dobrla vas	1999	25 places
KG « Kekec » - Völkermarkt / Velikovec	2004	25 places

There is also a bilingual day nursery „Zwerge / Palčki“ in Bleiburg / Pliberk. All private bilingual kindergartens are full to capacity. There is a demand in the entire bilingual area, which is indicated by the registration to bilingual instruction.

Language teaching methods in the private Kindergartens

In bilingual kindergartens the education and care of the children should take place in both the German and the Slovene languages in approximately equal amounts. In multilingual kindergartens, a third language should be offered for at least 4 hours a week and the language has to stay the same for three years.

Within the frame of personal relationships in the education and care of the children in bilingual or multilingual kindergartens, one kindergarten teacher should attend to the children in German, or Slovene, or a third language. The kindergarten teachers have the possibility to purposely use the language of choice, and switching languages - especially from the weaker to the stronger language – should be avoided. In using the Slovene language, the kindergarten teachers have to consistently speak Slovene with the children so that the children hear the languages to such an extent that they learn to understand the meaning and so that the structure of the language can be used in special – mostly ritually repetitive – situations.

Financing

All kindergartens (public and private) that meet the legal requirements are entitled to the regional kindergarten subsidy. In 2005, this amounted to € 25,706 per kindergarten group.

Some kindergartens also get a subsidy from the municipality. In Klagenfurt/Celovec this is fixed by a municipality ordinance and there is an entitlement to the subsidy of € 13,000 per kindergarten group.

Regarding the different possibilities to access bilingual pre-school education, the members of the minority group in the area of the bilingual school system are not treated equally. In some municipalities there is a possibility for bilingual education in public or private kindergartens, while in other municipalities the parents have no possibility at all to send their children to bilingual pre-school institutions.

Because of the great financial burdens (personal loan guarantees for building the kindergartens, higher monthly tuition for the children), Slovene parents, who have founded associations for the purpose of administering bilingual private kindergartens, have demanded over many years that they be treated equally to German speaking parents by the authorities of the region and the municipalities. These German speaking parents have the possibility to send their children to public kindergartens. In 2000, negotiations began with representatives of the Carinthian regional government to establish a foundation to finance the bilingual private kindergartens. The regional government should cover the deficits of the bilingual private kindergartens, just as the municipalities do for the public kindergartens. Thus, the Slovene parents would be treated equally regarding kindergarten tuition in bilingual private kindergartens to those parents who send their children to public kindergartens.

The Carinthian Kindergarten Fund Act (Regional Law Gazette Nr. 74/2001) was passed on December 7, 2001. It is effective in municipalities in which, according to paragraphs 1 and 3 of the Carinthian Implementation Ordinance to the Minorities School Act at least one primary school offers bilingual instruction [§2 (1)]. Since the Carinthian Kindergarten Fund Act (regional law of 2001) came into effect, the bilingual kindergartens have received between € 54,000 and € 70,000 per year to cover deficits. In the municipality kindergartens, the deficits are covered out of the municipality budgets.

The law does not treat the Slovene minority as an equal second minority group in Carinthia. At least the administration of the foundation should be in the hands of the Carinthian Slovenes. The Carinthia Slovenes in a state of financial distress traded the independence of the bilingual private kindergartens that were established with great sacrifice on the part of the Slovene parents with financial assistance from Slovenia for coverage of losses, without which a long-term existence would not be possible. The passing of this law is not a sign of any special generosity on the part of the regional authorities. Rather, it represents the suspension of a very long period of discrimination against Slovene parents as well as the fulfilling of the obligations according to §68 (2) of the Treaty of St. Germain (the right to relative portions of the national, regional and municipality budgets). Nevertheless, the fund is an important improvement over the earlier situation.

The Carinthian Kindergarten Fund Act secures an equal financing (coverage of losses) of the private bilingual kindergartens, **but only for the existing kindergartens**. The demand is much greater, which is proven by the statistics on bilingual instruction. Thus the fund has to be better endowed and additional money for the founding of additional bilingual kindergartens has to be set aside.

Slovene in the Municipality Kindergartens

In the municipality (public) kindergartens, teaching is usually monolingual German. There are bilingual groups in the municipalities of Ludmannsdorf / Bilčovs, St. Michael / Šmihel, Bleiburg / Pliberk, Globasnitz / Globasnica (in these groups the above mentioned didactic methods are used) Eisenkappel / Železna Kapla, Sittersdorf / Žitara vas and Feistritz im Rosental / Bistrica v Rožu (here the methods are not used, the Slovene language is absolutely subordinate and is used only on an hourly basis). In St. Egyden/ Šentilj, the Caritas association runs the kindergarten and Slovene is offered.

School system

There are 2 geographic conditions for the minority school system. These are:

- the geographic determination for the Slovene minority group especially regarding the coming primary and middle schools is to be carried out in those municipalities in which at the beginning of the school year 1958/59 instruction in the primary and middle schools was bilingual. This geographical scope is identical to the autochthonic settlement areas of the minority group. In this geographic area each child registered for school has a right to participate in bilingual instruction.
- Above and beyond this geographic area, as long as there is a "sustainable need," primary and middle schools can be defined as schools that come into special consideration for the Slovene minority group. The need is regarded as "sustainable" when the legally defined minimum number of registrations is met.

Thus the children who live outside of the narrowly defined (minority school system) area have the right to participate in bilingual instruction only when the minimum of 7 registrations in one school location is met (see table below – Klagenfurt).

In Carinthia, there is an increasing interest in bilingual education. Registrations for bilingual instruction in primary schools reached the 20% mark in 1989/90 and since then have continually gone up both in percentages and in absolute numbers. Since Slovenia became an independent country, economic cooperation has intensified between Austria and Slovenia and the Slovenia's joining the EU has positively influenced the status of the Slovene language and bilingualism.

Registration for bilingual instruction in the primary schools in the bilingual areas

School year	Pupils entirely	registrations		Pre-school	Klagenfurt Celovec
		absolutely	%		
1959/60	10.325	1.994	19,31	0	0
1969/70	10.544	1.485	14,08	0	0
1979/80	7.435	1.065	14,32	0	0
1984/85	5.821	1.070	18,38	19	0
1989/90	5.664	1.134	20,02	44	41
1990/91	5.650	1.163	20,58	54	71
1991/92	5.639	1.242	22,03	69	100
1992/93	5.757	1.302	22,61	67	118
1993/94	5.881	1.338	22,75	81	113
1994/95	5.780	1.368	23,67	71	110
1995/96	5.798	1.375	23,71	100	101
1996/97	5.707	1.427	25,00	109	102
1997/98	5.811	1.494	25,71	113	110
1998/99	6.108	1.620	26,52	32	103
1999/2000	6.133	1.619	26,40	Sche + 10	105
2000/01	5.876	1.657	28,20	Sche + 4	113
2001/02	5.735	1.722	30,03	Sche + 8	116
2002/03	5.456	1.670	30,61	Sche + 3	127
2003/04	5.328	1.720	32,28	Sche + 3	143
2004/05	5.150	1.720	33,39	Sche	146
2005/06	5.018	1.819	36,25	Sche	165
2006/07	4.818	1.855	38,50		180

Primary and Lower Secondary Schools

Registration for bilingual instruction in a primary school can be done

- * at the time of registering for school
- * during the first ten calendar days after school begin
- * or at the beginning of a later school year.

The registration can be done orally (to the school headmaster) or in written form.

Registration to Slovene instruction in a lower secondary school can be done

- upon beginning the middle school
- at the beginning of a later school year

The registration is intended for the entire time of attendance until leaving the primary school or lower secondary school. De-registration is effective at the end of the school year.

How does the instruction proceed in the primary schools or lower secondary schools that come into consideration for the Slovene minority group?

For pupils registered for bilingual instruction, the entire instruction at the pre-school level and during all four years of primary school is in approximately equal parts in German and Slovene.

Instruction in the middle schools is in German. For pupils registered for Slovene instruction (school subject Slovene), Slovene is taught in all school levels 3 or 4 hours a week as a

compulsory subject. It is also possible to take Slovene as an alternative compulsory subject "Living languages" or as an optional.

For pupils attending schools in the areas covered by the Minorities School Act for Carinthia and not registered for either bilingual instruction or for Slovene as language subject, instruction is entirely in German.

How are the classes administrated in primary schools that come into consideration for the Slovene minority group?

For the bilingual primary schools (primary school classes or primary school sections) the following special rulings, according to the Minorities School Act for Carinthia are effective:

1. The number of pupils in one class at the pre-school level and in levels 1 to 4 cannot be less than 7 or more than 20.
2. Should there be at least 9 children in levels 1 to 4 that are registered, or not registered for bilingual classes, parallel classes have to be run.
3. In classes of the level 1 to 4 in which pupils registered for bilingual instruction are instructed together with pupils not registered, additional teachers must be employed for regular teaching (independent and solely responsible) in compulsory subjects except for religion for at least 14 hours per week (team teaching); the amount of time spent with a team teacher in the individual classes cannot be less than 10 hours per week; if the team-teachers work together for all of the teaching and education work then they also have joint-responsibilities of the home room teacher.
4. For pupils registered for bilingual instruction whose knowledge of Slovene is insufficient, an additional tutoring hour in Slovene is to be offered and with three pupils (not necessarily of the same school level) must be taught.

Slovene as optional subject or voluntary practice course

In the primary and lower secondary schools, Slovene as an optional subject or voluntary practice course can be offered for pupils who otherwise are instructed in the German language.

Secondary schools

According to the amendment of the Minorities School Act, "a bilingual commercial college shall be set up in Carinthia, especially for Austrian nationals of the Slovene minority. (...) At the bilingual commercial college, instruction in all classes shall be given equally in the Slovene and German languages. As to the languages taught, German, Slovene, English and another living foreign language shall be the compulsory subjects."

For secondary schools, the following is offered for Slovene instruction:

Federal Grammar School and Upper-level Secondary School for Slovenes in Klagenfurt.

Federal Grammar School and Upper-level Secondary School for Slovenes in Klagenfurt, established in 1957, is a school with Slovene as language of instruction. It is the only school in Austria in which only children with Austrian citizenship can be regularly enrolled

(exceptional condition in any case is made for children whose parents have their main life interest in Austria). In addition, the pupils who apply for acceptance in the school have to have sufficient knowledge of Slovene.

Bilingual Federal Commercial Academy in Klagenfurt

The vocational secondary school with German and Slovene as languages of instruction was established in 1989. With this bilingual school a long-time wish of the Carinthian Slovenes was fulfilled and at the same time a gap in the school system was closed, as especially bi- and multilingual education in business-oriented professions is for the minority group in general, but in light of globalization and mobility of employees, increasingly important and in demand.

Private bilingual vocational lower secondary and upper level school for commercial professions, of the Order of the School Sisters in St. Peter bei St. Jakob in Rosental.

The private school was expanded from a home-economics school into a secondary school for commercial professions.

In both vocational schools, both German and Slovene are the languages of instruction in equal proportions in all levels. Only those children who can show sufficient proficiency in Slovene to follow in their classes can be accepted for regular enrolment.

Slovene in other schools

In some additional federal grammar schools and upper-secondary schools and vocational middle and upper secondary schools, Slovene is offered as an optional or as compulsory optional subject.

Universities and higher educational institutions

At the universities, it is possible to study the subject "Slovene". A university education in the Slovene language is not offered in Austria. Graduates of the Slovene Grammar School have the possibility to study at the universities in Ljubljana or Maribor or Koper/Capodistria – there are quotas allocated for those interested from Austria.

Other educational institutions

In the area of adult education there is not a single offering for courses using the Slovene language. An insufficient ersatz is offered by the Slovene cultural and educational associations with various kinds of courses. But the lack of trained teachers who speak Slovene is evident here. At one time the Slovene agricultural school in Föderlach/Podravlje had to be closed due to financial and organizational difficulties. It is possible to register for bilingual instruction at the bilingual agricultural school in Goldbrunnhof / Hoprijan near Völkermarkt/Velikovec.

Qualification Profile for bilingual teachers and head masters of bilingual schools

While the salary regulation of 1946 (§ 37) still designated that the head masters and teachers in bilingual schools had to be trained for teaching Slovene, in 1974, the advertising for the position of head master in a bilingual school no longer made an exam for teaching Slovene a pre-requisite for the position, although bilingual teachers were preferred. After 1976, the respective school authorities began to appoint head masters without bilingual qualifications to bilingual schools where there were no pupils registered for Slovene instruction. This prevented possible new pupils from registering for bilingual instruction or prevented already registered pupils from getting instruction in the Slovene language (for example, in the primary school in Tainach /Tinja, where there were 2 pupils registered in 1990/91. The Regional Teachers' Public Service Act (Landeslehrer-Dienstrechtsgesetz – LDG) of 1984 stipulated that the head masters in §32 had to substitute for absent teachers in bilingual classes, make suggestion of a pedagogical-didactic nature to bilingual teachers for the Slovene part of the instruction to act in an advisory capacity to pertinent situations in bilingual instruction. The head master also had to talk to the parents in Slovene and in German, hold school events in both languages and to conduct the interviews for registration in the Slovene language. Thus, a head master with no knowledge of the Slovene language cannot fulfill all of the job requirements.

The Slovene organizations managed to prevent the appointment of unqualified head masters to bilingual schools until regional governor Jörg Haider took office. In the spring of 1999, regional governor Haider rescinded the advertising for head master positions for six bilingual primary schools, specifically in Gödersdorf / Diča vas (district Villach-environs), Diex / Djekše, Eberndorf / Dobrla vas, dling / Kajzaze, Gallizien / Galicija (all in district of Völkermarkt) and Feistritz im Rosental / Bistrica v Rožu (district of Klagenfurt-environs), and ordered a new qualification profile in which bilingual qualifications were not necessary. He declared that only primary schools in which more than half of the pupils were bilingual had a right to a bilingual head master, although the Federal Chancellery confirmed that on the basis of the law concerning qualifications for head masters of bilingual schools, the Ministry for Education had to decide. The Minister of Education confirmed in her answer to a member of parliament of the Green Party that Haider's procedure did not conform to the law and further, that head masters of bilingual school had to at the very least fulfill those requirements that the teachers had to fulfill because the law does not differentiate between head masters and teachers. Head masters also have to teach. If they are excused from this obligation, they still have to be prepared to fill in for absent teachers, and so bilingualism is a requirement for filling this position. Nevertheless, regional governor Haider appointed head masters without bilingual training to 4 bilingual schools (Gödersdorf / Diča vas, Latschach / Loče, Maria Rain / Žihpolje and Ferlach / Borovlje) in the school year 2000 / 2001. On March 19, 2001 the ordinance to the Objectivity Law was passed pertaining to head masters of bilingual schools. It was passed by the Carinthian regional government over the objections of the Slovene minority, as it drops the bilingual qualification for the head masters of bilingual schools. This can be seen as an action towards the dismantling of the bilingual school system.

According to § 7 (2) of the State Treaty of Vienna, the Carinthian Slovene have the right to elementary education in the Slovene language. "Elementary education" means however at least the "compulsory education". In Austria that is 9 years. The ruling whereby with the 5th level of school only language classes are in Slovene – with the exception of the Federal

Grammar School for Slovenes and the bilingual Federal Commercial Academy - is likely unconstitutional. Slovene language instruction means additional classroom hours at inconvenient times, mostly after the normal school hours. Actually this differentiated organizational form has led to a massive reduction in bilingual education. This reduction can only be countered with a broadening of the offerings in bilingual education in German and Slovene as language of instruction in the entire compulsory school system (9 years).

While according to the annual report of the school authority for Carinthia about the school year 2005/06, there were 402 pupils in bilingual classes in the 4th school level, but the number at the 5th school level was nearly halved, to 231 pupils (of those 92 were in lower-secondary schools, 62 in grammar schools, and 77 in the Federal Grammar School for Slovenes.)

In total, the distribution of bilingual education, or instruction in Slovene for the registered pupils in school year 2005/06:

	%	Number of pupils
Primary Schools (levels 1-4)	54,13	2.021
Lower secondary	23,51	878
Upper secondary	22,36	835
Total:		3.734

Diametrically opposed to the continually increasing registration number for bilingual education is the development of the knowledge of Slovene of those children registered for bilingual education in the first level, which has been rated by the school authorities at the time of registration since school year 1980/81:

Knowledge of Slovene of those children registered for bilingual education in the first level primary school			
School year	good	low	none
1980/81	43,05%	25,69%	31,25%
1985/86	37,66%	28,66%	33,66%
1990/91	31,03%	20,48%	48,49%
1995/96	27,60%	19,70%	52,70%
1996/97	23,65%	16,67%	59,68%
1997/98	21,49%	20,61%	57,89%
1998/99	24,90%	21,29%	53,80%
1999/2000	24,39%	23,16%	52,46%
2000/01	25,15%	19,80%	55,05%
2001/02	18,99%	22,15%	58,86%
2002/03	19,58%	20,63%	59,79%
2003/04	20,31%	15,90%	63,79%
2004/05	16,93%	16,22%	66,85%
2005/06	15,17%	14,31%	70,52%

These data reflect an increasing assimilation, they also point clearly to the fact that bilingual educational offerings are increasingly taken up by families who do not speak Slovene (anymore). Above all, these data are the picture of a totally insufficient bilingual offering at the pre-school age (Kindergarten)

An evaluation of bilingual education with the goal of evaluating language competence after 4 years of primary school has not been done. The efficiency of a pedagogical model that has been practiced in the bilingual schools unchanged since the Minorities School Act of 1959, in the form of a constant switching between German and Slovene during the individual class hours is questionable. Also the teaching in this method does not conform to the Minorities School Act, in which nearly the same amount of German and Slovene is used, but rather in practice it depends on how many pupils have registered for bilingual instruction. The lower the number of pupils registered for bilingual instruction, the less Slovene is used in the classroom.

The private bilingual primary school of Hermagoras – Mohorjeva in Klagenfurt /Celovec, founded in 1989, was the first to implement a new pedagogical concept for languages: German and Slovene are alternated on a daily basis, the classroom teacher stays the same. As a result in the public bilingual primary school in Klagenfurt /Celovec, an experimental program with similar language use method was begun in the school year 2003/04. In this experiment the language alternation occurred weekly, on the principle of "one person-one language". The report on this experiment was published in following annual report of the state school authority on the school year 2005/06:

Report on the school experiment in primary school nr. 24:

Experience with a new pedagogical method for language teaching in the third year of the experimental program

Initial situation

In the school year 2003/04 a new concept of language teaching was implemented in the public bilingual primary school VS 24 in Klagenfurt / Javna dvojezična ljudska šola LS 24 v Celovcu and was applied for as an official school experiment. What is special about this experimental model is that the languages of instruction, German and Slovene are alternated weekly. This weekly language alternation is a departure from the broadly used continual alternation between German and Slovene during class time in the bilingual primary school in Carinthia. This school experiment began in the first grade level in school year 2003/04. The experiment is ascendant: In school year 2004/05, two grade levels were involved, the first grade with 20 pupils and a second grade with 17 pupils, and were taught in this new method. In school year 2005/06, the model was spread to all 4 grade levels, although initially only the first three grade levels were intended for that year. At the explicit request of the parents, the model was also implemented at the fourth grade level. The fact that parents of the pupils in the fourth grade level wanted their children to have the weekly language alternation shows that the legal representatives of the children associate such a form of teaching with their expectations of efficient language learning and a high quality assurance for language education.

The distribution of the pupils was like this:

<i>First grade /form level: 1a = 13; 1B = 14</i>	<i>total 27</i>
<i>Second grade/form level: 16</i>	<i>total 16</i>
<i>Third grade/form level: 16</i>	<i>total 16</i>
<i>Fourth grade/form level: 12</i>	<i>total 12</i>

Altogether there were 71 pupils taught according to this model in the school year 2006/06. The number of pupils at the first level is a indication that the new form of bilingual education meet with the approval of the parents and legal representatives. For the first time in the history of the public bilingual primary school nr. 2 / Javna dvojezična ljudska šola LS 24 - it was necessary to divide the pupils registered into 2 parallel classes. The reason for the increasing number of registrations is partially due to the special features of the new concept of language teaching.

The basic intention of the new language pedagogy is the weekly language alternation on the principle of "one person – one language" (see RONJAT, 1913) that is organized as individual-related, which in reality results in having teams of two teachers. The teacher teams divide the languages between them. The bilingual qualification of all the teacher teams is a basic pre-requisite in order to be able to carry out the weekly language change as well as the change in class.

The individual-related weekly language alternation in the primary school VS 24 in the school year 2005/06 was practiced in the first three levels with teaching teams. The two parallel classes of the first level were taught by two teachers, as were the second and third levels. Only in the fourth level was the weekly language alternation implemented by one and the same teacher.

The weekly language alternation was so organized that all school levels used the same teaching, working and play language. The weekly use of the same language for the whole primary school VS 24 had the pedagogical advantage that the whole school was immersed in

one language for the week, which was a great support for the language acquisition and a motivational challenge.

Theoretical assumptions

Modern theories of language acquisition attempt to incorporate experience and insights gained in general teaching and learning theories, especially those concerning managing day-to-day duties. Especially Wolfgang Butzkamm indicates in his long-term research on foreign language teaching that studies in anthropology and developmental psychology provide essential information on the arrangement of assisting learning situations that facilitate language education in schools. (Butzkamm 2004).

Learning is an interaction, a social process that guides and creates the relationship between two or more people. An important element of the learning process is the atmosphere in which people react to and learn from each other. Learning is successful when the learners feel accepted and secure, when they can approach new experiences and challenges unafraid. Situations that are free of fear and aggression are essentially connected with time as a resource, that is, the more time allowed, the less stress produced.

Successful and satisfied learning is built on important experiences that are expressed in experimenting, sampling, in searching and researching by learners (pupils). Situations that allow such activities are very basic to the emotional, social and intellectual development of school children, because they offer affective and social confidence.

The more complex a new experience is, the more important situations and persons are on which the learners can rely and from whom they get assistance. Confidence in the learning situation can be attained by comprehensible structures, according to Butzmann. Such structures are those that are acceptable and viable, and of a certain length of time. Structures that build reliance have an even greater importance the more complex and unknown the situation are in which the learners have to work and react. Hartmut von Hentig compares entrance into school with a complex learning and experiencing situation that for school beginners is not free from fear, because school learning is associated with evaluation and performance (see Hentig von, 1993, 1996). Beginning school creates realities that for the children are not comparable to anything they have experienced before and so causes uncertainty in the children. Similar considerations by Oskar Negt show that an important requirement for a learning atmosphere in schools that is free of fear and promotes curiosity lies in the development of conditions that create reliance and orientation. Reliance is understood to be a pedagogical operating principle, because the time available for new requirements creates and forms relationship and situations of trust. (see Negt, 1997:239-293).

All these ideas are valid for bilingual education, especially when one of the two languages represents a new school subject. It is assumed that, for most of the children, school learning in two languages is an unknown learning and working situation which should be reduced in its complexity by using transparent structures. From the perspective of developmental and social psychology, it is thus important to create framework conditions that accommodate the social-emotional needs and the intellectual abilities of the school children to that learning and working in two languages is accompanied by individual success situations.

The new concept of language teaching is built on a regulation framework that wants to implement the theoretical considerations for learning in two languages discussed above. Reliance, certainty and orientation is expected from such a regulation framework, so that both teachers and pupils can engage in new learning challenges. All four elements (teachers, time, situation and methods) of the regulation framework contribute importantly to giving a structure to the learning situation that can be relied on, and that is comprehensible, understandable and meaningful for the child. The essence of the regulation framework is that is stable and durable. Stability and durability have to do with time that makes it possible to enter into relationships, to try out new things, follow up on curiosity and to concentrate of other people (peers and teachers). Where time is broken up (as in continually alternating languages) learning is made difficult because the content relationships are not understandable. The four elements together build a rule observance that builds security and reliance.

In the new concept of language pedagogy, the four elements have the function of entwined support columns. Theoretically, they build a net that in the connection of all the elements makes possible an intensive, stable, individual-related (one person – one language) motivating kind of learning in both languages with a longer time-perspective (a whole week in one language). This regulation framework creates reliance, especially for children, and so determines in an important way the continuity and intensity of learning. At the same time it protects the pupils from arbitrary action on the part of the teacher. It is assumed that with the regulation framework a trust in a person (teacher) and the processes (learning situation) can be developed that at the same time gives the pupils an inner sense of security.

This regulation framework is important for second language acquisition in that realistic and longer immersions can be established. Immersion functions as an efficient language learning situation only if long time periods are available.

In conclusion it can be said that the weekly alternation of languages and the connection of language acquisition with a particular person delimits a pedagogical field or work that offers the child certainty, transparency, comprehensibility, orientation and possibilities to develop relationships. The child that gets a guided language education in school learning must be able to rely on a certain regulation framework in order to have confidence in the bilingual learning situation.

In the last school year, the theoretical assumption and the justification of a regulation framework were often themes of discussion in the fixed meetings with the teachers of primary school nr. 24. The new concept of language pedagogy needs a reflective and critical interaction with one's own personal practice, which must always be seen from the background of theoretical justification. Only so is it possible to create a pedagogically and scientifically justifiable coordination between theory and practice.

Separate Evaluation of Language Competencies

A separate evaluation of language competencies in bi-lingual and multi-lingual educational models belongs to the standards of a goal-oriented advancement in language-learning in the modern research on bilingualism. Support programs that have been developed and offered for the diverse language combinations are built on clear and separate evaluation of the separate languages (see, Hörn, 1990, Fürstenau/gogolin/Yagmur, 2003; Bonnet/Breidach, 2004). This awareness was the main leitmotiv for linking bilingual acquisition at the primary school nr 24 to specific teachers and to organize it along clear time specifications. Language promotion that is designed for pupils and their individual abilities assumes that the various

competencies in both languages will be identified and evaluated. This implies that the current practice of evaluation in bilingual instruction in the minority school system should be dispensed with. Instead the compulsory subject "German/ Reading/Writing" and "Slovene/Reading/Writing" are listed separately and evaluated separately. The separate evaluation of language competencies was a constant theme in the various inner school advances training seminars. The following arguments are in favor of separate evaluations:

- *separate language instruction (weekly alternation) should be expressed in separate evaluation of language competencies. So, each language gets a visible equality and equal treatment and both are at the same time learning relevant and school relevant subjects. This holds especially true for Slovene as the socially weaker language.*
- *For both pupils and their parents/legal guardians, a differentiated and individual evaluation of language competencies provides important information about the individual learning success. The persons concerned get a differentiated view in language acquisitions abilities and in their own language learning progress.*
- *Evaluations symbolize the importance of the school subject. Equal importance of both languages should be expressed in separate evaluations.*
- *Separate evaluations allow teachers to be responsive to the individual language and intellectual learning condition and learning potential of the pupils. Contrary to this, a general grade for both languages together waters down the actual differentiated language learning abilities and language learning efforts, and usual reflects a disadvantaging of one of the language.*
- *Exactly the various language socialization and education backgrounds of the pupils make it necessary to describe the achievements in language learning with a differentiated evaluation.*
- *With a contrastive and comparative approach to language acquisition, that at the same time thematizes the similarities and differences of the languages, linguistic and cultural connections will be made that excludes the danger of the compartmentalization of languages. In this concept. separate evaluation is in no way in opposition to the integrative function of bilingual instruction.*

The separate evaluation of language competencies and linguistic areas was the theme of an inner-school advanced training session in the school year 2005/06. The main emphasis of this session was the verbal evaluation of school achievement. Initially it concerned the development and identification of categories that play an important role in verbal evaluation and that can effectively reflect and reward the school work and efforts of the pupils. The experiences to date with verbal evaluation show that the parents get highly differentiated information about their children and attach great importance to getting a precise description of their development in achievement. Above all, it is important for them that the languages are perceived as different and disclosed separately, because only so can get a view of the acquisition and development of both languages.

Verbal evaluations are a special challenge for teachers because they demand a vigilant, continuous and engaged observation of each and every child. (see, Barnitsky/Christiani, 1994; Böttcher u.a., 1999).

Because the verbal evaluations are written in both languages and the teachers have mainly been educated and socialized with German terminology, there is a great backlog to fill here. Teachers are currently forced to learn the professional terminology and formulations for the

verbal evaluations in group work among colleagues. In order for verbal evaluations to be equivalent in both languages it will be necessary to organize further inner-school advanced training sessions along these lines.

Empirical Results: Language development and the Development of text competence

In the school year 2005/06 and analogous to the survey in 2004/05, a survey on text competence in both languages was taken. Pupils in the second and third grades/forms were shown pictures that they had to describe once in Slovene and once in German on different dates.

The results of the second level are comparable to the results of those pupils who were in the second level in school year 2004/05. This says that the language competence from the mid-term to the end of the school year increased dramatically in both languages. It is also noticeable that at both dates of the survey (February 2006 and June 2006) the German language took a very dominant position. This doesn't change the fact of the increase in language development in Slovene expressions. The German texts were longer and in certain description much more differentiated and contained a variety of detail descriptions. Without going into details of the results, it seems that the assessment of language development in the second level basically confirmed the results of the previous year (see the report on the school experiment in primary school nr 24 for the year 2004/05).

Special expectations were posed on the survey of text competence for the pupils in the third level. It was assumed that the progress in general language development, which was especially promoted through guided language acquisition, would be reflected in the use of vocabulary and the correct use of grammar regularities. Pupils of the third level were able to produce over-long descriptions of the pictures and allow their creativity and imagination to play in the development of the content. The German language is still the dominant one, as is reflected in the longer German texts. It is noticeable that some pupils who come from a bilingual family background wrote texts of nearly the same length in German and Slovene and in the Slovene descriptions of the pictures created very complex sentence structures. The picture descriptions in Slovene show that also children without a bilingual family background had acquired sufficient language competence to be able to correctly describe the happenings in the picture stories. It can be assumed from the survey in the third level that the pupils at this level made great progress in both languages and have the competency to be able to handle the grammatical, lexical and syntactic demands of both languages. A detailed representation of the results cannot be given in this report.

Conclusion

The scientific monitoring of this school experiment shows that it is necessary again and again to thematize and work through questions concerning pedagogy, language didactics and teaching methods that arise out of the daily school routine. It is characteristic of qualitative accompanying research that planning steps defined and delineated in advance cannot always be complied with. What is special on this form of accompanying research is that questions that arise are seen as the produce of the process of development that is connected to pedagogical work.

On the basis of scientific monitoring it becomes clear that various topic areas have been touched on in this school experiment that are important for the entire minority school system; for example, regular assessment of language development, connecting to inter-

culturalism and language acquisition, verbal evaluation as an important feedback for parents and children.

In order to assess the narrative competence of the children in Slovene and German, it would be necessary to conduct interviews with the children on certain themes in the 4th level.

Teacher Training

The Federal Pedagogical Academy of Carinthia in Klagenfurt / Celovec offers studies for bilingual instruction in primary schools and Slovene as a subject in the lower level secondary schools in addition to the general professional certification for teachers in compulsory education. The Higher Education Act of 2005 brought a change of the Federal Pedagogical Academies into Pedagogical Colleges with related innovations in teacher education. The new organization will go into effect with the academic year 2007/08. For the Federal Pedagogical College of Carinthia there is now an organizational plan that was positively evaluated by the founding commission of studies.

The Organizational plan of the Federal Pedagogical College of Carinthia

The Federal Pedagogical College of Carinthia proposes a solid professional education for people in professional field of education within the guidelines of the Higher Education Act of 2005 with its accompanying ordinances with regard to the Bologna Declaration. Among its course offerings are especially courses of study for the bachelor's degree for teachers in the primary, lower secondary, and special school as well as the general vocational ("polytechnische") schools and specialized vocational schools (together with the Federal Pedagogical College of Styria). In addition, target group-oriented continuing educational courses and those tailored to suit special needs for teachers of all types of schools will be offered with the possibility of attaining additional qualifications.

Furthermore, based on § 12 of the Minorities School Act for Carinthia (Federal Law Gazette Nr. 101/1959) as well as on § 8 (2) of the Higher Education Act of 2005, a supplementary course of studies for compulsory school teachers in the Slovene language will be provided as well as the corresponding additional offerings in the area of educational practice to be made available.

The Pedagogical College of Carinthia is devoted to research-accompanied teaching. It attributes great importance to the scientific and professionally oriented research and development and for that has established an extra vice-rector's administrative office.

The organizational plan as submitted serves the best possible implementation of the duties and responsibilities prescribed under the provisions of organizational and economic conditions and supports, above and beyond, the creating of a distinct profile for the Federal Pedagogical College of Carinthia in the areas of

- Multilingualism and intercultural education

In the past, competencies in the support of bilingualism and multilingualism were developed at the Federal Pedagogical Academy that in the future should be continued and enhanced through research and development in the areas of language teaching and intercultural education.

- Pedagogy and Didactics in Primary Education
The Federal Pedagogical College of Carinthia plans a close cooperation in research and development in the area of primary education with the Austrian competency centers for German and Mathematics at the Alp-Adriatic University of Klagenfurt.
- School Development
The Pedagogical College of Carinthia comes with recognized competencies in the areas of research and consulting in school development, which will be systematically, theoretically, and practically enhanced in the focal point "School Development".

Organization of the Federal Pedagogical College of Carinthia Departments and Competency Centers

To fulfill the specified duties and responsibilities in the Higher Education Act of 2005, departments and competency centers will be established at the Federal Pedagogical College of Carinthia.:

- Department of Pedagogy of Primary Schools
- Department of Specialized Science, Specialized Didactics and Pedagogy of Secondary Education
- Department of Vocational Education and Vocational Pedagogy
- Department of Pedagogy of General Sciences, School Development and Consulting
- **Competence Center: Multilingualism and Intercultural Education**

In addition a section on Special Education is to be established under the Department of Pedagogy and Didactics of Primary Schools.

The practice school will be under the first two departments listed above and will be expanded into model schools.

The departments, as in §16 of the Higher Education Act of 2005, will have a head of department, the competence center will be headed by an appropriate chairperson who will be partially released from other responsibilities to perform those duties.

Duties and Responsibilities of the Departments / Competency Center

The duties and responsibilities of the departments and competency center are oriented to the following premises:

Premise 1:

The qualification of teachers is seen as a continuation of professionalization and is derived from the concept of life-long learning. All departments and the competence center are thus responsible for the basic education of teachers as well as for advanced training and continuing education.

Premise 2:

The research mandates of the pedagogical colleges are conferred on the entire organization and not on specific people or groups. Research will be done in the departments and competence center as well as interdepartmental and interdisciplinary project form and is intended to flow into the research-accompanied teaching. (...)

Competence Center: Multilingualism and Intercultural Education

- Organization, implementation and evaluation of university-level courses of study and advanced training courses as well as continuing education for teachers of primary and middle school levels, according to §12 of the Minorities School Act and § 8 (2) of the Higher Education Act of 2005;
- Implementation and evaluation of teaching in the areas of language and intercultural education in the framework of advanced courses of study, and university-level courses as well as advanced training and continuing education in these areas.
- Implementation of university-level courses and advanced study courses (for example in German as a second language, supplementary foreign languages, etc.)
- Research and development in chosen areas (for example, language didactics, bilingual school system, etc.)

In all organizational units and across the board, university-level courses and advanced study courses can be developed and offered that lead to additional qualifications (Masters level studies, and advanced courses with the completion diploma "academically certified")

At the Federal Pedagogical College of Carinthia, an additional course of studies for teachers in compulsory education in the Slovene language is offered as well as additional offerings in the area of practice teaching will be made available. In the organizational plan, a competence center for multilingualism and intercultural education is provided for that, in the future, should continue and broaden research and development in the areas of language didactics and intercultural education.

It is suggested that questions regarding quality assurance and school development in the minority school system should have a special importance as well as in the area of accompanying research work.

In connection with the implementation of the rights of the Slovene minority in Carinthia, the questions arises that in the areas of education and training whether bilingual school are sufficient to guarantee the Slovene language, culture and identity and in the end the continuation of the Slovene minority. Bilingual instruction that is carried out only in the primary schools and that in the most rudimentary form, does not enable a sufficient proficiency in Slovene for public use. The reduction in the number of Slovene speakers in Carinthia shows that Slovene minority is not sufficiently protected. Both the Federal Grammar School for Slovenes and the bilingual Federal Commercial Academy in Klagenfurt/Celovec with instruction in Slovene have a very important function, but they alone cannot stop assimilation. To improve the situation, it would be necessary to reorganize the minority school system and pre-schools in terms of the newer concepts of language pedagogy in order for a sufficient knowledge of Slovene to be acquired and a Slovene identity to be built up. This could be implemented with a transfer of full authority for the organization, decision-making, leadership and control of the training and education of members of the Slovene minority to the minority group itself (in the form of a kind of cultural autonomy) and with the expansion of bilingual education to the end of the middle school level as well as in the middle, vocational and technical schools.

The prerequisite for beginning bilingual instruction has changed throughout the years. At the time of the implementation of bilingual education in 1945 and at the time the Minorities

School Act for Carinthia was passed in 1959, one could assume that the mother language of the children was primarily Slovene and that the children actually spoke Slovene or at least one of its dialects. German often had to be taught as a second language or national language. Today the situation is just the opposite.

The lifestyle conditions for families since the 1960s have changed dramatically and enduringly. Large farm families, in which several generations lived together and where the socialization was primarily or exclusively in the Slovene language, no longer exist. Parents working outside the home, social mobility and the accompanying restructuring of village life, the availability (or non-availability) of educational and child-care facilities at the pre-school level and afternoon child-care facilities, the influence of the media, and the mobility of the people have an increasing influence on the social environment of the schools. The Slovene language can be heard only in family and home areas of life. And even here the influence of the media has contributed to a change in speaking and the use of language. The social association with bilingualism and multilingualism and the value attached to languages and cultures in a particular environment encourages or hinders the quality and attractiveness of language learning and schooling. The rejection of bilingual topographical signs and designations carries a message about the valuation of the second language of the region and its speakers.

Styria

Slovenes

Primary school instruction as guaranteed by the State Treaty does not exist in Styria. In certain areas on the border to Slovenia, instruction in Slovene is offered as an optional practice hour (occasionally also as optional compulsory subject or as second living foreign language) usually for 2 hours a week, whereby primary school children in first and second levels are not allowed to attend. Even today there is no Slovene instruction at lower secondary schools. In the style of the very successful minority group lower secondary school in Oberwart in Burgenland (Croatian, Hungarian, German), minority group lower and upper secondary schools (then in combination with minority group lower secondary schools) should be established in Styria.

A system of bilingual kindergartens also does not exist in Styria.

In accordance with the implementation of the school system it should also be made possible to register a child for a bilingual kindergarten group. Legislation on schools including kindergartens should be taken up.

If due to the negative behavior of the authoritative bodies there is no improvement in the school and kindergarten system in Styria, then complete assimilation can hardly be stopped.

Burgenland

Croats

Primary schools

In the area of the Minorities School Act for Burgenland, it is possible to de-register from bilingual instruction in traditionally bilingual schools. The teachers can be put under pressure ("if my child gets a poor grade, then I will just de-register her/him"). For de-registered children, from the perspective of the Burgenland school authorities, the normal curricula is then effective. The teachers are not allowed to speak Croatian with a "de-registered" child. The three hours of Croatian are omitted, instead the child has one hour each of German, sports and crafts. But who should do sports and crafts with a de-registered child when no teachers are available? Here, a clear definition of "bilingual instruction" is missing. It is up to the teacher, or on the language competence of the pupils, to which extent Croatian is used and which demands are put on the pupils. For some, one Croatian poem a month is too much, for other too little. A pupil who cannot even greet someone in Croatian gets a grade of "good" and subsequently might at any rate de-register; a pupil who speaks Croatian fluently gets a grade of "excellent" – and that is often the spectrum of grades given. The law should have at least demanded a minimal use of the Croatian language, a minimal standard to be reached, or defined a teaching goal. For the preservation of the language, an obligatory bilingual instruction in the traditionally bilingual areas would be ideal. The law has been criticized by many Croat associations. Scientific experts have criticized the law because of its many stipulations hostile to the minority group and because of its inconsistencies. Rules and stipulations are considered by well-known legal experts as unconstitutional, but however up to now no one has been able to get amendments through. In a positive light, one must mention the stipulation in the new law whereby bilingual nursery groups (minimum of 4 registrations), pre-school classes (minimum 7 registrations) and school classes of the first to fourth levels can be organized in school locations in which up to now there was no bilingual instruction. Thus a decision of the Constitutional Court was enforced whereby under certain conditions there is a right to primary education in the minority language in the whole region.

Lower secondary schools

The bilingual lower secondary school that was conducted on an experimental basis up to now has been legally anchored. Otherwise the law allows only for monolingual (Croatian or Hungarian) lower secondary schools, which leads to an educational dead end, as no parents would put their children in school were German is only taught as a second language. Also for schools in which it is possible to established classes (minimum of 9 registrations) or departments (with minimum of 5 registrations) in the normal German language lower secondary schools, the classes cannot be taught bilingually but only monolingually in Croatian. The law-makers have invoked a "letter-of-the-law" implementation of § 7 of the State Treaty of Vienna. Otherwise, the pupils can be registered for instruction in Croatian in the form of Croatian as a subject. The rapid decrease in the number of participants in Croatian instruction from the 4th to the 5th levels has been exacerbated.

Lower secondary and upper secondary schools

The law provides for the establishment of one single secondary school for general education ("Gymnasium" or "Realgymnasium"). Taking the geographical situation of Burgenland into consideration, it is clear that hardly anyone from Neudorf / Novo Selo or from Osip / Uslop will attend the bilingual secondary school in Oberwart/Borta. Article 7 stipulates a "proportional number of their own lower secondary schools". While, for example, the Carinthian Slovenes have two upper secondary schools, only one such school was legally provided for the numerically larger groups of Croats (including the Hungarians). Here, regarding the implementation of § 7, the letter of the law was not so exactly interpreted.

Higher Schools

Up to now there is no legal basis for language instruction for the minority groups in Austria. At the university level there are only 2 pro-seminars (Culture and History of the Croats in Burgenland, practice classes for Burgenland-Croatian, 2 semester hours weekly).

Hungarians

School system in general

Hungarian is taught within the framework of bilingual instruction in the primary schools in Oberwart / Felsőőr, Unterwart / Alsóőr und Siget i. d. Wart / Őrsziget, and otherwise it is offered as an optional subject or voluntary practice class. The very successful school experiment up to school year 1993/94 "Lower secondary school with special consideration to Hungarian instruction" on two lower secondary schools was taken over into the regular school system and continues in lower secondary school classes and department with Hungarian as a compulsory subject. In the primary school in Oberwart / Felsőőr, there is one class and in the primary school in Oberpullendorf/Felsőpulya two classes with Hungarian as a compulsory subject. The teaching inspectorate in the area of compulsory schools is realized as stipulated in the Minorities School Act by a special school inspector who fulfills this function with a reduction in his/her teaching load as a lower secondary school teacher. In the area of general and vocational secondary schools, Hungarian is offered and taught in bilingual classes at the bilingual Federal Secondary School in Oberwart, as a compulsory subject in the Federal Vocational Upper Secondary School in Oberpullendorf ("Pannonische Klasse"), as well an optional subject and as a voluntary practice subject in several other school locations in the region. The bilingual Federal Secondary School in Oberwart was established in 1992. In the year 2000, the first pupils finished their school leaving certificates, whereby all of these school leavers have very promising prospects for employment on the basis of the language competency. The demand for foreign language competency is increasing, especially in the border regions, which confirms the importance and value of the minority group languages.

Roma in Burgenland

On the basis of the pertinent stipulations of the Minorities School Act for Burgenland, the Romani language is taught in the primary school Oberwart /Erba, the European Middle School in Oberwart(EMS) as an optional-compulsory subject, and in the Center for Special Education (SPZ9 in Oberwart in the form of an optional subject one hour a week. Altogether 92 pupils are registered for this form of instruction in the school year 2006/07. The representatives of the minority group would like a continuous expansion of language instruction.

Kindergarten System in Burgenland

In the daily routine of the kindergartens, the amount of time spent in using the Croatian or Hungarian languages as a "kindergarten"-language depends primarily on the linguistic competence and personal commitment of the kindergarten teacher. Whether the kindergarten teacher can even speak Croatian depends on the municipal council and the mayor. In some kindergartens Croatian is spoken and played in, in other kindergartens the children learn only a few Croatian songs and poems. The primary school teachers complain about the inadequate knowledge of Croatian of the first graders. In general, one can say that the allegedly bilingual kindergartens in Burgenland have with only a few exceptions reached the goals set by the law. Up till now, the intention of the law has been either completely ignored or simply made ridiculous. For example, in two municipalities, the mayors have refused to let a bilingual kindergarten assistant teacher enter the kindergartens. The reason given was that, even though there were several kindergarten groups, there was already "at least one" kindergarten teacher who could speak Croatian. The legal prerequisite for using the assistant kindergarten teacher was not provided for (unless one wanted to help the regional government save money). In one of the municipalities, 93% of the parents supported the deployment of the assistant kindergarten teacher, but the mayor stayed by his decision. Thus bilingual education is being undermined by those in authority - who themselves are Croats. Many parents try to counteract the linguistic assimilation of their children, but many more have given up and so they are taking from their children the chance to learn two languages at the same time in a playful way. Romani is not used in any kindergarten.

Vienna

Hungarian

As already mentioned, instruction in Hungarian is not regulated by law. Up to a few years ago, there were no possibilities to learn Hungarian in the primary, lower secondary or upper secondary schools – either as a compulsory or optional subject. At present, in four primary schools Hungarian is taught as an optional subject for 2 hours a week in the afternoon within a school experimental program, "Project Hungaricum". The interest is increasing; in school year 2006/07 150 children were enrolled. As of September 2007 the "Project Hungaricum" was expanded to lower secondary and lower secondary grammar school.

Besides some half-hearted attempts to introduce language instruction in Hungarian in individual schools, which have been usually undermined due to the lack of a Minorities School Act similar to the ones for Burgenland and Carinthia, there are numerous Hungarian associations in Vienna that try to encourage and enable their members and other interested people to acquire language competence and preservation.

Two associations offer regular courses for children and young people: the Central Union, whose "Viennese Hungarian School" has an enrolment, including kindergarten, of more than 100 children in school year 2006/07. Instruction is in a two-week rhythm with two teachers. The second association is the Hungarian School Club, founded in 1928. Between 550 and 60 children and young people from 5-18 years old participate in the weekly courses in small groups.

The children have the opportunity for language practice with, among other possibilities, the Hungarian Boy Scouts group, the children's dance group of the Viennese Hungarian culture association „Délibáb" or with the children's theater group of the Viennese Hungarian Worker's Club.

All these measures can only decelerate the loss of language competency in the members of the minority group, but cannot stop it altogether. The Viennese Hungarians find it absolutely essential to counteract the threat to the existence of the minority group by the establishing of bilingual educational institutions (kindergartens, primary schools, lower and upper secondary schools and grammar schools up to the "matura" leaving certificate) on the basis of a Minorities School Act for Vienna suggested by the Federal Government. This would also redress the current disadvantages of the members of the minority groups in Vienna compared to the members of minority groups in the regions of Burgenland and Carinthia.

Czech

The Czech school association "Komensky" runs private schools in Vienna – a primary school, a secondary school and an upper secondary school including an affiliated kindergarten. Instruction is bilingual (German-Czech, or Slovak). The school enrolment is steadily increasing. In school year 2006/07 the enrolment was 410. A sufficient demand for the offering of the Komensky school is obviously at hand.

According to § 7 of the Austrian State Treaty of May 1955 (Federal Law Gazette 1955/152), Austrian citizens of the Slovene and Croat minority groups in Carinthia, Burgenland and Styria are entitled to primary instruction in the Slovene or Croatian language and to a proportional number of their own middle schools. The corresponding rights are given in the Minorities School Acts for Burgenland and Carinthia. A Minorities School Act for Vienna that would be in keeping with § 7 of the Austrian State Treaty has not yet been enacted.

In January, 2005, in a report of an expert commission to the European Charter for Regional and Minority Languages, the lack of a corresponding law was criticized.

One result of this legal loophole is among other things, the necessarily higher number of children per class in the Komensky School as opposed to those schools in the specified area of the Minorities School Act. The higher number of children per class is a disadvantage to the children of the Czech and Slovak minority groups compared to those of the Slovene and Croat minority groups. The same rulings apply as those for the Austrian public schools. The positive discrimination demanded by the Constitutional Court (file nr. VfSlg. 9224) is thus not complied with.

At the moment, an amendment to the school laws is strongly suggested which would bring about the lowering of the necessary minimum number of pupils per class in the public schools. This amendment - according to available information - will not apply to private schools. Thus the pupils in the Komensky School will continue to be disadvantaged respective to pupils not belonging to a minority group (negative discrimination).

For children of the Czech and Slovak minority groups, there is no adequate offering for learning their second mother tongue in public schools. They can enjoy this constitutionally guaranteed right according to the equality principle only in the Komensky School. But there tuition has to be paid. Charging tuition is absolutely essential for the maintenance of the school, because the school association has not yet managed to accrue sufficient public funds for the school.

For all the other minority groups there is instruction or courses only on the basis of private initiatives.

Above all for the area of Vienna, the enactment of a Federal Minorities School Act has been demanded - up to now just as ineffectively as for Styria.

It is no accident that the minority group conflicts (above all in Carinthia) have been carried out in the school to a great extent. With the language of instruction, assimilation can be essentially encouraged or essentially blocked. A minority group can only maintain itself if its members get a solid education in their own language. The basis for language acquisition is created in the family. The size of the vocabulary and use of the language follow from and depends essentially on school education. If the schools do not comply with these responsibilities and duties, the members of the minority group will be limited to the mastery of their own mother tongue to the local dialects. At the time of the "utrquistic" schools, the physicist and rector of the University of Vienna, Jožek Stefan (from Ebental / Žrelec in Carinthia), said in a vivid way, "So here I stand, with a basket full of German knowledge and with only a few Slovene words in my bare hands." These words are valid today. For the preservation of the minority languages, the love of one's mother tongue is not enough. Those who do not know the language well will only be able to give their children the language in a reduced form. In a society in which public life plays nearly entirely in German, the children have no possibility to refresh and correct their knowledge of the language. And so from generation to generation there is an ever stronger reduction in vocabulary until the language disappears entirely. It is not accidental that assimilation advances the fastest where school education in the minority group language is absent. With the arrangement for school instruction in the minority group languages, the state holds in its hands the possibility to secure, hinder or even destroy the current population and the development of the minority groups.

RECOMMENDATION OF THE ADVISORY COMMITTEE: "Despite valuable efforts, considerable socio-economic differences between many Roma and the rest of the population persist. Further measures are therefore needed to promote full and effective equality in various fields such as education and employment."

The social disadvantages to the Roma still exist and the reduction of these disadvantages requires the application of efficient means. It is also necessary in the future to invest in the support of the identity and self-confidence of the members of the minority groups.

In January, 2007, for the first time in 20 years, a member of the Oberwart Roma was refused entrance to a public building, this time to the discotheque "Almrausch". After the refusal to admit the Roma was repeated (with the argument, "gypsies, Turks and foreigners are not allowed"), a Romani from Oberwart in a personal discussion asked the owner - who was only coincidentally in the discotheque at the time- about the cause of this refusal and was told that in general no Roma was allowed in the discotheque. The argument that there were often Roma in the discotheque was answered with the remark that they had not been identified as Roma, and in general Roma are not welcome and in the future would also be refused admittance. Basically what was said is: we won't let gypsies ruin our business. Oberwart businessmen had advised taking this step. And in other discotheques Roma are also not admitted.

The behavior of the police who were notified by the Oberwart Roma in the same Saturday night after the refusal of admittance to the discotheque was called "scandalous" by those involved. They were told by the police "Accept the fact that you are not allowed in there" and the police hung up.

6.) The Government Program for the XXIII Legislature – Reform Project affecting Minority Groups

Reforms of the State and the Administration

At the Minority Group Conference on February 2, 2001 in Oberpullendorf in Burgenland, the representative organizations of the minority groups, now joined together in the Austrian Centre for Ethnic Groups, issued a declaration titled, "Perspectives on the Protection of Austrian Minority Groups", which concerned the implementation of the national priority goals (Staatszielbestimmung). In this declaration, demands were stipulated for a new codification of minority rights, for the recognition of the Styrian Slovenes, for the right of the minority group organizations to file class action suits, for political representation of the Slovene minority in law-making bodies, for the installation of bilingual topographical signs and designations as secured in the Austrian State Treaty, for securing bilingualism in transactions in all government offices and agencies in the autochthonic settlement areas of the minority groups, for securing bilingual forms and diacritical symbols in all public books, for the publication of all laws and ordinances pertaining to the minority groups in the languages of the minority group, for bilingualism in the educational system from kindergarten to upper secondary leaving certificate, for a considerable increase in subsidies to the minority groups, for establishing radio and TV-programs in the minority groups languages in the Austrian Broadcasting Company (ORF), for financial guarantees for print media and for amendments to the Minorities Act (§ 2, ascertainment of minority group rights, elimination of percent clauses; § 8, establishing a foundation for the support of the minority groups to be administered autonomously; § 12, improvements in the area of bilingual topography, and § 13 improvements in the area of the local geographical scope of the official language regulations).

The minority groups have placed great hope and expectations in the reforms for state and administration agreed upon by the government parties (SPÖ and ÖVP) for the XXIII legislative period (2007-2010). On the basis of the work of the Austrian Convent and its special commissions, a constitutional reform should be prepared that above all would include a contemporary reform of basic rights, especially basic social rights, a re-allocation of competencies, the expansion of the protection of rights and democratic controls, improvements in election laws, a strengthening of autonomy of the regions ("Länder") and the legal position of the municipalities, the constitutional basis for reforms in administration, and last but not least a revision of the Federal Constitution. As specifically stated in the government's program:

- "a uniform, clear and concise catalogue of basic rights in which all the fragmented guarantees of basic rights are brought together and further developed in agreement with the catalogue of basic rights of the contracts with the European Union
- Basic rights should be formulated as real guarantees rather than simple declarations.

- Goal of the basic rights is the securing of freedom of the individual and human dignity. The guarantee of human dignity should be specifically included in the catalogue of basic rights. Further, guarantees against discrimination on the basis of gender, race, social or ethnic background, disabilities or other reasons (for example, age, sexual orientation) should be expanded, and the rights of children for the implementation of the convention on children's rights should be legally anchored.
- For the implementation also of the basic social rights, an appropriate mechanism for the protection of rights based on the suggestions in the Austrian Convent is to be provided for, which can become effective should the case arise that through any instance of unconstitutionality there should be a complete absence of these legal regulations....
- The emergent linguistic and cultural diversity is expressed in the autochthonic minority groups. The minority group rights should thus become an essential part of the constitution. At the same time, these rights should be expanded in the direction of the intercultural dialogue according to the Convention of the European Commission."

In 2003, the highest government body of the Republic entrusted the Austrian Convent with the assignment of working out a suggestion for a basic reform of the Austrian Federal Constitution and the governmental administration. The Convent, legally based in Parliament, was headed by the former president of the Court of Auditors, Dr. Franz Fiedler. Members of the Convent were made up of representatives of the parliamentary parties (18), the "Länder" (18), the Federal Government (5), the attorney for the people (Volksanwalt) – (1), the highest courts (3), the association of cities and municipalities (4), the social partners (6) as well as a 5-member executive committee of the Convent and 9 experts (with no voting rights). For working on the contents, the Convent established 10 committees whose work it was to draw up concrete suggestions for a reform of the state, the allocation of rights and duties, protection of rights and jurisdiction as well as for a catalogue of basic rights. The meetings of the Convent were open to the public and representatives of NGO's were invited to explain their ideas, suggestions and demands. Only in the case of minority groups were these basic ideas disregarded. Only representatives of state advisory organs were invited to the hearings on the issues of minority groups, but not the independent minority group organizations.

In the Convent, several concrete suggestions on the rights of minority groups - also from the minority groups themselves - were brought into the new constitution. These suggestions aimed at unifying the protection of minority groups in accordance with § 7 of the Austrian State Treaty. Altogether they were supplemented with the demands for a minority group media, for pre-school education in the mother languages, as well as the right for self-administration of financial means, collective rights and the possibility to implement these in the courts.

In January, 2004, on behalf of the committee of basic rights of the Convent, Prof. Dr. Dieter Kolonovits submitted a suggestion for the new formulation of a constitutional protection for minority groups. This was in the form of a very balanced article on minority group protection, conceived as part of a new catalogue on basic rights for the Austrian constitution. The Green Party member of parliament, Mag.

Terezija Stoisits had previously invited the representative organizations of the Austrian minority groups to a discussion with Dr. Kolonovits. The suggestion by Kolonovits included the currently effective constitutional right of the minority groups and implemented these for all minority groups (partially also as a collective right), whereby a careful further development of the protection of minority groups in the area of pre-school education and also the implementation of these rights in the administrative office and courts would be guaranteed, as well as own representative bodies for the minority groups. Kolonovits' suggestion thus would improve the protection of rights primarily for those minority groups not included in § 7 of the Austrian State Treaty and above that would be responsive to current circumstances and to European developments.

The Austrian Centre for Ethnic Groups supplemented Kolonovits' suggestion with their own draft insofar as it defined the concept of minority group and especially provided for special subsidies for the media and the establishment of self-governing authorities. The Social-Democrats made a special contribution to the debate in the committee on basic rights, in that they worked out their own comprehensive catalogue of basic rights based on public hearing to which politically independent NGO's of the minority groups were invited. In the area of minority groups this catalogue follows closely that of Kolonovits' suggestion supplementing it with the entitlement for a separate media and set a special emphasis in the area of openness and mutual acceptance of the diverse minority groups.

Parallel to that, on the behalf of the ÖVP, Univ. Prof. Dr. Dr. Christoph Grabenwarter submitted a catalogue of basic rights, in which for the area of the minority groups only the current national priority goals taken from § 8 (2) of the Federal Constitutional Act (B-VG) were suggested as well as a statement that § 7 of the Austrian State Treaty should remain untouched. However, in contradiction to this statement, in the corresponding article of the Grabenwarter draft concerning the school system, only the minority groups membership in Burgenland and in Carinthia would be given the right to use the minority group language as language of instruction, but not as in § 7 of the State Treaty, also the minority group members in Styria - an obviously purposeful inconsistency. At any rate, a further note on the Grabenwarter draft is that it takes neither § 66-68 of the State Treaty of St. Germain of 1919, nor §19 of the Basic Law of 1867 into consideration, nor pertinent documents of the European Parliament. According to that, the Grabenwarter draft would not even mean a codification of the current set of rights, but rather it would provide the reasons for a reduction of the current set of rights with the character of basic rights.

Committee documents of the Austrian Convent with all suggestions submitted:

EHRC	Basic Law 1867	Other Legal Bases	Basic Rights Charter	Complete Draft SPÖ (changed version from Jan 30, 2004)	Complete Draft Grabenwarter (Feb 16, 2004)	Other suggestions	Committee Draft
	Article 19 *) (1) All ethnic entities of the empire enjoy equal rights, and each ethnic entity has an inviolable right to the preservation and fostering of its nationality and language (2) The state recognizes the equal rights of all current languages in schools, administration and public life. (3) In the regions in which several ethnic entities live, the public teaching institutes are to be organized in such a manner that without application of an obligation to learn a second national language, each of these ethnic entities receives the	State Treaty of St. Germain, § 66 (1) All Austrian nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language, or religion. (2) Differences of religion, creed or confession shall not prejudice any Austrian national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.**) (3) No restriction shall be imposed	Article II-22 Diversity of Cultures, Religions and Languages The Union respects the diversity of cultures, religions and languages.	Article 14 (1) All people have the right to the preservation and care of their language and cultural identity. (2) There are no restrictions for anybody to declare himself member of an ethnic group. A member of an ethnic group must not be discriminated by exercising or not any rights he is entitled to as such member. Nobody shall be obligated to give evidence of his/her being a member of an ethnic group. (3) Article 66 (3 and 4), article 67 and 68 of the State Treaty of St. Germain-an-Laye of September 16, 1919, State Law Gazette 303/1920, and article 7 of the State Treaty	Article 7 (Rights of the Ethnic Groups) The Republic is committed to its linguistic and cultural varieties, which have evolved in the course of time and finds its expression in the autochthonous ethnic groups. The language and culture, continued existence and protection of these ethnic groups are to be respected, safeguarded and promoted. The rights of the Slovene and Croat minorities as in § 7 of the State Treaty regarding the re-establishment of an independent and democratic Austria, Federal Law Gazette 152 / 1955 will remain inviolable.	<u>Suggestion of the ecumenical panel of experts</u> (Feb 24, 2004) Article 12 1) All people have the right to the preservation and care of their language and cultural identity. (2) There are no restrictions for anybody to declare himself member of an ethnic group (3) Language and Culture, the continuance and preservation of the ethnic groups will be respected, supported and protected. (4) Article 66 (3 and 4) of the State Treaty of St. Germain, State Law Gazette 303/1920, and article 7 of the State Treaty, Federal Law Gazette 152 / 1955 will become integral components of this	

	necessary means for education in its own language. *) paragraph numbers added	on the free use by any Austrian national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings. (4) Notwithstanding any establishment by the Austrian Government of an official language, adequate facilities shall be given to Austrian nationals of non-German speech for the use of their language, either orally or in writing, before the courts State Treaty of St. Germain, § 67 Austrian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other		regarding the re-establishment of an independent and democratic Austria, Federal Law Gazette 152 / 1955 will become integral components of this Federal Constitution. (4) Language and Culture, the continuance and preservation of the ethnic groups will be respected, supported and protected.*) *) The other ethnic groups concerning the constitutional provisions and pertaining to the suggestions of committee 2 (Legal structural questions”) shall be integrated into the new Federal Constitution		Federal Constitution. Suggestion Kolonovits (Jan 30, 2004) Article X Minority Protection Article (1) All people are entitled to respect for their language and culture. The ethnic groups and their members are entitled to special support and safeguards for their continuance, their language and their culture.) There are no restrictions for anybody to declare himself a member of an ethnic group. A member of an ethnic group must not be discriminated by exercising or not any rights he is entitled to as such member. (2) The ethnic groups and their members are entitled to kindergarten education and school instruction in public compulsory schools in the respective ethnic group language in their settlement areas and outside of these if there	
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		Austrian nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein. State Treaty of St. Germain, § 68 *) (1) Austria will provide in the public educational system in towns and districts in which a considerable proportion of Austrian nationals of other than German speech are resident adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such				is a sustainable need, Further they are entitled to a proportional number of public secondary schools and to facilities of their own school inspectorate. The ethnic groups have a supplementary entitlement to an appropriate support for private kindergartens and private schools that serve the care and preservations of their language and culture. (3) The ethnic groups and their members in mixed-language areas are entitled to the use of their respective ethnic group language as additional official language in dealings with administrative authorities and courts as well as in public life; outside of these areas, they are entitled to an appropriate facilitation in the use of the respective language of the ethnic group. The additional official language in mixed-language areas can be used by every person. The ethnic groups in mixed-language areas are	
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		Austrian nationals through the medium of their own language. This provision shall not prevent the Austrian Government from making the teaching of the German language obligatory in the said schools. (2) In towns and districts where there is a considerable proportion of Austrian nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious or charitable purposes. *) paragraph				entitled to topographical signs and designations. (4) The ethnic groups are entitled to an appropriate part of public means as financial subsidies for ethnic groups from the federal budget as well as from the budgets of the regions and municipalities in which there are mixed-language areas. (5) Associations or representative bodies, whose legal purpose is to represent the interests of the ethnic groups and are representative of the respective ethnic group, have the right to enforce the rights of the respective ethnic group before the courts and administrative authorities. The rights of the members of the minority groups remain inviolable. <u>Suggestion of the Austrian Centre for Ethnic Groups</u> (on the basis of the draft of Dr. Kolonovits, differences are in italics) Article X	
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		numbers added **)does not concern the minority group protection under constitutional law State Treaty of Vienna Article 7 Rights of the Slovene and Croat Minorities (paragraphs 2,3 and 4 have constitutional rank) (1) Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights as all other Austrian nationals including the right to their own associations, meetings and press in their own languages. (2): They are entitled to elementary instruction in the Slovene or				Minority Protection Article (1) All people are entitled to respect for their language and culture. <i>The ethnic groups in the meaning of this article are those groups, who at the time of the re-establishment of the Republic of Austria lived and resided in parts of the federal territory, with non-German mother tongues and their own folklore.</i> The ethnic groups and their members are entitled to special support and safeguards for their continuance, their language and their culture.) There are no restrictions for anybody to declare himself a member of an ethnic group. A member of an ethnic group must not be discriminated by exercising or not any rights he is entitled to as such member. (2) The ethnic groups and their members are entitled to kindergarten education and school instruction in public compulsory schools in	
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		Croatian language and to a proportional number of secondary schools; in this connection, school curricula will be reviewed and a section of the Inspectorate of Education shall be established for Slovene and Croatian schools. (3) In the administrative and judicial districts of Carinthia, Burgenland and Styria with Slovene, Croat or mixed populations, the Slovene or Croatian language shall be accepted as official languages in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene or Croatian language as well as in German. (4) Austrian nationals of the				the respective ethnic group language in their <i>autochthonous</i> settlement areas and outside of these if there is a sustainable need, Further they are entitled to a proportional number of public secondary schools and to facilities of their own school inspectorate. The ethnic groups have a supplementary entitlement to an appropriate support for private kindergartens and private schools that serve the care and preservations of their language and culture. (3) The ethnic groups and their members in mixed-language areas are entitled to the use of their respective ethnic group language as additional official language in dealings with administrative authorities and courts as well as in public life; outside of these areas, they are entitled to an appropriate facilitation in the use of the respective language of the ethnic group. The additional official language in	
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		Slovene and Croat minorities in Carinthia, Burgenland and Styria shall participate in the cultural, administrative and judicial systems in these territories on equal terms with other Austrian nationals. (5) The activity of organizations whose aim is to deprive the Croat or Slovene population of their minority capacity or rights shall be prohibited. Federal Constitutional Law, § 8 1) The German language is, irrespective of rights granted by federal law to the linguistic minorities, the state language of the republic. (2) The Republic of Austria (Federal Government,				mixed-language areas can be used by every person. The ethnic groups in mixed-language areas are entitled to topographical signs and designations. (4) The ethnic groups are entitled to an appropriate part of public means as financial subsidies for ethnic groups from the federal budget as well as from the budgets of the regions and municipalities in which there are mixed-language areas <i>as well as to special subsidies for the media in their own languages.</i> (5) Associations or representative bodies, whose legal purpose is to represent the interests of the ethnic groups and are representative of the respective ethnic group, have the right to enforce the rights of the respective ethnic group before the courts and administrative authorities. The rights of the members of the minority groups remain inviolable.	
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		“Länder”, and municipalities) is committed to their linguistic and cultural varieties, which have evolved in the course of time and finds its expression in the autochthonous ethnic groups. The language and culture, continued existence and protection of these ethnic groups are to be respected, safeguarded and promoted. Minority School Act for Carinthia Art. 1 lit b § 7 § 7. The right to use the Slovene language as a language of instruction or to learn it as a compulsory subject is guaranteed to every school pupil in the geographical area described in § 10 (1) of this federal law and in the schools					
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		designated in §10 (1) of this federal law, as long as this is the declared intention of the legal guardians. A pupil can be allowed to use Slovene as a language of instruction or to learn it as a compulsory subject only with the declared intention of the legal guardian. Minority School Act for Burgenland § 1 (Constitutional clause) (1) The right to use the Croatian or Hungarian language as a language of instruction or to learn it as a compulsory subject in Burgenland is guaranteed to Austrian nationals of the Croat and Hungarian minority groups in the schools designated according to § 6, § 10 and § 12 (1) of					
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		this federal law. (2) A pupil cannot be allowed to use the Croatian or Hungarian language as a language of instruction against the declared intention of the legal guardian. Numerous other constitutional provisions (explainable in their respective contexts): i.e., Competence provision in § 1 lit a (1-6) Minority School Act for Carinthia; see also §8, §9 (2), § 34 (1), § 35, §36 (1) of the Minority School Act for Carinthia and § 19 of the amendment to the school constitution of 1962, Federal Law Gazette 1962 / 215; § 4 (2) Minorities School Act 1990, Federal Law Gazette 1990 / 420; see also §§ 19					
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		(1) and 20 (1) of the Minority School Act for Burgenland and §22 of the Minorities Act					
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Principle of Equality (Protection of the minorities from discrimination):

The provisions that stipulate a protection of the minorities from discrimination especially on the basis of their membership in a national minority, their language or race and that standardize equal treatment (compare § 63 (1) and § 67 of the Treaty of St. Germain, § 7 (4) of the State Treaty of Vienna; § 14 of the European Human Rights Commission; § 1 Racial Discrimination of the Federal Constitutional Law and on the level of simple laws, § 6 and 7 (1 and 5) of the State Treaty of Vienna; compare also § 21 (1) of the European Charter for Basic Rights) represent a special characteristic of principles of equality. They were not included in the text drafts for the protection of minority groups under constitutional law, because it is assumed that these stipulations will be taken into consideration in the formulation of a basic rights article on a principle of equality

Majority Suggestion of Committee IV of the Austrian Convent:

The Federal Government, the regions ("Länder"), and the municipalities support the spirit of openness and intercultural dialogue and take effective legal measures for the support of mutual respect and mutual understanding as well as cooperation between all those people living in their sovereign territory regardless of ethnic, cultural, linguistic or religious identities, especially in the areas of education, culture and the media.

Variation 2 of paragraph 2:

They facilitate mutual respect and cooperation among everyone living in the sovereign territory, regardless of their language and culture, in the spirit of openness and intercultural dialogue.

(3) Every person is entitled to respect for his/her language and culture. The commitment to a minority group is open. No member of a minority group may accrue disadvantages by using or not using his due rights (alternative: by a commitment or non-commitment to a minority group).

(4) The (recognized) minority groups and their members are entitled to support, within the framework of the law, for their (language) and culture, to kindergarten education and school instruction in public compulsory schools in the respective minority language in their own settlement areas and outside of these areas in case of sustainable need. Above this, the minority groups are entitled to commensurate assistance for private kindergartens and private schools that serve the care of their language and culture.

(5) The minority groups and their members are entitled to a relative number of public higher schools and the establishment of their own school inspectorate.

(6) The (recognized) minority groups and their members in mixed language areas are entitled to the use of the respective minority group language as additional official language in interaction with public administrative offices and the courts as well as in public life; outside of these areas they are entitled to a commensurate facilitation in the use of the respective minority group language. The additional official language can be used by everyone in the mixed language areas. The minority groups in mixed language areas are entitled to multilingual topographical signs and designations.

(7) The minority groups are entitled to an incommensurate proportion of public means as financial subsidies for the minority groups from the budget of the Federal Government as well as from the budgets of the regional governments ("Länder") and municipalities in which mixed language areas are located, as well as to special support for the media in their own languages.

Variation 1 to paragraph 8:

Associations or representative bodies, which represent minority group interests as their legal purpose and in which the corresponding minority groups are represented, have the right to enforce the rights of the corresponding minority grounded in this article in courts and administrative offices. The rights of the members of the minority group are not impinged by this.

Variation 2 to paragraph 8:

Associations for representation of minority groups have the right (according to the provision of the laws) to enforce the rights of the corresponding minority grounded in this article in courts and administrative offices. The rights of the members of the minority group are not impinged by this.*

**(another variation: "Minority groups interests" or "minority groups rights")*

The responsible committee on basic rights of the Convent concerned itself with among other areas with that of the protection of minority groups – all in a total of three meetings – and decided on a draft of a text on "The Rights of Minority Groups" (see previous page). This orients itself largely on the suggestions submitted, as mentioned previously, above all on Kolonivits' draft. However, it also points to the problem that it also contains weaker variations, which from the viewpoint of the minority groups must be rejected. With a benevolent, compassionate treatment, the draft of the committee is a good and usable basis for further discussion and could deserve to be the standard for a concept of minority groups rights designed for the next decades. Still, the committee draft, carried by the majority of representatives of the – at that time – oppositional parties of the SPO and the Green as well as independent experts, stands in counterpart to the Grabenwarter suggestion.

The suggestions produced by the Austrian Convent for a new codification of the protection of minority groups within the framework of a catalogue of basic rights of a new Austrian federal constitution are a good and usable basis for further discussion, from the point of view of the minority groups, in the meaning of the programs of the large coalition government of SPÖ and ÖVP for the current XXIII legislative period. The minority groups have set high hopes in the government program accords that the basic rights should "be created as real guarantees and not just as declarations".

Bilingual Topographical Signs and Designations in Carinthia

For the topic of bilingual topographical signs and designation in Carinthia, the government program states; *"The regulations for the implementation of the place-name decisions of the Constitutional Court should be constitutionally secured with a broadest possible consensus with the minority groups on the basis of the suggestions made so far. For municipalities in autochthonic settlement areas of the minority groups, an opening clause must be provided whereby on the basis of a petition of a certain percentage of the population additional bilingual topographical signs and designations can be put up. This regulation will be implemented by the summer of 2007."*

Both of the representative organizations of the Carinthian Slovenes, the Council of Slovenes in Carinthia / Narodni svet koroških Slovencev / Rat der Kärnten Slovenen and the Central Association of Slovene Organizations / Zveza slovenskih organizacij /

Zentralverband Slowenischer Organisationen, again expressed their willingness to find a constructive compromise solution in a joint letter to the Federal Government on February 26, 2007: In this letter, they also included suggestions and their minimum demands as following:

Dear Federal Chancellor,

The Federal Government states in its program that the regulation for the implementation of the place-name signs decisions of the Constitutional Court should be constitutionally secured on the basis of the suggestions made so far and in the broadest possible consensus with the ethnic groups. For municipalities in autochthonic settlement areas of the minority groups, an opening clause must be provided whereby on the basis of a petition of a certain percentage of the population additional bilingual topographical signs and designations can be put up. This regulation will be implemented by the summer of 2007.

We would like to clarify our point of view on this issue:

The proposal of a constitutional law submitted to the National Parliament by the Federal Government in July, 2006, was unanimously rejected by the extended Coordination Committee, the highest joint body of the Council of Slovenes in Carinthia and of the Central Association of Slovene Organizations. The reasons for this were, on the one hand, the percent clause in the suggestion of the Federal Government. In spite of the decision of the Constitutional in which a 10% Slovene population over a longer period of time was considered sufficient for qualifying for bilingual topographical signs and designations, the suggestion of the Federal Government calls for a 15% hurdle to be implemented on the level of the municipality, and in localities in municipalities with a small proportion of Slovene population even a 33% Slovene population is demanded. This percentage is even higher than the 25% clause of the Minorities Act of 1976 that was suspended by the Constitutional Court on the basis of its being unconstitutional. On the other hand, the suggested opening clause is so formulated that it would effectively prevent further bilingual topographical signs and designations.

Counterpart to this is the draft of an ordinance for 158 bilingual place-name signs, based on the so-called "Karner Paper", that was sent for assessment by the Federal Chancellor in May, 2006. This draft with the addition of an enforceable opening clause found broadest approval. A unanimous resolution of the Advisory Council of the Slovene groups exists; all of the Slovene organizations approved of this suggestion, as well as the political parties, with the exception of the BZÖ and the FPÖ. In other words, there is a draft for which a "broadest possible consensus" has already been found.

A comparison of the "Karner Paper" with the draft presented to the National Parliament shows that a total of 28 localities were deleted from the "Karner Paper", while 11 localities were added. Here it concerns smaller localities all of which have a Slovene proportion of the population of well over 25%- It would not be understandable that upon implementation of the broadly consensual "Karner Paper" that these localities would be deleted. Rather, the original draft should be amended to include these.

It should be observed that in the meantime further decisions of the Constitutional Court have been issued. Three of these decisions concern localities that were not in any of the previous suggestions. We consider it self-evident that these decisions of the Constitutional Court be included, especially since the government program admits its responsibility for the "implementation of the place-name decisions of the Constitutional Court". It must be pointed out that there are other cases pending before the Constitutional Court for localities not considered in any of the propositions so far, and, based on the judicature of the Constitutional Court so far, positive decisions for these localities are to be expected.

We know very well, and pointed out repeatedly that the Karner Paper is a political compromise. We are ready to bear such a compromise if it is amended with an opening clause to secure that regulations in the future can be reached that would also fulfill the judicature of the Constitutional Court and § 7 of the State Treaty. A petition of a certain percentage of the population within the autochthonic settlement areas of the minority group can be provided for. However, upon submission of the criteria, as the Constitutional Court developed them for the evaluation of a municipality as "mixed language administrative district", such a petition must also, in the end, be enforceable. In this connection we point out that the right to petition represents a basic right of the Austrian population guaranteed since 1848, and in the past the Slovene minority group has sent numerous petitions, resolutions etc to the Federal Government, unfortunately without success. Thus a ruling must be found, whereby with the submission of the criteria, the petition is to be implemented.

The question arises, who carries the responsibility for the demand of implementation. Several possibilities come to mind, like establishing a representative body of the Slovene minority governed by public law, the granting of such a competence to representative organizations of the minority groups that are also represented in the Advisory Council, also finally the granting of a status of legal party to the petitioners. or the reformed Minority Group Advisory Council is given the right to file class action suits. We consider this indispensable because it must not be forgotten that the suggestion for a total of 173 localities and municipalities with bilingual topographical signs and designations remains far behind the criteria developed by the Constitutional Court. It is a matter of another 80 localities and municipalities compared to the current situation, while a one-to-one implementation of the decisions of the Constitutional Court, depending on how many population censuses are used as a basis, would mean bilingual topographical signs and designations to between 180 and 300 additional localities and municipalities. The Slovene minority group is thus ready for very broad concessions to enable a compromise solution.

Concerning the form of a resolution, we are of the opinion that a constitutional law is not absolutely necessary. Such is justifiable if – for the intermediate term – it leads to no revision as to the content of the clauses of § 7 of the State Treaty of Vienna for the interpretation of the Constitutional Court. Otherwise, but in any case, a simply worded ruling or a regulation on the level of an ordinance is preferable, because with § 7 (3) of the State Treaty of Vienna a constitutional and internationally binding clause already exists. We are convinced that a solution found

in consensus with the minority groups needs to have no qualms about a review by the Constitutional Court.

Dear Federal Chancellor, we hope we have presented a constructive suggestion for the solution to the issue of topographical signs and designations. In this connection we would like to point out the national priority goals of § 8 (2) of the Federal Constitutional Act, wherein the Republic professes to its emergent linguistic and cultural diversity expressed in the autochthonic minority groups. Language and culture, continuance and preservation of the minority groups are to be respected, secured and supported. The government program mentions specifically the Convention of the European Parliament which states, among other things, that the current rights of the minority groups should not be reduced but rather extended. We ask to be granted a meeting for further discussion and preparations for a solution the issue of the topographical signs and designations, and remain.....

Suggestion for a Regulation on the Issue of the Topographical Signs and Designations

The Minorities Act (Federal Law Gazette 396/1976) is to be amended as follows:

§ 2a

- (1) By an ordinance of the Federal Government in consultation with the main committee of the National Parliament, after having heard the regional ("Länd") government in question, the municipalities and localities are to be designated in which bilingual signs and designations of a topographical nature (topographical designations) are to be put up by local authorities and other bodies and institutions of public law.*
- (2) The municipalities and localities mentioned in the appended list are to be included in the ordinance in any case on the basis of paragraph 1 (protection of continued existence).*

§ 2b

- (1) Irrespective of § 2a, additional localities and municipalities in the autochthonic settlement areas of a minority group can be designated by ordinance of the Federal Government in consultation with the main committee of the National Parliament, after having heard the regional ("Länd") government in question, in which bilingual topographical designations are to be put up by local authorities and other bodies and institutions of public law, if at least 10% of the people who are registered with their main residence in that locality and who have the right to vote in the municipal elections have demanded the decree of such an ordinance in a petition to the Federal Government.*
- (2) If the Federal Government does not decree an ordinance based on a petition according to paragraph 1, the Constitutional Court must designate upon the basis of a claim to be filed within a year by one of the representative organizations of the minority group in question, according to § 4 (2.2) [the representative body subject to public law of the minority group in question, the legal representative of the petitioners, or the Minority Group Advisory Commission] whether the*

petition is justifiable based on § 7 (3.2) of the State Treaty of Vienna. In the case of the positive decision of the Constitutional Court, the Federal Government is obligated to decree the ordinance.

§ 12 (1)

- (1) Topographical signs and designations, put up by local authorities and other bodies and institutions of public law, are to be composed in German and the language of the minority group in question, if they refer to localities and municipalities designated in an ordinance on the basis of § 2a or § 2b . Topographical designations are also directional signs (particularly traffic road signs) that refer to places that are within a municipality or locality designated by an Ordinance based on § 2a or § 2b.*
- (2) In the Ordinance based on § 2a or § 2b, there are also places that come into consideration for bilingual designations as well as the topographical designations in the language of the minority group in question which are to be put up next to the German language designation. In these cases, the local traditions and the results of scientific research are to be taken into consideration.*

Appendix: I.

Federal Region of Burgenland:

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II. Federal Region of Carinthia:

1. In the political district of Hermagor

*in the municipality of Hermagor-Presssegger See
in der locality*

Dellach

Dole

2. in the political district of Klagenfurt-environs

*a) in the municipality of Ebental in Carinthia
in the localities*

Kossiach

Kozje

Kreuth

Rute

Lipizach

Lipice

Radsberg

Radiše

Schwarz

Dvorec

Tutzach

Tuce

Werouzach

Verovce

*b) in the municipality of Feistritz im Rosental
in the localities*

Hundsdorf

Psinja vas

Matschach

Mače

	<i>St. Johann im Rosental</i>	<i>Št. Janž v Rožu</i>
	<i>Suetschach</i>	<i>Sveče</i>
c)	<i>in the municipality of Ferlach</i>	
	<i>in the localities</i>	
	<i>Bodental</i>	<i>Poden</i>
	<i>Glainach</i>	<i>Glinje</i>
	<i>Loibltal</i>	<i>Brodi</i>
	<i>Strugarjach</i>	<i>Strugarje</i>
	<i>Tratten</i>	<i>Trata</i>
	<i>Waidisch</i>	<i>Bajdiše</i>
	<i>Windisch Bleiberg</i>	<i>Slovenji Plajberk</i>
d)	<i>in the municipality of Keutschach am See</i>	
	<i>in the locality</i>	
	<i>Plescherken</i>	<i>Plešerka</i>
e)	<i>in the municipality of Köttmannsdorf</i>	
	<i>in the localities</i>	
	<i>Trabesing</i>	<i>Trabesinje</i>
	<i>Tschachoritsch</i>	<i>Čahorče</i>
f)	<i>in the municipality of Ludmannsdorf</i>	
	<i>in the localities</i>	
	<i>Bach</i>	<i>Potok</i>
	<i>Edling</i>	<i>Kajzaze</i>
	<i>Fellersdorf</i>	<i>Branča vas</i>
	<i>Großkleinberg</i>	<i>Mala gora</i>
	<i>Ludmannsdorf</i>	<i>Bilčovs</i>
	<i>Lukowitz</i>	<i>Koviče</i>
	<i>Moschenitzen</i>	<i>Moščenica</i>
	<i>Muschkau</i>	<i>Muškava</i>
	<i>Niederdörfl</i>	<i>Spodnja vesca</i>
	<i>Oberdörfl</i>	<i>Zgornja vesca</i>
	<i>Pugrad</i>	<i>Podgrad</i>
	<i>Rupertiberg</i>	<i>Na Gori</i>
	<i>Selkach</i>	<i>Želuče</i>
	<i>Strein</i>	<i>Stranje</i>
	<i>Wellersdorf</i>	<i>Velinja vas</i>
	<i>Zedras</i>	<i>Sodražava</i>
g)	<i>in the municipality of St. Margareten im Rosental</i>	
	<i>in the locality</i>	

	<i>Niederdörfel</i>	<i>Doljna vas</i>
	<i>St. Margarethen im Rosental</i>	<i>Šmarjeta v Rožu</i>
h)	<i>in the municipality of Schiefeling</i>	
	<i>in the locality</i>	
	<i>Techelweg</i>	<i>Holbiče</i>
i)	<i>in the municipality of Zell</i>	
	<i>in the localities</i>	
	<i>Zell-Freibach</i>	<i>Sele-Frajbah</i>
	<i>Zell-Homölich</i>	<i>Sele-Homeliše</i>
	<i>Zell-Koschuta</i>	<i>Sele-Košuta</i>
	<i>Zell-Mitterwinkel</i>	<i>Sele-Srednji Kot</i>
	<i>Zell-Oberwinkel</i>	<i>Sele-Zgornji Kot</i>
	<i>Zell-Pfarre</i>	<i>Sele-Fara</i>
	<i>Zell-Schaida</i>	<i>Sele-Šajda</i>
3.	<i>in the political district of Villach-environs</i>	
a)	<i>in the municipality of St. Jakob im Rosental</i>	
	<i>in the localities</i>	
	<i>Dreilach</i>	<i>Dravljje</i>
	<i>Greuth</i>	<i>Rut</i>
	<i>Feistritz</i>	<i>Bistrica</i>
	<i>Frießnitz</i>	<i>Breznica</i>
	<i>Gorintschach</i>	<i>Gorinčiče</i>
	<i>Kanin</i>	<i>Hodnina</i>
	<i>Längdorf</i>	<i>Velika vas</i>
	<i>Lessach</i>	<i>Leše</i>
	<i>Maria Elend</i>	<i>Podgorje</i>
	<i>Mühlbach</i>	<i>Reka</i>
	<i>Schlatten</i>	<i>Svatne</i>
	<i>Srajach</i>	<i>Sreje</i>
	<i>St. Jakob im Rosental</i>	<i>Št. Jakob v Rožu</i>
	<i>St. Peter</i>	<i>Št. Peter</i>
	<i>Tösching</i>	<i>Tešinja</i>
	<i>Winkl</i>	<i>Kot</i>
b)	<i>in the municipality of Arnoldstein</i>	
	<i>in the locality</i>	
	<i>Hart</i>	<i>Ločilo</i>
4.	<i>in the political district of Völkermarkt</i>	
a)	<i>in the municipality of Bleiburg</i>	
	<i>in the localities</i>	
	<i>Aich</i>	<i>Dob</i>
	<i>Bleiburg</i>	<i>Pliberk</i>
	<i>Dobrowa</i>	<i>Dobrova</i>
	<i>Daurain</i>	<i>Dobrova</i>
	<i>Ebersdorf</i>	<i>Drveša vas</i>

<i>Einersdorf</i>	<i>Nonča vas</i>
<i>Kömmel</i>	<i>Komelj</i>
<i>Kömmelgupf</i>	<i>Vrh</i>
<i>Loibach</i>	<i>Libuče</i>
<i>Moos</i>	<i>Blato</i>
<i>Replach</i>	<i>Replje</i>
<i>Rinkenberg</i>	<i>Vogrče</i>
<i>Rinkolach</i>	<i>Rinkole</i>
<i>Ruttach</i>	<i>Rute</i>
<i>Schilterndorf</i>	<i>Čirkovče</i>
<i>St. Georgen</i>	<i>Šentjur</i>
<i>St. Margarethen</i>	<i>Šmarjeta</i>
<i>Wiederndorf</i>	<i>Vidra vas</i>
<i>Woroujach</i>	<i>Borovje</i>
b) <i>in the municipality of Eberndorf</i>	
<i>in the localities</i>	
<i>Buchbrunn</i>	<i>Bukovje</i>
<i>Eberndorf</i>	<i>Dobrla vas</i>
<i>Edling</i>	<i>Kazaze</i>
<i>Gablern</i>	<i>Lovanke</i>
<i>Gösselsdorf</i>	<i>Goselna vas</i>
<i>Köcking</i>	<i>Kokje</i>
<i>Loibegg</i>	<i>Belovče</i>
<i>Mökriach</i>	<i>Mokrije</i>
<i>St. Marxen</i>	<i>Šmarkež</i>
c) <i>in the municipality of Eisenkappel-Vellach</i>	
<i>in the localities</i>	
<i>Bad Eisenkappel</i>	<i>Železna Kapla</i>
<i>Blasnitzen</i>	<i>Plaznica</i>
<i>Ebriach</i>	<i>Obirsko</i>
<i>Koprein Petzen</i>	<i>Pod Peco</i>
<i>Koprein Sonnseite</i>	<i>Koprivna</i>
<i>Leppen</i>	<i>Lepena</i>
<i>Lobnig</i>	<i>Lobnik</i>
<i>Rechberg</i>	<i>Rebrca</i>
<i>Remschenig</i>	<i>Remšenik</i>
<i>Trögern</i>	<i>Korte</i>
<i>Unterort</i>	<i>Podkraj</i>
<i>Vellach</i>	<i>Bela</i>
<i>Weißenbach</i>	<i>Bela</i>
<i>Zauchen</i>	<i>Suha</i>
d) <i>in municipality of Feistritz ob Bleiburg</i>	
<i>in the localities</i>	
<i>Dolintschitschach</i>	<i>Dolinčiče</i>
<i>Feistritz ob Bleiburg</i>	<i>Bistrica nad Pliberkom</i>
<i>Gonowetz</i>	<i>Konovece</i>
<i>Hinterlibitsch</i>	<i>Suha</i>
<i>Hof</i>	<i>Dvor</i>

	<i>Lettenstätten</i>	<i>Letina</i>
	<i>Penk</i>	<i>Ponikva</i>
	<i>Pirkdorf</i>	<i>Breška vas</i>
	<i>Rischberg</i>	<i>Rižberk</i>
	<i>Ruttach-Schmelz</i>	<i>Rute</i>
	<i>St. Michael ob Bleiburg</i>	<i>Šmihel nad Pliberkom</i>
	<i>Tscherberg</i>	<i>Črgoviče</i>
	<i>Unterlibitsch</i>	<i>Podlibič</i>
	<i>Unteort</i>	<i>Podkraj</i>
	<i>Winkel</i>	<i>Kot</i>
e)	<i>in the municipality of Gallizien</i>	
	<i>in the localities</i>	
	<i>Abtei</i>	<i>Apače</i>
	<i>Enzelsdorf</i>	<i>Encelna vas</i>
	<i>Gallizien</i>	<i>Galicija</i>
f)	<i>in the municipality of Globasnitz</i>	
	<i>in the localities</i>	
	<i>Globasnitz</i>	<i>Globasnica</i>
	<i>Jaunstein</i>	<i>Podjuna</i>
	<i>Kleindorf</i>	<i>Mala vas</i>
	<i>Podrain</i>	<i>Podroje</i>
	<i>Slovenjach</i>	<i>Slovenje</i>
	<i>St. Stefan</i>	<i>Šteben</i>
	<i>Traundorf</i>	<i>Strpna vas</i>
	<i>Tschepitschach</i>	<i>Čepiče</i>
	<i>Unterbergen</i>	<i>Podgora</i>
	<i>Wackendorf</i>	<i>Večna vas</i>
g)	<i>in the community of Neuhaus</i>	
	<i>in the localities</i>	
	<i>Draugegend</i>	<i>Pri Dravi</i>
	<i>Gaditschach</i>	<i>Gradiče</i>
	<i>Hart</i>	<i>Breg</i>
	<i>Heiligenstadt</i>	<i>Sveto mesto</i>
	<i>Oberdorf</i>	<i>Gornja vas</i>
	<i>Schwabegg</i>	<i>Žvabek</i>
	<i>Unterdorf</i>	<i>Doljna vas</i>
h)	<i>in the municipality of Sittersdorf</i>	
	<i>in the localities</i>	
	<i>Altendorf</i>	<i>Stara vas</i>
	<i>Goritschach</i>	<i>Goriče</i>
	<i>Kleinzapfen</i>	<i>Malčape</i>
	<i>Kristendorf</i>	<i>Kršna vas</i>
	<i>Müllnern</i>	<i>Mlinče</i>
	<i>Obernarrach</i>	<i>Zgornje Vinare</i>
	<i>Pfannsdorf</i>	<i>Banja vas</i>
	<i>Pogerschitzen</i>	<i>Pogerče</i>
	<i>Polena</i>	<i>Polena</i>
	<i>Proboj</i>	<i>Proboj</i>
	<i>Rückersdorf</i>	<i>Rikarja vas</i>

<i>Sagerberg</i>	<i>Zagorje</i>
<i>Sielach</i>	<i>Sele</i>
<i>Sittersdorf</i>	<i>Žitara vas</i>
<i>Sonnegg</i>	<i>Ženek</i>
<i>Tichoja</i>	<i>Tihoja</i>
i) <i>in the municipality of St. Kanzian am Klopeinersee</i>	
<i>in the localities</i>	
<i>Grabelsdorf</i>	<i>Grabalja vas</i>
<i>Horzach II</i>	<i>Horce</i>
<i>Kleindorf II</i>	<i>Mala vas</i>
<i>Klopein</i>	<i>Klopinj</i>
<i>Lauchenholz</i>	<i>Gluhi les</i>
<i>Mökriach</i>	<i>Mokrije</i>
<i>Nageltschach</i>	<i>Nagelče</i>
<i>Obersammelsdorf</i>	<i>Žamanje</i>
<i>Srejach</i>	<i>Sreje</i>
<i>St. Kanzian am Klopeiner See</i>	<i>Škocjan</i>
<i>St. Primus</i>	<i>Št. Primož</i>
<i>St. Veit im Jauntal</i>	<i>Št. Vid v Podjuni</i>
<i>Untenburg</i>	<i>Podgrad</i>
<i>Unternarrach</i>	<i>Spodnje Vinare</i>
<i>Vesielach</i>	<i>Vesele</i>

New Organization of School Administration

A further goal in the government program is the abolishment of the two-tracked school administration:

- * The goal is the creation of a single organizational unit for the concerns of school administration of the Federal Government and for that of the regions ("Land") at the regional level under the direction of the regional governor.

- * This is possible through the establishment of a regional school administration, whereby the region can manage this as part of the office of the regional government. The decision on the kind of organization is for the regional government to make."

It must be kept in mind, that according to § 7 (2) of the State Treaty of Vienna, "a department of the school inspectorate for Slovene and Croatian schools" is to be entrusted with the responsibility for the minority school system. Currently there is one department each in the regional school inspectorate for Carinthia and for Burgenland that are administered and managed by the members of the Slovene and Croat minority groups. This arrangement must remain intact with a new organization of the school administration.

7.) Suggestions for Reform by the Minority Groups for Improving the Protection of Minority Groups in Austria

To improve the situation of the minority groups in Austria, necessary measures could be classified into two groups:

- 1) Implementation of the currently valid protection of rights
- 2) Adoption of additional measures of protection according to current international standards of the protection of minority groups

Implementation of the currently valid protection of rights

For the preservation and development of the minority groups in Austria, the consistent compliance of the valid constitutional protection clauses, especially those in § 7 of the State Treaty of Vienna, would be necessary, not only by the letter of the law but also in spirit, - in particular and in accordance with the purpose of these clauses, namely, the preservation and development of the minority groups in their autochthonic settlement areas as determined at the time of the conclusion of the State Treaty of Vienna. The Allied Powers at the time of the conclusion of the State Treaty negotiated from the standpoint that the effective rights of the Slovene and Croat minorities, as in § 19 of the Constitution, § 62-68 of the Treaty of St. Germain and the ordinances of 1945 concerning the bilingual school system, would not be limited. In the bilingual areas of southern Carinthia, southern Styria and Burgenland, a uniform (non-discriminatory) school system for all members of the Slovene and Croat minorities was to be established. Currently, the rights regarding the possibility to learn the Slovene or Croatian languages, pre-school education, the use of Slovene and Croatian in public offices and topographical designations etc. vary from municipality to municipality. In the judiciary in the last 25 years, there has been a positive change regarding the protection of the minority groups. The decisions of the Constitutional Court has confirmed several times the rights of § 7 of the State Treaty of Vienna, that for decades had denied to them by the Republic of Austria, resulting in a high degree of assimilation and thinning out of the settlement areas. The legal changes in the areas of official languages and topography, which should have come based on the decisions of the Constitutional Court, have not yet been implemented. Changes in the area of education, some of which were not positive for the minority groups, have been implemented (changes in §16 of the Minority School Act for Carinthia in connection with the extension of bilingual instruction to the 4th level of the primary school).

For the Adoption of Additional Measures for Protection on the Basis of New International Standards of Minority Protection:

In the last decades on the international level, various instruments for the improvement of standards of minority protection have been adopted. Because of the progressive human rights policies which Austria positions itself in international organizations, Austria should integrate these instruments to the letter and in spirit into its legal system and legal practice. Austrian public offices should influence the public with positive measures (instruction in human rights, history and culture of the national minorities, programs in radio and television, etc.), so that the national minorities would be accepted as an equal

part of society, according to the basic rights to preservation and equal development. The idea of Austria as a national state of the German nation must change into a one of a historically grown multicultural Austrian society. Austria should recognize the national minorities as subjects. This would be like the continuation of the minority policies of the Cisleithanian part of the Austro-Hungarian monarchy, as prescribed in § 19 of the Constitution. A weak indication of a change in thinking was seen in the year 2000 with the adoption of the national policy objectives (§ 8 (2) of the Federal Constitutional Act). These agreements that do not have the same level as the protection in §19 of the Constitution, lack, however, concrete minority rights, and especially the possibility to file suits. Therefore, it would be very important for the improvement in the situation of minority groups that they be awarded this possibility to sue for their secured rights through their representative organizations. To assert rights and to lead dialogue in partnership with the majority population, it would be necessary that the minority groups be given representations as legal entities, democratically elected and legitimized by public law (for example, in a directly elected committee of the national minority). This would strengthen them politically and give considerably more weight to their demands. The Republic of Austria must enable the minority groups to have an effective participation, for example, in the Regional Assemblies. In some areas (kindergartens, school systems, culture, etc.) they must be given the right to autonomously determine their own affairs.

In the following are some documents with an analysis of the state of the national minorities in Austria, or some suggestions for improving the state of the national minorities in Austria:

The Report of the Conference of (University) Rectors: In 1988, an interdisciplinary task force that had been appointed by the Conference of Rectors of Austrian Universities in March, 1987, completed its year long work with a final report. The group made up of Austrian, German, one French and one Belgian scientists, investigated the political, cultural and legal situation of the Austrian minorities and worked out suggestions for their improvement. The occasion for the initiating the group was the discussion on the bilingual school system and its associated political conflict in Carinthia, that was set off in 1984 by the Freedom Party (FPÖ) and Carinthian Homeland Service (KHD) with their demands for a separation of the children (segregation) in the schools. In preparing the report, the group began with the following assumptions:

1. that the social and historically emergent social life of Austria has grown out of the ethnic diversity and the diversity of cultures, languages and nations are a component of the Austrian identity.
2. that Austria is multi-lingual, independent of the fact that German is the official language, and that the languages are equal, a fact that should be apparent in daily life
3. that Austria is a democratic society but solidarity with the weaker ones is not self-evident.
4. that Austria communicates with its neighbours and that it is a place for the meeting of neighbours, the conditions for this, however, would be a partnership relationship with the national minorities.

The task force support a positive development of the minorities. They wanted to contribute to the situation to overcome the negative attitudes about multilingualism and to create a situation in which bilingualism and multicultural life is not only tolerated but also actively facilitated. On the basis of statistical data, the report detected a general tendency, namely, that national minorities in Austria were disappearing. Although the report was completed before the political changes in Europe and before the adoption of important international instruments for the protection of minorities in the 1990s, the conclusions and recommendations are still up-to-date. The report determined that Austria needs modern and future-oriented minority policies and among them suggested:

- The development of a common bilingual school
- The instalment of bilingual topographical signs and designations – names of localities, streets, guideposts and geographic publications, timetables, telephone books etc.,
- The formation of really autonomous representatives of the national minorities
- The assertion to minority-friendly population censuses, which take into consideration the special psycho-social situation of the national minorities

The report suggested separate organs and procedures for the observation over the implementation of minority protection decisions and for the prevention of discrimination.

- a mediation board, composed proportionately, with legal competence, that would make the final decisions in minority conflicts.
- A minority ombudsman, who must have appropriate competencies and the right to file suit in connection with the implementation of minority protection
- The right to file class action suits for the minority organizations in order to bring action in minority rights in administrative and court cases.

An Amendment to § 19 of the Basic Law (StGG)

The clauses relating to the protection of minorities according to § 19 of the Basic Law (StGG) are still part of Austrian constitutional law, but after 140 years need amending. However, the argument that this article is no longer applicable because Austria is no longer a multi-national state but rather a state with a nearly homogeneous national base, so that one cannot refer to the right of nationalities any longer but only to refer to the protection of minorities – this argument must be challenged. The concept of collective minority protection in §19 of the Basic Law (StGG), which was also developed out of the practice of the judicature of the highest court in the monarchy, is also appropriate for the protection of minorities in present-day Austria as a multinational state. The national minorities are subject to enormous pressure to assimilate by the majority culture. The preservation of the minority culture is only possible if it is recognized as a collective right, for whose enforcement a special instrument of collective protection is necessary. The collective minority protection of § 19 of the Basic Law (StGG) can only be fully applied in present-day Republic of Austria. The concept of collective protection of minorities should be expanded from this article, whereby the original concept of minority protection should be re-established as it was developed in §19 of the Constitution by the judicature of the monarchy.

As early as 1998, the Austrian Centre for Ethnic Groups presented a draft for an amendment of §19 of the Basic Law (StGG) that was devised together with the Viennese constitutional expert, Theo Öhlinger. The draft was based on collective rights on whose foundation the national minorities could emerge as organized groups. It also received a clause that was later adopted as a new second paragraph of § 8 of the

Federal Constitutional Act – national policy goal, that in essence mirrored the judicature of the Austrian Constitutional Court. The draft included numerous concrete clauses, among them:

- the right of the national minorities to preservation and special legal protection;
- the right to free acceptance of the membership in a minority group regardless of objective characteristics and the prohibition of every kind of discrimination on the basis of this commitment
- the right of the member of minorities to education in kindergarten and instruction in school in the language of the minority;
- the right to the use of the minority language in public life and in dealings with public offices and the right to topographical signs and designations in the minority language in the traditional settlement areas;
- the right to file grievances by minority organizations to enforce recognized collective rights (class action suits)

This right should not be anything new in Austrian minority rights, as it was allowed in the monarchy of the nationalities by the High Court.

Because of the obsolescence and dispersal among many laws of constitutional regulations concerning the protection of national minorities in Austria, the development of international minority protection and the non-agreement of the Austrian State Treaty, the Austrian Centre for Ethnic Groups worked out a suggestion for a new minority group law that includes the following improvements to the Minorities Act:

- The goal of the new law is not only the preservation but also the development of the minority groups.
- The definition of minority groups would be adjusted to new definitions in the appropriate literature.
- The territorial validity of the law should be laid down by the Constitutional Court in an appendix.
- Topographical signs and designations: Intended are bilingual signs and designations on all facilities under public law in areas (also for the Styrian Slovenes) designated in the appendix. Outside of this bilingual area they are also intended if they refer to localities in the bilingual areas.
- Official Language: The language of the minority groups should be allowed as an official language in all the areas included in the appendix, in all public offices and authorities. Outside of this area they are allowed if the public offices or authorities are geographically or factually responsible for part of the bilingual areas and when it concerns immediate decisions and when in the lower instance the minority language was allowed as an official language. Official printed documents and forms must be bilingual as well as public announcements in facilities under public law. Each member of a minority group should have the right to receive all official concerns that relate to him or her in the language of the minority until revoked. Public officials and civil servants, who have command of the language and who can use them in proceedings, should have the right to a supplementary pay.
- Minority positive discrimination. Beside subsidies, the draft suggests other forms of positive discrimination: in the area of education, the support of measures suggested by the Advisory Committee, encouragement for administrative offices for the implementation of measures in the area of topography and official languages, etc. The Federal Government should submit an annual report to

Parliament on the measures from this chapter. This proposal sees the establishment of a minority group representative organization under public law that could be founded on the basis of a regional law. This representative organization would be elected in direct secret balloting and would have the exclusive right to the allocation of minority subsidies. The proposal sees the establishment of a separate fund for minority subsidies into which the Federal Government would pay a certain proportion of the federal budget. This fund would be administered by the minority groups themselves.

- The Minorities Council should get for assessment all rules and regulations, application for assistance and international treaties and contracts relating to the interests of the minorities. The law would clearly designate that the advisory committee is not a minority representative organization.

One of the possible facilities for the improvement of the situation of the Austrian national minorities could be an **ombudsman for minorities' rights** based on the example of the Swedish ombudsman for ethnic anti-discrimination, which has been in existence since 1989, or on the example of the Hungarian minority ombudsman. The ombudsman would oversee the implementation of minority rights, prepare annual reports to the Federal Parliament on the situation of the national minorities in Austria and on the implementation of their rights, have office hours in Parliament and file written complaints to the Constitutional and Administrative Courts on violations to minority rights. Through these activities, the minority problems would come through more strongly in the media and so would sensitize the public to minority issues.

Carinthia

Model of an autonomous representation under public law of the Slovene minority group in Carinthia according to an expert opinion by Univ. Prof. Dr. Peter Pernthaler, Nov 7, 1990 to Feb. 22, 1993.

The regional office of government of Carinthia asked for an expert assessor in spring, 1990, to work out a model of an autonomous representation under public law for the Slovene minority group in Carinthia. Independently, the same wish was advanced by the Council of Slovenes in Carinthia. In a joint meeting of representatives of the minority group and of the office of government on July 5, 1990 the legal framework for such a representation was jointly formulated.

Legal Evaluation

The organizations of the minority groups, fragmented and exclusively organized under private law, are not seen as proper political collective representation. The minority groups should by law - without any changes in the currently valid clauses on minority protection – be constituted as a legal public body and its legitimation as a political representation be procured on a broad democratic basis. Such a constituted **public body** would be understandably endowed with autonomy under public law; the minority group could take care of itself in its own affairs in the well-tried organizational form of self-government.

Membership and Right to Vote

If the minority groups are constituted as a self-governing public body and their representatives as legal representative bodies, then all "Austrian citizens of the Slovene minority in Carinthia" (§ 7 State Treaty of 1955) must be members, including children and others not eligible to vote.

The active and passive eligibility for voting for legal representation of the minority group in this kind of legal framework would be a subjective (simple legally warranted) minority right bound to the status as member of the minority group, according to § 7 of the State Treaty. At this stage – and not with the determination of the membership in the public body – the commitment principle comes into effect: according to a 1983 law (file nr. VfSlg 9744/1983), the legal status of "member of the minority group" is based neither on objective characteristics (language, ancestry, etc.) nor on subjective characteristics (group consciousness, etc.), but only on the "volition to use minority rights". This would be expressed in the use of voting rights.

The Election of Minority Group Representatives

At the same time as the Regional Assembly of Carinthia elections, an election for the self-governing legal entity of the minority group (minority group representation) would be conducted. All members of the Slovene minority in group in Carinthia would be eligible to vote. For these elections to the minority group representatives, the general list of voters could be used, whereby utilization of voting rights implies the "volition to use minority rights". In practice this means that in the autochthonic settlement areas of the minority group, ballots for the election of the minority group representatives would be issued and people living outside this area could request a ballot. Those who make use of this ballot to the election of the representatives of the minority group commit themselves as members of the Slovene minority group. It is, however, guaranteed that this commitment in the voting booth is secret and not verifiable. Putting together a minority group register or a special list of voters is not necessary.

The minority group representation should consist of, for example, 25 mandantaries, with the election based on a proportional electoral system (D'Hondtsch procedure). To be elected as a functionary requires a commitment to the minority group that is associative and testable. There would have to be a control mechanism, similar to that for the members of the Minorities Council, to prevent misfeasance.

Internal Organization and Competencies

As a corporate body under public law, the elected minority groups' representation issues its own by-laws, and commissions its own controlling and implementing bodies. Certain competencies must be transferred to them from the state: the act of disposal and allocation over the subsidies and means set aside for the minority group, the active legitimacy to file grievances before the highest courts in concerns of the minority groups, assessment and right to make proposals, and partially the sole right to make proposals (for example, for the head of the department for minority issues in the regional school inspectorate), general matters that lie primarily in the interest of the minority groups and that can be attended to by themselves.

State Supervision

This should confine itself to supervising regularities in the same way as the control over the municipalities is handled:

- control over the financial conduct with public funds
- control over the organization
- control regarding the contents of issues concerning general sovereign competencies of the autonomous minority group representation.

Competency issue

Arguments of the constitutional judicature (file nr. VfSlg 3314 / 1958) demonstrate that the establishment of an autonomous minority group representation under public law is a concern of the Federal Government as far as legislation and implementation goes. On the other hand, the relationship to the regional administration is so strong that on practical grounds a regional legal regulation and regional implementation is recommended.

The expert assessor recommended, analogous to §1 of the Minority School Act for Carinthia, that the allocation of competencies for the establishment of an autonomous representation under public law for the minority groups in general and the Carinthian Slovenes in particular should be fixed under constitutional law. There should be at least an implementation legislation, or some regional legislation, as in § 15 (1) of the Federal Constitutional Act (B-VG),

for the organization of the minority groups at the regional level.

Model for a Minority Group Mandate in the Regional Assembly ("Landtag") of Carinthia

Special election ward for the minority group mandate

The Carinthian Slovenes had their own party in the Regional Assembly of Carinthia all during the monarchy and the First Republic. Another participation in the Regional Assembly of Carinthia after 1945 was thwarted by the withdrawal of a promising candidate influenced by a Slovenia that was ideologically deep in the communist regime. In 1975, the Koroška enotna lista / Carinthian Unity List barely missed the necessary votes for representation in the Regional Assembly. It could be foreseen that in the next Regional Assembly elections, a Slovene party would most likely attain a mandate. The reaction to this was that the Carinthian election laws were so changed that the bilingual area was divided up into 4 election wards each with majority of voters outside the bilingual areas. In this situation, it was illusionary to think that a minority group party could surmount the hurdle of a basic mandate. Carinthia is the only region that has basic mandates for the Regional Assembly elections. The other regions have only a 4% or 5% hurdles

Because of the intensification of assimilation on the one hand and because of the integration of some of the members of the minority group into majority political parties on the other hand, it would be impossible to capture a mandate in the Regional Assembly of Carinthia of Carinthia purely on proportional electoral laws. Thus, the Carinthian Slovenes are striving for a secure minority group mandate in the Regional Assembly of Carinthia of Carinthia. This could be realized with the following model:

1. The number of mandates in the Regional Assembly of Carinthia will be increased from 36 to 37. In addition to the current 4 election wards, a 5th ward would be established including all regions of Carinthia. In this special election ward for the minority group mandate which would determine the minority group mandate, the 37th mandate would be awarded.
2. As candidates in an election district for the 5th special ward, only persons can be nominated who declare themselves members of the Slovene minority group and otherwise fulfill the additional requirements for passive election to the Regional Assembly of Carinthia.
3. On the official ballot, there would be the names for the candidates for the respective election ward as well as for the special ward
4. The voters cast their ballots either for the regional ward or for the special ward.
5. The minority group mandate in the 5th special ward will be given to the group with the most votes, provided this group gets at least one-percent of all the ballots cast in all of Carinthia. If none of the candidate groups get the necessary proportion of votes, then the mandate in the 5th special ward would be not awarded and would go into a second electoral procedure according to the current provisions.

In the federal region of Carinthia, there is a population of 527,333 Austrian nationals (census 2001). 12,554 Austrian nationals listed Slovene as their language of everyday life. The allocation of a mandate to the 5th special ward for a minority group mandate would be possible without it influencing the weighting of the balloting.

According a first assessment, an amendment to the Federal Constitution does not seem to be necessary, as the general principles of elections as stipulated in the Constitution would not be affected by this model. In case of doubt, the decision of the Constitutional Court of October 5, 1981 (file nr. VfSlg. 9224) is of importance, in which the Constitutional Court determined:

“the importance given to the protection of minorities by the constitutional law-makers demands by regulation a very differentiated balancing concerning the situation of a minority within other social groups. A more or less schematic equality of members of other social groups is not always sufficient for the legal value judgements (in favour of the protection of minorities). Depending on the circumstances to be regulated, it can justify the protection of members of a minority over members of another social group, and even demand the privileging the minority in certain cases.”

This model seems to be feasible at the simple legal (regional) level in the framework of the election laws for the Regional Assembly of Carinthia. To avoid any legal uncertainties, however, an amendment to the Federal Constitution could be considered.

8.) Proposals for Recommendations by the Advisory Committee

1. In spite of the current measures for supporting the autochthonic minority groups, there is a need for a much more decisive action on the part of the public authorities to enable this community to maintain their identity above all in the area of the media and participation in public life. This applies especially to the Slovene minority in Styria, the Croat, Hungarian, Czech, and Slovak minorities in Vienna and the Roma in Burgenland and Vienna.
2. The Advisory Committee pointed out possibilities for improvement in the area of the media in their annual report in 2002. There is a much to catch up on for the minority language radio programs for the minorities in Burgenland, especially for the minorities in Vienna and the Slovenes in Styria – in comparison to the situation in Carinthia, and there is substantial room for improvement. The same is true for the minority language television program, and this also in Carinthia.
3. In the area of education, as mentioned in the annual report of 2002, attention must be paid to creating in Vienna the possibilities to learn Croat, Hungarian, Czech and Slovak or to have instruction in these languages, or at least the current offering should be greatly expanded. Special attention must be paid to the sufficient financing of the education facilities of the minorities (private schools) from the public budget so that the pupils in these educational facilities are not discriminated against in comparison to the educational expenditures in comparable public institutions.

Concerning the educational institutions for the Slovene, Croat and Hungarian minorities in Carinthia and Burgenland, there are improvements possible in the transition from bilingual primary schools to lower secondary school and bilingual grammar schools. Bilingual instruction with Slovene, or Croat, as the language of instruction with German should be maintained for the entire compulsory school area.

In the area of the minority school system, new language teaching concepts should be given special interest. In Carinthia, such new language teaching concepts (daily or weekly switching of languages instead of continually switching between Slovene and German) has been implemented as school experiments and were evaluated as successful and efficient. Their use should be encouraged in the regular school system.

In the area of teacher education and continuing education as in the transition stage to the Pedagogical Colleges, it is important to pay attention to the question of quality assurance and school development in the minority school system and give it special weighting; this as well in the area of accompanying research work.

In the area of pre-school education, the Carinthian Kindergarten Fund Act has secured an equal financing of already established bilingual kindergartens in Carinthia. Regarding the endowment of the fund it should be kept in mind that the expansion of bilingual child care facilities should be secured as well.

In the area of financing the music school system in Carinthia, the advisory committee determined an obvious discrimination against the Slovene minority and challenged the regional government of Carinthia to redress the situation.

4. In its annual report of 2002, the Advisory Committee already addressed the difficult problems in connection with the bilingual topographical signs and designations in Carinthia and suggested that the appropriate authorities find a practicable solution in consultation with the Slovene minority. The problem has been aggravated by the tardiness of the authorities. The Advisory Committee recommended that Austria be reminded under pressure to find a solution to the problem, in complete agreement with the decisions of the Constitutional Court and in agreement with the Slovene minority.

The Advisory Committee considers the reforms agreed upon in the government accords for the XXIII legislative period for the re-organization of the state and its administration as a great chance to create a complete, constitutionally legal and institutional framework for the protection of minority groups in Austria. Special considerations should be given to an effective participation of the minority group in public life and self-government of the minority groups. The proposals of the Austrian Convent for minority protection articles in the Federal Constitution offer a solid basis.