

## UN Universal Periodic Review Austria

### Report by the Austrian Center for Ethnic Groups for the 23th Session of the UPR – Working Groups in November, 2015

#### I. Introduction: Austrian Center for Ethnic Groups

1. This is the second UPR-Report by the Austrian Center for Ethnic Groups, an umbrella organization of all national minorities (ethnic groups)<sup>1</sup> in Austria. The following organizations have contributed to this *Report on the specific problems of national minorities in Austria*.

Council of Carinthian Slovenes / Rat der Kärntner Slowenen / Narodni svet koroških Slovencev,

Article VII-Cultural Club for Styria - Pavelhaus / Artikel-VII-Kulturverein für Steiermark – Pavelhaus / Kulturno društvo čen 7 za avstrijsko Štajersko – Pavlova hiša

Minority Council of the Czech and Slovak National Minority Groups in Austria / Minderheitsrat der tschechischen und slowakischen Volksgruppe in Österreich / Menšinová rada české a slovenské větve v Rakousko

Austrian-Slovak Cultural Club / Österreichisch-Slowakischer Kulturverein / Rakúsko-slovenský kultúrny spolok

Burgenland-Hungarian Cultural Club / Burgenländisch-Ungarischer Kulturverein /Burgenlandi Magyar Kultúregyesület

Central Federation of Hungarian Clubs and Organizations in Austria / Zentralverband ungarischer Vereine und Organisationen in Österreich / Ausztriai Magyar Egyesületek és Szervezetek Központi Szövetsége

Federation of Independent Hungarian Clubs in Austria / Dachverband der Unabhängigen ungarischen Vereine in Österreich / Ausztriai Független Magyar Kultúregyesületek Csúcsszervezete,

Club Roma / Verein Roma,

Cultural Club of Austrian Roma / Kulturverein österreichischer Roma

Croatian Cultural Club in Burgenland / Kroatischer Kulturverein in Burgenland / Hrvatsko kulturno društvo u Gradišću and

Croatian Centre in Vienna/ Kroatisches Zentrum Wien / Hrvatski Centar Beć.

2. Up to the time of this report from march 2015, the Austrian federal government had not involved any of the above organizations in the development of the the UPR- State Report.

## II. Short Summary

3. The basic problems are the **unequal protection of minorities** as well as the **non-implementation of articles of the State Treaty of Vienna** of 1955<sup>2</sup> and the **State Treaty of Saint Germain** of 1920<sup>3</sup>, through which above all the rights of the national minorities to their own organizations, free use of their languages, adequate school instruction and support of their own culture has been undermined. **Decisions of the Constitutional Court have not been implemented.** Minority rights have been conceded restrictively on the basis of “historical settlement rights”, whereby it has been attempted to further limit even those. Urbanization and rural depopulation have not been taken into consideration. Some national minorities, among them the Polish and Jenish, have not been given recognition at all. Since the 10th Session of the UPR-Working Groups in January, 2011 the overall political climate towards the national minorities in Austria improved. The recommendations 92.18, 92.87, 92.96, 92.97, 93.54, 93.53 which were given at this 10<sup>th</sup> session, but were not yet realized, should be implemented at the soonest.

### 4. Recommendations of the 10<sup>th</sup> UPR Session from January 2011

The amendment of the Volksgruppengesetzes / Ethnic Groups Act<sup>4</sup> in 2011 took place in contradiction to the findings of the Supreme Constitutional Court (VfGH). Thus for not from the VfGH chosen places – the VfGH considered a 10% share of minority language speakers as sufficient – by constitutional determination bilingual place names were exhaustive settled only for places with a 17,5% share in minority language speakers, in some cases yet arbitrary an even higher percentage. Also with the constitutional determination only topographical designations on place-name signs and signposts are limited. Likewise, by constitutional determination, the finding of the VfGH, according to which the inhabitants of the locality Eberndorf/Dobrla vas are allowed to use Slovene as an official language at the municipal office, was revised. The constitutional determinations in the Ethnic Groups Act are a revision of Art. 7, Para. 3 State Treaty of Vienna and the thereto issued VfGH findings.

Styria is excluded from the constitutional regulation in amendment of the Ethnic Groups Act.

The determinations from the State Treaty of Vienna and the State Treaty of Saint-Germain are still waiting for the realization. There was no contact made with the minorities in Burgenland.

The constitutional determinations in the amendment of the Ethnic Groups Act were passed against their express will.

The Carinthian Parliament in 2012 passed a new Carinthian Music School Act<sup>5</sup>. This Act completely disregards the Slovene music school. The Slovene music school receives support only from the Ethnic Groups Support and the Culture Support – both are discretion expenses and considerably slender than the comparable cost per Child for the German music school. The Slovene music school limited the teaching in the school year 2014/15 and is endeavouring intensely with the Bund and the Land Carinthia to find a non-discriminatory resolution. A correspondent amendment is prospective for summer 2015.

A non-discriminatory amendment would be a success for the UPR-Proceedings.

### **RECOMMENDATION:**

#### **- Realization of the recommendations from UPR I from January 2011**

#### **Equality and Non-Discrimination**

5. The protection of minorities in Austria is not uniform and there is discrimination against minority groups in particular as well as against individual members of minority groups. One example is the use of minority languages in school instruction:

- In contrast to Hungarian and Croatian language school instruction in Burgenland, there is only rudimentary instruction in the Roma language in Burgenland.

- In contrast to Carinthia and Burgenland, there is no bilingual instruction in public school for the national minorities in Vienna and Styria.
  - The outmoded and strongly territorial limitations on granting minority rights that takes neither urbanization nor rural depopulation into consideration. This makes it nearly impossible for individual members of national minorities outside of the “historical settlement areas” to make use of their minority rights.
  - An additional example is the only surviving bilingual minority school in Vienna for Czech and Slovak minority groups established through the “Brünner Treaty”<sup>6</sup>. Its existence is a duty of the federal state in compliance with the treaty, yet compared to the public schools it is insufficiently funded and so its existence is continually threatened.
- This unequal treatment of the Komensky School represent a breach of Article 68 of the State Treaty of Saint German, which provides for minority groups a proportional part of public funds for educational purposes.
- In addition some national minorities, Polish and Jenish among others, have not been legally recognized and therefore are subject to discrimination.

**RECOMMENDATION:**

**-Unification of minority group rights according to the Petition of the Austrian Ethnic Groups<sup>7</sup>.**

**-Implementation of the State Treaties of Vienna of 1955 and Saint Germain of 1920.**

**- Creation of a bilingual school system for the ethnic groups in Vienna and Styria**

**Rule of Law**

6. The lack of willingness on the part of the Austrian federal government to implement the decisions of the Constitutional Court on the issue of the recognition of minority languages as official languages<sup>8</sup> and on the issue of bilingual topography<sup>9</sup> is alarming, as these cases demonstrate a blatant deficiency in the protection of minorities as well as a blatant lack of respect for the rule of law in Austria.<sup>10</sup>

The rule of law has been undermined by the decades-long pseudo-activities of the various Austrian federal governments and actively fought against by the government fractions of the province of Carinthia.<sup>11</sup>

The amendment of the Ethnic Groups Act took place in contradiction to the findings of the Supreme Constitutional Court (VfGH).

The Austrian Centre for Ethnic Groups is deeply concerned about unilateral revision of Article 7, Paragraph 3, of the State Treaty of Vienna of 1955 by this amendment to the Ethnic Groups Act, adopted in Austrian Parliament on 27 July 2011, with some provisions in the constitutional level. Furthermore, the Act completely ignores the rights of Slovene minority in Styria, guaranteed in Article 7 of the State Treaty of Vienna, and so narrows considerably the rights of Slovene and Croatian minority in Austria. This "de facto" unilateral revision of Austrian international obligations under Article 7 of the State Treaty of Vienna is now confirmed by two latest decisions of Austrian constitutional Court<sup>12</sup>, which since 27 July 2011 rely its decisions on newly introduced or amended provisions of constitutional nature of the National Minorities Act instead of on Paragraph 3 of Article 7 of the State Treaty of Vienna.

**RECOMMENDATION:**

***-Implementation of the decisions of the Constitutional Court on topography and official languages.***

## **National Minorities**

7. The national minorities in Austria – officially recognized are only the Croat, Czech, Hungarian, Roma, Slovak and the Slovene ethnic group – have been deprived for decades of basic minority rights guaranteed under international law (State Treaties of Saint Germain of 1920 and Vienna of 1955), and decisions of the Constitutional Court on these issues have been consistently not implemented. Thus, Austria has violated the basis of the adherence to human rights and basic freedoms, as well as respect for the rule of law.

### 8. Right to their own organizations

Representative organizations of national minorities are registered only as regular clubs and organizations under Austrian club-law and have no special competencies or rights; the enforcement of collective rights is impossible. These organizations cannot act in the name of members of minority groups. The advisory councils set up according to the Minority Act are not legitimized by direct democracy<sup>13</sup> and when necessary can be easily manipulated.

The “right to their own organizations” is understood by the independent representative organizations of national minorities in Austria as the right to self-administration in their own matters. Article 120a of the Austrian Federal Constitutional Law provides for the establishment of entities under public law for the self-administration of national minorities. Austria has refused so far any self-administration on the part of national minorities.

#### **RECOMMENDATION:**

***-Establishment of self-administrative bodies under public law for minorities .***

### 9. Right to free use of minority languages

The use of minority languages in government offices and agencies in the provinces of Vienna and Styria is not possible at all and in Burgenland and Carinthia is very limited<sup>14</sup> because civil servants competent in minority languages are few and usable legal forms and documents in minority languages are rare. Individual applicants who insist on filling out forms in their minority language have even been discriminated against by the authorities.<sup>15</sup>

#### **RECOMMENDATION:**

**-Implementation of the decisions of the Constitutional Court including more manageable facilitation in the use of minority languages as official languages.**

**-Enabling of equivalent use of the ethnic groups languages in the context of E-Governments.**

### 10. Bilingual topographical signs

The right to bilingual topographical designations concerns not only place name signs but as stated in Article 7 of the Vienna State Treaty of 1955 all “topographical terminology and inscriptions”. The Austrian federal government has solved topographical signs issues with a listing of settlements and communities with bilingual place name signs in a constitutional law. This means a limitation of minority rights guaranteed in Article 7 of the State Treaty of 1955 by a new constitutional law, and thus the Constitutional Court would in the future be deprived of legal control of the minorities’ right about topographic inscriptions in Slovene and Croatian language. Bilingual street names, inscriptions on public buildings, names of rivers, mountains and other traditional local topographic names in minority language are excluded against Paragraph 3 of Article 7 of the State Treaty of Vienna

**RECOMMENDATION:    *-Implementation of the State Treaty of Vienna of 1955***

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<sup>1</sup> In the Republic of Austria, the general term to designate language and ethnic autochthonic national minorities is usually “Volksgruppen” or ethnic groups. This report uses the term “national minorities” that is more commonly used in the English language areas.

<sup>2</sup> Federal Law Gazette (BGBl) 1955/152.

<sup>3</sup> State Law Gazette 1920/303.

<sup>4</sup> Federal Law Gazette 1955/152.

<sup>5</sup> Regional Law Gazette (LGBl) 2012/73.

<sup>6</sup> Federal Law Gazette I Nr. 2011/46.

<sup>7</sup> XXV. GP.-NR. Nr. 29/BI from 29.10 2013, see:

[http://www.parlament.gv.at/PAKT/VHG/XXV/BI/BI\\_00029/imfname\\_329398.pdf](http://www.parlament.gv.at/PAKT/VHG/XXV/BI/BI_00029/imfname_329398.pdf) .

<sup>8</sup> V 91/99 (4 October 2000).

<sup>9</sup> V 16.404/2001 (13 December 2001).

<sup>10</sup> See Report by the Commissioner for Human Rights, Th. Hammarberg, on his visit to Austria, 21 – 25 May 2007, 26, para 98: “The Commissioner is particularly concerned by the non-implementation of the decisions of the Constitutional Court regarding bilingual topographical signs since the case reveals shortcomings in both the protection of national minorities and the respect for the rule of law in Austria”.

<sup>11</sup> Vice-governor of Carinthia Gerhard Dörfler: „The rule of law is one thing, a “popular instinct” is another.” *Kärntner Tageszeitung*, 30 December 2006; Governor Jörg Haider started an advertising campaign in September 2006, „Carinthia will become monolingual“ and sent a letter with that content to the citizens of southern Carinthia.

<sup>12</sup> B 61/12-14 and B 832/12-3 (both of 11 October 2012).

<sup>13</sup> The UN Committee on the Prevention of Race Discrimination in its 37<sup>th</sup> meeting (CERD/C/AUT/CO/17, para 22) in the year 2008 ascertained: „In this context, the Committee recommends that the State party review the relevant laws and provisions regarding Autochthonous National Minorities Advisory Councils and their structure, in order to ensure that national minority members of these Councils are freely elected by their respective minority and also to ensure that these Councils represent a real dialogue partner for the different bodies of the State party“.

<sup>14</sup> Example: In official buildings there are no directories in the minority languages, no information one can turn to when one party wants to use a minority language, it is nowhere visible whether this is an official building where using a minority language is even allowed; there is a lack of civil servants who are fluent in the minority languages; fluency in a minority language is not a criteria for the civil service. In identification papers and documents - such as passports, identity cards etc – applications for the inserting the address or place of birth in both languages (German and minority language) are regularly denied; in legal acts that are carried out immediately there is no right to use the minority language. The demand to use the minority language as an official language leads to drastic lengthening of the procedures.

<sup>15</sup> In the community of St. Kanzian/Škocjan in Carinthia, citizens who want their notices for the assessment of public fees to be issued in Slovene were harassed by the community officials with diverse legal actions and seizure procedures - garnishment of wages, impounding of chattel and forced statements of liens in title registers.