

UN Universal Periodic Review Austria

Report by the Austrian Center for Ethnic Groups for the 37th Session of the UPR – Working Groups in January and February, 2021

I. Introduction: Austrian Center for Ethnic Groups

1. This is the third UPR-Report by the Austrian Center for Ethnic Groups, an umbrella organization of all national minorities (ethnic groups)ⁱ 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,

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 June 2020, the Austrian federal government has not involved any of the above organizations in the development of 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 1955ⁱⁱ and the **State Treaty of Saint Germain** of 1920ⁱⁱⁱ, 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 and media has been undermined. **Decisions of the Constitutional Court have not been fully implemented.** Minority rights are still interpreted in a narrow way and 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 Jewish, were not acknowledged by the government as minorities yet. Since the 10th Session of the UPR-Working Groups in January, 2011 the overall political climate towards the national minorities in Austria improved but did so far not lead to the necessary results. The recommendations 92.18, 92.96, 92.97, 93.53 made at the 10th session and the recommendations 141.62, 139.118, 141.64, 141.63, 141.65, 140.19 from the 23th Session of the UPR-Working Groups in November 2015 were not yet realized and should be implemented at the soonest.

Recommendations of the 10th UPR Session from January 2011 and the 23th Session of the UPR-Working Groups in November 2015

4. The amendment of the Volksgruppengesetz / Ethnic Groups Act^{iv} in 2011 took place in contradiction to the findings of the Supreme Constitutional Court (VfGH).

The determinations from the State Treaty of Vienna and the State Treaty of Saint-Germain are still waiting for the realization.

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

Provisions in constitutional rank – which are not in conformity with previous jurisprudence of the Constitutional Court – were included in the Ethnic Groups Act and passed against the explicit will of the national minorities in Austria. They are now part of the constitutional *acquis* and can now only be amended with a two-thirds majority

A non-discriminatory amendment the Ethnic Groups Act and guaranteeing its consistent application would be a success resulting from the UPR process.

A systemic solution for the Slovenian music school was found, which became the 28th provincial music school of Carinthia in 2015/2016 school year. However, as a result, number of lessons and pupils of the Slovene music school has been halved, curtailing its activity.

The financial support for the national minorities has not increased since 1995 and has not even be adjusted to compensate for inflation

Representative organizations of national minorities are registered only as regular associations and organizations under the Austrian Act on associations (Vereinsgesetz) 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 national minorities do not have any specific entities at their disposal for their operative participation in the political decision-making process.

RECOMMENDATION:

- Realization of the recommendations: 92.18, 92.96, 92.97, 93.53 made at the 10th session and the recommendations 141.62, 139.118, 141.64, 141.63, 141.65, 140.19 from the 23th Session of the UPR-Working Groups in November 2015

Equality and Non-Discrimination

5. The protection of minorities in Austria is not equal. There is discrimination against minority groups 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 the land 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 schools for the national minorities in Vienna and Styria.
- There are outmoded and strongly territorial limitations on granting minority rights that take 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”^v. Its existence is a duty of the federal state in compliance with the treaty. However, compared to the public schools it is insufficiently funded and so its existence is continually threatened.

This unequal treatment of the Komensky School represents a breach of Article 68 of the State Treaty of Saint German, which provides minority groups with a proportional part of public funds for educational purposes.

- In addition, some national minorities, Polish and Jewish among others, have not been legally recognized and therefore are subject to discrimination.

RECOMMENDATION:

-Harmonization and consistent application of minority group rights according to the Petition of the Austrian Ethnic Groups^{vi}.

-Implementation of the State Treaties of Vienna of 1955 and Saint Germain of 1919.

- Creation of a bilingual school system for the minority 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^{vii} and on the issue of bilingual topography^{viii} 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.^{ix}

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.^x

The amendment of the Ethnic Groups Act in 2011 took place in contradiction to the findings of the Supreme Constitutional Court (VfGH).

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.

RECOMMENDATION:

-Full and consistent 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 associations and organizations under the Austrian Act on associations and have no special competencies or rights; the enforcement of collective rights is not foreseen. These organizations cannot act in the name of members of minority groups. The advisory councils set up according to the Ethnic Groups Act are not legitimized by direct democracy^{xi} and when necessary can be easily manipulated by the subsidy provider.

The “right to their own organizations” as set out in Article 7(1) of the State Treaty of Vienna 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 is very limited in the Länder Burgenland and Carinthia^{xii} 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.

In the land Carinthia only residents of a small area of the bilingual territory have the right to use Slovene at authorities. In some cases, only a chosen number of municipality residents, depending in which part of the municipality they reside.^{xiii}

RECOMMENDATION:

-Full implementation of the decisions of the Constitutional Court including greater facilitation of the use of minority languages as official languages.

-Enabling of equivalent use of the minority languages in the context of e-administration

10. Elementary education in minority languages:

Contrary to Article 7 of the State Treaty of 1955 education in Slovene language in Carinthia and Croatian language in Burgenland is not organized for the whole elementary school, but only 4 years. As also in nursery, kindergarten and afternoon care children are not appropriately educated in the minority language, the knowledge of the minority language is more and more bad and consequently the number of persons speaking minority languages dramatically declines.

RECOMMENDATION: In accordance to Article 7 of the State Treaty of Vienna must Austria assure education in Slovene and Croatian language for the entire

elementary education

11. Support for culture and media in minority languages

The financial support for the national minorities has not increased since 1995. Due to inflation, the support has de facto been halved.

Austria also did not take any specific actions to amend legislation on with a view to financing a greater share of minority media.

RECOMMENDATION:

- ***Duplication of subsidies for ethnic-minorities and inclusion of an annual adjustment to inflation clause.***
- ***Adjustment of press subsidies to the needs of the minority press, including by providing an effective basic allowance for minority newspapers.***

12. 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 in the Ethnic Groups Act. This mean 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 of 1955.

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

ⁱ 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.

ⁱⁱ Federal Law Gazette (BGBl) 1955/152.

ⁱⁱⁱ State Law Gazette 1920/303.

^{iv} Federal Law Gazette 1976/396.

^v Federal Law Gazette 1921/163.

^{vi} XXV. GP.-NR. Nr. 29/BI from 29.10 2013.

^{vii} V 91/99 (4 October 2000).

^{viii} V 16.404/2001 (13 December 2001).

^{ix} 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“.

^x 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. At present some mayors are acting against the possibility to voluntarily install additional bilingual signs and what is even more severe: currently the local council of the municipality Grafenstein/Grabštanj determined that the local bilingual German-Slovene Elementary School should be transformed into a solely German-speaking one.

^{xi} The UN Committee on the Prevention of Race Discrimination in its 37th 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“.

^{xii} 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.

^{xiii} in the municipality Eberndorf/Dobrla vas only the residents of some villages explicitly mentioned in the constitutional provision have the right to use the Slovene language at the town hall. Residents of other villages of the same municipality/Dobrla vas do not have this right, while these residents were conferred this right explicitly as a result of a judgment by the Constitutional Court.