COUNCIL OF EUROPE

EUROPEAN COMMISSION OF HUMAN RIGHTS

DECISION OF THE COMMISSION

AS TO THE ADMISSIBILITY

of Application No. 808/60
by Frans ISOP
against Austria

The European Commission of Human Rights sitting in private on 8th March 1962, under the presidency of Mr. S. PETREN and the following members being present:

MM. C. Th. EUSTATHIADES, Vice-President.
P. FABER
A. SÜSTERHENN
Mrs G. JANSSEN-PEVTSCHIN
MM. H. SØRENSEN
M. [illegible]
F. ERMACORA
E. CASTBERG
G. SPERDUTI
M. ILMONEN
S. SIGURJONSSON
J. E. S. FAWCETT

Mr. A. B. McNULTY, Secretary to the Commission

Having regard to the Application lodged on 20th July 1960 by Frans ISOP against Austria and registered on 22nd July 1960 under file No. 808/60;

Having regard to the report provided for in Rule 45, paragraph (1) of the Rules of Procedure of the Commission;

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Having regard to the decision of the Commission of 31st May 1961 that notice of this Application should be given to the Government of Austria and that the said Government should be invited to submit to the Commission within a period of six weeks its observations in writing on the admissibility of the Application;

Having regard to the written observations submitted to the Commission by the Austrian Government on 15th July 1961;

Having regard to the decision of the Commission of 27th July 1961 to invite the Austrian Government to submit further information as to the facts of the case;

Having regard to the reply of the Austrian Government of 11th September 1961;

Having regard to the rejoinder of the Applicant of 13th December 1961;

Having regard to the oral explanations submitted by the parties on 7th March 1962, at the invitation of the former President of the Commission, Sir Humphrey Waldock, in accordance with Rule 46, paragraph 1 of the Rules of Procedure;

Having deliberated,

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THE FACTS

Whereas the facts of the case may be summarised as follows;

1. The Applicant, a farmer, is an Austrian Citizen of Slovene origin and living in the district of Rosegg in Carinthia (Kärnten). He is represented by Mr. Anton Andorfer, who is acting for him under a power of attorney dated 20th July 1960.

2. Article 7 of the Austrian State Treaty of 15th May 1955 contains the following provisions:

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 on equal terms as all other Austrian nationals, including the right to their own organisations, meetings and press in their own language.

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

3. In the administrative and judicial districts of Carinthia, Burgenland and Styria, where there are Slovene, Croat or mixed populations, the Slovene or Croat language shall be accepted as an official language in addition to German. In such districts topographical terminology and inscriptions shall be in the Slovene or Croat 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 organisations whose aim is to deprive the Slovene or Croat population of their minority character or rights shall be prohibited."

3. On 19th March 1959 the Austrian Parliament passed an Act (No. 102/1959) concerning the use of the Slovene language in Court proceedings in Carinthia. This Act authorised the use of Slovene in specifically mentioned areas only and Rosegg was not included in any of these areas.

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On 26th May 1959 the Supreme Court (Oberster Gerichtshof) in a criminal case from Burgenland where the defendant claimed the right to use the Croat language in the proceedings rejected this claim on the ground that Article 7 (3) of the Austrian State Treaty was not a directly applicable provision of law and that no law as to its application in Burgenland had been enacted.

4. On 17th November 1959 the Applicant's lawyer introduced, in accordance with the relevant rules of the Austrian Criminal Code, a complaint (Privatklage) against a certain Mr. HAFNER, by which he alleged that the latter had used defamatory words against him on the occasion of a meeting of the municipal council of St.Jacob in Rosenthal. The Applicant, representing the Slovene minority party on the council, claimed that Mr. Hafner, who was politically opposed to him, had accused him of being a "traitor" and a "Tito communist".

At the Applicant's request, the complaint was drafted in the Slovene language, although his lawyer had drawn his attention to the above Act and the subsequent decision of the Supreme Court. On the same day, two other members of the minority party introduced similar complaints against Mr. Hafner, drafted in German. The Applicant's claim was lodged three days before the expiry of the time-limit of 42 days laid down for the introduction of such claims.

5. On 18th November 1959, the complaint introduced by the Applicant was rejected by the District Court (Bezirksgericht) of Rosegg on the ground that as it was written in Slovene and the Court was not qualified to deal with it (zur Verhandlung ungeeignet), as the district of Rosegg was not within the jurisdictional limits covered by the provisions of the Act 102/1959 of 19th March 1959 concerning the use of the Slovene language.

On 30th November 1959 the Applicant appealed to the Regional Court (Landesgericht) of Klagenfurt which on 12th January 1960 upheld the decision of the District Court. This decision was communicated to the Applicant's Counsel on 21st January 1960.

6. The defamation cases introduced by the two other members of the Slovene Christian Party on the Municipal Council were settled on 25th May 1960 during a session of the Court of Rosegg held in St. Jacob in Rosenthal. During the hearing the Applicant gave evidence in German. At the end of the hearing the defendant, Mr. Hafner, agreed to sign a declaration in which he retracted all accusations made against the two plaintiffs as well as against the Applicant in the present case. ./.

THE ALLEGATIONS MADE BY THE APPLICANT

7. Whereas the Applicant's allegations may be summarised as follows:

- that the courts have denied him a fair hearing within the meaning of Article 6 of the Convention;
- that, having regard to Article 14 of the Convention, he has been deprived of these procedural rights by reason of a discrimination against him on grounds of language and of association with a national minority.

THE ARGUMENTS OF THE PARTIES

8. Whereas the Applicant's submission made orally and in writing may be summarised as follows:

The Applicant wished to use the Slovene language, his mother tongue, for the purpose of introducing his complaint against Mr. Hafner, as, although he understood and spoke German, he did not feel that his knowledge of the latter language, in particular, in the special form in which it is used in the courts, was sufficient for a successful pursuit of his claim.

9. In order to justify his use of the Slovene language, he relied on the following legal sources:

Article 19 of the Imperial Constitution of 1867, which according to Article 149 of the present Federal Constitution, still remains in force, establishes equality of languages for all public purposes in all bilingual regions.

Article 8 of the Austrian Constitution of 1920 implicitly retains rights for the Slovene minority insofar as recognition of Slovene as an official language is concerned: "Without prejudice to the rights conceded by federal law to linguistic minorities, the German language is the official language of the Republic".

The Peace Treaty of St. Germain-en-Laye of 10th September 1919, Articles 66, paragraph 1, and Article 62, guaranteed to national minorities facilities for the use of their own languages throughout the entire country.

The State Treaty of 1955, as quoted above, explicitly guaranteed to the Applicant and other Slovene-speaking persons the right to avail themselves of their mother tongue in mixed areas in the three provinces of Carinthia, Styria and Burgenland. ./.

10. Act 102/1959 of 19th March 1959 concerning the use of the Slovene language in Court restricts, however, the use of Slovene to three specifically mentioned areas and makes no provision for the use of that language in other areas, although as far as concerns schools and public administration, they have been recognised as bilingual areas (such as Rosegg). The Act thus violates the provisions of the State Treaty and its application by the Austrian courts in the present case consitiuted a breach of the Applicant's rights as set forth in Article 7 of the Treaty.

According to the State Treaty, Article 7, paragraph (3) and notwithstanding Act 102/1959, the Court of Rosegg was under the obligation to accept the Applicant's use of Slovene for the purpose of introducing a complaint against a private person. The State Treaty is a "self-executing" Treaty and Act 102/1959 is an unnecessary interpretation and an unwarranted restriction of the rights directly granted to the Slovenes by the Treaty.

The Applicant has referred to an article written by Mr. Ermacora: "Der Staatsvertrag und die österreichische Bundesverfassung" (Juristische Blätter 13/1955, page 319), in which it is said that the Treaty introduced Slovene as an official language and that this is ipso jure effective, and to Adamovich-Spanner: "Handbuch des österreichischen Verfassungsrechts" 1957, page 469 et seq.

The reasoning of the two courts of Rosegg and Klagenfurt based on Act 102/1959 and on the theory that the State Treaty is not self-executing is contrary to the views expressed in Parliament at the time of the ratification of the Treaty. It was stated at that time that no implementing legislation was necessary in order to put into effect the protection measures introduced on behalf of national minorities.

11. In a decision of 5th December 1956 the Supreme Court (Oberster Gerichtshof) had held that the State Treaty was self-executing and that a Croat had thereby a guaranteed right to address a judge in his own language.

The Court of Appeal (Oberlandesgericht) of Vienna, in 1957 implicitly acknowledged the right of a Croat to use his own language and found the State Treaty to be self-executing.

In a decision of 1st October 1959, the Court of Appeal of Graz reversed a decision of the Regional Court of Klagenfurt which had dismissed a similar case. The Court of Appeal held:

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"in view of the rights granted to the Slovene and Croat minorities, a submission in the Slovene language cannot be rejected on the ground that it is not submitted in German or accompanied by a translation into German".

It is thus established that the provisions of the State Treaty, in particular of Article 7, are directly and immediately applicable to all mixed areas.

12. The region of Rosegg is a mixed area as shown by the census of 1951, according to which 61% of the population was German and 39% Slovene.

Under Act 101/1959 of 19th March 1959 concerning schools in Carinthia, the district is bilingual and Slovene schools have been established (cf. the State Treaty, Article 7, paragraph 2).

According to the Bill of 23rd September 1960 concerning the languages to be employed in Carinthia for administrative purposes, the district is bilingual and Slovene shall be placed on an equal footing with the German language for all administrative purposes (cf. the State Treaty, Article 7, paragraph 3).

13. In view of Austria's treaty obligations and according to its established jurisprudence, and in spite of Act 102/1959, the judges of the courts at Rosegg and Klagenfurt were obliged to accept documents written in a minority language although they might not themselves understand this language. Article 100 of the Code of Criminal Procedure provides in such circumstances for the interpretation and translation into a language intelligible to the court.

14. The proceedings relating to the Applicant's right to use Slovene acted as a bar to the main proceedings brought by him against Mr. Hafner, as, even if he had subsequently filed his complaint in German, the time-limit prescribed by law would have expired, the complaint in Slovene having been introduced just before the expiry of the time-limit.

15. As to the Convention, the Applicant submitted that Article 6 is clearly applicable to the proceedings initiated by him as the words "determination of civil rights" in paragraph (1) cannot be interpreted so as to exclude proceedings in which a person seeks to defend his honour or to obtain compensation for the damage done to his reputation by injurious remarks. It cannot be relevant that according to Austrian law such proceedings took place before a criminal court. By the refusal on the part of the judge to accept the complaint he was denied a "fair trial" such as this term is to be understood in the said Article

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16. Whereas the submissions of the Respondent Government may be summarised as follows:

The Applicant had failed to exhaust the domestic remedies at his disposal as he had not invoked in domestic proceedings the rights guaranteed by the Convention. Nevertheless the Government did not wish to rely on Article 26 of the Convention. It found, however, that the proceedings before the District Court of Rosegg and the Regional Court of Klagenfurt did not violate Article 6 of the Convention. Article 6, paragraphs (2) and (3) of the Convention are concerned solely with defendant's rights and thus do not apply to the present case where the Applicant was not the defendant but the plaintiff. Article 6, paragraph (1), on the other hand, relates to any person contesting or upholding his civil rights or obligations or against whom a criminal charge is brought. It cannot apply, therefore, to a person who filed a suit against another in a criminal court, in particular, as the suit did not concern "a civil right or obligation".

17. Even if Article 6, paragraph (1) of the Convention were applicable to the present case, the Applicant could not complain that he was refused a fair hearing within the meaning of this Article, since the right recognised in Article 6, paragraph (1) is not a right to be heard in one's own language but simply the legal right of a person to be able to put his own case in a court of law. It may be seen from Article 6, paragraph (3) (e) that the hearing need not necessarily be in that person's own language, as that Article simply provides that a person charged with a criminal offence shall be provided with an interpreter if he does not understand or speak the language used in court; the Applicant, however, had not claimed that he was ignorant of the German language; and during the hearing of the two cases introduced against Mr. Hafner by the two other members of the Slovene Christian Party on the Town Council of St. Jacob in Rosenthal, the Applicant chose to speak German. He was, furthermore, assisted by a German-speaking lawyer in preparing his initial complaint.

18. The Applicant had been warned by his lawyer that, in view of the Supreme Court's decision of 26th May 1959, he ran the risk of not being allowed to present his complaint in Slovene. The two other plaintiffs, of whom one had the same lawyer as the Applicant, introduced their complaints in German. The Applicant could not therefore have expected that his complaint would be received and had deliberately taken the risk of not being able to introduce a complaint in German within the applicable legal time-limit.

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19. In respect of the allegation that Rosegg was predominantly a Slovene area, data which had been prepared on the basis of the population census published by the Central Office of Statistics for the year 1951 and which were to be used for the Federal Act of 19th March 1959 (BGBL No. 102) show that the languages spoken in the jurisdictional district of Rosegg were as follows:

Slovene	656	5.0%
Slovene-German or Slovene-Vendish (Sorbian)	1,278	10.3%
German-Slovene or Vendish (Sorbian)-Slovene	1,717	13.5%

The Government had chosen for practical purposes to permit the use in court of the minority languages only in districts when the linguistic minorities exceeded 20%. This was not the case in the district of Rosegg as shown by the census in 1951 and also that of 1961.

20. The Court proceedings did not violate Article 14 of the Convention. This Article provides that the enjoyment of the rights and freedoms defined in the Convention shall be secured to all persons without discrimination. In order validly to invoke Article 14, the Applicant would therefore have to show that the Convention gave him the right to file a criminal suit in the Slovene language and also that this right was denied him because he belonged to a Slovene minority.

21. The Government also submitted that the Applicant was not a victim within the meaning of Article 25 of the Convention. At the end of the hearing on 25th May 1960 Mr. Haffner agreed to signing a declaration in which he retracted his accusations against the two plaintiffs as well as the Applicant

22. Questions concerning the interpretation of the Austrian State Treaty and whether it should be considered self-executory or not were not matters for the Commission. The only question before the Commission was whether the procedure before the Austrian Courts in the Applicant's case fell short of the standards set by Articles 6 and 14 of the Convention

THE OBJECT OF THE APPLICATION

Whereas the Applicant claims the annulment of the court decisions of 18th November 1959 and of 12th January 1960 by an order to the Attorney-General to introduce a plea of nullity before the Supreme Court;

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THE LAW

Whereas in its written observations of 13th July 1961, the Respondent Government submitted that the Applicant had not exhausted the domestic remedies within the meaning of Article 26 of the Convention, as he had failed to show that he had invoked before the Austrian courts the provisions of the Convention, notably Articles 6 and 14; whereas, however, the Government added that in the present case it chose not to rely on Article 26 of the Convention.

Whereas, in any case, in its decision of 27th June 1960 (B.469/59, 12, reported in Yearbook of the European Convention on Human Rights. Vol. 3, Page 622) the Austrian Constitutional Court expressly held that "the lack of precision of certain notions contained in Article 6 which is to be compared with a detailed judicial system of civil procedure and criminal procedure, leads to the idea that Article 6 contains only a declaration of principles which the legislator certainly must carry out and respect, but which in themselves do not constitute immediately applicable rights"; whereas, consequently, it would in no way have been an effective remedy for the Applicant to invoke Article 6 in proceedings before the Austrian courts; and whereas under Article 26 of the Convention he was therefore not so obliged before introducing his Application before the Commission of Human Rights;

Whereas the Respondent Government has contended that Article 6 of the Convention does not apply to the present case; whereas Article 6, paragraph (3) clearly restricts its application to persons charged with a criminal offence; and whereas it is evident, as submitted by the Respondent Government, that the Applicant, during the proceedings before the Court of Rosegg, was not charged with a criminal offence but on the contrary, was attempting to charge his opponent with a criminal offence; whereas paragraph (3) of Article 6 does not apply;

Whereas paragraph (1) of Article 6 stipulates that in the determination of his civil rights and obligations, everyone is entitled to a fair hearing; whereas it is true that the complaint lodged by the Applicant was filed in criminal proceedings; whereas however, the question whether a right or an obligation is of a civil nature within Article 6, paragraph (1) of the Convention does not depend on the particular procedure prescribed by domestic law for its determination but solely on an appreciation of the claim itself and of the purpose of the complaint; whereas the Applicant alleged that his opponent had defamed his good name

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and reputation by the use of highly injurious words and whereas he intended by the means given to him by Austrian law to seek the rehabilitation of his honour; whereas the right to enjoy a good reputation and the right to have determined before a tribunal the justification of attacks upon such reputation must be considered to be civil rights within the meaning of Article 6 paragraph (1) of the Convention;

Whereas it must be concluded that the Applicant in the present case may validly invoke this paragraph as applicable to the proceedings before the court of Rosegg;

Whereas the only question that remains to be considered by the Commission is whether the decisions of the court of Rosegg of 18th November 1959 and of the court of Klagenfurt of 12th January 1960 rejecting the Applicant's complaint written in the Slovene language constitute a violation of the rights guaranteed to him by the Convention in Article 6 paragraphs (1) and 14, namely, that he was entitled to a fair hearing without any discrimination on the basis of language or association with a national minority; whereas the Act 102/1959 of 19th March 1959 does not recognise the Slovene language as an official language in court in the district of Rosegg; whereas the question whether, on other legal grounds, the Slovene language ought to be recognised as an official language for court purposes might, in view of the decision of the Court of Appeal of Graz of 1st October 1959, give rise to certain doubts as to the actual legal situation in Austria;

Whereas, nevertheless, the decision of the Court of Rosegg as upheld on appeal, was based on the above Act of 19th March 1959 and was in conformity with the Supreme Court decision of 26th May 1959;

Whereas the Applicant's lawyer drew the Applicant's attention to the risks to which, in view of the above legislation and jurisprudence, he exposed himself in insisting upon the use of the Slovene language;

Whereas the Applicant with the assistance of his lawyer had sufficient linguistic knowledge to permit him to lodge his complaint in the German language;

Whereas it follows that the refusals by the Courts of Rosegg and Klagenfurt to accept his complaint in the Slovene language and the expiry of the time-limit for introducing a similar complaint in the German language, which occurred during the proceedings concerning his right to use the Slovene language, do not constitute a violation of the Applicant's right under Article 6, paragraph (1) that he should be given a fair hearing;

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Whereas, in regard to the complaint that the said refusal constituted a violation of Article 14 of the Convention, it is to be observed that that Article, by its express terms, forbids discrimination only with regard to the enjoyment of the rights and freedoms guaranteed in the Convention; and whereas the Commission has already held above that such right is not violated in the present case; whereas it follows that Article 14 of the Convention has no application in the circumstances of the present case;

Whereas, consequently, the Application is manifestly ill-founded and must be rejected in accordance with Article 27, paragraph (2) of the Convention;

Now therefore the Commission

DECLARES THIS APPLICATION INADMISSIBLE

Secretary to the Commission

(A. B. Hellurty)

President of the Commission

(S. Petren)