
(1) Altenwörth, Au, Hirschbach, Höbersbrunn, Manhartsbrunn, Markthof, Neuruppersdorf, Oeynhaus, Paasdorf, Palterndorf, Peygarten, Seyring, Siebenhirten, Tattendorf, Unter-Waltersdorf, Weissenbach.

THE FACTS

Following the submissions of the applicants, the facts common to these sixteen individual applications may be summarised as follows:

In each of these applications the applicants are firstly communes which existed in the Province (Land) of Niederösterreich until 1 January 1972 and, secondly, persons who were, until this date, members of the respective municipal councils of these communes. Both the communes in all these sixteen separate applications, and some of the respective municipal councillors, are represented in the proceedings before the Commission by Rechtsanwalt Dr. Karl Leiminger, a lawyer practising in Vienna (1).

(1) Dr. Leiminger had been given a power-of-attorney by each of the communes concerned before 1 January 1972 which marked the end of their independent existence. These powers-of-attorney were given after a decision of the respective municipal board, and were all qualified as being irrevocable. The individual applicants have also given a duly signed power-of-attorney to the above Rechtsanwalt.

Both the individual councillors and the communes complain about a violation of their rights under the Convention as a consequence of the ending of the communes' independent existence.

On 3 November 1971 the diet of the Austrian Province of Niederösterreich adopted the Communal Structures Improvement Act 1971 (Niederösterreichischer Kommunalstrukturverbesserungsgesetz 1971). This Act was published on 13 December 1971 and, according to Article 9, should have entered into force on 1 January 1972. According to the terms of this Act a substantial reduction was to be carried out as regards the number of communes in this Land. This was to be achieved either by merging several small communes and forming thereby a new, bigger commune, or by incorporating a small commune into a bigger commune already in existence. The reasons for this reform were indicated in the explanatory memorandum to the above Act; they reflect the results of enquiries on the regional planning in this province, and also stress the fact that small communities are not as well equipped and are financially too weak to give their inhabitants the services requested by the developments of modern society.

Immediately after the promulgation of the above Act, and before it became valid, the provincial Government (Landesregierung) issued a number of individual decisions (Bescheide) whereby the Act was brought into operation. Such decisions were also given in regard to the present applicants (for the exact dates see the survey below). These decisions had the following identical content: first, they stated that by the above-mentioned Act the commune concerned was incorporated into another commune or that it was merged with others to form a new commune. Then a Government Delegate was appointed who had to administer the new (or enlarged) commune until a new Mayor had been elected, and at the same time a board of provisional councillors was set up, until the new municipal council was elected. The remuneration of the Government Delegate was to be borne by the new (or enlarged) commune and was also fixed in this decision.

These decisions were served on the Government Delegates and the members of the municipal board thereby appointed and were also published in the communes concerned, after 1 January 1972.

During January 1972 (for the exact dates in regard to the different applicants see below) the respective Government Delegate for the commune concerned requested the Mayor to transfer to him the commune's administrative and financial papers. In the case of the present applications the transfer was made under protest.

Dates of the administrative decisions and of the transfer of the communes' administration to the Government Delegate

.....

Remedies attempted by the applicants

The communes mentioned above in Group I complained to the Constitutional Court (Verfassungsgerichtshof) about the administrative decisions whereby their existence was found to have ended on 1 January 1972, and whereby a Government Delegate had been imposed upon them. They also lodged a separate complaint to the same Court against the actual taking over by the Government Delegate. Some of the individual municipal councillors concerned joined in both these complaints.

On 17 March and 16 June 1972 respectively the Austrian Constitutional Court rejected the complaints of both the communes and of the municipal councillors concerned.

.....

The communes mentioned above in Group II did not complain about the administrative decisions whereby their existence was found to have terminated on 1 January 1972; nor did the municipal councillors of these communes bring such an appeal before the Constitutional Court. On the other hand, they complained both about the transfer of the archives and the finances of the communes to the Government Delegate. The Austrian Constitutional Court, however, rejected their complaints.

.....

Summary of the reasons given by the Constitutional Court for its decisions.

In regard to the administrative decisions complained of by the communes and their councillors mentioned in Group I above

The Constitutional Court gave identical reasons for the dismissal of the appeals of the communes and the municipal councillors complaining about the individual administrative decision of the Government of the Province Niederösterreich. These reasons can be summarised as follows:

Insofar as the complaint was lodged by the commune concerned, the Constitutional Court found that it was inadmissible, since at the time when the appeal was introduced the commune had ceased to exist. It had lost its legal personality as a direct consequence of the Communal Structures Improvement Act 1971. In order to reach this finding, however, the Court had to examine whether or not the latter Act itself violated the Constitution and was therefore void. If this had been the case, the commune would not have ceased to exist and therefore could bring an appeal. The Court therefore examined in detail whether or not the above Act was in conformity with the Austrian Constitution. In this respect the Court found that the Constitution guaranteed the institution of independent communes as such, but not the existence of certain individual communes. It also decided that the commune's right to property and self-government had not been violated, and that other technical provisions of the Constitution had been duly respected. In regard to the argument of the applications that Articles 11 and 14 of the European Convention on Human Rights had been infringed, the Constitutional Court held that this was ill-founded. It stated that communes were not to be regarded as "free associations of persons" as they had alleged and that, consequently, Article 11 was not applicable to the present complaints. As regards Article 14, the Constitutional Court held that the facts complained of neither fell under Article 11

of the Convention, nor under Article 1 of Protocol No. 1, and that, therefore, Article 14 was equally inapplicable. For these reasons the Constitutional Court found that the above Communal Structures Improvement Act was in conformity with the Constitution and that, therefore, the communes concerned had ceased to exist on 1 January 1972. Consequently, their appeal to the Court had to be rejected as being inadmissible.

The same reasoning applied, according to the Court, to the appeal lodged by the municipal councillors on behalf of their respective communes. Their complaint did not need to be examined in this respect since the communes, which they represented, no longer existed.

The Court then examined the question whether and to what extent the personal rights of the municipal councillors, as such, might have been violated. The Court first found that they could only complain insofar as they had lost their functions in the municipal council, since only this concerned their own personal rights. In this respect the Court found that the above decision was not unlawful and that it had been taken by the competent authority.

The Court then discussed the question whether the appointment of a councillor as a member of the above-mentioned provisional municipal board violated the rights guaranteed by the Constitution. Several councillors so appointed [Applications Nos. 5929 (Mr B.), 5953 (Mr. K.), 5986 (Mr. G.)] had complained that they had not been asked whether they agreed to be appointed and that there had been no public procedure in this regard. The Court, however, found that the applicant's rights were not violated by their appointment since they had been at liberty either to accept or to refuse it.

The decision of the Constitutional Court as regards the constitutional appeals of the communes and their councillors, mentioned in groups I and II above, against the actual transfer of the administration to the Government Delegate

The Constitutional Court rejected as inadmissible the applicants' complaints against the taking over of the archives and the finances of the communes concerned. The Court held that the facts complained of could not be separately attacked before it, since they were merely the consequence of the execution of the above-mentioned administrative decisions which the Court had found to be lawful. The Court, therefore, could not discuss the merits of these complaints.

Submissions of the applicants as regards the right of the communes to bring an application under Article 25 of the Convention

The applicants submit that the existence of an independent commune can not validly be terminated by an Act which contravenes the Austrian Constitution and the Convention. The communes concerned are, therefore, still in existence.

The applicants also submit that communes have only local authority. They can therefore not be considered as governmental organisations but are "non-governmental organisations" and consequently entitled to bring applications under Article 25.

Complaints of the applicants under the Convention

1. Articles 6, 13 and 14 of the Convention

The applicants complain that the Austrian Constitutional Court failed to apply the provisions of the Convention to the facts submitted in their appeals, although the Convention had the force and rank of a constitutional law. In this respect they allege that the Court did not properly consider Article 14 of the Convention which forbids unjustified discrimination, although in fact the applicant communes were discriminated against: their independent existence had been

terminated exclusively for the reason that they had less than 1,000 inhabitants. They also submit that the Court did not correctly consider their appeals under Article 11 of the Convention, although this Article guarantees the right of everyone freely to associate with others, and therefore to form a commune.

The applicants allege that their appeals were not dealt with in a fair hearing since, had the Court considered the cases properly, it would have decided in their favour. They further submit that the Court's decision was incorrect as the Convention was not properly applied, and that this amounted to a denial of a fair hearing, and of an effective remedy such as is guaranteed under Articles 6, 13 and 14 of the Convention.

The applicants further complain that the Constitutional Court did not examine the merits of their appeal against the takeover of the communes' administration by the Government Delegate, and that thereby it violated Article 6 (1) of the Convention since it did not give them a fair and public hearing.

2. Article 11 of the Convention

The applicants moreover complain of a violation of Article 11 of the Convention as a consequence of the appointment of a Government Delegate to administer the communes concerned. They allege that this measure was unlawfully taken, since the Delegate was appointed in December 1971, although the law providing for such appointment did not enter into force until 1 January 1972. This appointment also violated, in their submission, the rights of the municipal councillors who, as agents of the communes, were equally protected by Article 11 of the Convention.

3. Article 1 of Protocol No. 1

The applicants further complain that the communes' right under Article 1 of Protocol No. 1, to a peaceful enjoyment of their possessions was violated since, having the Government Delegates imposed on them, they had to pay for their remuneration, and the communes' existence being ended, they also lost their property.

4. Article 10 of the Convention

The applicants further allege a violation of Article 10 of the Convention since the municipal councillors of the communes were prevented from obtaining the information concerning their commune, and expressing their opinions as regards the administration of the commune concerned.

5. Article 8 of the Convention

They further complain of a violation of Article 8 of the Convention since the taking over of the administration of the communes by the Government Delegates interfered with the communes' and their councillors' rights to respect for their correspondence.

6. Article 4 of the Convention

MM. B. (Application No. 5929/72), K. (Application No. 5953/72) and G. (Application No. 5986/73) also complain of a violation of their property rights as a consequence of their appointment as councillors on the provisional board which had to function until the election of a new municipal council. They submit that thereby they were forced to work without remuneration. They also complain that this constituted a violation of Article 4, paragraph (2), of the Convention, since they were subjected to compulsory labour.

THE LAW

As stated above, the present applications have been brought:

- I. in the name of the communes concerned,
- II. by some of their councillors.

The Commission has considered the complaints in this order.

I. Complaints in the name of the communes

Under Article 25 (Art. 25) of the Convention, the Commission may receive applications from "any person, non-governmental organisation or group of individuals" (in French text: "toute personne physique, toute organisation non gouvernementale ou tout groupe de particuliers").

The Commission has first examined the question whether the communes concerned could, as submitted by the applicants, be considered as "non-governmental" organisations within the meaning of this provision. It finds that local government organisations such as communes, which exercise public functions on behalf of the State, are clearly "governmental organisations" as opposed to non-governmental organisations" mentioned in Article 25 (Art. 25).

The Commission has next examined the question whether the communes concerned could nevertheless be regarded as "persons" or "groups of individuals" in the sense of Article 25 (Art. 25) of the Convention. It finds that such a construction would not be consistent with the clear distinction made in this provision between "non-governmental organisations" on the one hand and "persons" or "groups of individuals" on the other.

The Commission concludes that the communes concerned could not at any stage bring an application under Article 25 (Art. 25). It follows that their complaints are incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention, irrespective of whether the communes still existed under Austrian law when the present applications were filed in their name.

II. Complaints of the councillors

These applicants complain mainly about the consequences of their communes' dissolution with respect to their status as organs and members of the communes. In particular:

1. They submit that their freedom of association under Article 11 (Art. 11) of the Convention was violated by the appointment of a Government Delegate. However, neither the existence nor the autonomy of a public body such as a commune, nor the official functions exercised within such a body, are protected by Article 11 (Art. 11) or any other provision of the Convention. The Commission observes in this connection that communes are not associations which are formed and freely joined by individuals but bodies established and governed by public law. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27 (2) (Art. 27-2).

2. The applicants further complain that their right to a fair hearing under Article 6 (Art. 6) of the Convention was violated by the Constitutional Court. However, the proceedings before that Court concerned the determination of constitutional, and not civil, rights and thus fall outside the scope of Article 6 (Art. 6). It follows that this complaint is equally incompatible *ratione materiae* with the provisions of the Convention.

3. The applicants also submit that the taking over of the administration by the Government Delegates interfered with the communes' and their councillors' rights to respect for their correspondence under Article 8 (Art. 8) of the Convention. However, rights under this provision in respect of correspondence cannot be invoked in the exercise of public functions. It follows that this complaint, insofar as it relates to the correspondence of the

councillors, is again incompatible *ratione materiae* with the provisions of the Convention.

4. The applicants further allege a violation of Article 10 (Art. 10) of the Convention, in that they were prevented from obtaining the information concerning their commune and from expressing their opinions as regards the administration of the communes concerned.

As regards the first complaint, it appears that the applicants claim the access to information which is not normally available to the general public but which, they consider, should be put at their disposal in their capacity as councillors. However, Article 10 (Art. 10) does not accord to public officials a special right of information which is wider than that of other persons.

Furthermore, as regards the applicants' complaint that they were prevented from expressing their opinions with respect to the administration of their communes, the applicants have failed to show that they were in fact so prevented. It follows that the complaint under Article 10 (Art. 10) is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

5. The applicants also invoke Article 1 of Protocol No. 1 (P1-1) to the Convention which states that every natural or legal person is entitled to the peaceful enjoyment of his possessions. However, the applicants' property rights were in no way affected by the measures complained of. Any property rights of the former communes cannot be regarded as being those of their councillors or members, nor does the remuneration of the Government Delegates constitute any burden on the applicants' property. This is also true in respect of the appointment of three applicants as councillors on the provisional board. It follows that this complaint is equally manifestly ill-founded.

6. Three of the applicants also complain that their appointment to the provisional board violated Article 4, paragraph (2) (Art. 4-2), of the Convention which prohibits forced or compulsory labour. The Commission notes, however, that the applicants were free to resign. It follows that this complaint is again manifestly ill-founded.

7. The applicants have finally invoked Articles 13 and 14 (Art. 13, 14) of the Convention. However, Article 13 (Art. 13) relates exclusively to a remedy in respect of a violation of one of the rights and freedoms set out in the other Articles of the Convention, and the Commission has already found that, in the present case, not even the appearance of such a violation has been established. Furthermore, Article 14 (Art. 14) prohibits discrimination only with regard to the enjoyment of the rights and freedoms set out in other Articles of the Convention, and the Commission has already found that, in the present case, the related complaint concerning fair trial before the Constitutional Court falls outside the scope of the Convention. It follows that the remainder of the applications is incompatible *ratione materiae* with the provisions of the Convention.

For these reasons, the Commission DECLARES THIS APPLICATION INADMISSIBLE.