Border crossers.
Malo čez. Grenzgänger.

40 grilc vouk škof

RECHTSANWÄLTE ° ODVETNIKI ° LAWYERS

40

Border crossers.

Malo čez. Grenzgänger.

DR. ROLAND GRILC
MAG. RUDOLF VOUK
DR. MARIA ŠKOF

Introduction

Dear clients and colleagues, dear friends of the *GRILC VOUK ŠKOF* Law Office

Border crossers. Grenzgänger. Malo čez. This motto briefly and concisely describes what distinguishes the GRILC VOUK ŠKOF law firm and what it stands for. Border crossers. Grenzgänger. Malo čez. It is not only to be understood from a geographical point of view. The GRILC VOUK ŠKOF law firm is active in Austria as well as in Slovenia and the other successor states of the former Yugoslavia. *Border crossers. Grenzgänger. Malo čez.* It also stands for the approach with which the GRILC VOUK ŠKOF law firm is tirelessly seeking solutions to the legal problems of its clients. The cases and decisions made by the lawyers of GRILC VOUK ŠKOF in Austria, Slovenia and beyond bear witness to this. As members of the Slovene ethnic group in Carinthia, we are well accustomed to fighting persistently for rights and to breaking new - often unusual - ground. Maybe this is the reason why many a client has chosen GRILC VOUK ŠKOF's legal advice.

Dr Matthäus Grilc founded the law office in 1979. Over the years, Dr Roland Grilc, Mag Rudolf Vouk and Dr Maria Škof have joined the team. Since 2012 the firm has been operating under the name GRILC VOUK ŠKOF. On the occasion of the 40th anniversary of the law firm we have decided to publish the commemorative publication "*Grenzgänger. Malo čez.*" with a series of articles on the firm's activities and its most remarkable successes, as well as on everyday life at the firm. We would like to thank all our clients for their trust and loyalty. We will continue to do everything in our power to live up to this trust. We would like to thank our colleagues for their good, professional cooperation. We would like to thank all our friends for always standing by us and supported us. Our special thanks also go to our former employees. They form an important - albeit often overlooked - pillar of our firm. Special thanks go to our partners Veronika, Lidija and Tone, as well as to our families for their endless patience and support.

The commemorative publication has been published in printed form in Slovene and German. The English and Croatian translations of the individual contributions can be found on our home page www.gvs3.at.

Colleagues:

Nicole Brumnik
Mojca Erman, LL.M.
Gisela Grilc-Kargl
Julia Grilc
mag. Sara Grilc, LL.M.
mmag. Katarina Pajnič
Elvina Jusufagić
mag. Eva Maria Offner
mmag. Maja Ranc
mag. Martin Sima
Bernadka Škof
Amalia Valeško
mag. Matej Zenz

Greetings

DR. PETER ZIMMERMANN
President of the
DACH European
Lawyers' Association e.V.

Dear colleagues,

On behalf of the Board of Directors and all almost 600 members of the DACH European Lawyers' Association e.V., (»DACH«) I would like to congratulate the founders and all current lawyers and employees of GRILC VOUK ŠKOF on their 40th anniversary. Our international lawyers' association DACH, which operates across borders and is oriented towards the German-speaking attorneys, has a lot in common with GRILC VOUK ŠKOF. This prompts us to draw special attention to what unites us on this anniversary. First of all, the round numbers of our existence should be mentioned. While DACH, founded in 1989, celebrates its 30th anniversary this year, GRILC VOUK ŠKOF can already look back on 40 years of active legal practice and remarkable expansion during this time. Both are active across borders. While DACH, in contrast to most other international lawyers' associations in Europe, has chosen the German language as a distinctive and unifying element, and the abbreviation naturally stands for the German-speaking countries, GRILC VOUK ŠKOF can rightly call itself a »border crosser«, especially in the area of Austria/Slovenia, and thus also has the bilingualism of German and Slovene as a distinctive and style-forming element. Last but not least, it is of course the people who connect our two units. The name partner and nephew of the founder of GRILC VOUK ŠKOF, the attorney Dr Roland Grilc, has been an active member of DACH for 25 years. He has often distinguished himself and the firm he represents by giving brilliant lectures at our bi-annual DACH conferences. Even though Slovenia, as a non-German speaking country, is not one of the core countries of DACH, it should be emphasized that the law firm GRILC VOUK ŠKOF comprised half of all DACH members with a registered office in Slovenia, that is, in addition to Dr Roland Grilc, another name partner, the attorney Dr Maria Škof.

So we can only hope that both DACH and GRILC VOUK ŠKOF will continue to develop as excellently as they have since their respective establishments, and that they will both continue to celebrate many round anniversaries together in the future.

MAG. ROMAN ZAVRŠEK
Attorney at Law
Chairman
of the Slovenian
Bar Association

Dear colleagues,

This year, the Austrian law firm GRILC VOUK ŠKOF based in Klagenfurt/Celovec, is celebrating its 40th anniversary. This is an honourable celebration, which should be acknowledged in particular for the law firm‘s efforts to improve the rights of the Slovene ethnic group in neighbouring Austria.

The GRILC VOUK ŠKOF Law Office was founded in 1979 by Dr Matthäus Grilc in Klagenfurt/Celovec. The current partners of the law firm, as well as its founder, are members of the Slovene ethnic group in Carinthia, which is closely connected to Slovenia. All partners and many employees of the law office are also members of the Slovene ethnic group in Carinthia. This connection was so strong that, in addition to having branches in other cities in Austria, they decided to open a branch office in Slovenia in Ljubljana and to register as attorneys with the Slovenian Bar Association. They also actively participate in the activities of the Slovenian Bar Association.

The scope of their activities is transnational. Throughout their existence, they have represented and advised both Slovene companies in their activities in Austria and, vice versa, Austrian companies in their activities in Slovenia.

Their contribution to the fight for the rights of the Slovene ethnic group and the Slovenian language in Carinthia, as well as other areas outside Slovenia, must be mentioned in particular. The firm has been consciously committed to the use of the Slovene language and the rights of the Slovene ethnic group ever since its founding, both with regard to companies hindered in entering the market by legal provisions of the Republic of Austria as well as ordinary people who use the Slovene language in their daily communication and life. In short, the law firm‘s contribution to the use of the Slovenian language in Austria and in the struggle for the rights of the Slovene ethnic group is significant and deserves recognition. The firm‘s contribution to improving the situation of Carinthian Slovenes with regard to bilingual place name signs and the entry of Slovene names and surnames with diacritical marks into Austrian public records and registers is also particularly noteworthy, achievements of which we colleagues from Slovenia can also be proud.
On the occasion of this anniversary, we wish the GRILC VOUK ŠKOF Law Office continued success in its activities.

MAG. FRANZ BOSCHITZ
Head of the District Court of Bleiburg/Pliberk and Eisenkappel/ Železna Kapla

Dear Attorneys at Law,

As a judge of the two bilingual district courts, Bleiburg/Pliberk and Bad Eisenkappel/Železna Kapla, I would like to congratulate you warmly on your 40th anniversary.

Since I was appointed judge at the BG Bleiburg in October 1993, the GRILC VOUK ŠKOF law firm has always played a role in my professional life. Due to the fact that the senior partner of the firm, Dr Matthäus Grilc, has his roots in Loibach, he has been engaged in several lawsuits in his home area. Dr Grilc was always a very professional, honest, friendly and ambitious legal representative, who fought for his case, but always remained loyal to the outcome of the proceedings.

Many of the lawsuits dealt with typical rural matters, such as border disputes and conflicts within farming families, but not only these cases were represented by the law firm. I can recall the case of a skiing accident on the Petzen, which went through all instances up to the Supreme Court in Vienna.

With the name attorneys of the law firm, Dr Roland Grilc, Mag Rudi Vouk and Dr Maria Škof, we have a very professional and collegial relationship.

I would like to briefly mention a particular case represented by GRILC VOUK ŠKOF, which I referred to the European Court of Justice in Luxembourg for a preliminary ruling in the Slovene language in January 2017. The case, Čepelnik C-33/17, was heard by the Grand Chamber on February 26th, 2018 and decided by judgment on November 13th, 2018. The legal opinion of GRILC VOUK ŠKOF has been confirmed in its entirety. The main question was whether the Austrian Wage and Social Dumping legislation was compatible with European law.

I wish the attorneys and employees of GRILC VOUK ŠKOF a lot of success in their legal work, fascinating trials and satisfied clients.

UNIV. PROF. DR.
GERNOT MURKO
Lawyer
President of the
Bar Association for Carinthiao

Lawyers shaping society

Ever since there have been advocates, they have played a formative role in their respective societies. In Austria they made an especially decisive contribution in the revolutionary year of 1848 and thereafter, so that finally in 1867 a constitutional state could be established. They also contributed to the creation of constitutional controlling procedures for the entire state administration in the form of the Imperial Court (Reichsgericht) and the Administrative Court. Austrian advocates were also prepared to disregard their economic well-being, resulting from the numerus clausus and the state admission of advocates, and accept economic disadvantages as a consequence of free advocacy. With the provisional Advocate's Regulations (Advokatenordnung), which is also the cornerstone of the present Lawyers' Code, the free bar was founded. Anyone (the first woman became a lawyer in Austria in 1928) who fulfilled the legal requirements could now become a lawyer. The fate of being a trainee lawyer with more than 20 years of legal training for politically unpopular people was finally a thing of the past.

However, only democratic constitutional states can tolerate free advocacy. In 1934, the free, self-governing law was abrogated and placed under state administration. In 1938, it was relegated to history.

According to Article 1b paragraph 1 and Article 7 of the 5th Regulation to the Reichsbürgergesetz of September 27th, 1938, lawyers of non-Aryan descent were excluded from the practice of the profession and were therefore to be delisted. On March 13th, 1938, a total of 2,541 lawyers were registered in the list of the Vienna Bar Association. On December 31, 1938, there were only 771 left. In Carinthia, there were 98 registered lawyers at the end of 1937 and still 74 at the end of 1948. This indicates that the number of colleagues of Jewish descent in Carinthia was far lower than in the federal capital. Most of the excluded colleagues obviously had a political disposition that the Nazi state did not like. The Nazi system assigned advocates a different primary task. It was no longer the enforcement and safeguarding of the rights of clients vis-à-vis the state, but the enforcement of National Socialist ideas within the judiciary that should be the objective of lawyers' activities. It should not be forgotten, however, that even in this period many remembered the past and considered the independent lawyer's task to be different and, utilizing their personal freedom, attempted to effectively represent clients and offer them legal assistance.

With the rebirth of the democratic constitutional state, the free advocacy in Austria was also re-established. Since 1945, lawyers have again been able to pursue their activities independently of the state and courts.

But such free advocacies do not exist everywhere. In the countries of the former Eastern Bloc, the freedom of advocacy was a foreign word. Like in other totalitarian systems, lawyers had to serve the system and not the rule of law. In order to offer assistance to the lawyers working in these states, the Austrian Bar Association organized the European Presidents' Conference of Lawyers' Organisations, the "Wiener Advokatengespräche", in 1973. Personal contacts and assistance were to pave the way for free advocacy in these states as well. And in 1989, with the fall of the Iron Curtain, the time had come.

However, if we look at the situation in Turkey today, as well as in Russia, we know that state-independent advocacy is not an end in itself. Lawyers play an essential role in society because of their abilities as representatives of parties, but also because of their comprehensive knowledge of substantive and procedural law. They contribute to the further development and preservation of the rule of law and legal development. Especially in times when fundamental rights are restricted by police security measures, there is hardly anyone else who stands up for the fundamental rights of citizens. Lawyers, however, raise their voices.

When the rights of citizens are massively violated by data retention, it is lawyers who bring down the relevant regulations by writing complaints to the courts of public law. If surveillance measures are introduced in criminal law and security legislation is enacted, which cannot be reconciled with either the European Charter of Fundamental Rights or the European Convention on Human Rights, it is again almost without exception the lawyers who publicly express criticism.
If the procedural rights of individual applicants for justice are to be curtailed in order to allegedly make proceedings more efficient, then it is again only the free and independent lawyers who oppose this in public. It is at this very time that citizens are being denied independent legal advice. For the first time since the provisional Advokatenordnung (Advocate's Regulations) of 1968, which clarified the legal representation of asylum seekers as being independent of the state and the courts, the representation of asylum seekers is to be taken over by employees of a Federal Support Agency (Bundesbetreuungsagentur). The reason given for this request is that lawyers are allegedly delaying proceedings.

Does this mean that the legislature regards the taking of procedural steps as mere delays and procrastination? Does this mean that employees of a Federal Support Agency are not allowed to take any legal remedies for asylum seekers because they receive instructions to the contrary? Such regressions under the rule of law must be resisted vigorously.

Particularly in asylum proceedings, appeals against decisions of the Federal Asylum Office filed by lawyers have a 50% success rate at the Federal Administrative Court. In no other legal matter does the Administrative Court accept extraordinary appeals against decisions of the Federal Administrative Court in such numbers as in asylum proceedings.

Procedural acceleration cannot be achieved by curtailing appeals, but only through high-quality decision-making practice in the first instance. Citizens have the right to independent legal representation. If the state deprives them of this right, lawyers must oppose it.

In the area of basic criminal law, lawyers are also involved in improving the legal position of citizens. Although aggravation of sentences is often seen as a panacea against further crimes, our practical experience shows that this is not the case. When attorneys defend in criminal proceedings, they point out the legal protection deficits that also exist in the Austrian criminal justice system. Especially in cases of particularly serious offences that are tried before a court of lay assessors, there is only one instance of fact. Penalties of up to ten years can be imposed without the first judge's assessment of the evidence being subject to review. While civil proceedings over €2,700.00 guarantee a review of the facts in a second instance, this is not the case in criminal proceedings. Lawyers will in turn make their contribution to ensuring that the principles of the rule of law are applied in criminal proceedings.

Lawyers are also actively involved in the legislative process. Not only do they encourage the drafting of legislation; they make their expertise available in legal review procedures. Those who deal with law enforcement on a daily basis can point their fingers at the weak points in proposed legislation in order to enable the laws to be enforced in a reasonable manner afterwards. This role is not always loved either. Regarding neuralgic laws, review periods are limited to three days. Sometimes there is no evaluation at all and only an initiative proposal is made in the National Council in order to avoid the democratic discourse of legislative proposals. This, too, is repeatedly criticised by the legal profession. Governments know that we are only bound by our three basic principles, namely independence, confidentiality and freedom from conflicts of interest. There is no dependence on the state and the courts. But lawyers do not have to be loved either. It is enough for us if we are accepted, respected and appreciated.

In particular the GRILC VOUK ŠKOF law firm has proven this through its commitment more than once during the last four decades. The law serves not only as an instrument for the enforcement of individual interests, but also for the enforcement of socio-political and constitutional changes. The advocatory art of our colleague Rudi Vouk in combating administrative penal sanctions, which led to a solution (if not entirely satisfactory) to the issue of place-name signs in Carinthia, is an example of this.

Law is not an end in itself, but a means to an end in order to bring about socially desirable results. This also applies to the activities in European law, which now form the main focus of the law firm celebrating its anniversary.

If AVRAG (Employment Contracts Adjustment Act) and the Law on Wage and Social Dumping are used in Austria to seal off its own market from other member states, European law limits these intentions. In turn, the legal skills of lawyers lead to the result that the European objectives of the internal market must also be applied to border traffic between Austria and its neighbouring states. A tedious path, but crowned with success in the end.

Lawyers, free advocates, form an essential part of a free democratic constitutional state. They exercise their role within the framework of and in accordance with the legal system. It is impossible to imagine a democratic society without them.

Since its foundation, this jubilant law firm has fulfilled this task to the best of its ability. On behalf of the Carinthian Bar Association, I would like to express my sincere congratulations and gratitude. This is combined with the request to continue working for freedom and justice.

40 years GRILC VOUK ŠKOF

The GRILC VOUK ŠKOF Law Office commenced its activities on July 1, 1979. Dr Matthäus Grilc opened his firm in a small room at the same address where the office is still located today. Prior to doing so, Dr Grilc was an associate with Dr Janko Tischler, the then doyen of the Carinthian Slovene lawyers. At the same time, Matthäus Grilc was also chairman of the Council of Carinthian Slovenes. The 1970s were very turbulent for the Slovene minority, and together with Dr Franci Zwitter, the chairman of the Central Association of Carinthian Slovenes, Dr Grilc represented Carinthian Slovenes activists, who were drawing attention to the still unimplemented rights of the Slovene minority with some sensational actions. At the same time, Dr Grilc, himself the Chairman of the Council of Carinthian Slovenes and political representative of the ethnic group, had to maintain good contacts with the Yugoslav states.

Before a lawyer takes the plunge into self-employment, he usually has to secure a certain amount of capital, not in the form of money, but in the form of clients he will represent in the future. These can be banks, insurance companies or larger companies that continually entrust the lawyer with cases, or perhaps he is the only lawyer in a small town and thereby secures a constant flow of clients.

For Dr Matthäus Grilc it was a little different: As a political representative of the Carinthian Slovenes he was already well-known in the community and enjoyed their trust, so they also came to him with the legal problems of daily life. These were border disputes, traffic accidents, defamations of honour, divorces, handovers of farms, contracts of sale, etc. Some - even if only a few - German speakers also decided to entrust Dr Grilc with their legal matters. They knew him as a representative of the minority and knew that their concerns and interests would be in good hands with Dr Grilc, especially as his views were not always in line with those of the politics of Carinthia and Austria as a whole. The clients initially came from the surroundings of Bleiburg/Pliberk and Kühnsdorf/Sinča vas, the Dr Grilc's hometown and place of residence. From the very beginning, however, he also represented companies from the Yugoslav states in their legal difficulties in Austria. With regard to the structure of the law firm, it could be said that in its early years it was comparable to a rural law firm, with the difference being that it represented mainly Slovene clients and some of its cases were politically sensitive.

Dr Roland Grilc joined the firm in 1982, initially as an associate and then as a lawyer from 1987. He is the nephew of the firm's founder. When he joined the firm, it gained a stronger business focus, in particular in view of the ever stronger cross-border economic cooperation. At that time, it was of course not possible for an Austrian attorney to represent clients directly before the authorities and courts in Yugoslavia, but it was possible to cooperate with colleagues from Yugoslavia.

In order to represent Yugoslav companies in Austria, good knowledge of the socialist legal system was also required, and it was also necessary to be able to explain the basic organisation of associated work (Temeljna organizacija združenega dela - TOZD) and a collective organisation of associated work (Sestavljena organizacija združenega dela - SOZD) or what was meant by social property (družbena lastnina) to the Austrian courts. Dr Roland Grilc became a self-employed attorney at law at the time when Slovenia was withdrawing from the socialist market economy, and he actively participated in the highly interesting process of creating a new legal system. He was also involved in the establishment of the first private companies in Slovenia and co-authored the first Slovene legal literature in this field. He accompanied numerous Austrian companies to Slovenia, which was completely unknown to them at the time, as well as to Croatia.

At the same time, Dr Matthäus Grilc, who was still Chairman of the Council of Carinthian Slovenes, actively supported the Republic of Slovenia on its way to independence. For example, the law firm Grilc & Grilc, as it was called at the time, conducted the proceedings that made it possible for the Consulate General of the former Yugoslavia in Klagenfurt to transform into the Slovene Consulate, which was by no means a matter of course. During the time of Slovenia's independence, many later renowned representatives of Slovene politics and economy were regular visitors at both the Grilc law firm and Dr Grilc's home.

Slovenia's independence significantly expanded the scope of activities undertaken by the law firm. It was now possible to make investments in Slovenia, and Austrian companies were able to establish companies there as well. The scope of cross-border activity increased significantly and so did the work of the law firm. Nevertheless, certain obstacles remained: An Austrian executory title could not be enforced in Slovenia and vice versa, apart from minor exceptions such as the execution of procedural costs or alimony. Anyone who wanted to provide legal advice in both systems in the border area had to know both legal systems.

In 1991, Mag Rudolf Vouk joined the law office first as an associate and in 1997 as a lawyer. The firm's previous focus remained the same. Vouk additionally placed a strong focus on constitutional and administrative law as well as social law. On the one hand, this was due to the circumstances of the time. Vouk joined the firm just as war had broken out in the former Yugoslavia, and numerous refugees, especially from Bosnia, needed legal assistance on a daily basis because they were unable to speak German. Grilc & Grilc was one of the few places where they could obtain information in their mother tongue. This was accompanied by an increase in the number of administrative and social security procedures, as well as procedures related to citizenship, pension matters, family allowances and cross-border recognition of documents. At the time, Vouk was also a local councilman in his home municipality Eberndorf/Dobrla vas, so due to his knowledge of municipal law and related areas, such as sewage and water management, the registry office, municipal regulations, etc., his field of activity expanded to these areas. Vouk also tried to assert outstanding minority rights in legal proceedings. The first visible success in this respect was the Constitutional Court's decision on the official language, according to which Slovene had to be

recognized as an official language in the municipality of Eberndorf/Dobrla vas. The provisions of the Ethnic Groups Act and the Regulation on Official Languages were both repealed as unconstitutional.

One year later, in 2001, the most sensational decision followed, the so-called »Ortstafelerkenntnis« of the Constitutional Court. The court decided that bilingual place-name signs should be erected in St Kanzian/Škocjan. This case was initiated because Vouk drove too quickly through St Kanzian/Škocjan and then appealed against the fine with the argument that the place-name sign had not been properly displayed, because it was not bilingual. As a consequence of the findings of the Constitutional Court and in line with the rule of law, the area in which Slovene was recognised as an official language should have been expanded from 2000 and 2001, and bilingual place-name signs should have been erected in approximately 400 places. However, this is not what transpired. What followed were 10 years of a disregard for the rule of law by politicians at both the state and federal levels, and 30 additional decisions by the Constitutional Court. Only in 2011 was a compromise finally reached, and while it too is by no means in line with the decisions of the Constitutional Court, it enjoys constitutional status. Nowadays, Vouk continues in his efforts to secure minority rights in various proceedings, including outside Carinthia, and the GRILC VOUK ŠKOF law firm is one of the few firms that have also conducted proceedings in the Croatian language before the Administrative Court for Burgenland.

Dr Maria Škof joined Grilc & Partner in 2009 following her practice as an associate in Ljubljana and Vienna. With her entry to the firm, branch offices were opened in Graz and, almost simultaneously, in Ljubljana. It was at this time that preparations began for the legal challenges arising from Slovenia's accession to the European Union. Slovenia joined the EU in 2004, but access to the Austrian market, especially in the area of freedom to provide services and free movement of workers, was denied until 2011. Austria took full advantage of the transitional period and the associated possible restrictions. A legal area that was originally only a secondary activity, i.e. advising on the filing of service notifications and notifications of posted employees, became a focus of GRILC VOUK ŠKOF. From 2011, Austria has continuously tightened the conditions for the cross-border provision of services and thus tried to protect the Austrian market from unwanted competition from other EU member states, especially from neighbouring South-eastern European countries. According to GRILC VOUK ŠKOF, the Austrian approach contradicts European law. In the Čepelnik proceedings before the European Court of Justice in Luxembourg, Dr Škof won the first verdict in which it was established that Austrian legislation in connection with wage and social dumping is not compatible with European law. Currently, GRILC VOUK ŠKOF is involved in several such proceedings pending before the European Court of Justice.

European law is particularly important for the activities of the lawyers of GRILC VOUK ŠKOF. Unlike attorneys who focus mainly on the national market, GRILC VOUK ŠKOF, which is based in two member states of the EU and is also active in other countries, requires comprehensive knowledge of European law. However, this also leads to a different approach to the national legal system. It is therefore not surprising that GRILC VOUK ŠKOF has already conducted proceedings before the European Court of Justice in Luxembourg in various fields of law.

Dr Matthäus Grilc, the founder of the law firm, retired in 2014. However, he is still available to provide advice and assistance to the active lawyers and employees of the firm. The law office has continued to grow and is now also represented by attorneys at law MMag Maja Ranc, Mag Sara Grilc, LLM and Mojca Erman, LLM in Ljubljana and the associates Mag Matej Zenz, Mag Martin Sima and Mag Eva Maria Offner. However, GRILC VOUK ŠKOF is already looking forward to expanding further. The firm has also opened a branch in Vienna and is thus also represented in the capital.

In addition to German and Slovene, the GRILC VOUK ŠKOF Law Office also represents clients in Croatian, Serbian and Bosnian, and English, Italian and French are among the languages of the office as well. Dr Roland Grilc, Mag Rudi Vouk and Dr Maria Škof are also admitted as attorneys in Slovenia.

In the following articles, we would like to illustrate the most significant events in the 40-year history of the firm: important decisions, major successes and also the development of the law firm itself, which is part of the small minority of Carinthian Slovenes and operates on both sides of the border between Austria and Slovenia, i.e. literally in Europe. We cordially invite you to accompany us on this journey through time.

DR. MATTHÄUS GRILC, ATTORNEY AT LAW

All beginnings are difficult

After graduating from the BG/BRG for Slovenes in 1965, I first completed my military service. I had the intention to study, however, I only decided to study law at the last moment, before the beginning of the winter semester in 1966. I was interested in many different fields of study, with the only exception being medicine. The decision to study law was taken on the spur of the moment, but I have never regretted it.

My future wife Maria accompanied me to Vienna and worked diligently, so that I could study without worries. When I graduated from law school in 1971, the then Federal Chancellor Bruno Kreisky offered me the opportunity to join the diplomatic service, which naturally meant that I had to stay in Vienna. Since I had married Maria in the meantime and we had two small children who were with their grandmother in Kühnsdorf/Sinča vas, we returned to Carinthia. My wife Maria got a job at the tax office, although there was a lot of animosity towards her being a Carinthian Slovene.

I completed the court apprenticeship in Klagenfurt and then joined the law firm of Dr Janko Tischler in

Klagenfurt in 1972 as an associate. I worked there for seven years, although I had already been registered as an attorney at law with the Carinthian Bar Association since June 2, 1976. Nevertheless I stayed another 3 years in the law firm of Dr Tischer, mainly due to his poor state of health.

But since I knew that Dr Tischler‘s son would eventually take over the law office, it was clear to me that I had to go my own way and open my own office, which I ultimately did on July 1st, 1979.

Founding my own law firm was not the easiest thing for me, and of course I lacked the money for necessary investments. Together with my wife Maria we were able to obtain the necessary loans, so that in March 1979 I bought a small apartment in Klagenfurt at Karfreitstraße 14, which was converted into a law office.

The first secretary was Mrs Erika Jug, at that time still with the surname Mak. She had just graduated from the School for Economic Professions in St Jakob/Šentjakob. At the beginning I only equipped the office with the most necessary supplies, and in the first months my wife had to take care of Erika‘s salary with her own income. In addition to her regular work at the tax office, Maria also managed the bookkeeping in my office. As the volume of work increased rapidly, I was able to take on a second secretary on March 1st, 1980, Ms Malči Valeško, who is still working in the office today and will celebrate her 40th anniversary next year. The four of us were definitely a successful team right from the very beginning. All three employees literally lived with and for the firm. Without the commitment of the employees, the law office would not have been able to develop as it did. That is why I would like to thank these pioneers once again today on the occasion of the 40-year anniversary of our law office.

In these early months we did not have a copy machine; copies were usually printed in the office of the Council of Carinthian Slovenes. We had traditional typewriters, but when we had to make several copies of submissions to the court or public authorities, we used tracing paper, even for 10 or more copies. The work was made a little easier when typewriters with a spherical printball were introduced. When texts had to be written in Slovene, the secretary simply exchanged the printball. In the following years, the technology developed rapidly, but we lived through several generations of typewriters before the first computers were introduced in our office.

Back then, if an extract from the land register or from the commercial register was required, a secretary went to court and manually copied the necessary information, the accuracy of which was then confirmed by the official in court. A special feature were also the so-called first hearings in civil proceedings. A secretary usually intervened in these first hearings and was therefore issued authorization by the Bar Association. When the secretary represented the plaintiff and the defendant did not appear, she applied for a default judgment, and when the secretary represented the defendant, she contested the complaint and then the normal procedure was initiated.

One of the main focuses of my work in the 1970s were criminal and administrative proceedings in connection with the Carinthian Slovenes‘ struggle for equal rights for their ethnic group. I am of the opinion that this fight for the rights of the Carinthian Slovenes in the 1970s was decisive for the survival of the ethnic group as such. The means had to correspond to the pressure the Carinthian Slovenes were subjected to at that time.

As an associate and for the last three years as an attorney in the law firm of Dr Janko Tischler, I represented the interests of members of the Slovene ethnic group in about 60 proceedings concerning ethnic group politics. These included media proceedings, defamatory statements in the press, judicial criminal proceedings, administrative criminal proceedings, proceedings before the Constitutional and Administrative Court, etc.

The greatest attention was probably stirred by the proceedings against Filip Warasch, and also the proceedings against four men from Zell/Sele, who had abducted and destroyed the ballot box on November 14th, 1976 during a special census, as well as the proceedings before the Constitutional Court in connection with the demonstration in St Kanzian/Škocjan on August 8th, 1976 against the erection of an „Abwehrkämpfer“-memorial.

The criminal proceedings against Filip Warasch, then Secretary General of the Council of Carinthian Slovenes, were held before the Regional Court in Salzburg. Warasch had been accused of deliberately endangering the community and endangering life and property of others. It was alleged that Warasch was trying to persuade another person to carry out a bombing. This was supposed to have happened in autumn 1976, and Warasch had been arrested by the police on 21 January 1977.

I represented Filip Warasch as a defence attorney alongside Dr Franci Zwitter until I was dismissed by the court on a motion filed by the public prosecutor‘s office, because they wanted to hear me as a witness. It was alleged that the explosives had been in my car. Dr Michael Stern, one of the most renowned defence lawyers of the time, had intervened in my place. I can remember a conversation with Dr Stern, who one day called me into his office at 4:30 in the morning.

Warasch was acquitted by decision of the Regional Court in Salzburg on October 19th, 1977 for lack of evidence. The whole matter was yet another attempt to exert pressure on the Carinthian Slovenes, and Warasch had described the proceedings as a „criminal provocation“.

The facts of the case regarding the abduction of the ballot box on November 14th, 1976 in Zell/Sele were quite clear. It had been a protest against the government's attempt at „defining a minority", a pure act of self-defence against the prevailing minority policy of the Austrian government. The criminal proceedings against the four persons from Zell/Sele were held before the Regional Court in Wiener Neustadt, to which the criminal proceedings had been delegated as no objective proceedings could be guaranteed in the Carinthian political climate at the time.

I defended the accused solely with political arguments and demanded that the criminal proceedings should be dismissed. I called attention to the thirteen victims from Zell/Sele who had been executed on April 29th, 1943 in Vienna merely on the grounds that they belonged to the Slovene ethnic group. The destruction of the ballot box seemed all the more understandable as the family history of the four accused persons was closely linked to that of the executed victims.

On April 29, 1978 there was a commemoration ceremony in the Vienna Regional Criminal Court on the occasion of the 35th anniversary of the execution of the victims from Zell/Sele. President Dr Rudolf Kirchschläger also attended the ceremony. Two days before the commemoration Dr Kirchschläger, as Federal President, had exercised his right to pardon and stopped the criminal proceedings against the four activists from Zell/Sele.

This topic was recently presented very realistically in the film Sine legibus by Milena Olip.

On August 8, 1976 the unveiling of an „Abwehrkämpfer"-monument was held in St Kanzian/Škocjan. Many young Carinthian Slovenes demonstrated peacefully with banners against this inauguration. However, the police brutally dissolved the protest, arrested the participants, handcuffed them and detained them in the police station in Kühnsdorf/Sinča vas.

I filed a complaint for twenty-five persons with the Constitutional Court on the grounds of the violation of constitutional rights by the exercise of direct authority and coercive power of the administrative organs. The Constitutional Court appointed the Constitutional Judge Dr Piska as rapporteur. He interrogated the complainants, the policemen and other witnesses at the Regional Court in Klagenfurt/Celovec for several days, and on April 6, 1977 the oral hearing before the Constitutional Court took place. In the majority of cases, the Constitutional Court found that the police officers had violated the complainants' constitutionally guaranteed rights by exposing them to degrading treatment and unlawfully depriving them of their personal freedom. The Constitutional Court invoked Article 3 of the European Convention on Human Rights, which has constitutional status in Austria and provides that no one may be subjected to inhuman or degrading treatment.

Of course, this finding caused a great stir amongst the Carinthian public, as the Constitutional Court put the security organs in their place.

Since I had already been handling all proceedings related to ethnic group politics in the law firm of Dr Tischler, I naturally continued with them even after opening my own law firm on July 1st, 1979.
At that time, there were still criminal proceedings pending against fifteen Carinthian Slovenes. Six of them had been accused of „labelling actions" (Beschriftungsaktionen) in 1976, eight of them had been accused of resisting the state authority in connection with the opening of the „Abwehrkämpfer"-monument in 1976 in St Kanzian/Škocjan and in connection with a demonstration in Bleiburg/Pliberk in 1977, when Carinthian Slovenes were protecting a bilingual place-name sign that had been erected on private property. The defamation of state organs was the subject of another one of the proceedings.

By July 1, 1979, six criminal proceedings had already been discontinued at the investigation stage, primarily because no criminal offence could be established against the accused. In addition to the four persons from Zell/Sele, another accused has been pardoned by the Federal President. The Court of Appeal in Vienna has acquitted two defendants because it was of the opinion that their actions were not punishable. Only two persons were eventually convicted.

On December 7, 1979, the Council of Carinthian Slovenes and the Central Association of Slovene Organizations of the Austrian Federal Government presented an operation calendar in which, among other things, the immediate discontinuation of all criminal proceedings against Carinthian Slovenes in connection with their political actions for the fulfilment of Article 7 of the Austrian State Treaty was being demanded. The organisations also drew attention to the fact that all criminal proceedings against German-national „Ortstafelstürmer" dating from 1972 had been discontinued.

Nevertheless, the criminal proceedings before the Regional Court in Salzburg and the District Court in Wiener Neustadt continued. In fact, the proceedings concerning the delegation of jurisdiction took place before various courts, in Vienna, in Linz and even before the District Court in Ried in Upper Austria.

In the spring of 1980, President Rudolf Kirchschläger suspended six criminal proceedings against persons seeking pardon; the other defendants were granted amnesty in July 1985. This brought to an end all political trials against the Carinthian Slovenes in connection with their activities in the 1970s.

At the beginning of the 1980s, the Carinthian Slovenes tried to enforce the right to use Slovene as an official language, mainly in administrative and criminal proceedings. At that time, there were about forty such cases, in which I had been involved representing Ca-

rinthian Slovenes who demanded the use of Slovene as an official language in their cases. The administrative criminal proceedings concerned various offences, including two sentences issued by the District Council in Völkermarkt/Velikovec on April 7th, 1983 against Rudi Vouk, then Chairman of the Carinthian Students' Association, for initiating a meeting of some eighty pupils from the Federal Grammar School for Slovenes at the central railway station in Klagenfurt, which led to a blockade of the ticket counters. The action of the Carinthian Students' Association in 1983 attracted a lot of attention from the Carinthian public. The high school students arrived at the station in the morning and wanted to buy their tickets speaking Slovene. Since the railway officials did not want to understand them, they remained in front of the ticket counters and blocked them for a long time.

All Carinthian media had reported far and wide about the „railway station blockade in Klagenfurt". Even Federal Chancellor Kreisky has cancelled already scheduled talks with the two Slovene representative organisations because of this station action.

As in other proceedings, in the proceedings against Rudi Vouk I also requested the translation of the entire administrative criminal file into Slovene, referring to the provisions of Section V of the Ethnic Groups Act of 1976, in particular to Articles 15 and 16 of that Act. I advocated the position that the constitutional provision of Article 7 of the Austrian State Treaty provides for the Slovene language as an equal language to German. In this sense Section V of the Ethnic Groups Act of 1976 states that the Slovene language is to be considered an equal official language. These provisions stipulate that applications may be submitted to certain authorities and offices both in writing and orally in the Slovene language, that negotiations must take place in the Slovene language, and that decisions and orders must be issued and delivered in the Slovene language. If these provisions do not expressis verbis provide for the translation of the entire document into Slovene, this does not mean, that there is no right to have the document translated into Slovene. In such cases it would be necessary to determine the purpose and meaning of the legal provisions by means of interpretation. In the sense of an objective-teleological interpretation, one has to ask oneself what sense such a regulation has. The law had to be thought through to the end. In such cases, it should be assumed that proceedings, whether in German or Slovene, can only be conducted if the necessary information is available from the files or parts of the files. Within the meaning of Paragraph 17 of the General Administrative Procedure Act 1950, the party has the right of access to the file, namely to those parts of the file which are essential for the representation of the party's legal interests.

Assuming that the Carinthian Slovenes have the right to proceedings in the Slovene language according to the provisions of Art. 7 of the State Treaty and also according to the provisions of the Ethnic Groups Act, it follows that all stages of the proceedings, from the application to the inspection of the file to the decision, must be carried out in the Slovene language. Any other interpretation of the provisions is unacceptable and would not correspond to the purpose of the provisions of the law, which is to allow both the accused and the defence counsel to inspect the files and only on this basis to make a statement on the accusations and offer appropriate evidence.

In all cases, the district administration had rejected the requests for translation of the entire file into Slovene. The Regional Government and the Security Directorate for the State of Carinthia, however, did not follow appeals. In some cases, therefore, appeals were lodged with the Constitutional Court for violation of constitutionally guaranteed rights or application of an unconstitutional law.

But the Constitutional Court, among other things, with its ruling of September 29th, 1983, B415/82, did not grant the appeals. Because this finding is still relevant today, the conclusion is quoted here:

„According to the complainant, from the point of view of the right to access the file, the admission of Slovene as an official language means that files or parts of files already available in Slovene do not have to be translated at the request of the defendant. However, the Constitutional Court cannot agree with this view. The Ethnic Groups Act does not provide for a general right to the translation of files or parts of files for the purpose of inspecting them and Article 7 section 3 of the State Treaty of Vienna does not require this. The admission of Slovene as an official language can only mean that the right to use this language also exists in dealings with authorities, but not that all texts that are somehow - possibly - relevant to a matter, which the person concerned is entitled to inspect and, if necessary, use without regard to their origin and whose authoritativeness he himself is first responsible for determining, must be made available in Slovene. Even the limitation to certain administrative and judicial districts forces members of the minority to accept that federal and state laws and other acts of higher state bodies are passed solely in the state language and that the administrative or judicial acts conducted in other districts are exclusively written in the state language.

It is not the incomprehensibility of the state language to the minority, but the possibility of preserving and cultivating one's own language that is the reason for admitting Slovene as an official language. Article 7 section 3 of the State Treaty merely ensures that the member of the minority can also use his native language in dealings with the local authorities or courts. Only the conversation and correspondence with the state authorities shall take place - upon request - in the Slovene language.

According to the state of the case, it may be necessary to provide Slovene speakers with an interpreter for the purpose of inspecting the files if parts of the files of administrative criminal proceedings brought

against him have come about in circumstances which have not given rise to the use of Slovene (Article 15 paragraph 3 of the Ethnic Groups Act). However, it is not for the Constitutional Court to decide whether such a case exists here because the complainant did not request the provision of an interpreter but the production of a translation, and the negative treatment of his request cannot under any circumstances constitute a violation of the constitutionally guaranteed right to use Slovene in dealings with authorities."

It was with this ruling of the Constitutional Court that the majority of administrative criminal proceedings and administrative proceedings ended in the 1980s.

Of course, legal representation in these political processes has not helped to improve the financial situation of our law office and in most cases no costs have been paid. However, these proceedings were essential for the prominence of our law office, as was the fact that I had been politically active and thus known to the public for many years before the opening of the law office.

In 1976, I was elected chairman of the Council of Carinthian Slovenes, and because of my political activity I was also closely connected with the Carinthian Slovenes as well as with institutions in Slovenia.

Of course I could not and did not want to be that selective with my clients, I have accepted all kinds of cases, e.g. traffic accidents, disturbances of property, border disputes, divorces, alimony proceedings, criminal defence in connection with brawls, thefts, threats; I drafted contracts, in particular several transfer contracts between farmers, etc. I have always been connected with the so-called „ordinary" people and I have talked with them about their problems at every opportunity without reservation, be it in the office, at political meetings or every first Sunday of the month in the premises of Posojilnica Bank in Bleiburg/Pliberk. These consultations were a service of the Enotna Lista/Unit List.

At the beginning of the 1980s, the scope of work increased considerably as Yugoslav companies, mainly from Slovenia, began to establish so-called "mixed companies" in southern Carinthia through capital contributions. Various companies were established in the fields of industry, trade, tourism and catering. In this way around 1,000 jobs were created in Carinthia, and Yugoslav companies had the advantage of overcoming customs barriers to the EEA and EFTA. In this context, a number of companies, limited liability companies, limited partnerships and the like were established. This legal advisory activity was of course rewarded accordingly, so that our law firm made a relatively quick financial recovery.
Private individuals, mainly from Slovenia, also founded such companies, mainly commercial companies. In this context, it was necessary to deal with business licenses, employment permits for foreigners, cross-border capital transfers, settlement permits, etc. At the beginning of the 1980s, the legal support of these companies was extremely lucrative, especially for a newly established law firm. In addition, we legally represented the Posojilnica Bank and the Zadruga n the enforcement of their claims.

It soon turned out that I alone could not manage this workload, in part because my political activity was very time-consuming and my family life suffered as a result. Without the understanding of my family I would not have been able to cope with all this anyway. I therefore recruited Dr Franz Serajnik as my first associate in 1982, but after only six months he left the firm and started working for the Administrative Court. After his departure, my nephew Dr Roland Grilc joined the firm as an associate, which marked the beginning of the expansion of the firm in all areas, both in terms of personnel and fields of activity. I can say that by 1982 we had coped with the birthing pains of the firm and laid the foundation for its successful development to this day.

Finally, a few anecdotes related to my work as a lawyer:

• During a court case the Slovene court interpreter translated my German job title „Anwärter Dr. Tischler" into „čakalec dr. Tischler", actually untranslatable, meaning „The one who waits for Dr Tischler".
Two farmers in the area of Bleiburg/Pliberk had been suing each other for years. First the neighbour claimed that my client's cows had caused damage to his meadow, then it was said that it had been the chickens and finally a complaint was filed that bark beetles from my client's forest had gotten into his forest and damaged the spruces. Since nothing of this kind could be proven, and the neighbour lost all the lawsuits.

• I have also represented a farmer who was suing his brother-in-law for easements on forest roads, border disputes in forests and meadows and the like. After each trial won, there was the same ritual: the farmer lit his pipe and inhaled deeply, and you could see how much he enjoyed life.

• A cattle dealer was transporting a boar named „Hugo" with his truck, which had died during the transport after a heart attack. The trial was centred around the question of who was responsible for the death of the boar. The proceedings became interesting because the judge who was hearing the case was also called Hugo.

• In one of the moats around Eisenkappel/Železna Kapla two farmers litigated over an area of about 20 m^2, actually completely worthless, because it was a wasteland with gravel. The farmer's comment after the successful completion of the process was: „Justice must be done".

• These curiosities prove that the legal profession, despite all its seriousness, also has its humorous sides.

Toast and sauce! Please, Mr Lawyer, we're not in a restaurant, what's that got to do with anything?"

„No, Your Honour! - TOZD and SOZD! That's like a GmbH, an AG, a limited partnership in Austria."

„And who are the shareholders and who is the managing director?

„Well, the workers that are united in this TOZD are a type of partner. This work collective manages the assets of the TOZD. However, this working collective is not the owner of these assets, they are the property of the company."

„So the assets are the property of the TOZD?"

„No, actually not, rather the property of society, thus of all labourers in Yugoslavia, thus the property of me and you, and in the end also of no one."

„Now stop it, nowhere else in the world does this exist! A company has shareholders, therefore owners, the company owns the assets and the managing director is the boss. That's what it looks like in the world."

DR. ROLAND GRILC, ATTORNEY AT LAW

UPHEAVAL AND DEPARTURE – GO SOUTH
The long farewell to Yugoslavia

Between 1980 and 1989, this is how countless conversations proceeded at courts in Vienna, Styria and Carinthia, where our law office were representing companies from Yugoslavia in court proceedings. It was a total clash of systems. They were rather simple court proceedings involving cases where Yugoslavian companies had sold goods to Austrian customers, which still owed them payments, so the companies sought justice in Austrian courts. However, the beginning of every such process was somewhat bumpy, as the legal forms that existed in Yugoslavia were completely unknown in Austria. One must not forget: while Austria had a market economy, Yugoslavia had self-governing socialism, workers‘ councils, only limited private property, so-called „social property“. So the start of pretty much all court proceedings began with a basic introduction from our side about workers‘ self-administration, associated work and coordinated economic activity (dogovorno gospodarstvo). Nevertheless, the result was usually head shaking and complete incomprehension. The class enemy was in the courtroom.

By the way, TOZD (Temeljna organizacija združenega dela) stands for “Basic Organization of Associated Work” in which the workers directly and equally implement their socio-economic and other self-governing rights and decide on other issues of their socio-economic situation (Art. 14 of the Constitution of the Socialist Federal Republic of Yugoslavia). The workers thus associate (unite) their work and their means (which, however, are socially owned) and develop and promote their socialist self-government and socio-economic relations, expand and improve the economic foundation of the associated work, improve their economic and social position and satisfy their personal, common and general social needs and interests, increase their personal income and the total income of society through the higher productivity of their work and the work of the whole socialist society, administer and maintain their work in a socially and economically reasonable way and plan their work in self-administration, adapt it to economic and social development and share the profit while exercising their self-administration.

That is how it was defined in the Law on Associated Work (Zakon o združenem delu) in Article 4, which was in fact a real page-turner, consisting of 653 articles, which seemed like there were from another world.

In short, a TOZD was a legal entity that had economic and legal independence. The workers‘ collective managed the assets of the company, but was not the owner of these assets, which still belonged to the company as such. There was no group property and no private property. And the distribution of profits? That did not exist either. The TOZD‘s colloquial definition, „Tovariš, Oprostite, Delate Zastonj“ (“Excuse me, comrade, you work for free”), certainly came true.

The acronym SOZD stands for „Sestavljena Organizacija Združenega Dela“ (Association of Labour Organisations). Several labour organisations were united in an association of labour organisations, which was also a legal entity.

From the beginning, our law firm supported Yugoslav companies in their legal disputes in Austria, and from the mid-1980s onwards there was a significant expansion of the consulting practice for Yugoslav citizens. The economy in Yugoslavia was at a standstill and the call for reforms became ever louder; Tito had been dead for a long time and many Yugoslav citizens, especially near the border, took their first steps as entrepreneurs, as far as permissible - or not permissible, but undiscovered. Smaller craft activities (obrtništvo), complementary activities (dopolnilno delo) and „afternoon activities“ (popoldansko delo) were permitted. In order to carry out these activities, however, it was necessary to purchase materials, goods, vehicles, etc. And foreign exchange was also necessary.
For all these reasons, there has been an extreme increase in the number of business start-ups by private Yugoslav persons in Austria during this period of time. In most cases, a limited liability company (GmbH) had been founded, which is why in these years our office was called upon quite frequently for the incorporation of companies and the handling of related matters. But things which run smoothly today were even more formalistic in Austria back then, and there was no talk of great economic liberalism yet.

Our law firm therefore offered a complete package: a one-man incorporation was not permitted at that time, so we had to provide incorporation assistants (so-called „Gründungshelfer“); bank connections had to be established; in most cases we needed to find an Austrian managing director under trade law, since there were hardly any free trades and Yugoslav training and practical qualifications were not recognized in Austria; we had to look for apartments for the partners and managers and make them appear as if those persons actually lived there by depositing clothes and toiletries, since the foreign police, before issuing residence permits, always paid close attention to whether adequate accommodation was actually available. And finally, obtaining a residence permit with the corresponding stamp in the passport was like winning the lottery, as it made it much easier for Yugoslav citizens to cross the border, it allowed them to drive a car with a foreign registration number (company car), etc. Our law firm also took care of the tax and social security issues. So to speak, we were putting together an „all-round happy package“.

Within the field of Limited Liability Company Law (GmbH Law), our law firm was able to gain remarkable experience, which was of great benefit to us in later years. Looking back, it must be said that this GmbH-boom in Carinthia, stemming from Yugoslav clients, had many reasons and was born out of the need of the time: goods, supplies and raw materials could be acquired through Austrian companies more easily than through Yugoslav companies, payment transactions through Austrian companies and Austrian banks were much easier, input tax could be deduc-

ted (there was no VAT system in Yugoslavia), funds could remain in Austria, etc.

But there were also other, very superficial, reasons: owning an Austrian company finally made it possible for Yugoslav citizens to buy a decent car, and having that stamp in the passport made it easier for them to cross the border more often. It may have happened that people from Yugoslavia sometimes forgot to declare goods for customs clearance at these border crossings, and foreign currency purchased in Austria could be easily sold in Yugoslavia or simply remain hidden on an anonymous savings account in Austria. By the way, of all these innumerable GmbHs, only two are still active today - both are import-export companies owned by spouses.

Go south

And then it came. The year 1989. The federal parliament in Belgrade launched a major economic reform on December 29th,1988 per acclamationem and passed two key laws, both of which came into force on January 1st, 1989: the Enterprise Act (Zakon o podjetjih) and the Foreign Investment Act (Zakon o tujih vlaganjih). The whole thing was absolutely revolutionary. Self-managed socialism, bye bye! They introduced legal forms for the carrying-out of economic activities, which were the standard form in market-based systems, such as joint stock companies, GmbHs, open societies, limited partnerships. The most important thing, however, was that the management of these companies and the decision-making in these companies was no longer based on self-governing criteria and executed through the workers associated in a company, but was based on capitalist principles: the shareholders decide to the extent of their participation in the company, not the workers on the basis of their work. This was, of course, an ideologically and practically explosive idea.

The other big news was that now everyone was entitled to found a privately owned company as an independent owner. So far this had been unknown. And, what's more, even foreigners were allowed to invest their capital as foreign investors. They were permitted to set up a company themselves, to invest in existing „old socialist social enterprises", to set up so-called „mixed enterprises" (mešano podjetje), in which national citizens or national corporate bodies were associated, to participate in banks and insurance companies and other financial organizations, and the position of the foreign investor was secured by law.

That was quite something! The legal regulations were still rather meagre and poor; there were only 5 articles about GmbH in the Enterprise Act (Art. 104 to 108) and additionally a few articles which concerned all legal forms (Art. 120 to 132), but it was a start.

There was now a market of 20 million people on Austria's doorstep, which had until then been completely unexplored and was naturally tempting from an economic point of view. For the establishment of a GmbH one only needed the equivalent of ATS 50,000.00 (EUR 3,633.00). It was assumed that there would be companies in Austria and Germany, as well as in the rest of Europe, which would be willing to take advantage of the possibility of establishing companies in Yugoslavia, as the risk seemed rather tolerable.

Our law firm had also been directly involved in the drafting of both the aforementioned Yugoslav Enterprise Act and the Foreign Investment Act. In the process of drafting these laws, many Yugoslav professional associations and political organizations were consulted, including professional associations of Slovene lawyers.

At workshops on December 17th and 18th, 1988 at the Chamber of Commerce of Slovenia, I had the opportunity to present the Austrian Company Law in a detailed manner. For this reason our law firm was well informed about what will be possible in Yugoslavia from January 1st, 1989 and we considered it as an opportunity and a challenge. We assumed there would be increased interest from foreign investors and were of the opinion that these investors would naturally look for consultants who would advise and accompany them with their ventures in Yugoslavia. We believed that someone who is familiar with both Austrian legislation and business law, as well as with Yugoslav regulations, who speaks the languages spoken in this territory, who is familiar with the socio-economic environment and who has a distinctive network of contacts, is predestined for such activity. Obviously, a Yugoslav lawyer could also have offered that kind of service, but if I may say so, he had no clue about the market economy and business law. After all, he had been raised in a completely different system. And last but not least, we also believed that as Austrians we could earn sufficient trust in Austrian, German and other European investors.

However, although we had all the necessary qualifications, since we were foreign lawyers we were denied such cross-border activity in Yugoslavia. So what could we do? Of course! Founding a Yugoslav company ourselves, preferably a consulting company and preferably with other Yugoslav experts, and then we could begin. This had best to be done very quickly, so we could experience for ourselves how a GmbH is founded, how long it takes, what the procedure involves, what we would need to take into account, so that in the end we could give our clients all the information they need. Let's start.

Wide open

No sooner said than done. On March 10th, 1989 Mr Janko Arah from Slovenj Gradec, who was employed at the Chamber of Commerce of Slovenia, Prof Dr Šime Ivanjko, professor of law from Maribor, lawyer Goran Kanalec from Ljubljana, Mr Miroslav Odar, managing director of the Association of Slovenian Transport Operators, and Dr Roland Grilc, a lawyer from Klagenfurt/Celovec, founded the company „Interconsulting d.o.o." with its registered office on Titova cesta/Tito Street (befitting its rank) in Ljubl-

jana. (It later moved to Kardeljeva, where it - so to speak - remained in the socialist nomenclature). The company was a consulting company, offering both domestic and foreign investors full services both during the establishment of a company in Yugoslavia and subsequently.

It was not only about the founding procedures, obtaining all the numerous permits, organizing appropriate premises, head hunting, organizing accounting, assisting with marketing and opening up the market. All this seemed necessary to us, because not only was Yugoslavia completely new as an investment location, the state itself was just beginning to transition to a completely new system. Nobody knew how it should work at all; there were language barriers, wonderfully terrible differences in systems and perceptions, and a certain degree of mental reservation in relation to the „new" ones in the market. So there was a lot to do. The market was big, the country was wide open.

On April 1st, 1989 the company was registered in the court register of the Ljubljana District Court. „Interconsulting d.o.o.", which was subsequently renamed „Arah Consulting d.o.o." (named after the shareholder and managing director Janko Arah), was the first limited liability company with foreign participation to be founded on the territory of the former Yugoslavia after 1945. It quickly developed into a true success story, not least due to the untiring efforts of the managing partner Janko Arah, a lawyer and former high-ranking employee of the Chamber of Commerce of Slovenia, who put all his energy into this project and worked tirelessly day and night on the success of the company.

Already in August 1989, after only 4 months, we had founded 37 companies in Yugoslavia, with investors from Germany, Austria, Yugoslavia and Saudi Arabia. During the following months and years this area of activity continued to develop rapidly.

Simultaneously, intensive publishing, lecture and seminar activities were also being developed. On the topic of business law, there was only the rather fragmentary Law on Companies and the Law on Foreign Participations, and only gradually other laws were introduced. However, in the end many fields of law remained completely unexplored and the courts and lawyers as well as businessmen were often left in a legal void that had yet to be filled. Therefore, our company immediately started with publishing activities, and already in 1989 we had published the following books and commentaries:

Legal status of business companies (Pravna ureditev družb) (in Slovene and Serbian); in this context, the regulations in Austria and Germany were also presented; The Yugoslav Companies' Act (in German and Slovene);
General partnerships under Yugoslav and Austrian law (in German and Slovene);
Limited liability companies under Yugoslav and Austrian law (in German and Slovene)

The publications were a real blessing for the legal practice and for those who had to apply the new laws. In particular, the Austrian Limited Liability Company Act as well as the corresponding provisions of the Austrian Commercial Code of the time, which concerned general partnerships and limited partnerships, had been translated into Slovene. As a result, details of the much more regulated legal system in Austria were available in Slovene, and those who had to apply the law could also find solutions to the legal problems in Yugoslavia. One might say that Austrian law had subliminally been introduced into Slovenia. All the publications were printed in several editions within a very short time and were a huge success.

The lecture and seminar activities were similarly intensive. On the topic of „Investing in Yugoslavia", seminars were held in Yugoslavia as well as in Austria, which were very well received.

The collapse of Yugoslavia

On June 26th, 1991 Dr Roland Grilc and Mag Janko Arah were holding another seminar on „Foreign Investments in Yugoslavia" in Baden near Vienna. The seminar was extremely well received and was attended by various representatives of renowned Austrian companies. The morning was spent in an efficient working atmosphere. On the way from the lecture hall to lunch, we were passing a TV set, which was obviously broadcasting a news programme. A closer look showed rolling tanks, soldiers, a war atmosphere, and an even closer look showed pictures from Ljubljana/Slovenia. The 10-day war had begun.

Slovenia and Croatia had declared their independence the day before and one day later the Yugoslav People's Army rolled through Slovenia. A real shock! Who could even think of business investments in Yugoslavia at such a moment? After lunch we asked the participants if it would still make sense to continue the seminar in view of these circumstances, when a leading representative of the largest Austrian bank rose and said with a firm voice: „We will continue the seminar under the title „Investing in Yugoslavia after the war"".

After June 25th, 1991 nothing was like it had been before. The wide open country was not wide open any more, five new states had emerged. There were suddenly five new legal systems, although in the beginning everything in all new states was still based on the old legal norms; borders were established and initially everything was surely in a state of shock.

However, this shock was overcome very quickly and our law firm continued with the same activities as before, as there was no longer only one state to look after, but five states. We had to acquire new knowledge

on a daily basis to stay up to date. But, frankly speaking, for us Austrian lawyers this legal development was actually easier to follow than for our former Yugoslav colleagues. This was due to the fact that Central European law - in particular European, German and Austrian law - was gradually being introduced, and this law was much more familiar to us than to our colleagues from the former Yugoslavia, who had to learn it all from scratch.

In the years following 1991, our law firm even more intensified its publishing and seminar activities. We were soon offering special seminars adapted to each new state, such as „Investing in Slovenia“, „Investing in Croatia“, not only „Investing in Yugoslavia“. In Austria and Germany, the quest for information was almost endless: What is the new Labour Law like; do the workers still determine everything? Is it even possible to dismiss workers? What are the tariffs? Is there a VAT? Are domestic payment transactions actually handled by state authorities rather than banks? Is there a land register? Can the entries in the land register be trusted? Why is there no input tax deduction? Can a foreigner acquire ownership of land? These and many other questions had to be clarified and examined before investing in Slovenia, Croatia and the rest of the former Yugoslav states.

And investments were made, in all possible forms. And our law firm was involved in many of them: A Swedish global textile group, an Austrian insurance company, which was the first foreign insurance company to be established on the territory of Yugoslavia („We already insured Slovene Lower Styria with our Archduke Johann in the 19th century“), major Austrian banks and Austrian regional banks (with the exception of one former large Carinthian bank), German energy companies as well as American telecommunications companies. We executed purchase contracts for apartments and houses in Piran, Istria and Dalmatia for interested parties, we enforced outstanding debts, we settled estates, we carried out denationalizations. We carried out extensive real estate projects in Slovenia and Croatia and assisted foreign developers with their search for suitable plots of land, the amendment of regional planning and development plans, the necessary supportive discussions with decision-makers, the safeguarding of the land register, the support of the construction process, helped navigate difficulties related to labour law (of which there were of course many!), and provided assistance during the extensive inspection procedures by various trade, construction, foreign exchange, market and labour inspectorates.

Our clients came from all over the world. They were the kind of clients who were thinking for the longer term, and there were those who wanted to do one-off business transactions. There were individuals and large corporations, serious entrepreneurs and knights of fortune. Most of them stayed, others failed. However, the handling of the latter again meant work for our law firm.

Immediately after Slovenia‘s accession to the EU in 2004, we registered ourselves in the list of lawyers in Slovenia. However, the accession to the EU and thus the end of the transitional period for the application of the freedom to provide services led to a noticeable reversal of the trend. The direction now is no longer towards the south, but towards the north, towards Austria. Slovene companies are investing in Austria, providing extensive services on a daily basis; 15,000 people are commuting daily from Slovene Styria to Austrian Styria and beyond, and legal assistance is, of course, required.

But that is another story.

MAG. RUDI VOUK, ATTORNEY AT LAW

Bitter success

The most sensational achievement in the history of the GRILC-VOUK-ŠKOF law firm was certainly the „Ortstafelerkenntnis“ (i.e. court ruling about the place-name signs) of St Kanzian/Škocjan, with Rudi Vouk as the appellant.

Previous history

During the monarchy, the Slovene language was recognized as a customary language in Carinthia/Kärnten within the meaning of Art. 19 of the Austrian Constitution (Staatsgrundgesetz). For this reason public signs in the southern part of the country were - if existing - bilingual. After a national referendum in 1920 Carinthia identified as a German-speaking territory and as a consequence all public bilingual signs were removed. Art. 7 of the State Treaty of Vienna (Staatsvertrag von Wien) was introduced in 1955 as compensation for Yugoslavia waiving its former territorial claims, asserted with the reasoning that the the Slovene ethnic group in Carinthia had been seriously endangered in the period between 1920 and 1945. Another reason for its introduction was to offer Carinthian Slovenes compensation for the injustice they suffered during this same period.

Art. 7 section 3 of the State Treaty of Vienna provides for mandatory bilingual topographic signs in administrative and judicial districts with a Slovene or mixed population. However, since 1950 Austria has consequently ignored this treaty obligation, although it was raised to the constitutional level in 1964. Only after the so-called „Beschriftungsaktionen“ - labeling actions - in 1970 did the government under Kreisky at the federal level and Sima at state level decide to implement these treaty obligations. The „Ortstafelgesetz“ (Law on Place-name Signs) of 1972 was not very generous. An analysis shows that bilingual place-name signs were intended for places with a Slovene-speaking population of at least 20%, while taking into consideration the population census of 1961. At this time the results of the 1971 census were already available, but were ignored due to the fact that it would have been beneficial for the Slovene ethnic group. The 1961 census was, with regard to the affiliation with the Slovene ethnic group, probably the most manipulated census of all; it supposedly exposed how in various villages and even municipalities, which had previously been predominantly Slovene-speaking, the Slovenes had seemingly disappeared completely. But even the 205 bilingual place-name signs that had been installed in 1972 were forcibly removed by a German-national mob during the so-called „Ortstafelsturm“. The police only stood by and watched, and nobody has ever been prosecuted.

In 1976, the „Volksgruppengesetz“ (Ethnic Groups Act) was passed, which provided for bilingual place-name signs in municipalities with a Slovene-speaking population of at least 25%. These municipalities would need to be determined by ways of a special census. This census was boycotted by the Carinthian Slovenes as well as many non-Slovene citizens declaring their solidarity. An analysis of the census results and the list of municipalities, which have been noted in the „Topographieverordnung“ (Topographic Regulation) of 1977, reveals that bilingual place-name signs have really only been earmarked for those municipalities in which the majority of the population was Slovene-speaking - clearly showing the high percentage of those who had been boycotting this special census. But even the Topographic Regulation was largely ignored, escalating to the point that in the former municipalities of Schwabegg/Žvabek (now Neuhaus/Suha) and Windisch Bleiberg/Slovenji Plajberk, as well as Ferlach/Borovlje, no place-name signs were erected at all, just to avoid the bilingual requirement. This was the starting position for the „Ortstafelverfahren“ (i.e. proceedings involving place-name signs).

The proceedings

Another difficulty was the fact that there were no provisions through which formal complaints against this persistent ignoring of Carinthian Slovenes‘ right to bilingual place-name signs could be made. During the 1970s, a citizen tried to bring the matter to the Constitutional Court. His appeal was dismissed on the grounds that nobody had a subjective-public right to any place-name signs. Austria could therefore keep ignoring and violating treaty obligations towards Carinthian Slovenes (and also Burgenland Croats) without fear of punishment. It was therefore necessary to make this issue of place-name signs „justiciable“.

The point of origin was that some topographic signs do not only serve as signposts displaying the name of a certain place or locality. In accordance with (Road) Traffic Regulations, place-name signs are at the same time speed limitations, which makes them announcements of the respective regulation indicating that in between two place-name signs a speed-limit of 50 km/h is to be observed. Flawed announcements lead to the result that the regulation is considered not to be lawfully adopted and therefore deemed irrelevant. In the case of an incorrectly announced place-name sign this would mean that instead of a speed limit of 50 km/h as usually mandated by the place-name sign, the general speed limit of 100 km/h would be applicable.

In 1994, while on his way home from the office, Rudi Vouk was stopped in St Kanzian/Škocjan by a police patrol, which charged him with violating the allowed speed limit of 50 km/h by driving 62 km/h. He refused to pay the traffic ticket and instead let the police report him to the District Commission in Völkermark/Velikovec. Vouk requested that the proceedings be led in the Slovene language and challenged the issued penal order by arguing that the place-name sign of St Kanzian/Škocjan had not been lawfully announced as it was not bilingual, which it should have been according to the regulations of the State Treaty of Vienna. For this reason he should not have to answer for the violation of the speed limit.

The proceedings dragged on, in part because the Independent Administrative Commission for Carinthia was of the opinion that Vouk did not have the right to have the proceedings conducted in the Slovene language. His home municipality of Eberndorf/Dobrla vas was not an officially recognized as bilingual, and therefore Vouk should not be allowed to use the Slovene language as an official language at the District Commission in Völkermarkt/Velikovec, despite the fact that this very District Commission was obliged to use the Slovene language as an official language in cases with other, officially recognized, bilingual municipalities. The case ended up at the Constitutional Court for the first time, which ruled in favour of Vouk and stated that everyone had the right to utilize Slovene as the official language at the District Commission, no matter where s/he comes from.

The proceedings started anew, this time dealing with its actual content. The District Commission as well as the Independent Administrative Commission both confirmed the fine, arguing that St Kanzian/Škocjan was not amongst the municipalities covered by the Topographic Regulation regarding bilingual place-name signs. The Constitutional Court, however, had a different opinion. After its decision regarding the municipality Eberndorf/Dobrla vas, where it determined that municipalities with a Slovene population of 10% or more have to use Slovene as an official language, it

now ruled that places with a Slovene population of 10% or more must have bilingual topographic signs. The decision included a more extensive period of time, and as St Kanzian/Škocjan had a Slovene population of 9.9% during the census in 1991, this would be sufficient.

The decision of the Constitutional Court left a few questions unanswered and also posed some new ones. One question was at what point in time the 10% threshold regarding the Slovene population must have been reached. This was especially relevant, because not least due to the lack of protection for minority rights the assimilation of Carinthian Slovenes was and is still continuing. After the census in 1951, the last one before the State Treaty, virtually the entire bilingual territory of Carinthia would have fulfilled the criterion of the Constitutional Court, meeting the 10% threshold. This would mean that about 800 villages would have had to have bilingual place-name signs. At the time of the census in 1971, the last one before the Ethnic Groups Act was passed in 1976, which was later partially rescinded by the Constitutional Court with its "Ortstafelerkenntnis" (finding on place-name signs), only 400 villages would have met the threshold After the census in 1991 around 270 bilingual villages remained. One could argue that by applying the so-called „petrification-principle" the prevailing circumstances at the time of the State Treaty should have been taken into account, as any other approach would have led to the result that those ignoring their obligation to implement minority rights for nearly half a century would be rewarded. On the other hand, one could argue that history cannot be undone, no matter how unfortunate it might have been, which is why the current circumstances would have to be taken into account. The Carinthian Slovenes voluntarily opted for a midway solution - the consideration of the circumstances in the year 1971 - and thus showed a tremendous willingness to compromise.

Another problem was that the Constitutional Court reverted to the concept as provided for in the „Ortstafelgesetz" (Law on Place-name Signs) of 1972, taking into consideration the individual villages instead of the territories or parts of territories that would emanate from municipalities or old municipalities, as intended in the Topographic Regulation of 1977. This has both advantages and disadvantages. An advantage would be that bilingual place-name signs would exist even in municipalities where only a few or maybe just one village would reach the necessary the Slovenian population threshold, although the municipality itself would not fulfil the requirements. A disadvantage would be that it is difficult to determine where the scope of the bilingual topography begins and ends - for example regarding signposts. Certainly, with a little good will a solution could easily have been found, e.g. cadastral communities could be determined as the smallest territorial entity, or, while villages would remain the smallest territorial entity, they would always be identified bilingually, even if they are referred to outside of the territory - by bilingual topography.

Whatever the solution, in a state under the rule of law it should be self-evident that the decisions of the Constitutional Court are duly implemented and that outstanding issues are settled with the affected party in the spirit of the ruling. This opinion was also shared by the attorney Rudi Vouk and his former colleagues Dr Matthäus Grilc and Dr Roland Grilc. An important step was achieved for the implementation of minority rights, and now one could focus on different topics.

The aftermath

This expectation that with the decision of the Constitutional Court the final word on the matter had been spoken was not naive. In fact, that is usually the case in legal practice. No matter whether the decision would cause commercial costs in the millions, incomprehensible consequences such as the repetition of the presidential election or whether it concerned the introduction of same-sex marriages or a third gender: decisions of the Constitutional Court are implemented, often for the reason that politicians gladly let the Constitutional Court make the decisions regarding unpleasant issues. But in this case it was different and gave credence to the question, whether there is only a second-class state of law for Carinthian Slovenes. There was no sign of the immediate implementation of the Constitutional Court's decision and there was also no significant political party to advocate for this cause. The former Carinthian governor ridiculed the Constitutional Court, while all other parties were blankly trying to hide behind the argumentation that a consensus must be achieved, instead of simply demanding the implementation of due process in the Republic of Austria.

Initially, the decision regarding St Kanzian/Škocjan was tacitly not implemented. Researches revealed that the place-name sign of St Kanzian/Škocjan was simply shifted to another position. The Constitutional Court had overturned the place-name sign at one specific location, as it was provided for in the Regulation - „place-name sign at kilometre xy". The solution was to move the place-name sign a few metres away. Instead of initiating proceedings on account of this abuse of office, new proceedings at the Constitutional Court were initiated. And this time the Constitutional Court caved and decided that St Kanzian/Škocjan was not required to have bilingual place-name signs. It argued that the Slovene population fell during the census in 2001 to only 9.1% and therefore no longer met the threshold of 10%.

The Constitutional Court basically compared apples and oranges. In reality, the boundaries of the territory of St Kanzian/Škocjan had been changed, meaning that during the census in 2001 a larger territory was included than during the census in 1991. In another attempt to overcome this decision, more 10% of the population of St Kanzian/Škocjan confirmed, with signatures, that they were members of the Slovene ethnic group - which also raises the question of how the census in 2001 was executed. But even this

attempt was not recognized by the Constitutional Court, which instead simply denied a right which it had adjudicated only shortly before.

On the other hand, some villages did receive bilingual place-name signs. The next „Ortstafelerkenntnis“ concerned Bleiburg/Pliberk, and the appellant was again Rudi Vouk. In Bleiburg/Pliberk there was no way to „shrink“ the Slovene population by „territorial changes“ with the aim of avoiding the threshold of 10%. Politicians tried twice to circumvent the decision by relocating the place-name signs, until the Constitutional Court ruled those actions were insufficient. Criminal proceedings, however, have not been initiated - the Department of the Public Prosecution in Klagenfurt/Celovec attested towards the responsible Territorial Council as well as the subsequent Governor not to know exactly what the possible consequences for these actions might be.

Until the final erection of the place-name signs in2011, 30 more proceedings at the Constitutional Court were necessary; initiated by self-indictments of activists, which informed the responsible authorities that they had been „speeding“ through villages at speeds of 55 to 65 km/h. The Republic of Austria simply does not provide for other possibilities for Carinthian Slovenes to enforce their rights - quite contrary to environmental groups, credit unions, unions for protection against unfair competition and many other organizations, which are naturally entitled to enforce their collective rights.

The „solution“

In 2011, there were still several proceedings regarding place-name signs pending at the Constitutional Court. It was foreseeable that the Constitutional Court would not only have to strike down parts of the entire Topographic Regulation, but, due to the number of proceedings causing the repeal of several separate parts, the Regulation itself was beyond remedy. The consequence of the repeal would be that in all villages of Southern Carinthia with a Slovene population of 10% or more all place-name signs within the context of the (Road) Traffic Regulations would be invalid, and the legislature would be forced to immediately issue a constitutional solution.

In fact, in the autumn 2011 the Constitutional Court struck down the entire Topographic Regulation from the year 1977. However, this decision did not have any consequences, as politicians were faster. Both federal and national politicians had obviously been aware of the imminent consequences of the looming decision of the Constitutional Court, contrary to the representatives of the Carinthian Slovenes, despite countless attempts of cautioning. This is the only explanation for how the „Ortstafelkompromiss“ (Compromise on place-name signs) could come into being. The compromise was characterized by the fact that it lacked any comprehensible rationale and completely deviated from the practice of international law regarding a minority‘s right to bilingual topography. Above all things, it was raised to the status of constitutional law, which makes it virtually unassailable.

The new regulation arranged for bilingual topographic signs in 164 villages. It included all villages where the Constitutional Court had ruled in their favour, including Buchbrunn/Bukovje, which in 2001 only had a Slovene population of 9.5%, but during the last two censuses reached over 10%, as the village with the smallest percentage of Slovenes. Naturally all villages were included which had already been mentioned in the Topographic Regulation of 1977. In addition to these, only those places that had been over 17.5% during the last census in 2001 were included. This „requirement“ is not regulated anywhere, but was merely a wish of the former Governor. Where this concrete number stems from is beyond any logical explanation and basically follows a strange Carinthian logic about what a compromise should look like: the Constitutional Court asked for 10% and has rescinded the former 25% as unconstitutional. Thus 17.5% would be exactly the middle ground, which therefore constitutes a compromise, according to the Carinthian understanding of a compromise. Such an understanding of fundamental rights requires no special comment - all the more deplorable is the fact that there are representatives of minorities, who were - in their misguided need for harmony - so desperate for a solution that they opted for a rapid solution, no matter the cost. They were not even willing to wait a few months for the final decision of the Constitutional Court to put them in a much more favourable negotiating position.

The „Ortstafelkompromiss“ contains some other Carinthian „delicacies“ as well:

Places with less than 31 inhabitants are not included, allegedly for reasons of data protection, as one could then identify those 3 „necessary“ Carinthian Slovenes. This leads to the peculiar consequence that within the municipality of Bleiburg/Pliberk all villages got bilingual place-name signs, except for 4, which were considered „too small“. But this municipality proved to be smart and tolerant enough to rectify this faux pas and the Local Council unisono decided to erect bilingual place-name signs in those small villages as well. Everywhere else small villages remain discriminated against with regard to bilingualism, just because of their size.

As for the topic of signposts, the regulation allows for signposts to be bilingual only if they are located within a bilingual village. This leads to bizarre consequences. In the municipality St Kanzian/Škocjan they wanted to avoid a bilingual signpost for the small village of Horzach I/Horce I, which is why they simply relocated the signpost from the right to the left side of the street. Hence the signpost was outside of bilingual territory and could remain German. After a complaint was filed, the signpost was deemed as contradictory to the (Road) Traffic Act, and since then there has been no signpost at all. The village Lanzendorf/Lancova, which is also located within this municipality, was too small to even be considered. However, in the middle of this village there is a crossroad with a signpost pointing to all four cardinal points. The con-

sequence was that although the village has a Slovene population of over 50%, because of its small size the signpost pointing towards other villages - with bilingual place-name signs - remains German itself.

The bilingual topography should apply only to place-name signs and toponym-signs, not, however, for other topographic labels. While the Republic of Austria is - in relation to South Tyrol - very well aware what is internationally understood as bilingual topography and, quite rightly, insists upon the use of bilingual names for their rivers, mountains and lakes as well as road signs and squares, this belief seems not apply to Austria itself, as demonstrated by the new constitutional regulation.

It is not surprising that some municipalities very swiftly introduced new street names. Within the municipality of St Kanzian/Škocjan, houses in the village Grabelsdorf/Grabalja vas were previously just numbered consecutively, so the inhabitants had at least a bilingual postal address. However, now they introduced street names that were - very imaginatively - labelled Keltenweg I to Keltenweg XII. As a result, the mail is now addressed solely in German to Keltenweg, with the postal code of St Kanzian. Similar attempts were and are still conducted in numerous other municipalities.

Also in the municipality St Kanzian/Škocjan, the right to use the Slovene language as an official language has been tied to the existence of a bilingual place-name sign. As a consequence of the „Ortstafelkompromiss“ and with approval of the political representatives of the Carinthian Slovenes, the inhabitants of the previously mentioned Lanzendorf/Lancova, as well as those of many other villages with a Slovene population of 10% or more, have lost their right to use Slovene as an official language.

Internal legal remedies do not exist anymore, as a result of the new constitutional regulation. Only steps under international law can be taken, but they seem very unlikely. Slovenia will not risk causing a conflict with Austria over a few sheet metal signs, while other countries, especially the guarantor powers of the Austrian State Treaty, are not the least bit interested in this issue.

The “Ortstafelerkenntnis“ was surely a success, making the attorney who obtained it famous for a while within Austria and Slovenia. It led to the erection of double as many place-name signs than had existed before, and Carinthian politicians are proudly announcing how pleasant the climate within the country has become. What remains, however, is the bitter aftertaste that the Constitution was abused, that rights, which had already been obtained, have been taken away, and that representatives of the minority group proved to be utterly spineless. It is preposterous that the Constitution now stipulates that the small village of Slovenjach/Slovenje within the municipality of Hemmaberg has to have a bilingual place-name sign. Something of that sort has no place in any Constitution. It is regrettable that after the compromise essentially everyone was convinced that with a better climate the missing rationale of the regulation will be adjusted through voluntary measures and that this ridiculous regulation within the Constitution will turn out to be just an initial flaw.

But far from that, with the exception of the case in Bleiburg/Pliberk nothing has happened since. At least there was one other case: In Sielach/Sele within the municipality of Sittersdorf/Žitara vas, Mr Kukovica did not want to accept that his hometown did not receive a bilingual place-name sign, despite the fact that it fulfilled all criteria in accordance with the Constitutional Court‘s judicature. He collected signatures from the majority of the village‘s inhabitants, who supported his claim. When the municipality was still not willing to set things in motion, he unilaterally added the missing Slovene label by means of a decal. While those who have actively worked to prevent the implementation of bilingual place-name signs - no matter if „Ortstafelstürmer“, „relocators“ or ignoramuses in office - have never faced legal consequences for their actions, Mr Kukovica was put on trial for criminal property damage. At least the District Court in the first instance recognized his action as a political protest, which might be condemned in a police state, but not in a constitutional state such as Austria, and he was acquitted. But while the Public Prosecution did not want to bring charges against any of the right-wing governors for their preventative actions in connection with the erection of bilingual place-name signs in the past, it filed an appeal against the Court‘s decision, and the proceedings are still open.

While in other areas the public is quite willing to shield the constitutional state from danger, the case of bilingual place-name signs clearly shows that this does not apply to minority rights. When in 2019 the Austrian Minister for Interior Affairs talked about the fact that the law has to follow politics and not the other way around, it caused a tremendous outcry. But with the „solution“ of the issue surrounding place-name signs in Carinthia that is exactly what has happened: politicians violated the law, while the representatives of the ethnic group were too frightened or dependent on the government that they agreed to an absurd resolution. By elevating the decision-making to constitutional status, critics have lost their only option to oppose within a constitutional state or to have the regulations at least reviewed.

Hence, the Carinthian question regarding place-name signs is still unresolved and remains a dark spot on the vest of the constitutional state of Austria.

Apart from our knowledge of the law, the language - Slovene - is, so to speak, the share capital of the GRILC VOUK ŠKOF law firm. For this reason, it goes without saying that we have always striven to make Slovene an official language in Carinthia. Only two years before Dr Matthäus Grilc founded the law office, the Regulation on the Admission of Slovene as an Official Language came into force. Despite the fact that the Slovene language should have been regarded as an additional official language

MAG. RUDI VOUK, ATTORNEY AT LAW

Slovene – our (official) language?

in the entire bilingual region ever since the State Treaty, the Director of the Carinthian State Government's Office, Mr Karl Newole, issued a corresponding order in 1957 on how to deal with Slovene-language submissions, and Governor Sima reaffirmed this order in 1969. However, in practice both orders simply sat in drawers getting dusty, with nobody giving them any consideration. It was only Prof Veiter who promulgated them in his fundamental work »Das Volksgruppenrecht in Österreich« (Minorities' rights in Austria). In 1977, the so-called »July 7th legislation« ordinance

reduced the bilingual territory to 1/3 of its original size. On paper, this was a major step backwards, but in practice it still meant a step forward - after all, it was the first time that Slovene was used as the official language in Austria.

This new legal right now had to be mastered, and Dr Matthäus Grilc was among the pioneers to write court submissions in Slovene. In fact, the Austrian-Slovene legal language first had to be reinvented. Although there were templates from the time of the monarchy, in the years since, the law had continued to develop, and the institutions of the Republic of Austria, above all in the administrative procedures, were no longer comparable with offices from the Habsburg monarchy. Of course one could also look to where the Slovene language was actually used as the national language, i.e. in the Socialist Republic of Slovenia. But as is apparent by the name, Slovenia was a Socialist Republic, and because of the vast differences between the systems, there was not much that could be adopted. It was therefore necessary to create a completely independent version of the Austrian-Slovene legal language - a challenge that is often forgotten when speaking of the right to use Slovene as an official language.
In this context it is worth mentioning the significant work of Dr Pavel Apovnik and Dr Ludvik Karničar, who published the German-Slovene and Slovene--German legal dictionaries. This extraordinary and unique work showed where the greatest practical demand had been: municipal law is dealt with in detail, since especially at that time the representatives of the independent Slovene political movement were storming the municipal councils on a large scale and needed these expressions. The area of cooperative and banking law was also dealt with very fundamentally for the purposes of Slovene cooperatives, the so-called loan societies (posojilnice). In other areas something is missing here and there, but of course the work of Apovnik and Karničar is also no longer up-to-date today, so a new edition would be much appreciated. At that time, Austria was not yet a member of the EU. There were still many instruments of legal protection that did not yet exist, and completely new procedures and challenges have emerged since.

Independently of this, the linguistic framework for Slovene as an official language developed in the 1970s. However, this linguistic basis also had to somehow find its way into practice. This was largely done through the law firm of Dr Matthäus Grilc, from which submissions in Slovene reached municipalities, district administrations, the regional government and, of course, the three district courts in which Slovene was admitted as a court language, namely the district courts in Bleiburg/Pliberk, Eisenkappel/Železna Kapla and Ferlach/Borovlje.

In practice, the use of Slovene as an official language was exceptionally difficult. Countless municipalities simply ignored Slovene submissions, and in some places, such as the municipality of Sittersdorf/Žitara vas, this is still the case today. In countless cases people, who had – rightfully - applied for a building permit in the Slovene language would wait forever and sometimes never actually obtain it, not until they learned that this approach would not be effective. Those people, who were not lawyers or did not have the time or means to make use of the legal remedies, which are intended for exactly those cases in which an authority is in default of a decision, would thus be forced to submit their applications in German. But precisely for this reason, the use of Slovene became more popular in administrative criminal proceedings - district authorities simply did not translate penal orders into Slovene, so that the payment of the fines became irrelevant. In municipalities that were not explicitly recognized as bilingual, Slovene-language submissions were routinely rejected. Similarly, Slovene-language submissions to district administrations and the Carinthian State Government were rejected if they came from a citizen who was not a resident in a publicly recognized bilingual municipality.

The first improvement in this context stemmed from a decision of the Constitutional Court (VfSlg 9.224/81). The case actually did not at all concern the official language, but a complaint of the Carinthian Unity List/Enotna Lista against the Carinthian Electoral Regulations. In 1975, the Carinthian Unity List had only narrowly fallen short of gaining seats in the Carinthian Landtag; at that time Carinthia was still a united constituency. In order to prevent the Slovene list from entering the Landtag, the electoral legislation was then amended to the effect that Carinthia was divided into four constituencies, with the boundaries of the constituencies designed to divide the bilingual area into four parts. As a result, the minority party was unable to achieve any electoral success (and it should be noted that this electoral regulation still applies today). Although the complaint had not been successful, the Constitutional Court took this opportunity to deal - for the first time ever - with minority rights. In doing so, the Constitutional Court formulated the important and often quoted aphorism on the »value judgement of the constitutional legislation in favour of the protection of minorities«. However, the Ethnic Groups Act also said civil servants may use the Slovene language even where this is not mandatory, if it would facilitate communication with the party. In light of this Constitutional Court ruling, lawyers argued that this provision should be understood as obliging civil servants to use the Slovene language whenever it facilitates communication with the party. This was particularly important for authorities that should have been able to use Slovene as an official language, such as the district councils in Völkermarkt/Velikovec, Klagenfurt/Celovec and Villach/Beljak. Previously they had refused to use Slovene if the party did not live in an officially recognized bilingual municipality. On the basis of the aforementioned Constitutional Court decision, the use of Slovene as an official language was permitted at the level of the district councils as well as at the state level, but nothing changed at the level of the municipalities.
The next step towards the improvement of minority rights regarding the use of the minority language was taken by the Burgenland Croats. Marjana Grandits, a

future Green Party member of the Landtag, had got married and requested to have the marriage certificate issued in Croatian as well. Unlike Carinthia, Burgenland did not even have a regulation including a list of municipalities in which Croatian was to be permitted as an official language. Thus, Burgenland authorities argued that the Croatian language may not be used due to the lack of a regulation. Ms Grandits appealed to the Constitutional Court, which overturned the part of the Ethnic Groups Act that provided for a minority language's use only if a corresponding decree had been issued. Now, in the absence of a corresponding regulation, each municipality had to decide for itself whether it was bilingual or not. If, however, the Federal Government had issued a corresponding ordinance, then this ordinance naturally applied. For Carinthia, therefore, the decision of the Constitutional Court in the Grandits case (VfSlg 11.585/1987) did not bring any change.

I got married in 1994. My home municipality of Eberndorf/Dobrla vas was not yet officially recognized as bilingual. I decided that I would follow in in the footsteps of Marjana Grandits and demand that the marriage certificate be issued in Slovene - presuming that the Constitutional Court would subsequently have to repeal the Regulation on Slovene as an official language, with regard to the part concerning the district of Völkermarkt/Velikovec. The proceedings went through all instances, and in the end I received a great surprise: the Constitutional Court ruled that all national authorities would have to translate all national documents into Slovene, so the Regulation on Slovene as an official language was not applicable in the case. So while I received a Slovene marriage certificate, the regulation remained in force.

Soon afterwards, the municipality decided that my house should be connected to the municipality's sewage system and also assigned me a new house number, so I tried again. I demanded that the municipality of Eberndorf/Dobrla vas issued the relevant decrees in Slovene, which the municipality refused to do because of the current legal situation. The procedure was lengthy, as in municipal matters the mayor decides first, then the municipal board and then the municipal council; only then was it possible to appeal to the Carinthian State Government. Each instance had a period of six months to make a decision, and this period was of course exhausted in its entirety every time. Sometimes it was even exceeded, necessitating an additional complaint of default, which in turn led to the transfer of competence to the superior instance. Only then was it finally possible to lodge a complaint with the Constitutional Court. Due to the complicated and tedious legal process, it is not surprising that hitherto no one had attempted to assert the right to use Slovene as an official language; if not for other reasons, the high costs that the party itself would have to bear were a sufficient deterrent.
This time the Constitutional Court ruled as expected. By decision of October 4th, 2000, V 91/99, the Constitutional Court removed the word »Sittersdorf« (Žitara vas) from the Regulation on Slovene as an official language. The regulation was structured in such a way that those municipalities with bilingual place-name signs were listed under point A. All those political districts and municipalities within a district in which Slovene was permitted as an official language were listed under point B. Within the district of Völkermarkt/Velikovec this was - besides the municipalities with bilingual topography (Bleiburg/Pliberk, Feistritz ob Bleiburg/Bistrica pri Pliberku, Globasnitz/Globasnica, Neuhaus/Suha and Eisenkappel/Železna Kapla) - only the municipality of Sittersdorf/Žitara vas. As the Constitutional Court had removed the word »Sittersdorf«, the text of the regulation consisted only of the wording »in the political district Völkermarkt/Velikovec«. This, however, created the same situation prevailing in Burgenland after the decision in the Grandits case, and each municipality in the political district of Völkermarkt/Velikovec now had to decide for itself whether or not it fulfilled the criteria for allowing Slovene as an official language.

The Constitutional Court further specified that a municipality is bilingual if it has a Slovene population of more than 10% for longer period of time. The municipality of Eberndorf/Dobrla vas met these criteria and it was therefore necessary that Slovene was permitted as an official language. This decision was also decisive for later decisions regarding bilingual place-name signs, since Article 7 of the Austrian State Treaty regulates the official language as well as the bilingual topography in the same paragraph and under the same conditions. After the Constitutional Court's decision on the official language, no one was surprised that the Constitutional Court decided similarly in a case concerning the bilingual place-name sign in St Kanzian/Škocjan, which was already pending at that time.

Usually, if the Constitutional Court were to repeal a provision of the law, the legislature would immediately correct that law. It would therefore have been necessary to correct the Regulation on Slovene as an official language accordingly. Within the district of Völkermarkt/Velikovec, in addition to Eberndorf/Dobrla vas, the municipalities of St Kanzian/Škocjan, Gallizien/Galicija and Diex/Djekše also met the criteria laid down by the Constitutional Court, whereas in other districts it would have been necessary to determine the period to which the decision of the Constitutional Court applied. In addition to the municipalities in which Slovene was permitted as an official language under the decree of 1977 (namely, Zell/Sele, St. Margarethen/Šmarjeta, Ferlach/Borovlje, Feistritz im Rosental/Bistrica v Rožu, Ebenthal/Žrelec, Ludmannsdorf/Bilčovs in the political district of Klagenfurt/Celovec, St.Jakob im Rosental/Št. Jakob v Rožu and Rosegg/Rožek in the political distict of Villach/Beljak), and, had the results of the 1971 census been taken into account, the municipalities of Köttmannsdorf/Kotmara vas, Keutschach/Hodiše and Schiefling/Škofiče in the district of Klagenfurt/Celovec, as well as Velden/Vrba, Finkenstein/Bekštanj, Hohenthurn/Straja vas and Feistritz im Gailtal/Bistrica na Zilji in the district of Villach/Beljak would

also have met the criteria. The legislature, however, simply folded its arms and refused to take any action. A year later, during the turmoil surrounding the Constitutional Court's decision on the bilingual place-name signs, the public had already forgotten that the question of the official language was also on the agenda. Political observers of the Carinthian Slovenes had been talking about the place-name signs for 10 years, while the official language was no longer an issue.

In the municipality of Eberndorf/Dobrla vas, decisions - because it was so clearly defined - were now also issued in Slovene. Other municipalities in the district of Völkermarkt/Velikovec, where the Slovene language should have been used as well, decided - once again - to ignore minority rights. This applies above all to the municipality of St Kanzian/Škocjan, where the mayor of the Social Democratic Party consistently decided to reject everything Slovene. For this reason, a group of activists in the municipality of St Kanzian/Škocjan, represented by the GRILC VOUK ŠKOF law firm (back then called "Grilc & Partner"), demanded that all decisions regarding municipal taxes be in Slovene, and when the municipality did not respect this right, they refused to pay these taxes. The problem escalated. The municipality began to unlawfully issue arrears statements, which constituted an execution title, and then initiated enforcement proceedings at the District Court in Völkermarkt/Velikovec. The inhabitants of St Kanzian/Škocjan were then actually subjected to executions, because of their demand to use the Slovene language, and the municipality even began to foreclose on mortgages! This revealed the exceptional absurdity of the Austrian legal system with regard to administrative enforcement: anyone who is of the opinion that the administrative body was carrying out the enforcement without justification could demand that the statement of arrears be cancelled pursuant to Article 7 of the Austrian Enforcement Regulation. However, the decision on the revocation of this statement of arrears was again vested in the body which issued it in the first place - i.e. the municipality.

This case resulted in a clear abuse of office on the part of the municipality, since objections to the revocation of the arrears statements were lodged immediately, but the municipality simply refused to deal with them. For this reason, the mayor of St Kanzian/Škocjan was charged, and criminal proceedings were instituted before the Court of Lay Assessors. However, he was acquitted of the charges, as his lawyer was able to successfully explain that the legal situation was so complicated that the mayor did not know exactly what he was doing, and abuse of office could only be committed knowingly. This subsequently served as the basis for the later decision of the Public Prosecutor's Office against the Carinthian Governor Dörfler, who was acquitted in connection with the relocation of the place-name signs, with the same argument.

The municipality of St Kanzian/Škocjan once again made use of the tactic of delaying and did not deal with the applications within the 6-month period, so that motions to transfer competence to the superior body had to be submitted again, namely from the mayor to the municipal board, then to the municipal council, and thereafter complaints had to be submitted to the Administrative Court in Vienna for breach of the duty to decide. The enforcement proceedings before the District Court in Völkermarkt/Velikovec were suspended while the other proceedings were conducted.

In one of the cases, even the Administrative Court in Vienna made an incomprehensible mistake. Because the Constitutional Court had later overturned its decision on the bilingual place-name sign for the village of St Kanzian/Škocjan, on the pretext that the Slovene-speaking population was no longer numerous enough, the Administrative Court also decided that there was no right to use Slovene as an official language in the municipality of St Kanzian/Škocjan, as it confused the municipality and the village of St Kanzian/ Škocjan. It was only after another procedure and after another complaint that the Administrative Court was able to admit its error and resolve the matter. The »battle« for the Slovene language in the municipality of St Kanzian/Škocjan lasted a full seven years, in over 30 filings we incurred costs of more than EUR 50,000.00 based on the lawyer's tariff. Only years later, when the Constitutional Court finally clarified that - in light of the decision concerning the municipality of Eberndorf/Dobrla vas - the right to use Slovene as an official language also extended to the municipality of St Kanzian/Škocjan, did the municipality finally give in and began to issue decisions in Slovene. The activists subsequently paid their taxes, and the State Government moderated a compromise, according to which the municipality had to cover at least part of the lawyer's fees incurred. This made what happened afterwards all the more bitter. Thus, the right of all citizens in the municipalities of Eberndorf/Dobrla vas and St Kanzian/Škocjan to use Slovene as their official language was recognised after a long tedious legal fight, and it was clearly decided that this would also apply to all other municipalities that met the criteria.

It was therefore like a bolt from the blue when, simultaneously with the Regulation on Bilingual Place-name Signs in 2011, a new Regulation on Slovene as an official language was elevated to constitutional status. And this new regulation was far worse than the one that had already been recognized by the courts. Once again, but this time at the constitutional level, those villages were listed as bilingual which had already had the right to use Slovene as an official language in 1977. For the municipality of St Kanzian/Škocjan, the absurd situation had been created in constitutional rank that the Slovene language may only be used by those residents of the municipality who live in villages with bilingual place-name signs. In Eberndorf/Dobrla vas the situation was even more absurd: Slovene could only be used as an official language by inhabitants of the villages of Gablern/Lovanke, Mökriach/Mokrije and Hof/Dvor. The village Eberndorf/Dobrla vas and the villages Gösselsdorf/Goselna vas and Buchbrunn/

Bukovje have bilingual place-name signs, but Slovene may not be used as an official language there.
The village of Pudab has the same name in both Slovene and German, whereas the percentage of Slovene-speaking population is even higher than in villages where Slovene is allowed as an official language. Nevertheless, Pudab is not included in this list. Due to the fact that it has the same name in both languages, it was apparently not thought of at all. The same municipal employee in St Kanzian/Škocjan and in Eberndorf/Dobrla vas would have to use the Slovene language for one group of municipal residents, while he would have to deny this possibility to the other group. In the new Ethnic Groups Act of 2011 it was clearly stated in the explanatory memorandum that all incomprehensible conditions regarding the specific place of residence of a person wishing to use Slovene as an official language had been eliminated. This also corresponds to the case law of the European Court of Justice, whereby in cases concerning South Tyrol decided several times that the local authority, which is in principle able to use the minority language, must offer this possibility to every EU citizen. However, the municipalities Eberndorf/Dobrla vas and St Kanzian/ Škocjan have yet again brought about this absurd and contradictory legal situation.
The negotiators from the ranks of the Carinthian Slovenes obviously did not understand what they actually agreed to. And what's more, since 2011 the core political organisations of the Carinthian Slovenes no longer made any clear demands to eliminate this discrimination against the Carinthian Slovenes in St Kanzian/Škocjan and Eberndorf/Dobrla vas. In fact, in Eberndorf/Dobrla vas I was deprived of the very right that I, lawyer Rudi Vouk, fought for by means of the constitutional law, which is how the Austrian Constitutional State is when it comes to the rights of the Carinthian Slovenes.

There have been attempts to have the Constitutional Court re-examine the matter, but it has refused to do so on the grounds that constitutional provisions elude any review. There have also been attempts to bring the matter before the European Court of Human Rights in Strasbourg, but these have also been unsuccessful because the European Convention on Human Rights does not provide special rights for minorities, and European courts do not have to give any reason for not accepting cases. In fact, they reject some 95% of the cases, and often no one knows why.

If a citizen of another European Union member state were to file such a complaint, he would probably succeed. However, discrimination against one's own citizens is permitted under European law.
It is high time that the Republic of Slovenia, as protector of the Carinthian Slovenes, brings a case dealing with the discrimination against the Slovene language before the European Court of Justice, or at least addresses the issue during bilateral negotiations. We Carinthian Slovenes have achieved everything that is possible by legal means, but unfortunately we cannot change constitutional provisions by means of legal remedies.

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Slovenia – a strange country

We lawyers of GRILC VOUK ŠKOF, i.e. Roland Grilc, Rudi Vouk and Maria Škof, are Austrian attorneys at law who are also established as attorneys at law in the Republic of Slovenia. This means that we can also represent clients before Slovene courts and administrative bodies.

The basic prerequisite for legal representation in Slovenia, however, is knowledge of Slovene law. As Austrian lawyers, who are accustomed to thinking legally in an „Austrian way“, we repeatedly encounter peculiarities in the Slovene legal system, which we simply cannot explain to ourselves. If someone were to try to implement one of these measures in Austria, there would be an uprising and the measure would probably have no lasting effect. Our Slovene colleagues, however, are apparently not particularly bothered by these strange rules. When we complain that something can simply not be right, we often get the feeling that we are just being looked at in astonishment. Slovene lawyers probably experience a similar situation

when they are dealing with some Austrian provisions. It's in this light that we would like to present a list of the "10 strangest rules of the Slovene legal system", which we believe should be amended as soon as possible:

1. Deadlines

In a state governed by the rule of law, it is customary to provide for an appeal against decisions of courts and administrative bodies, which must be lodged within a certain period of time. In Austria, it was previously the case that the period for appeals against judgments was four weeks, against decisions two weeks, and also two weeks in administrative matters. Decades ago, almost all deadlines for appeals were harmonized to four weeks. Only in exceptional cases there are two-week deadlines. What's more, in complicated, expansive matters, it is even possible to extend the deadlines. A justification is not required. The situation is quite different in Slovenia.

In Slovenia, the deadline is often as short as 8 days, and sometimes only 3 days. Just imagine: The postman arrives at the law office in the afternoon and delivers the mail. The postal item is stamped. Even before the secretary opens the letter, fetches the file from the filing cabinet and distributes the mail, the first day has already passed. The next day, the lawyer in charge may be in Graz, Vienna or Salzburg, or elsewhere, at an out of office meeting. This is often the case at the GRILC VOUK ŠKOF law office, and so the second day passes and the lawyer in charge has not even seen the letter. On the third day, the lawyer is informed of the court's decision, translates the document into German, as the client often does not speak Slovene, and dictates a letter to the client. However, since this is usually not the only file that is being processed, the dictated letter is only written by the secretary on the fourth day. If the client has an email address, he will receive the letter on the same day and be informed of the court's decision. If the client does not have an email address, another day passes before the letter can be delivered. The client must then make a decision while six or seven days have already passed. If the client then makes a decision, the lawyer has to appeal on the very last day of the deadline.

The short, rigorous deadlines in Slovenia are simply not in accordance with the right to a fair trial. It is incomprehensible to us how it is possible that no one in Slovenia objects to this regulation. Even 14-day deadlines are too short, but 8-day deadlines are inhumane.

2. Preclusion

The principle of preclusion provides that all submissions and evidence must be submitted from the outset of the oral procedure. Later on, this is no longer permissible. As a result, in proceedings with international elements, all evidence must be examined and translated at the time of the first submission. These are often innumerable pages, and in the course of the proceedings it may turn out that they are not even necessary, because the opposing party acknowledges certain facts. The same also applies to the submissions: To ensure that nothing is forgotten or overlooked and that it is not precluded at a later stage, endless pleadings are drafted and submitted, even if it turns out in the course of the proceedings that only a few things are actually disputed, which could have been presented on one page. Rather than embarking on proceedings by first determining what is actually disputed between the parties, in Slovenia proceedings begin by determining what might be disputed between the parties. Instead of establishing the facts, the proceedings in Slovenia begin by speculating about what could be the issue.

We believe that the opposite would be better: even a contentious procedure constitutes a kind of dialogue, at the end of which there should be a certain insight rather than an attempt to establish positions with the aim that the strongest wins.

3. Eloquent statements

Lawyers in Austria are taught that on the one hand, submissions should be precise and on the other hand, they should also be brief. The better a lawyer succeeds in getting to the heart of the matter, the greater the probability that he will succeed with his claim. Judges are not pleased when they have to work their way through long sentences, but wish for concise arguments about what is at stake and on what grounds the legal position is derived.

The situation is different in Slovenia: one gets the impression that the more pages they contain, the better the pleadings. Whereas in Austria reference is made to the relevant paragraphs and it is assumed that the content of the legal provision must be known by the court anyway, in Slovenia the content of this provision is also reproduced.

Anyone who has translated from German into Slovene, or vice versa, knows that Slovene is a „short language". Where two pages have been used in German, half a page in Slovene is sufficient.

The situation is completely different with the briefs and submissions to the court. The submissions in Austria are usually relatively short and concise and it is possible to grasp the gist as well as the line of argument relatively quickly. With Slovene pleadings, however, you have to take your time and wade through all the ornamentations, formal arguments and quotations in order to get to the actual point.

We suspect that this is a legacy of the former socialist system. In the former system of self-government, it was necessary to explain from the outset what was actually valid. This was necessary because only a small part of the legal system was regarded as a generally recognized legal principle, everything else was scattered, including the decisions of the self-governing bodies. Although this system no longer exists, the habit of quoting everything from the beginning of time still remains.

4. Consent of the debtor

It is often the case that a debtor cannot pay as agreed. For such cases, enforcement proceedings are provided for. The debtor pleads that while he cannot pay

now, he will do so in a few months and the creditor should have mercy on him. In some cases, the creditor actually does have mercy on him and applies to the court for a stay of enforcement proceedings. In Austria, the court would be pleased having no more work and would close the case. In Slovenia, however, the court rejects the application if the debtor's declaration of consent was not enclosed with the creditor´s application.

Despite long and intensive considerations, we are unable to understand the meaning of such a provision. The debtor will probably be able to pay his debts at some point and the creditor will be satisfied. Why should it be necessary to prove to the court that the debtor agrees to the suspension of the enforcement proceedings if the creditor himself applies for it? One might think that the debtor is entitled to enforcement proceedings against him. Of all the mysteries of Slovene law, this may be the most puzzling.

5. Subsequent registrations in bankruptcy

Insolvency proceedings are always very unpleasant for creditors, as they generally have to expect that they will lose a large portion of their claim. As a result, it seems obvious that they should be accommodated at least in procedural terms and that they should be able to assert their claims as simply as possible.
Slovenia has opted for a different solution. The claim must be registered during the bankruptcy proceedings by a certain point in time, and subsequent registrations are not permitted. This is different in Austria. Subsequent filing of claims in insolvency is not a problem. The small country of Slovenia, which is closely linked to neighbouring countries precisely because of its size, where its citizens regularly settle and live and naturally also have debts, obviously assumes that all persons resident in neighbouring countries routinely monitor Slovene publications on the opening of insolvency proceedings in Slovenia in order to comply with the associated deadlines for filing claims. It is apparently assumed that all Austrians, Italians, Germans and others are, of course, fluent in Slovene.

May we be forgiven, but we find the system for filing bankruptcy claims in Slovenia extremely unfriendly, even towards Slovene bankruptcy creditors, but that is another story. Foreign bankruptcy creditors do not usually become aware of the opening of bankruptcy proceedings in a timely manner and therefore do not have the possibility to file their claims in bankruptcy. In this way Slovenia supports those who want to fraudulently get rid of their debts. The main problem is not the insolvency of companies, but the private bankruptcy of Slovene citizens who work in Austria and secretly file for bankruptcy in Slovenia. The Austrian creditors often do not find out about this or only after the expiration of the deadlines.

6. Land register

Austria and Slovenia have a long common history, also from a legal point of view. When the Josephine cadastral register was introduced, almost all Slovene lands were part of the Austrian Empire and as such the cadastral register was also introduced in Slovene territories. Even today it must be acknowledged that the introduction of this cadastre was a benefit to the legal system, from which Austria still benefits today.
Until recently, Slovenia has also benefitted from this. Reforms were then introduced, and we still do not understand why these reforms were necessary. Slovenia had a land register similar to the Austrian land register: there was a deposit number and the individual parcels were recorded in this deposit number. There was a sheet for encumbrances in rem and encumbrances in money.

This system was clear and understandable for everyone. Nevertheless, in Slovenia this clear system of the land register has been amended so that each individual parcel now has its own identification number and an extract from the land register. In the case of larger estates with many parcels, it is now necessary to deal with countless individual extracts from the land register instead of having the cadastral status summarized in one clear extract. It may please bureaucrats, but it is a nightmare for every simple mortal and also for every lawyer who is dependent on clear information and does not want to sift through hundreds of pages. It remains a mystery to us who thought up this retrogression of the previously existing, much better system, whom this new system should serve, why it should serve at all, and why this reform has even come about.

7. Power of attorney

Due to the fact that we completed our legal training in Austria, we never acquired a basic reflex of Slovene lawyers. The reflex looks like this: if a client enters the office, he must first sign over power of attorney. Nothing works without power of attorney. It is best if the client signs several powers of attorney in the first place, so that there is always one power of attorney available. Whoever a letter is addressed to must be provided with power of attorney.

What is the purpose of this waste of paper? A lawyer would have to be crazy if he sent a letter to someone on behalf of a client if he was not authorized to do so. The lawyer's profession is to represent clients and this is what he deals with on a daily basis.

It is understandable that proof of the power of attorney is required from a person who does not usually represent parties. If, however, a lawyer appears, he acts precisely in the manner expected of him. Why should he constantly have to provide proof of this? This fundamental distrust of lawyers is completely incomprehensible.

In Austria, it has been a rule for decades that it is sufficient for the lawyer to invoke the power of attorney granted. It is not necessary to present the power of attorney in paper form. This has enabled the legal profession to save tons of paper and a large number of unnecessary procedures through redundant formalities.

8. The freezing of business accounts

In the case of enforcement proceedings in Austria and Slovenia, the main procedural differences between the two countries have to be explained again and again, especially with regard to the „freezing of business accounts“.

For Austrians, banking secrecy is still a sacred cow and it is completely incomprehensible that a third person could gain control of a bank account. Of course it is possible to freeze the credit in the account, but this is merely a snapshot. If a payment arrives in the account the next day, the account holder can still dispose of these funds himself and these funds are not considered to have been frozen.

In Slovenia, business accounts are frozen until the entire claim has been settled. However, even if the claim has been settled for a long time, the account remains frozen until the creditor requests the suspension of the enforcement proceedings. As a result, the creditor also faces a stressful situation because he must react within a reasonable time.

It is difficult to judge which system is better or worse. However, it is problematic that in such a small area within the EU there are such completely different systems, and where the parties have no knowledge of these differences and therefore proceedings are initiated with false expectations and ideas.

9. Enforcement proceedings on the basis of an authentic document

When we explain to Austrians that in Slovenia it is possible to bring an immediate execution on the basis of an authentic document, but without any complaint, even if this is merely a simple invoice, it sounds like paradise to them. In Austria, an action has to be brought first, which entails correspondingly high court fees.

But here, too, there are two sides to the sun and the shadows. The possibility of quickly obtaining an enforcement order is desirable if the short, 8-day appeal period is taken into account. From the point of view of legal certainty, however, this is very problematic. The Austrian system is probably better in terms of legal certainty, but at the same time it causes considerably higher costs to the benefit of state coffers.

10. Wearing the gown

Austrian attorneys have successfully resisted the wearing of the lawyer‘s gown, called “Talar”. The jurisdiction of a state is a service for the citizen, and the courts (especially in civil matters) should assist the citizen in resolving and settling a dispute. That is the exercise of authority rather than authoritarianism. Wearing official garments is only an outdated expression of authority and subject. Only in the context of oral hearings before the highest courts, i.e. the Constitutional Court, the Administrative Court, the Supreme Court or the European Court of Justice in Luxembourg or the European Court of Human Rights in Strasbourg, are lawyers obliged to wear the gown as an expression of the particular respect and esteem of these courts. For the rest, lawyers are dressed decently but normally in their daily life as lawyers, i.e. when they represent their clients before ordinary courts.

In Slovenia, however, the lawyer must wear the gown for every single act he performs before a court. They are annoying, unpleasant and hot, and the public may even think they are something from the carnival. Those who thought up the requirement of wearing a lawyer‘s gown probably did not have in mind a lawyer who appears in court in Klagenfurt in the morning, in Graz or Ljubljana in the afternoon, then in Eisenkappel and a few hours later in Linz. Who wants to carry this cloak with them all the time?

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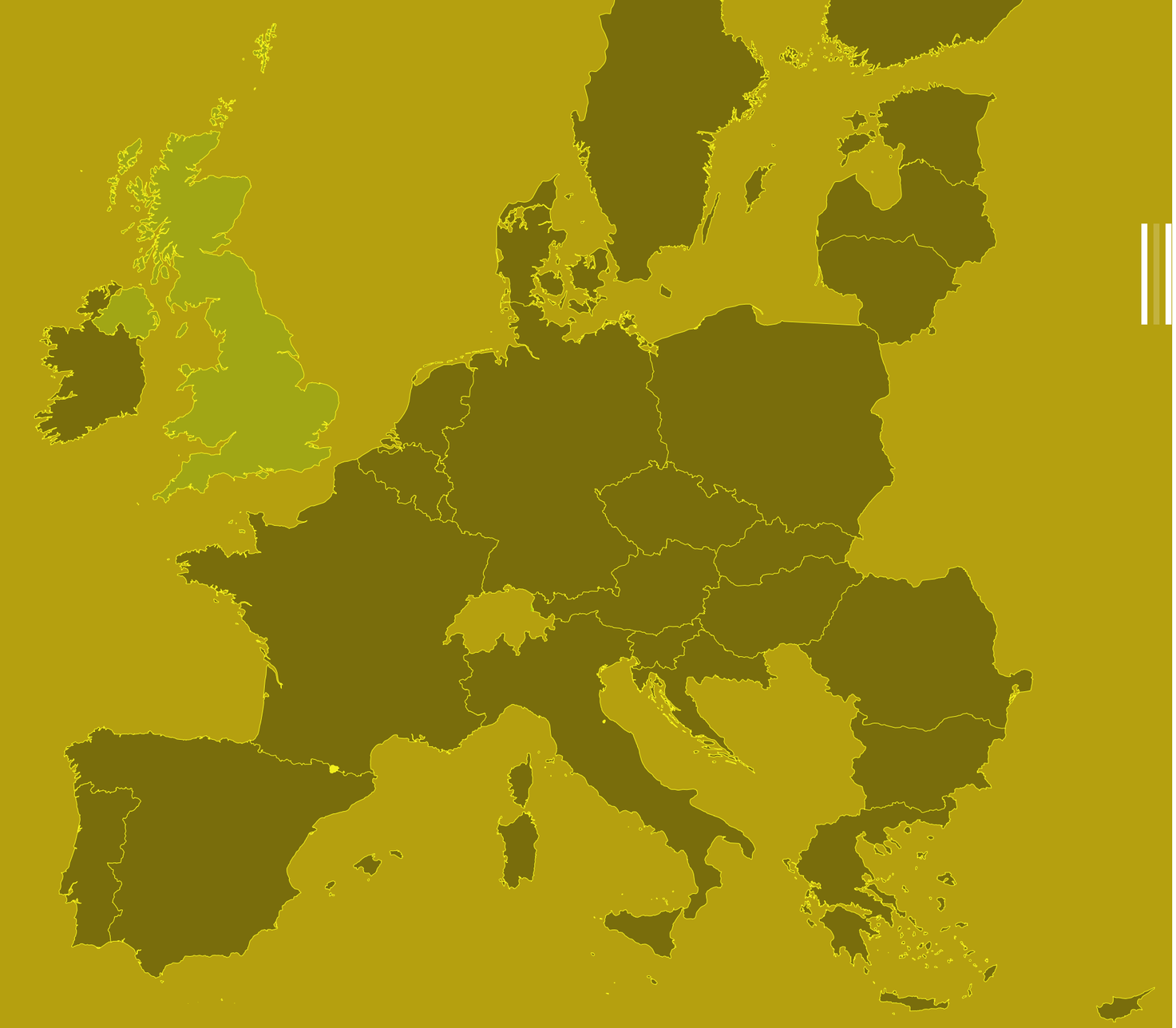

MAG. RUDI VOUK, ATTORNEY AT LAW

The freedom to provide services – the internal market of the man in the street

In the Treaty of Tordesillas in 1494, after the discovery of America, the leading naval power, Portugal, and the nation that discovered the new world, Spain, divided the world along a degree of longitude. Everything that was east of this latitude should belong to Portugal, everything that was west of it to Spain. Any other nation would be excluded from taking possession of and trading in these – for Europeans - newly discovered lands. There was resistance against this excessiveness of the Iberians - practical resistance by various pirates, but also legal resistance. We owe the emergence of international law to the latter. The Dutchman Hugo Grotius can be described as the first ever international lawyer. In his expert opinion „Mare Liberum Sive De iure quod Batavis competit ad Indicana commercia dissertatio“ he formulated one of the first principles of international law: „Each nation can approach another and do business with it.” When the Portuguese and Spaniards complained about the damage done to their interests, Grotius replied: „It is quite natural and in the sense of justice and equity for everyone to claim a profit that beckons equally to everyone, even if someone else exploited it for himself in the past“ and went on: „But the cause of the Dutch is all the more just because their benefit is linked to the benefit of the entire human race“.

The income of the Portuguese and Spaniards would be reduced, but it would be reduced to the advantage of the whole. Ever since Hugo Grotius formulated these principles of international law more than 400 years ago, many states have tried to seal themselves off and keep unwelcome competition from other states at bay. Since the invention of nationalism as an ideology suitable for the masses, it has always gone hand in hand with protectionism. Why should any foreigners be allowed to do business and dispute their well-deserved profits with hard-working na-

tionals? A state that protects its citizens must manifest this belief with appropriate laws. Protectionist attitudes have been supported by politicians on the far right and far left throughout history, with protectionism reaching its peak in the interwar period and contributing to the rise of authoritarian and anti-democratic politics in Europe and America. Only after 1945 did the conviction prevail everywhere in the world, but especially in Europe, that ever closer cross-border economic cooperation would benefit everyone. And that is what has happened. To return to the claim of Hugo Grotius quoted at the beginning, free trade would be associated with the benefit of the entire human race. Just a few decades ago, reports of famine in China and India were commonplace. Thanks to the economic upturn resulting from globalization, such reports no longer exist. Even from Africa high growth rates are reported, at least in places not hindered by wars. Of course, Europe and America did not pursue global economic integration purely out of charity, but because they - and above all they - profited from it.
In Europe, the EU has expressly set itself the goal of achieving the long-term harmonization of living conditions in all member states - not only through payments from various structural funds to less developed regions, but primarily through ever closer economic ties. Despite all the difficulties, this policy was ultimately successful too; the differences in Europe have narrowed and are still narrowing.

Of course, ever closer global and European economic cooperation also means more competition. The easiest way to keep competition at bay is to ban this competition or at least to make it more difficult to gain access to the market by imposing severe restrictions. It is always those who already have something to defend who are interested in such regulations and not those who want free market access in order to improve their situation. It therefore seems hypocritical that those who have benefitted the most from the free market in the past, such as the USA and England, are suddenly resorting to protectionism after Trump and Brexit. „The Moor has done his duty, the Moor can go“, one could almost say, the big profits have been made, companies from the USA and England are active all over the world, so one can calmly give in to populist demands and send Mexicans and Poles home.

Not quite as strict, but with a similar tendency, this discussion has also been going on in Austria in recent years. Austria has profited the most from the accession of the Central and Eastern European countries to the European Union, and Austrian companies are at the forefront in all these countries. The Austrian market was only opened for services from these countries, however, when the transition periods were exhausted at the end of 2011. The freedom to provide services constitutes free market access for everyone, while being of particular interest for small and medium-sized enterprises; large corporations do not need it, as they can just open a branch in the country concerned. After it became mandatory under EU law to extend the freedom to provide services to all new Member States that joined the EU and fulfilled the prerequisites in 2004, ever more detailed regulations were introduced to regulate the cross-border provision of services, numerous amendments were issued, and with each amendment the penalties were tightened and the sanctions catalogue extended.

Austrian politicians, too, like to emphasize in their Sunday speeches that the crisis following the Brexit is about strengthening Europe and not weakening it, and that it has to stop talking this way in Brussels, but differently at home. When it comes to the freedom to provide services in Europe, however, Austria itself is behaving exactly as those that are criticized in these speeches.

With regard to the Law Against Wage and Social Dumping, the following bizarre situation arises in Austria: we are dealing with civil servants who are obliged to apply current laws and who, of course, are also bound by orders. For this reason, they cannot do anything other than exercise their professional duty. However, European law considerations do not always find their way into their decisions. Of course, civil servants are also people of different natures, but in an ideal state this should not be a factor.

On the other hand, courts are also required to apply the law, but at the same time they are subject to the control of superior courts. The situation becomes more difficult when two supreme courts, which do not have to give reasons for their decisions, simply refuse to deal with certain complaints. There is hardly any jurisprudence on this issue, the problem is highly relevant, but of course it does not primarily concern Austrians, but mostly foreign nationals. We have regional Administrative Courts, which quite rightly point out that while they are not obliged to initiate preliminary ruling proceedings, they are entitled to do so and have already made use of this possibility.
However, all these authorities have to deal with decisions of Austrian politics, which is where the real problem lies. Austrian politics advocates the most restrictive interpretation of the Services Directive and the Enforcement Directive of the European Union, and the trade unions in particular are proud of this. The fact that the Austrian Law on Wages and Social Dumping violates European law in several aspects, as the European Court of Justice has already stated, is of little interest to the representatives of Austria. In the area of cross-border economic activity, both in terms of workers and employers, we are unfortunately faced with a situation in which there is competition as to who is more protectionist.

As the example of Hugo Grotius shows, it was possible for a young lawyer, only 22 years old at the time, to prevail against the then absolute global power of the Spanish/Portuguese/Austrian/German Habsburgs. This example is intended to give hope that the GRILC VOUK ŠKOF law firm can also make a difference.

DR. MARIA ŠKOF, ATTORNEY AT LAW

How the free movement of services became the „long runner“ of my legal practice

The first steps

I first became aware of both the relevance and potential of the free movement of services - one of cornerstones of the Single European Market - during my studies in Utrecht. The name of the case was „Donatella Calfa“, and it addressed the incident of an Italian vacationer who was caught smoking marihuana during her holidays in Greece. As the consumption of cannabis constitutes a criminal offence in Greece, she was convicted and served with a life-long entry ban. Ms Calfa challenged the decision, arguing that the ruling of the Greek court would constitute a violation of her right of free movement of services. The European Court of Justice found in favour of her, arguing that the free movement of services applies to the recipient of services as well. This ruling seemed to me, a student of a relatively young member state of the European Union (Austria had only been a member state of the EU for 5 years), quite a „revolution“ and challenged my previous legal thinking, which was still stuck in national

terms. The hitherto prevailing approach that law only possesses validity within national borders was being blown up by the European Law. The legal framework was no longer limited to the Austrian legal system, but was extended by the superior European Law, also called acquis communautaire.

Slovenia becomes a EU member state

On May 1st, 2004 Slovenia became a member state of the European Union. The joy was enormous. Finally the borders that had divided nations for decades would be removed. But Austria was dreading this moment, mostly because it feared that workers from the new member states would flood the Austrian market, leading to a situation where Austrians would be replaced by cheaper manpower coming from the new member states. This fear, however, did not materialise. But the Republic of Austria still insisted on reserving its right to a transitional arrangement. The so-called „2+3+2-model" allowed for the freedom of free movement, and thus also the posting of workers, to come into full effect only after the expiration of a transitional period of seven years in total. Furthermore, so-called sensible areas were established, which would have been of particular interest for Austrian customers and foreign contractors. But nonetheless, within these sectors, in particular the building sector, it was pretty much impossible to obtain the necessary permits to provide services in Austria.

It was clear from the beginning that Austria would utilize the entire transitional period of seven years and that it never intended to open the Austrian market to workers coming from new member states earlier than necessary. On the other hand, Austrian workers and companies had been benefitting from the free movement of services within the new member states ever since their accession to the European Union. Austrian workers no longer required any work permits , and Austrian and German companies could - without any hurdles or burdens - conduct their businesses with their own employees in other states, e.g. in Slovenia.

The meaning of the free movement of services

But where is the great potential of the free movement of services? Ever since the 1990s, the European Commission had been emphasizing how the free movement of services was the crucial factor that would substantially foster growth and prosperity within Europe. The origin of the Commissions' considerations was that everyone who is legally providing services within a member state should be allowed to provide those same services - with his employees and without any bureaucratic hindrances - in any other member state of the EU. This is also how many a businessman initially envisioned the free movement of services. But the member states feared this freedom, which led to the adoption of a varied form of the regulation, by which the providers of services are in many aspects subjected to the host country's legislation.
In comparison to the freedom of establishment, the free movement of services provides greater flexibility. And this very flexibility is what is needed by small and medium-sized companies, which constitute the majority of companies within the region. The formation of a branch office in another member state just to carry out a few orders a year is certainly not economical. A company from Maribor can accept and execute an order in Graz without the need to found a company in Austria and hire employees. The advantage of the geographic proximity, short journeys and thus the geographically bigger market make the free movement of services particularly appealing to Austria and its bordering countries. The journey time of a company from Maribor to its deployment site in Graz is only 45 minutes, while traveling to Ljubljana takes 1.5 hours and to Koper some 2.5 hours.

For the duration of their posting, posted workers remain - under certain conditions - state-insured by the social insurance provider of their home country. The tax on wages is also paid in the workers' country of residence, if certain requirements are fulfilled. There are no uncertainties whether or not co-insured family members are in fact insured in the event of illness. The same goes for an Austrian company and its employees, which are executing an order in the south of France or Spain or Germany, etc.

Provision of services in practice - the first Austrian companies venture to Slovenia

Soon after the accession of Slovenia to the EU, both Austrian and German companies began making use of the possibilities offered by the free movement of services and posted their workers to Slovenia. This was of particular interest to me, given that Austria had previously feared that companies from newer member states would offer their services in Austria, while Austria itself would not benefit from the free movement of services at all. I remember walking through the centre of Ljubljana, when I saw Austrian handymen in work clothes during their lunch break. They were laying parquet flooring.

Shortly thereafter, a renowned German apparel chain entered the Slovene market. I had been working with the company on legal matters, including incorporating their Slovene branch, reviewing Slovene regulations regarding the labelling of goods and drafting lease agreements for their stores. These stores were designed by their in-house design team and the work did not take very long. For years the company had worked with the same contractors, which took care of the equipment for individual stores: lighting and electric installations, wall and floor covering, shelves, furniture, etc. All these works were done by German contractors and their employees, and without the need to incorporate branches in Slovenia, pay corporate tax, hire employees or pay social security contributions or personal income tax.

The free movement of services made all of this possible and Slovenia did not establish any difficult administrative barriers either. The workers that were posted to Slovenia only had to be legally employed in Germany and registered at the Employment Service of Slovenia (Zavod za zaposlovanje). They only had to fill out a one-sided form with information about

the employer, duration of the work, deployment site and posted workers. After that the German companies were legally set to work. No permits were necessary; there was not even a formal confirmation of the completed registration. The only confirmation they received was an „OK“ on the transfer protocol. It was that easy to conduct temporary services in Slovenia. And later it became even easier.

Provision of services in the other direction - the first Slovenian companies venture to Austria, or the „Freundschaftsbrücke“(„Friendship-bridge“) project in Bad Radkersburg/ Radgona

Even before the expiration of the transitional period, the accession of Slovenia to the European Union had a positive impact on the „togetherness“ and the „abolition of frontiers“ between Austria and Slovenia. An example is the project of the general renovation of the bridge over the river Mur called „Freundschaftsbrücke“ in Bad Radkersburg/Radgona. The city had been divided after World War I. The part of town on the right side of the river Mur, Oberradkersburg (Gornja Radgona), became part of Slovenia or the „SHS-state“ (State of the Slovenes, Croats and Serbs), while the other part of town on the left side of the river became part of Austria. After the Peace Treaty of Saint-Germain, Bad Radkersburg became a divided border town. On October 12th, 1969, after the rapprochement of Austria and the SFRJ, the bridge over the Mur, which had once connected two sides of the same town, was opened again. But in 2008 the „Friendship bridge“ needed a general renovation. Styria and Slovenia decided that - in the spirit of friendship, trust and solidarity between the two towns and countries - they would execute this project together. They agreed that Styria would contribute the architectural part, while Slovenia would be tasked with the execution and thus with the actual construction work.

But this wonderful idea of collaboration in terms of a common Europe failed as a consequence of the legislative framework, in particular due do the fact that Austria insisted on exhausting the entire transitional period. If a Slovene company wanted to conduct any construction work within Austria prior to that, it would require work permits. These, however, could not be obtained because they lacked of approval from the Foreigners‘ Advisory Council. In concrete terms, this meant that the Slovene companies could only engage in construction work on the Slovene side of the bridge. If the situation had been reversed, it would not have posed any problem. An Austrian construction company would have readily been able to carry our works on the Slovene side of the bridge as well.
I remember how in May 2009 I was giving a lecture in Murska Sobota regarding the issue, whether and under which conditions Slovene companies could provide services in Austria. At the end of the lecture, the head of the legal department of a large Slovene construction company came to talk to me. Her company had just been awarded the contract regarding the construction works on the „Friendship-Bridge“. She asked me, whether my explanations and elucidations where indeed correct. She could simply not believe what I had told them. Her company was obligated to abide by the contract, but in consequence of the transitional period they could only realize half of it. This would cause the company to be in breach of the agreement and it would eventually be liable to pay contractual damages. An unimaginable situation for a common Europe.

What followed was an intense time with lots of claims, appeals, talks and interventions on all imaginable levels, even diplomatic ones. Finally the Foreigners‘ Advisory Council was convinced and assented to the construction work. At the beginning of August 2009, the competent job centre issued 50 work permits and the construction work could finally begin. On July 28th, 2010 the „Friendship-Bridge“ was inaugurated, with politicians, diplomats from both countries, mayors as well as the inhabitants of Radgona and Bad Radkersburg attending the ceremony. It was a public celebration and in every aspect a manifestation of a common Europe.

Extensive lecture activities

The closer the end of the transitional period got, the more prepared Slovene companies wanted to be. They wanted to know which conditions they had to fulfil. It was appealing for Slovene companies to provide services in Austria, for many reasons: the deployment locations were often closer than some in Slovenia; for many Slovene companies Austria was considered the „Promised Land“, where law and order prevails and where accounts were settled on time - although many would become disabused of this last one. Slovenia was still feeling the consequences of the economic crisis of 2008, which began in earnest with the collapse of the Lehman Brothers investment bank. But Austrian clients and home-builders also wanted to take advantage of the wider market and bigger variety.

During the expiration of the transitional period, I was holding lectures across Slovenia, from Murska Sobota to Portorož, from Kranj to Novo Mesto, from Maribor to Jesenice, from Dravograd to Velenje and Celje. In a year and a half, I gave over 200 lectures, and the lecture halls were always completely full. Additionally, our law firm held several symposiums in Graz, Maribor and Bad Radkersburg/Radgona in order to shine a light on as many aspects of the provision of services in Austria as possible.

A particular difficulty was, however, that until the very end of the transitional period it was not quite clear what Austrian legislation after May 1st, 2011 would look like. Nobody really believed that Austria would allow the free movement of services to be carried out to the extent that was stipulated under European law. Obstacles were to be expected, but their actual dimensions were by no means conceivable.

On April 28th, 2014 the respective law was announced and became effective on May 1st, 2014. With the Anti-Fraud Law on Wage and Social Dumping

(Lohn- und Sozialdumping Betrugsbekämpfungsgesetz) the Austrian legislature really did itself credit. Due to various administrative obstacles as well as the prospect of punitive contractual damages, companies based in other EU member states would clearly be kept out of the Austrian market. In the years since, both the Law as well as the penalties have become even more severe, and penalties for formal offences in the hundreds of thousands of Euros or even in the millions have become the norm, even in cases were offences were corrected immediately. These penalties - converted into custodial sentences - even exceeded the punishment which Austria had imposed in the most severe national cases of fraud, e.g. in the cases of Hypo Alpe Adria and BAWAG. However, those drastic sanctions did not even pertain to the issue of wage and social dumping, which had been continually cited by the Republic of Austria as a justification for imposing those measures. At any given opportunity I would point out that this Austrian legislation was contrary to European Law and was aimed against foreign service providers. Being an attorney and a member of the Slovene ethnic group in Carinthia, I could afford to speak up and constantly highlight Austria's discriminatory approach. Eventually, the European Commission also wanted to get a better picture of the situation within individual member states and organized several national conferences including a closing conference in Riga, Latvia in April 2015. The competent EU Commissioner and a member of the European Parliament that was active in this field both partook in the conference, and the draconian Austrian measures and penalties for formal offences startled all of conference's participants.

How are things in practice?

Many questions and a field of law t
hat could not be more complex

In the beginning, my consultations would mainly focus on the notification of various Austrian offices, or the „gathering of material". I was often derided by colleagues who didn't consider this task to be legally relevant in any way. But soon it became apparent that the topic of the cross-border provision of services reaches into many other fields of law, and its complexity is a hard act to follow. Today, the free movement of services is an important field for our law office.

Just to give you a few examples if its relevance: The question might arise, whether invoices should be issued with or without value added tax, and if so, whether the Austrian or the Slovene, or maybe even the reduced VAT, should be applied. Where and how should the VAT be paid and can a pre-tax deduction be asserted for materials purchased in Austria? Is it necessary to obtain an Austrian tax ID? Where are employees insured? Do they remain insured within the Slovene social security system or do they have to be socially insured in Austria? What is the situation for co-insured family members that are still living in Slovenia?
What about the situation on income tax: Does it have to be paid in Austria? Which part of the income falls under the Austrian income tax and when does it have to be paid in Austria? How does the already taxed income affect the Slovene income tax? Does it have to be paid subsequently? Will it be credited? Is it subject to progression?

Or even more trivial: Which collective agreement should be applied for the posting of workers? The pertinent Austrian regulations stipulate that posted workers are entitled to the same wage that is due to comparable workers in Austria. For companies based in Austria this seldom poses a problem, as the affiliation with a certain trade guild within the Economic Chamber is defined, and thereby also the applicable collective agreement, when the trade license is issued. With the cross-border provision of services, however, this is not as easy. For the installation of windows six different collective agreements could come into effect, depending on the material of the windows and whether or not they are skylights. In the field of steel construction three different collective agreements could be applicable, for drywall works at least two. Furthermore, in Austria one should know about the existence of the profession of a refractory mason (Feuerfestmaurer). Given that there are over 800 different collective agreements in Austria one needs quite some knowledge, if not „archival diligence", to apply the right one, and it can still happen that the wrong one is chosen, which can eventually lead to penalties.
It has to be distinguished whether the contract between the client and the contractor is qualified as a contract for work or personnel leasing; legally speaking this is a very meticulous question which can be difficult to solve even for experienced lawyers. Added to this, Austrian authorities and courts have for a long time ignored the judicature of the European Court in the case „Martin Meat" and only began adhering to in on August 22nd, 2017. The consequences of a wrong subsumption, however, are disastrous: Not only is using the wrong registration form punishable itself, but in the case of personnel leasing the Austrian income tax is due from the very first day of the posting, and the client also needs to pay the withholding tax in Austria. What's more, the Austrian client is obliged to have all documentation readily available. Contravening these regulations leads to penalties for both the foreign deployer and the domestic employer. Moreover, for posted members of third countries, no EU Posting of Workers Certificates are issued.
Are self-employed persons to be treated as employees when they are consulted as external specialists as part of a project? Or does their work fall within the scope of the Construction Workers Leave and Severance Pay Fund (Bauarbeiter-Urlaubs- und Abfertigungskasse, BUAK), with the consequence that for each employee some EUR 40.00 per posting per day has to be paid to the BUAK, which could under certain circumstances even consume the calculated yield?
Which documentation has to be held ready during an inspection in Austria? The wording of the law is very vague and allows the financial police wide scope for interpretations. They could request documents that have not been in use for years, and which do not constitute part of the payroll accounting in the employee's home country. They could demand certificates of educational qualifications for unskilled workers,

although the whole reason they have status as „unskilled workers“ is because they have not completed vocational training.

And lastly, how and where can outstanding wages be legally asserted? Even foreign service providers will not be spared going to court against their employee. These are just a few of the practical questions that are on the minds of service providers in Austria.

Measures that are efficient, but contravene European Law - the „Čepelnik“ case

Apart from exorbitantly high and disproportionate penalties, which are aimed toward foreign providers of services, the Austrian legislation also wanted to take action against Austrian clients. When even the client experiences the negative consequences of commissioning a company based another EU member state, it is very likely that he will not commission other foreign companies in the future, so the problem will basically resolve itself. One might think that this is the real reason why the Austrian legislature introduced the instrument of suspended payments and the security deposit (Sicherheitsleistung) against Austrian clients. The client had to - immediately and without further ado - pay the outstanding contractual amount to the Republic of Austria, whether or not the alleged offences of the foreign company had been legally determined, without even giving the foreign company the possibility to challenge the accusations, without even considering possible warranty claims or the rights of retention of the client, etc. The foreign contractor did not even have legal standing and would often only by chance learn about the security deposit. All this was simply due to the fact that the contractor was based in another EU member state. Whether or not the foreign company might evade possible criminal prosecution would also not even be examined. It could be said that Austria was shooting proverbial sparrows with canons with its policies, and all under the pretext of wage and social dumping. Austrian authorities thus portrayed foreign companies as unreliable partners and risked the latter´s reputation.

The squaring of the circle was reached in cases where the security deposit was declared forfeited in favour of the Republic of Austria, but without crediting it to a possible penalty, even though Austria argued that the security deposit should serve exactly for that, as a security for a possible penalty.

This policy led to the absurd situation where although the client had paid the security deposit and thus the entire wage, he did not receive the commissioned work; on the other hand the contractor did not receive any work wage, he had to pay the penalty imposed on him, and in addition, the security deposit lapsed in favour of the tax authorities. The measure was extremely effective in obstructing the internal market.
The Austrian Supreme Court, the Constitutional Court and the Administrative Court were approached several times with questions relating to the security deposit, but they were very cautious. Only shortly before the decision of the European Court of Justice in the Čepelnik case, foreign contractors were granted the status of party. However, these Austrian High Courts did not find the measure questionable.
As the Republic of Austria painfully learned from the European Court of Justice in the Čepelnik case, the suspended payments and the security deposit were qualified as disproportionate and even described by the European Commission as a measure „which no longer has any place in today‘s Europe“.

However, despite the ruling by the European Court of Justice, the suspended payments and the security deposit were not removed from the law. They may no longer be applied, but ultimately this does not protect against the possibility of overzealous officials still imposing a payment freeze or security deposit.

Formalisms, rigorous controls and elaborate procedures

As mentioned above, the Austrian Law on Wage and Social Dumping (Lohn- und Sozialdumpingbekämpfungsgesetz, LSD-BG) and the administrative practice have been continuously tightened. Despite amendments to the law, it still contains plenty of indeterminate terms, which means that a service provider can never have legal certainty. In addition, inspections at construction sites have become more rigorous.

The list of formal offences that a foreign service provider can commit in Austria is infinitely long. In each situation each posted worker can be accused of up to four formal offences. If several managing directors are appointed, the penalties are multiplied by the number of managing directors. These cases, however, are not about wage and social dumping at all, although this is always cited by Austria as being the reason for the rigorous Austrian measures. Another interesting detail is that underpayment in Austria was exempt from punishment prior to May 1st, 2011. Until then it was not even illegal if trade workers were paid below the collective agreement. But even after underpayment became punishable, the Austrian Supreme Court ruled that an Austrian professional driver who regularly drives passengers from Salzburg to the airport in Munich, Germany is not entitled to remuneration according to the German minimum wage tariff. In comparison, a chauffeur who transports passengers from Maribor, Slovenia to the airport in Graz must be paid according to the applicable Austrian collective agreement as soon as he crosses the border. Service providers also face difficulties in terms of procedural law. In the first instance, administrative officials bound by directives often decide „blindly“ in order to comply with complaints of the financial police. The arguments of the accused in their justification are rarely listened to. Arguments under European law usually go nowhere. Only in the second instance, i.e. in appeal proceedings, is the case heard by an independent judge. But even in appeal hearings there are discrepancies. However, there are some judges who are willing to suspend proceedings and initiate a preliminary ruling procedure before the European Court of Justice in order to obtain legal certainty.

As ordinary revisions to the Administrative Court are usually excluded with the explanation that „these are not questions of fundamental importance“, there is then only one instance left that would actually deal with the content of the accusation against the service provider. What certainly remains for the complainants, however, are the procedural costs, since there is no reimbursement of costs in administrative proceedings, not even in cases that are eventually discontinued.

Conclusion

In a nutshell, one would have to say that Austria is striving to use formalisms to seal off the internal market from foreign service providers. The issue is actually not the one that is so often put forward, namely that companies from other EU Member States do not comply with Austrian wage regulations and that they practice social dumping. This would have to be punished separately anyway, and social dumping is indeed unacceptable and needs to be punished. Unfortunately, the ‚group of service providers from other EU Member States‘ is not part of the Austrian Social Partnership and is therefore opposed by both employers and worker representatives. And clients who would actually like to accept offers from foreign suppliers are left with no voice.

One gets the feeling that the Austrian legislature has consciously accepted violations of the European law, because it is not certain that national provisions will actually be examined by the European Court of Justice, and even if they are it can take years before the European Court of Justice reaches a decision.

The public debate on the freedom to provide services in Austria is often very one-sided: It categorizes „bad foreign contractors practicing dumping“ and „good domestic clients“. However, this disregards the fact that Austrian clients are actually not prepared to pay foreign companies the same prices they would pay Austrian companies. In addition, it is quite common for Austrian general contractors to award contracts to foreign service providers for major projects in which price plays an important role, which leads to price dumping by way of only charging the margin. The work itself is done by foreign companies, which are also liable for their work; very often a billing process follows at the end. These and similar aspects are all too often overlooked.

In conclusion, it has to be said that Austria is isolating its internal market under the pretext of social dumping, while itself taking advantage of the freedom to provide services.

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Since Austria's accession to the European Union, European law has continuously gained in importance and has also become a compulsory subject within the framework of legal studies. For older colleagues, European law sometimes - one could think - represents an unnecessary burden, while younger colleagues, who have already studied European law at universities, are more open to this field. European law and the legal view across the border are no longer „fantasies".

DR. MARIA ŠKOF, ATTORNEY AT LAW

Nothing works without European law

For the law firm GRILC VOUK ŠKOF, European law must always be taken into consideration. Disregarding it can lead to serious errors, to the detriment of clients.

Zagreb, Ljubljana, Maribor, Varaždin, Trieste, Udine and Salzburg are located within a geographical area with a radius of 230 km as the linear distance from Klagenfurt. If one takes the radius to Vienna, the area of activity includes northern Italy as far as Bolzano and Padua, the whole of Slovenia, large parts of Croatia, parts of Bosnia and Herzegovina and southern

Germany as far as Munich. About 16 million people live in this geographical area and seven languages are spoken. Seven legal systems are in use. All countries - with the exception of Bosnia and Herzegovina - belong to the EU. European law is thus the „daily bread“ of a lawyer working in this geographical region.
European law does not mean, however, that there is a harmonized „European Law Code“ for all areas of law, which is being applied and disregards national law, such as the Austrian Civil Code or Matrimonial Law. Rather, it is about the combination of national law and European law, which covers almost all areas of everyday life. Before a lawyer can assess the chances of success in terms of substance, he must assess the international jurisdiction and the applicable law. By no means do Austrian courts always have international jurisdiction nor is Austrian law is always applicable. The Austrian Civil Code, which generations of lawyers have regarded as the „legal Bible“ for over 200 years, has been considerably extended by European regulations. Overlooking this fact and the ignorance of European law can lead to unpleasant consequences and liability claims against the lawyer.

1. The lame Slovenian show horse or a Slovenian-Bosnian divorce in Austria or two Carinthian chimney sweeps in dispute over the sweeping area
One may think that a Slovenian show horse has little to do with European law. A simple sales contract for the purchase of a show horse is probably subject to the Austrian Civil Code (ABGB). But you can be mistaken if the seller happens to be from Slovenia. Since the purchased show horse was paralysed and would never win any more trophies, the Austrian buyer wanted to challenge the sales contract in court. She brought an action before the competent District Court in Villach/Beljak and based her claims on the Austrian Civil Code (ABGB). However, she had overlooked the fact that this was a cross-border case and that the Rome I Regulation had to be applied in advance to determine which law was applicable to the dispute, and the Brussels I Regulation had to be applied to determine which court had international jurisdiction.

By overlooking the fact that Slovenian law was applicable, the plaintiff had brought an action even though the claims had already been time-barred under the applicable Slovenian Code of Obligations (Obligacijski zakonik). The statute of limitations for errors is one year in Slovenia and three years in Austria. Warranty claims must be asserted within 6 months in Slovenia in the B2B sector and within two years in Austria.In family and matrimonial matters, it is also common for family relationships to involve partners from different countries, who then settle in Austria, establish a family in Austria, acquire assets and then separate again. Before it can be assessed who is entitled to what and why, the situation must be examined according to which law the claims are to be evaluated and which courts have international jurisdiction in the first place.

In the case of two Carinthian chimney sweeps involved in a legal dispute over the sweeping area, neither of the chimney sweeps had thought that the European Services Directive could be applied when their case was submitted to the ECJ by the Supreme Court. Chimney sweeps have always enjoyed territorial protection. When the defendant was sweeping in the sweeping area of the plaintiff and the latter had filed an action for an injunction. The essential question for whether area protection applies is determining what kind of tasks the chimney sweep performs. The ECJ ruled that territorial protection is justified for „safety-relevant tasks“ as in the case of firefighters or police, but not for „private-law tasks“.

2. European law as a review standard for national norms

Due to the primacy of European law over national law, national standards and measures may not contradict European law, which is why European law serves as a guideline for national provisions and measures. The free movement of goods and workers, the freedom of establishment and the freedom to provide services, the free movement of capital and the prohibition of discrimination form a particularly important standard of assessment. The European Court of Justice in Luxembourg has a monopoly on examination and interpretation. Its rulings are effective not only for the specific case but erga omnes throughout the EU.
GRILC VOUK ŠKOF has been the representative before the European Court of Justice in the following proceedings:

2.1 Amalia Valeško or ‚25 cigarettes are the limit‘.

Many people in South Carinthia associate the name Amalia Valeško with the long-time employee of the law firm GRILC VOUK ŠKOF. After Slovenia‘s accession to the EU, GRILC VOUK ŠKOF immediately wanted to explore the practical side of the applicability of European law.

For a long time, residents of the Republic of Austria had been tempted by the cheaper cigarettes and fuel prices in Slovenia, which led to so-called ‚cigarette and tank tourism‘, and Slovenia was repeatedly asked to close duty-free shops on the border and increase fuel prices. In the end the, import for one’s own consumption was reduced to 25 cigarettes in the case of entry from Slovenia, the Slovak Republic and Hungary. By international standards, it is common to import 200 cigarettes. Could this Austrian provision possibly be compatible with the free movement of goods?

Mrs Valeško bought a carton of cigarettes in Slovenia and duly declared it to customs for payment of tobacco duty. The responsible customs officer was somewhat surprised, as the tobacco tax was only EUR 16.80 and the completion of the form also caused some difficulties.

The national proceedings before the Independent Financial Senate were suspended. A preliminary ruling procedure was initiated before the ECJ. Although the ECJ did not see any discrimination against imports

of cigarettes from other third countries, meaning that the import of 25 cigarettes as a limit was legal in this case, this was the first preliminary ruling procedure after Slovenia‘s accession to the EU.

2.2 „Casino at the Border“

The Austrian Gaming Act stipulates that foreign casinos wishing to advertise their services in Austria must obtain the prior consent of the Austrian Ministry of Finance. The casinos in Slovenia are only a stone‘s throw from Austria and are popular with Austrian guests. Austria does not prohibit the promotion of gambling casinos from other EU Member States per se, but the approval of the Ministry of Finance must be obtained for advertising measures, although European law itself permits the freedom to provide correspondence services. The freedom to provide correspondence services means that both service recipients and providers remain in their countries of residence and that only the service crosses the border, as in the case of advertising. The ECJ followed Austria‘s view that the requirement of approval by the Ministry of Finance is justified on grounds of player protection. Many Austrian visitors to Slovenian casinos, however, do not feel this way at all and appreciate their attractive offers2.3 Bail-in - Kotnik or investors must proceed to checkout

Behind this term from the world of finance, which was born in the banking crisis of 2008, lies the fact that investors were asked to pay in the context of the banking crisis. The money invested is converted into subordinated capital in accordance with the Commission‘s Banking Communication. Only then state measures to bail out banks are permissible.

Investors are generally interested in a good profit and high interest rates, but in recent decades this has increasingly been achieved only with products that carry higher risk. But banks also have an interest in deposits and so various products have been designed to give investors the feeling of a safe, high-yield investment product. However, this was not about savings deposits on a savings account, but about bonds.

As a result of the banking crisis in 2008, some banks in Slovenia also had to be bailed out and were even threatened with being included under the European bailout fund, a measure that no national banking system would wish for. Countless small investors have lost their savings by converting their bonds from Slovenian banks into capital ex lege. They were angry and demanded compensation. The Slovenian Constitutional Court initiated a preliminary ruling procedure.

The bail-out of banks during the crisis, which was coupled with many investors losing their money, caused trouble not only in Slovenia, but also in Cyprus, Spain and Greece. Interestingly, Italian banks were also affected, but Italy took the necessary steps before the European legislation came into force, allowing banks to be rescued by government measures without the turmoil and anger experienced in Slovenia‘s case.

2.3 Čepelnik or the border remains - but not!

The Čepelnik case is a typical example of how border and peripheral regions, small businesses and consumers can also benefit from European law and the freedom to provide services, and how European law offers defence mechanisms against Austrian discriminatory measures.

The Austrian client, who lives in St. Michael ob Bleiburg/Šmihel ob Pliberku, was ordered to pay a security deposit in the amount of the outstanding work wage, because of alleged administrative violations by his Slovenian contractor, on the grounds that „the contractor is based in another EU member state“. This meant that the Austrian client had to pay work wages to the district authorities even before the work had been carried out and before it was due. The associated inconveniences are obvious: The client pays the fee but does not receive a service, and the contractor does not receive a work wage.

The Austrian client and the Slovenian contractor were located only 18 km from each other by car. In between lies the Austrian-Slovenian border. Until 1918 both towns were located in the same municipality Loibach/Libuče.

In addition to questions of content, which are described in detail in the article „How the freedom to provide services has become a constant feature of my legal activities“, the procedure was also interesting because it was conducted before the European Court of Justice in the Slovenian language. All EU citizens can use any of the official languages recognized by public authorities and courts. Thus, all EU citizens can use the Slovenian language in proceedings before the District Court in Bleiburg/Pliberk.

The proceedings were also particularly interesting because, in a dispute over the payment of remuneration for work, an administrative question had become relevant as a preliminary question, namely whether the security paid by the Austrian client was contrary to European law, and because the proceedings before the European Court of Justice had been initiated by a civil court. This is permissible, as any national court can refer preliminary questions to the ECJ if it is of the opinion that the issue is relevant to the decision, but it took many Austrian civil servants and the Austrian authorities and courts by surprise.

The ECJ overturned the Austrian measure of imposing a payment freeze and ordering the payment of the security deposit and qualified them as disproportionate.

The decision in the case of Čepelnik is the ECJ‘s first ruling on the Austrian Law on Wages and Social Dumping. It is clear that the Austrian measures have nothing to do with the repeated argument – “it concerns wage and social dumping and the protection of competition” - but only serve to close off the Austrian market. In a united Europe, however, the common market is more important than the national market.

2.4 Maksimović or administrative penalties in the millions for formal offences

The case of Maksimović, like the case of Čepelnik, also concerns the Austrian Law on Wage and Social Dumping and thus above all service providers from other EU Member States. The law provides for very high minimum penalties and the principle of accumulation, especially for formal offences. Wage dumping, which is reprehensible and must be punished, is not the main issue in most cases.

A Croatian company had committed itself to provide a service for a leading Austrian company. The contract value was EUR 1.5 million. In order to carry out this project, 217 employees were temporarily sent to Austria. In the course of the inspection by the financial police, the Croatian contractor was accused of not having any „documentation on wages (Lohnunterlagen)“ on hand at the site, whereby the required and existing documents were sent to the financial police only two hours after the inspection.

Since the contract that was originally qualified as a contract for work and services was subsequently reclassified by the responsible Austrian Labour Market Service (AMS) as a personnel leasing contract, the obligation to keep „documentation on wages“ available also applies to the Austrian company. As the company had several members of the Management Board, and the penalty is multiplied according to the number of members of the Management Board, administrative fines totalling EUR 23,271,000.00 or a substitute imprisonment of 15,316 days or 42 years (!) were imposed in the first instance for „failure to keep wage documents available“. In addition, flat-rate procedural costs of 10% were imposed, which alone amounted to EUR 2.3 million. If the contract had been awarded to an Austrian company, the administrative penalty would have amounted to a maximum of EUR 26,851.

It should be stressed, however, that it is by no means clear which documents are considered to be „wage documents“. The financial police often requests foreign service providers to provide various documents, such as the income tax card, under the title „wage documents“. However, this was abolished in Austria in 1993. Unskilled workers, for example, are sometimes required to provide graduation certificates, although the very fact that no vocational training has been completed is the reason why the worker is an “unskilled worker”.

It is evident that such exorbitantly high penalties are contrary to the principle that penalties must be proportionate. During the oral hearing before the European Court of Justice, the representative of the Republic of Austria was also confronted with this blatant imbalance between the offence and the punishment when he was asked whether a Member State - before the adoption of such a law - should not take a hard look at itself again and reconsider it critically. Even in cases of the most serious fraud, such as the recent BAWAG or HYPO-Kärnten scandal, the sentences imposed did not exceed 10 years. Meanwhile, in cases of a punishable offence for a serious bodily injury, the sentence in Austria ranges between 1 and 15 years, regardless of whether the offender has seriously injured one or 100 persons.

2.4 Other cases before the European Court of Justice

We are currently involved in a number of other proceedings pending before the European Court of Justice.

Since the General Data Protection Regulation entered into force, these proceedings, insofar as they concern private individuals, are not identified by name, as had been the case, but are anonymised and given letter combinations. In the future, when we talk about judgments of the European Court of Justice and the principles established by it, lawyers will no longer talk about Van Gend en Loos, Costa ENEL, Cassis de Dijon, Francovich, Kotnik, Valeško, Maksimović, Elektrobudowa, which for non-lawyers often sound like code words of a secret society, but about EX, DY or DX. It remains to be seen how lawyers will deal with this.

3. Practical experience with the European Court of Justice (ECJ)

Knowledge of „internals“ is an invaluable advantage when conducting proceedings before the ECJ. The law firm GRILC VOUK ŠKOF had the opportunity to gain insight into internal processes when attorney Maria Škof completed an internship at the ECJ. She was a somewhat „more mature“ trainee compared to her peers, but with a lot of practical knowledge and experience. By the way, this possibility is also offered to national judges, provided they speak French.
The preliminary ruling procedure at the ECJ is very different from the national civil and criminal proceedings. These are not adversarial proceedings in which parties and witnesses are heard, even though the judges at the ECJ can „pester“ quite a bit. In addition, there is an obligation to pay a fee. No note of fees has to be submitted. The decision on costs is reserved for the referring court. In exceptional cases, procedural assistance is also granted.

The preliminary ruling proceedings before the ECJ are conducted in the language of the referring court, even if the working language of the court is French. All languages have equal rights. Since all submissions must be translated into French, it is necessary to ensure that the submissions are not only understandable in the language of the author, but that abbreviations are explained and that sentences are as short and precise as possible. The same applies to oral presentations.

The experience gained is invaluable for the conduct of the process and the determination of the process strategy.

MAG. RUDI VOUK, ATTORNEY AT LAW

Austria –
A strange country

The lawyers GRILC VOUK ŠKOF, i.e. Dr. Roland Grilc, Mag. Rudi Vouk and Dr. Maria Škof, are all registered as established lawyers in Ljubljana, Slovenia. We believe that by looking beyond the borders we can also broaden our horizons in the field of law. From an Austrian point of view, one or two Slovenian regulations might seem incomprehensible to us, but on the other hand, our view as Slovenian lawyers has taught us that one or two Austrian regulations might also be worthy of criticism and should be reconsidered:

1. Court fees for undisputed claims:
In Slovenia, if a trader issues an invoice for services rendered or a retailer issues an invoice for goods sold and the customer subsequently fails to pay it, he will instantly file an application for execution on the basis of the invoice. After paying a court fee in the amount of EUR 44.00, the court will immediately issue an execution order and if the debtor does not appeal against it, the creditor will obtain a legally binding execution title and the execution proceedings will continue.

But how are unpaid invoiced dealt with in Austria? Let us assume that this is an invoice amounting to EUR 10,000.00. What should our client in Austria do in such a case? First, he must bring an action (application for payment order). In addition to the lawyer‘s fees - there is an obligation to be represented by an attorney - he has to pay a court fee of EUR 743.00. If the debtor does not object to this payment order, an execution must be brought separately and an additional court fee of EUR 143.00 must be paid.
A comparison of the two procedures shows the following: in order to obtain an execution order, the client in Austria has to pay court fees which are 20 times higher than those in Slovenia, while the lawyer‘s fees are about 10 times higher than in Slovenia. In principle, there is nothing to be said against the relatively expensive Austrian system of conducting legal proceedings, because people think twice about it before they credulously initiate court proceedings. In Slovenia this is - at least in our opinion - somewhat different, as some people decide to initiate legal proceedings just for fun or ‚sport‘ without any legal merit. Nevertheless, it seems to us that Austria charges disproportionately high fees compared to Slovenia in cases of the simple determination of uncontested claims, and as a result the Austrian budget receives a disproportionate contribution. Some will now say that Slovenia has not taken advantage of an opportunity to restructure the state budget. In Austria, court fees are also not capped at a maximum absolute amount: the court fee can be as high as 1.2% of the amount in dispute + EUR 3,488.00. In other words: if only one claim with a dispute value of EUR 100,000,000.00 is filed each year - then the entire court, including judges, clerical staff, porter and security officers, would not have to worry about their salaries for the year.

2. Business accounts:
When a claim has been made against a Slovenian company, the balance of that company‘s business accounts will be checked first. If it is established that the business account is frozen, the client must be informed that the prospects are bad: the debtor is obviously in financial difficulties and the client must therefore consider whether it makes sense to initiate proceedings or whether it might be more reasonable to accept the proposed settlement offer.
This is quite different in Austria. Business accounts are not publicly accessible, which is why it is not possible to determine the account balance or even at which bank a company has a business account. Only if one first learns, from other sources, at which bank a business account is held, can an execution on the assets in this account be initiated. The other possibility is to blindly bring an execution on business accounts at all possible banks, which would require court fees and costs for the declaration of the third-party debtor (Drittschuldnererklärung) to be paid for each and every one. Indeed, many Slovenian companies have also realized that the Austrian system makes it easier to hide money from debtors, so the question arises whether this is desired or even compatible with an open market economy in light of the prevention of tax havens?

3. Publicly available data:
As far as transparency is concerned, in Slovenia the AJPES register provides free access to all the necessary company data, including balance sheets. In the case of insolvency proceedings, all the liquidator‘s reports on the insolvency proceedings can also be accessed online. For each individual procedure, even if it is proceeding slowly, the status of the procedure can be checked on the website of the court.
In Austria, all of this is a „black box“. If one wants to obtain any data, an analysis must be requested from one of the Creditor Protection Associations (Gläubigerschutzverband), which of course must be paid for. And how do you obtain the liquidator‘s report in Austria? As a party to the proceedings, you could go to court and have it copied, or you can kindly ask the liquidator to submit the report, which he will not always do. One could obtain information about the status of the proceedings from the clerk of the court‘s department, but his answer might again depend on his mood that day. When it comes to transparency, Austria could indeed learn a lot from Slovenia.

4. Statutes of limitation:
In Slovenia, it is relatively easy and inexpensive to obtain a writ of execution for undisputed claims. For this reason, the Slovenian execution order is only valid for a period of 10 years, after which claims established by the court become statute-barred. Austrian execution orders are relatively expensive in comparison - but that is why they are usually only filed when there is a legitimate reason for doing so. In Austria, claims recognized by the courts only expire after 30 years. In today‘s fast-moving world, this is quite absurd. Thirty years ago Yugoslavia still existed, Austria was not yet a member of the European Union, and the internet did not yet exist; but judicially established claims amounting to 1,000.00 Schilling from 1989 could still be executed in Austria today. It is not surprising that the problem of the limitation of claims established by the courts has not yet been dealt with in Austria, whereas this problem occurs more frequently in the case of claims established by Slovenian courts.

5. Legal aid:
The feeling that claims are lodged more often in Slovenia than in Austria may also have to do with the different conditions under which legal aid is granted. Of course, legal aid also exists in Austria, it is granted by the court and the Austrian Bar Association appoints a lawyer and the lawyer is obliged to represent the assigned client with the same commitment as any other party. A big difference, however, is that lawyers are not paid for it, they have to work free of charge or almost free of charge: after the case has been closed, the lawyer submits a note of fees to his Bar Association, which forwards the note of fees to the Ministry of Justice, which only pays a partial amount into the pension fund of Austrian lawyers, so that Austrian lawyers can also enjoy their retirement someday. It is therefore not surprising that some lawyers in Slovenia have developed a business model based on legal aid.

In place of clients who pay fees, they make their living from clients who enjoy legal aid. Someone who does not know this difference would be surprised at how naturally some Slovenian citizens contact our office, as they have problems in Austria and wish that we take on their case. However, with regard to the payment of fees, they suggest that we apply for legal aid.

6. Work-related accidents:
Very often we are approached by Slovenian clients who are employed in Austria and whom we represent in compensation proceedings for industrial accidents. They would like to bring an action for damages against the company at which they had the accident. However, they do not understand that this is unfortunately not possible in Austria. In Austria, the employer is only responsible if he intentionally caused the accident at work, which can be excluded in about 99% of cases. In all other cases, a compulsory accident insurance system is provided, from which the injured party can obtain compensation or even a pension if his ability to work is reduced by at least 20%. However, the injured party only receives compensation for the pain suffered if physical integrity is reduced by at least 50%, which is also the exception: in Austria we have a system that clearly favours employers. It is therefore astonishing that neither the trade unions nor the left-wing political parties are demanding change in the field of occupational accidents in Austria. Judging by our clients, most of whom are foreign citizens who do not have the right to vote in Austria, it quickly becomes clear that their difficulties are of no interest to anyone here and the fact that no one advocates a change in the Austrian regulation is therefore not surprising.

7. Land register procedures:
The land register in Austria is clear and easy to understand, unlike in Slovenia. Nevertheless, gaining access to the land register in Austria is disproportionately more complicated than in Slovenia. The officials who keep the land register are still committed to the old Roman legal system from the 12-table period around 450 B.C.: a transaction is considered final if you say the right word; the Romans had to say the word „spondeo“, today‘s Austrian land registrars have different expressions for it. But if you use a synonym for one of these expressions, even if the meaning is the same, it is not legally binding. For these reasons only specialized notaries deal with land register matters, because to ordinary lawyers, who try to solve problems instead of memorizing formulas, it all seems a little tedious. In addition, there are various commissions in Austria, such as the Land Transfer Commission at the district authorities, which essentially is responsible for ensuring that a land transaction does not fall under a certain law or does not endanger the farming community. The commissions have long since lost their importance, but they still exist, presumably out of curiosity, so that officials are informed in good time about what is happening on the property market. It is often difficult to explain to Slovenian citizens that in “capitalist” Austria the registration of property in the land register is more formal than in “socialist” Slovenia.

8. Access to the Constitutional Court:
In Slovenia, courts often approach the Constitutional Court with questions as to whether a certain legal situation is consistent with the Constitution of the Republic of Slovenia. The Constitutional Court thus has a major influence on legal developments in both civil and criminal law.
This is different in Austria. The Constitutional Court is essentially a state court and a special administrative court dealing with constitutional problems. In Austria, the principle of equivalence applies to all three supreme courts, i.e. the Constitutional Court, the Administrative Court and the Supreme Court. This often leads to irreconcilable differences in the jurisdiction, which can be bridged in such a way that one has to know how to get to the right court. If one does not know about this possibility and ends up before a court which represents the „wrong legal view”, this can also be problematic. For this reason, it is not surprising that the Austrian supreme courts, in particular the Constitutional Court, are reluctant to initiate preliminary ruling proceedings before the European Court of Justice, because this would mean that they would recognize the legal opinion of a higher court. Clients in Austria only have the possibility to appeal to the Constitutional Court simultaneously with an appeal in a civil or criminal matter with the assertion that the concrete law is unconstitutional, but not with the assertion that it encroaches on their subjective rights. As far as the Constitutional Court is concerned, clients in Slovenia thus have more options.

9. Fear:
Austrians have no fear. And if they do, it is of no use to them even when fear is inflicted on them unlawfully and culpably - that is, the Austrian legal system provides no compensation for fear suffered or for diminishing of quality of life. With regard to non-material damage, the Austrian legal system is more or less limited to pain and suffering. Although the result is similar in the majority of cases when it comes to physical damage, which of course also involves anxiety with an impairment of quality of life, the calculation is different. Regardless of this, it is difficult to explain to Slovenian clients, who are at least partially aware of how compensation for personal injury and impairment of physical integrity is calculated in Slovenia, what Austrian law provides in this respect. This is very flexibility on this issue. In the history of our law firm we have seen how the Austrian Supreme Court only awarded damages for mourning the death of a close relative almost 20 years ago. The Austrian Civil Code from 1811 did not attach great importance to emotional circumstances at that time. Considering its age, the Austrian Civil Code is not so bad as far as the emotional process in humans is concerned, but it would not hurt if it were adapted to more recent findings about the meaning of emotions in humans, which coincidentally was also an Austrian discovery, but has so far only been considered elsewhere.

10. Non-marital partners:
Austrian history alone shows how the Austrian legal system treats non-marital partners. The provisions of

inheritance law changed with the amendment of the Austrian Civil Code in 2017 and the assertion is circulating that now for the first time in Austria cohabiting partners are also entitled to inherit. But how?! Only when there is no heir entitled to an inheritance in the case of hereditary succession, which would then revert in favour of the state, are life partners entitled to an inheritance. Even if partners lived in the same household, they are dependent on the goodwill of the other heirs not to throw them out immediately, but only after one year. Austrian law therefore still takes the view that someone who wishes to grant legal status to his partner must marry. Under Slovenian law, however, there is no longer any significant difference between married and unmarried couples, so that the question has already arisen as to whether marriage in Slovenia is still even a necessary legal act or whether it is merely a legally recognised possibility of celebration. To sum up: if Slovenian law is perhaps too far-reaching for some people, Austrian law is surely lagging behind in this respect.

In a federal state, the diversity of administrative structures is common and welcome, as regional specificities can be taken into account and it is possible to constantly check which regulation is more appropriate. For this reason, comparative law is also one of the most interesting legal disciplines. Even in a common Europe we will therefore always have different legal systems. The question, however, is whether they should differ as much as Austrian and Slovenian law.

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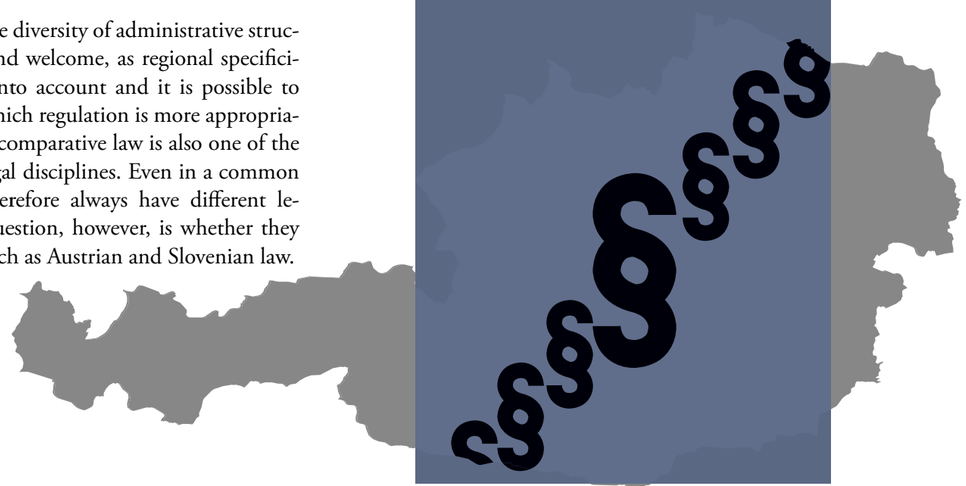

MAG. RUDI VOUK, ATTORNEY AT LAW

Law of Aliens as a practical experience

The GRILC VOUK ŠKOF Law Office has always been concerned with the Law of Aliens. At the time of its founding, the aim was to ensure the formal conditions for Yugoslav citizens to work in Carinthia - it was not about the so-called “Gastarbeiter”, foreign workers, but about managers and entrepreneurs who wanted to invest in Carinthia. After the disintegration of Yugoslavia and during the time of the Bosnian War, a large part of the law firm‘s work consisted of - more or less unpaid - assistance to Bosnian refugees navigating through the bureaucratic jungle of Austrian law, especially since very few of them understood even one word of German. Later it was about family reunification and more and more about the question of how to get to Austria legally.

There is a strange contradiction in Austrian foreign policy: on the one hand, Austria is one of the countries with the highest proportion of people with a migration background. Austria has also taken in far more refugees than many other states; our ratio of inhabitants per refugee is about 1:60, while in many other European countries there is only one refugee per 500 inhabitants. In this respect, Austria has nothing to answer for. On the other hand, it is not necessary to emphasize this because Austria simply needs immigrants. Without immigration, Austria would soon have a population of only 6 million instead of 9 million, and the pension and social security systems would be on the brink of collapse. One could say, so far, so good.

But Austria is also one of the countries with the most restrictive immigration laws. From the original relatively liberal legal situation to the Aliens Act of 1992, the law of aliens has been continuously tightened. It is currently almost impossible to emigrate legally to Austria if you have no family members in Austria or if you have not already guaranteed an income of around EUR 3,000.00 before entering the country, have a good knowledge of German and a fixed occupation. It is no coincidence that Austria is falling further and further behind in the competition for top executives, because the conditions for legal entry cannot be fulfilled by most interested parties. In an effort to stop migration, the laws have been tightened more and more in an attempt to ignore reality - but nothing has changed with regard to this reality. It's a typical Austrian sob story - officially we don't let anybody in, but because the migrants are coming anyway and we can't turn them away after a few years for reasons based on the Human Rights Convention, immigration still takes place.

This is a completely unsatisfactory situation for a lawyer. We cannot advise illegal actions. But on the other hand, there is hardly any legal possibility even for people we urgently need to come to Austria for economic reasons. From a lawyer's point of view, a law on immigration is much needed.

Beyond such theoretical considerations, however, the fact that every „foreigner" represents a personal destiny is virtually absent from the public debate. The following are only a few examples:

- An old Bosnian woman whose husband and son were killed in the war. She was illiterate, could not speak German, so she had to come to the office with every letter from the refugee department in order to be able to resume the proceedings. We managed to keep her here, with time the visits became rarer, she needed less and less help.

- The former mayor of Srebrenica, who at the beginning was extremely grateful and enthusiastic about migrating to Austria, but then became increasingly desperate about the bureaucracy and finally gave up. He travelled on to the Netherlands, where he was able to arrange his status in the shortest possible time and even sent us a postcard.

- A woman who was looking after her brother, who was paralysed from birth and mentally disabled. After their parents' death, he was suddenly informed that he was to be deported due to a lack of secure financial support. It took 2 years until this inhumane madness was stopped and the right to stay was secured for this person who no one wanted to take care of.

- An Afghan whose family was killed by the Taliban, but who was informed in his first-instance asylum decision that he had merely made himself unpopular with the „local Taliban", which was not considered a sufficient reason for asylum. The whole village campaigned for him and went with him to the appeal hearing before the Federal Administrative Court in Vienna, where the refugee was cynically interrogated for five hours as to whether there was any place in Afghanistan where he would be safe.

- A young woman from Nigeria, who was lured to Austria under false promises of being able to work as a hairdresser,but was then forced into prostitution. She is instructed to tell a false story. Only because we succeed in convincing her to tell the authorities the truth did she get a chance to stay in Austria as a protected victim and as a potential witness in the proceedings against the traffickers.

Such procedures are a regular part of our work. It is not possible to take on every case. There are always inquiries, and you have to decide within a very short time whether a case should be accepted or not. Costs cannot play a role, we believe that we are fulfilling our obligations to the general public, to a certain extent, by representing these clients.

If the nationalization of legal assistance in refugee matters is introduced, all that remains from a lawyer's point of view is a serious warning: all the above-mentioned cases were under state supervision and were decided negatively before they were handled by our office, and all of them were dealt with positively after they were taken care of by a lawyer.

MAG. RUDI VOUK, ATTORNEY AT LAW

Are the lawyers of GRILC VOUK ŠKOF monarchists?

One day, shortly before the presidential elections in Austria in 2010, a certain Mr Ulrich Habsburg-Lothringen called our office. He said that he was familiar with our office because of the proceedings concerning the minority rights of the Slovenian ethnic group and that now he himself had encountered a constitutional problem. However, before we went any further into the matter, he wanted to know whether Carinthian Slovenes had a problem with the Habsburgs. I replied that he was certainly aware that the Slovenes had been one of the most loyal people to the Emperor for as long as it was possible, and that it was the monarchy that ultimately made a kind of United Slovenia possible. Only when it was no longer possible, they had to decide differently.

Mr Habsburg-Lothringen was satisfied with the answer and began to describe his constitutional problem in more detail: He wished to run for Federal President, but because of the Constitution this right would be denied to him. Mr Ulrich Habsburg-Lothringen was a member of the Municipal Council of the city of Wolfsberg on the list of the Greens at the time, and if his party were successful he could also become mayor, even Federal Chancellor - but he would not be allowed to run as President. One of the first constitutional laws of the Republic of Austria that had ever been passed was that relatives and descendants of former ruling houses could not become Federal Presidents.
This issue is intriguing to every constitutional lawyer. After all, the wording of the Constitution is entirely superficial. For historical reasons it seems obvious to everyone that members of former dynasties would be excluded, such as the descendants of the former Emperor Karl I, today this would be Karl Habsburg. If he were interested in the position of the Federal President, the republican principle of our Constitution would be applicable and one could argue that it would be justified for historical reasons to exclude him. But if all the members of former dynasties are excluded, would that not exceed the limits? If the aristocracy still existed in Austria, Mr Ulrich Habsburg-Lothringen would certainly be a Grand Duke in title, but he would not have any claim to the throne. His ancestors were Grand Princes of Tuscany, who were the secondogeniture of the Viennese emperors. First and foremost was the Imperial Court in Vienna, only if there were no more successors from this Court would the Tuscan princes have their turn. The last person to take this career path was Emperor Leopold II at the time of the French Revolution. After the unification of Italy and the end of the Grand Duchy of Tuscany, the Tuscan line of Habsburgs within the Austrian Empire had been given appropriate titles, but they were far from ever succeeding to the throne.

One could then show a certain understanding for the Austrian Constitution if it concerned exclusively the Habsburg-Lothringen family. However, in their anger of 1918, the Austrian Republicans decided that all members of any ruling or former ruling houses should be excluded from the position of Federal President. The decree therefore affects not only the Habsburgs, but also the Wittelsbach, Karađorđević, Windsor and Bourbon families, even Massai kings and the descendants of the emperors of Abyssinia. If someone could prove the genetic relationship of a Carinthian Slovene with King Samo or Prince Borut from the times of Carantania, this Carinthian Slovene would also be excluded from the office of Federal President as a descendant of a former ruling house. Therefore, this formulation clearly goes too far and we gladly took the case of Mr Ulrich Habsburg-Lothringen, who, incidentally, did not attach any importance whatsoever to the fact that he was addressed with any title, but was just a client like any other.

We lodged a complaint because he was banned from standing as a candidate, and the proceedings went first to the Constitutional Court and then to the European Court of Human Rights in Strasbourg.

What was once a mere legal curiosity developed its own dynamics over time. I knew some journalists from the time of the proceedings around the bilingual place-name signs and I told them that I had an interesting new case. The journalist, who is responsible for the Austrian Press Agency and is basically an extraordinarily knowledgeable historical person, was enthusiastic about the story. We expected that there would perhaps be a brief announcement in the newspapers about the Habsburg exotic who wanted to become Federal President, and that this would be criticized from the point of view that he was not being treated as an equal person. But instead, the mainstream media around the world began to report on a Habsburg's struggle for the office of Federal President. The matter attracted so much attention that Austrian politicians felt compelled to deal with this issue, which had actually been of no interest to anyone for decades.

In the end, we lost the proceedings. The Austrian Constitutional Court has quite clearly stated that a constitutional law ought not to be the subject of a ruling, and the European Court of Human Rights has ratione temporis refused to deal with the matter at all. The argument is not convincing, but it probably feared that next time another member of a former ruling house in another European country would complain, and that this time it would not just be about symbolism, as was the case with Grand Duke Ulrich.

In reality, however, the matter was still a success: the Austrian parliament amended the constitution and Ulrich Habsburg-Lothringen could now run for the office of Federal President. However, he refrained from doing so, after all, he had achieved what he really wanted.

In addition to the pleasure of a lawyer in challenging superficial and ill-considered phrasing, as in this case, and entirely without any monarchist background, it is necessary to mention the following: GRILC VOUK ŠKOF is a law firm that operates across borders. The Habsburg Monarchy was the same; it encompassed the very countries in which we operate. As a lawyer working in precisely these areas, it was therefore a nice synergy to represent a clientele that still thinks in at least Central European terms. Some even believe that the Austro-Hungarian Empire was the unsuccessful prototype of what we are trying to create within the European Union today, only a little better and bigger.
When we succeeded in the „Čepelnik“ proceedings (C-33/17) before the European Court of Justice in Luxembourg, where representatives of Slovenia, Hungary, the Czech Republic, Slovakia and Poland also argued in our favour, one of the representatives of these countries concluded by noting that on that day it was a matter of proceedings of the former crown countries against Austria.

Competences

EUROPEAN LAW ▪ COMMERCIAL LAW ▪ CONTRACT LAW ▪ LABOUR LAW ▪ ARBITRATION ▪ CIVIL LAW ▪ FAMILY LAW AND LAW OF INHERITANCE ▪ HUMAN RIGHTS, FUNDAMENTAL FREEDOMS, RIGHT OF ASYLUM ▪ MINORITY RIGHTS ▪ CRIMINAL LAW ▪ WORKSHOPS AND LECTURES

MAG. MATEJ ZENZ, ASSOCIATE

Everyday life as a lawyer:
Not Luxembourg, but Bleiburg

If someone had told me 5 years ago that I would be sitting in front of a Carinthian district judge today, not in the dock, but as a lawyer, I would have shaken my head in disbelief. Now, however, I find myself sitting here explaining to the judge that it is probably a cross-border consumer matter when an Austrian pensioner‘s dentures crumble out of his mouth after receiving dental treatment in Slovenia, even before he emerges from the Karawanken tunnel in the direction of Villach/Beljak. From the point of view of a student studying law in Vienna, Carinthia/Koroška was then „lei ans“ - that is, uninteresting.

To the metropolitan university with a measure of idealism…

But let‘s go back to the beginning. Being a lawyer you are always asked why you studied law. And as with so many lawyers, my story begins with the fact that I didn‘t really want to become a lawyer. As a graduate

of a Slovene grammar school, I first and foremost just wanted to leave Carinthia/Koroška - as far away as possible from the mountains and lakes and parents. Urbanity, concrete and anonymity were what I needed. Vienna was of course the first choice in Austria. What I would actually do there was of secondary importance - I'd study something. My primary interests, politics and history, were not very attractive for a future career. My parents confirmed this, saying that I should do something „gscheid's". No sooner said than done, and I enrolled as a student of law. After all, law and politics are closely interwoven. Moreover, as a young Carinthian Slovene, you are inevitably an idealist and fighter for just causes. And law, so the thought goes, can make a difference in the world. Hadn't the great revolutionary Lenin also studied law?

... only to emerge disillusioned

First of all, the study of law had little to do with Lenin. On the contrary. My fellow students were anything but revolutionary. Rolling to university with papa's Range Rover, they were first and foremost interested in themselves. Justice? Absolutely not. The only thing that would be just later on would be their own salary. My studies turned out to be quite unspectacular. When I got a job with a Slovene professor working as an assistant at the Institute for European Law, I was able to use my Slovene language skills in a legal context for the first time. But I still didn't have an idea which direction to take, not even after graduating. Like Lenin, who was now collecting dust in the back corner of my bookshelf, I asked myself: „What should I do?" While my fellow students were being hired either by large law firms, ministries or were employed in their parents' offices, I was initially quite aimless with my degree in hand and there was little left of my desire to fight for justice. Then I was approached by the GRILC VOUK ŠKOF law firm .

Back to Carinthia/Koroška?

At first, I was rather sceptical about the offer. Don't they just do commercial law? Do I even want to become a lawyer? And moving back to Carinthia/Koroška? I consulted my former university classmates, who were at that time associates in large law firms along the Vienna Ring. „Urfad, dead boring" they said the countryside would be, asking whether I really wanted to „make sure that one farmer's pear tree doesn't grow on the other's property". In Vienna, that's where the action is, they said, citing foreign words such as „equity partner", „merger", „due diligence". They wanted to get to the top, including the penthouse as in the lawyer-themed television series „Suits". In hindsight, I can't say whether or not some defiance against these big city brats played a role in accepting the offer from Carinthia, but the decision turned out to be the right one.

Back to Carinthia/Koroška!

Arriving in Carinthia/Koroška I was intimidated at first. I only knew the GRILC VOUK ŠKOF law firm from well-publicised cases such as the proceedings regarding the bilingual place-name signs, various proceedings at the European Court of Justice as well as dealing with large football club insolvencies. Fortunately, nobody here talked about „equity partners" and „mergers" and I was pleased to find that the first case that was put on my table was a simple warranty or compensation case. A foreign worker had, with pain and misery, saved a small amount of money to buy a car from a used car dealer. At least that's what he had thought. In the purchase contract there was nothing to be read of a "dealer" anymore, he had acquired the car, a scrap heap dressed up with an „optimized Pickerl" – the sticker confirming the vehicle examination – from a private person unknown to him. A mean trick, as contrary to an actual dealer a private person can exclude claims like warranty. A foreign worker who has been deceived by a cunning used car dealer - justice, there you are again!

Human beings and their everyday problems

Although GRILC VOUK ŠKOF has gained international recognition for its large cases, its day-to-day business remains down-to-earth: Traffic accidents, border disputes, purchase contracts, divorces, drug smuggling. Things that occupy people in their everyday lives and where injustice happens to them - or at least that is what they think. It may not be the October Revolution, but even supposedly small worries are important matters for the individuals concerned - and for that they need someone who fights for their rights. Whether the bamboo hedge overgrows the neighbour's property and he sues for omission, or the hand accidentally slips in the disco after the eighth beer and lands on the face of a fellow patron - GRILC VOUK ŠKOF also takes care of these matters.

Learning to know Austria ...

As an associate at this law firm I do not only learn about the everyday problems of Austrians and Slovenes, but also about Austria and Slovenia themselves. A Tyrolean sales representative sells the windows and doors of a Slovene manufacturer in Tyrol. After, the advance payments he received evaporated, the infuriated Austrian customers bombarded the Slovene manufacturer with hate mail. Nevertheless, the sales representative wanted money and sued the manufacturer. Let's see what the District Court of Hall in Tyrol (by the way a beautiful small medieval town) has to say about this. A farmer from Waldviertel tries to cut down a tree using a winch from a Slovene manufacturer. The winch pulls well, unfortunately too well, so that it doesn't stop pulling and knocks over and injures the farmer and destroys his tractor. The District Court of Zwettl now has to clarify whether the winch was defective or whether it was an operating error on the part of the farmer. The local beer there, Zwettler, is certainly recommendable. Or would you like a detour to the Regional Court of Steyr, because when else would you come to this former workers' town behind the Kalk Alps?

... and Slovenia

However, it is not only Slovenes who require legal help in Austria, but also - thanks to the EU - more and more Austrians are seeking help in Slovenia. One

buys a condominium in Piran where the apartment above causes water damage, but he does not speak a word of Slovene. One inherits a nice little plot of land from their great-grandmother in Prekmurje and suddenly the neighbour wants to enforce the right to herd his cows exactly over this plot of land. One has his car serviced in Ljubljana, which is of course cheaper, but instead of a service he receives a car without functioning air conditioning. Or the Slovene dentist that messed up your teeth. The GRILC VOUK ŠKOF law firm is active both in Austria and Slovenia and I not only get to know all imaginable human problems, but also places where I would never have found myself otherwise.

Meanwhile, my colleagues in Vienna

So while I'm waltzing through the courtrooms of Austria, the first my former classmates have already put their dreams of a penthouse on ice. Instead of an exciting lawyer's life as pictured in „Suits", they were sitting day after day in front of boring, identical banking contracts. Very few of them have ever seen a courtroom from the inside. Some of them were surprised by the fact that, even as an associate, you can be at the centre of the court proceedings when I told them about the trials in various courts anywhere between Bleiburg/Pliberk and Kufstein. It was an older colleague from Linz who told me that one can only learn the classic legal profession outside of large law firms of Vienna, because both the profession as well as the bar exam consist not only of due diligence, but also of general civil law and criminal law, lawsuits and criminal appeals. As far as Vienna and the Viennese lawyers were concerned, I also quickly learned in practice that there is only one group that is even less popular in Austria than Germans - namely Viennese lawyers. On more than one occasion when I was appearing on behalf of a Viennese law firm, I had to listen to Carinthian judges rant about what „the Viennese actually believe that they are". Lesson learned. Henceforth, I always let the Carinthian dialect work for me, cordially shook the hands with every judge and made comments about how the weather was so much nicer „at home in the south". And voilá, I was winning the hearts of Western and Eastern Austria. Of course I prefer to conceal the fact that I continue to live in Vienna for half the week and that GRILC VOUK ŠKOF has opened an office there as well.

"Yugo flair"

But the Carinthian dialect and the Slovene language are not the only linguistic focal points in my daily work. Since, as Prince Metternich is said to have claimed, the Balkans begin in Vienna at Rennweg, a Slovene law firm naturally welcomes other ex-Yugoslav states and their languages. With the foreign workers of the 1970s, the refugees of the 1990s and the accession of Slovenia and Croatia to the EU after the turn of the millennium, Austria today, as back then, is still decisively influenced by people from the former Yugoslavia. Above all, Vienna is regarded as the Balkan metropolis (outside the Balkans) par excellence. With the difference being that in Vienna a remnant of the Yugoslav „brotherhood and unity" has inevitably survived. Here the various nationalities all have to consider how they cope in a foreign country and therefore are more strongly connected, especially when they cross paths in the evenings celebrating on Vienna's so-called „Balkan Mile", the Ottakringerstraße. Whether they are Serbs, Croatians or Bosnians, just like the locals they also depend on legal support from time to time, and they wish to receive it in their mother tongue. So what could be more natural than for a Slovene to take the Titovka out of the cellar and stand by his former brothers or sisters - „pa svi smo naši, a?". The GRILC VOUK ŠKOF law firm, and therefore also I, are increasingly concerned with the problems that people from the former Yugoslavia have in Austria. For example, a Croat, who is married to a Bosnian woman and lives in Austria and now wants to get divorced. Who is responsible and according to which law must one proceed? Or the Viennese, who sells her private car to a Serbian via a Slovene dealer and the Slovene financial police impound the vehicle at the border. Who does she turn to? Or a Serbian foreign worker, who wants to reunite with his wife and children and thereby has to overcome bureaucratic obstacles - there is hardly a legal area in Austria that is more incomprehensible than the right of residence.

There for all

Founded by Dr Matthäus Grilc as a law firm by a Carinthian Slovene for Carinthian Slovenes, GRILC VOUK ŠKOF has not only gained in profile during its 40 years of existence, but has also learnt languages and broken down barriers while never forgetting its roots. A lawyer's daily business still does not take place at the European Court of Justice in Luxembourg, although a trip there of course makes for a nice change. You are still mainly needed on the property lines between Jozi and Pepi, or Zorka and Ivana, in the courtroom of Regional and District Courts, on the phone and in the conference room. It is the everyday concerns of the people who employ us lawyers and future lawyers - also here at GRILC VOUK ŠKOF - in different languages, regarding different people and crossing borders in the whole territory between Belgrade and Vienna.

Our team

From left to right, 1. row:
Matej Zenz, Gisela Grilc-Kargl, Monika Nestić, Julia Grilc, Maja Ranc;

From left to right, 2. row:
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