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VierPf/ACCC11 / a / 6SB

Communication ACCC/C/2011/63

Dear Ms. Marshall,

In the name of the communicant Vier Pfofen I would like to comment on the message submitted by the Party concerned on January 10th as follows:

The Party concerned wishes the ACCC to declare communication ACCC/C/2011/63 inadmissible because its main concerns might be covered by case ACCC/C/2010/48.

Although case ACCC/C/2010/48 does indeed cover many important issues of non-compliance with Art 9/3 of the Convention in the Austrian legal system, it certainly doesn't touch upon „the entire Austrian legal system“, as stated by the Party concerned.

In fact, the problems referred to in case ACCC/C/2011/63 (no access to justice for NGOs in administrative penal proceedings and judicial criminal proceedings regarding contraventions of provisions of national law relating to the environment.) were not raised in case ACCC/C/2010/48 and as a result the findings do not indicate whether Austria is in breach of the Convention in this matter.

The communicant certainly does not wish to prolong and complicate case ACCC/C/2010/48 even further, as its complexity and wide range of raised issues was criticized by the Committee in its draft findings.

Declaring case ACCC/C/2011/63 inadmissible would lead to an ambiguous situation which would not allow to clearly answer the question whether Austria is in breach of the

Convention by not providing access to justice for NGOs in administrative penal proceedings and judicial criminal proceedings regarding contraventions of provisions of national law relating to the environment.

The communicant therefore kindly asks the ACCC to affirm its preliminary declaration of admissibility of communication ACCC/C/2011/63.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Unterweger', written in a cursive style.

Dr. Josef Unterweger