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### Economic Commission for Europe

Meeting of the Parties to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters

#### Seventh session

Geneva, 18 – 20 October 2021

Item 7 (b) of the provisional agenda

**Procedures and mechanisms facilitating the implementation of the Convention:  
Compliance mechanism**

### Report of the Compliance Committee\*

#### Compliance by Austria with its obligations under the Convention

##### *Summary*

This document is prepared by the Compliance Committee pursuant to the request set out in paragraph 21 of decision VI/8 of the Meeting of the Parties (ECE/MP.PP/2017/2/Add.1) and in accordance with the Committee's mandate set out in paragraph 35 of the annex to decision I/7 of the Meeting of the Parties on review of compliance (ECE/MP.PP/2/Add.8).

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\* The present document is being issued without formal editing

## I. Introduction<sup>1</sup>

1. At its sixth session (Budva, Montenegro, 11-13 September 2017), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VI/8b on compliance by Austria with its obligations under the Convention (see ECE/MP.PP/2017/2/Add.1).

## II. Summary of follow-up

2. On 9 March 2018, the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63 submitted written statements concerning the implementation of decision VI/8b.

3. At its sixtieth meeting (Geneva, 12-15 March 2018), the Committee reviewed the implementation of decision VI/8b in open session with the participation by audio conference of representatives of the Party concerned and the communicant of communication ACCC/C/2010/48.

4. On 27 September 2018, the communicant of communication ACCC/C/2010/48 submitted comments on the first progress report by the Party concerned on decision VI/8b.

5. On 2 October 2018, the Party concerned submitted its first progress report on decision VI/8b, one day after the deadline of 1 October 2018.

6. On 5 October 2018, the secretariat forwarded the first progress report to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63, inviting their comments by 1 November 2018.

7. On 30 October 2018, the communicant of communication ACCC/C/2011/63 provided comments on the first progress report and the communicant of communication ACCC/C/2010/48 submitted additional comments. On 1 November 2018, the communicant of communication ACCC/C/2010/48 submitted an update on legislative developments in the Party concerned.

8. On 18 December 2018, the communicant of communication ACCC/C/2010/48 submitted comments on the Aarhus Participation Act 2018.

9. On 20 December 2018, in response to a request from the Committee, the Party concerned provided the text of the Aarhus Participation Act 2018 as published in its official gazette, along with an official English translation. Though the Committee had requested it to do so, the Party concerned did not provide consolidated versions of the relevant provisions of the sectoral laws, as amended by the Aarhus Participation Act 2018, or an English translation thereof.

10. After taking into account the information received, the Committee prepared its first progress review and adopted it through its electronic decision-making procedure on 22 February 2019.

11. On 25 February 2019, the secretariat sent the Committee's first progress review to the Party concerned and the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63.

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<sup>1</sup> This text will be produced as an official United Nations document in due course. Meanwhile editorial or minor substantive changes (that is changes that have no impact on the findings and conclusions) may take place.

12. At its sixty-third meeting (Geneva, 11-15 March 2019), the Committee reviewed the implementation of decision VI/8b in open session, with the participation by audio conference of representatives of the Party concerned and the communicant of communication ACCC/C/2010/48.
13. On 14 March 2019, the Party concerned and the communicant of communication ACCC/C/2010/48 provided a written version of the statements they had delivered during the open session on decision VI/8b held during the Committee's sixty-third meeting.
14. On 27 June 2019, the communicant of communication ACCC/C/2010/48 provided additional information.
15. On 24 July 2019, the secretariat wrote to the Party concerned to remind it of the deadline of 1 October 2019 set out in paragraph 3(e) of decision VI/8b for the Party concerned to provide its second progress report.
16. On 1 October 2019, the Party concerned submitted its second progress report on decision VI/8b, on time.
17. On 2 October 2019, the secretariat forwarded the second progress report to the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63, inviting their comments thereon.
18. On 28 October 2019, the communicant of communication ACCC/C/2010/48 provided its comments on the second progress report of the Party concerned.
19. On 30 October 2019, the communicant of communication ACCC/C/2011/63 provided its comments on the second progress report of the Party concerned.
20. After taking into account the information received, the Committee prepared its second progress review and adopted it through its electronic decision-making procedure on 1 March 2020. On 2 March 2020, the secretariat forwarded the second progress review to the Party concerned and the communicants of communications ACCC/C/2010/48 and ACCC/C/2011/63.
21. At its sixty-sixth meeting (Geneva online, 9-13 March 2020), the Committee reviewed the implementation of decision VI/8b in open session, with the participation via virtual means of representatives of the Party concerned and the communicant of communication ACCC/C/2010/48.
22. On 11 March 2020, the Party concerned and the communicant of communication ACCC/C/2010/48 provided a written version of the statements they had delivered during the open session on decision VI/8b held during the Committee's sixty-sixth meeting.
23. On 1 October 2020, the Party concerned submitted its final progress report on decision VI/8b, on time.
24. On 2 November 2020, the communicant of communication ACCC/C/2011/48 provided its comments on the second progress report by the Party concerned.
25. The Committee completed its draft report to the seventh session of the Meeting of the Parties on the progress by the Party concerned to implement decision VI/8b through its electronic decision-making procedure on 2 July 2021. In accordance with paragraph 34 of the annex to decision I/7, the draft report was then forwarded on that date to the Party concerned and the communicants with an invitation to provide comments by 16 July 2021.
26. At its seventy-first meeting (Geneva online, 7-9 July 2021), the Committee reviewed the implementation of decision VI/8b in open session with the participation via virtual means of representatives of the Party concerned and the communicant of communication ACCC/C/2011/48.

27. On 13 and 15 July 2021, respectively, the communicant of communication ACCC/C/2011/48 and the Party concerned provided comments on the Committee's draft report.

28. After taking into account the information received, the Committee finalized and adopted its report to the seventh session of the Meeting of the Parties on the implementation of decision VI/8b through its electronic decision-making procedure on 23 July 2021 and thereafter requested the secretariat to send it to the Party concerned and the communicants.

### III. Considerations and evaluation by the Committee

29. In order to fulfil the requirements of paragraph 3 of decision VI/8b, the Party concerned would need to provide the Committee with evidence that:

(a) As a matter of urgency, it had taken the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that criteria for non-governmental organisation (NGO) standing to challenge acts or omissions by private persons or public authorities that contravene national law relating to the environment under article 9(3) of the Convention are revised and specifically laid down in sectorial environmental laws, in addition to any existing criteria for NGO standing in the environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability laws;

(b) When addressing subparagraph (a) above, it ensured that, members of the public, including NGOs, have access to adequate and effective administrative or judicial procedures and remedies in order to challenge acts and omissions of private persons and public authorities that contravene national laws, including administrative penal laws and criminal laws, relating to the environment;

(c) It provided the Committee as soon as possible and no later than 1 October 2018 with a detailed plan of action on how it will implement the above recommendations;

(d) It developed a capacity-building programme and provided training on the implementation of the Convention for judges, prosecutors and lawyers.

30. The Committee welcomes the three progress reports received from the Party concerned and the additional information received on 21 December 2018.

31. The Committee also welcomes the information and comments provided by the communicants of communication ACCC/C/2011/48 and ACCC/C/2012/63.

#### **Paragraph 3(a) of decision VI/8b: criteria for NGO standing to challenge acts or omissions by private persons or public authorities that contravene national law relating to the environment**

##### *The federal level*

##### The Aarhus Participation Act and Environmental Liability Act

32. In its second progress report, the Party concerned confirmed that the Aarhus Participation Act 2018, which entered into force on 23 November 2018, amended the following federal environmental laws: the Waste Management Act (*Abfallwirtschaftsgesetz 2000*), the Water Act 1959 (*Wasserrechtsgesetz 1959*) and the Air Pollution Control Act (*Immissionsschutzgesetz-Luft*). On air quality, provisions on access to justice were part of a recast National Air Emissions Act 2018 (*Emissionsgesetz-Luft 2018*). The Party concerned

submitted that the Aarhus Participation Act 2018 covered “the most predominant and comprehensive” areas of environmental law that are in federal competence.<sup>2</sup>

33. In its final progress report, the Party concerned reported that, following the judgment of the Court of Justice of the European Union in Case C-529/15 *Folk*, the Federal Environmental Liability Act was also amended in 2018 to entitle natural or legal persons, including environmental organisations, to lodge a complaint if a public authority fails to take action in the event of environmental damage.<sup>3</sup>

34. Lastly, the Party concerned reports on the infringement procedure regarding its compliance with article 9(3) of the Convention launched by the European Commission. The procedure was commenced in 2014 with a letter of formal notice regarding the areas of waste, water, air quality and nature protection. In June 2021, the Commission issued an additional letter of formal notice raising concerns regarding various shortcomings in the legislative amendments at the federal level summarized in paragraph 32 above. The Party concerned must deliver its reply to the Commission’s letter by early October 2021.<sup>4</sup>

35. In its comments on the Party concerned’s second progress report, the communicant of communication ACCC/C/2010/48 submitted that, notwithstanding the Aarhus Participation Act 2018, there remained significant gaps in implementation of article 9(3) of the Convention, namely:

(a) Apart from the specific areas of waste, water and air quality legislation, other federal environmental legislation (including, for example, industrial and trade law, forestry, mining, animal protection, pesticides and chemicals) have not been adapted to meet the requirements of article 9(3);

(b) The right to appeal under section 42(3) of the Waste Management Act is limited to alleged violations of European Union environmental law;

(c) Access to justice in the context of water protection is mainly limited to projects with potentially significant adverse effects on water quality; and

(d) There is no access to justice to challenge plans and programmes or omissions by private parties and public authorities that contravene national law relating to the environment, except under air quality legislation.<sup>5</sup>

36. At the open session on decision VI/8b at the Committee’s seventy-first meeting, the communicant of communication ACCC/C/2010/48 reported on a proposed legislative amendment to remove the limitation of the right to appeal under section 42(3) of the Waste Management Act to violations only of European Union law and to revise the provision on preclusion. It submits however that the proposed amendment does not address omissions by private parties or public authorities or access to justice regarding plans and programmes.<sup>6</sup>

37. The communicant also reports that, in a recent ruling of the Regional Administrative Court Salzburg, an environmental NGO was granted standing with the status of a party in proceedings under the Federal Forestry Act and the European Union Habitats Directive,<sup>7</sup> based on a decision of the Supreme Administrative Court in December 2019. The

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<sup>2</sup> Party’s second progress report, 1 October 2019, pp. 1-2.

<sup>3</sup> Party’s final progress report, p. 3.

<sup>4</sup> Party’s comments on the Committee’s draft report, 15 July 2021, p. 1.

<sup>5</sup> Comments on the Party’s second progress report from the communicant of communication ACCC/C/2010/48, 28 October 2019, pp. 2-3.

<sup>6</sup> Statement delivered at the open session on decision VI/8b at the Committee’s 71st meeting by the communicant of communication ACCC/C/2010/48, p. 1.

<sup>7</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

communicant submits that, while the courts' approach provides for public participation and access to justice, the lack of legislative implementation of the Aarhus Convention in Austria causes legal uncertainty.<sup>8</sup>

38. In its second progress review, the Committee recalled that, with respect to the scope of "national law relating to the environment" in article 9(3), in its findings on communication ACCC/C/2011/63, it held that:

Article 9, paragraph 3, is not limited to "environmental laws", e.g., laws that explicitly include the term "environment" in their title or provisions. Rather, it covers any law that relates to the environment, i.e. a law under any policy, including and not limited to, chemicals control and waste management, planning, transport, mining and exploitation of natural resources, agriculture, energy, taxation or maritime affairs, which may relate in general to, or help to protect, or harm or otherwise impact on the environment.<sup>9</sup>

39. In the light of the preceding paragraph, while welcoming the progress made in providing access to justice for environmental NGOs under the Waste Management Act 2002, the Air Pollution Control Act and the Water Act 1959 through the Aarhus Participation Act and the recent ruling of the Regional Administrative Court Salzburg regarding access to justice under the Federal Forestry Act (see para. 37 above), the Committee is not convinced that the Party concerned has yet taken the necessary legislative or other measures to ensure NGO standing to challenge contraventions of all its sectoral environmental laws, in addition to any existing criteria for NGO standing in the environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability laws.

40. In its first progress review, the Committee had indicated that, in the light of the broad scope of article 9(3) of the Convention, it was clear that amending the law to provide for access to justice only in the sectoral areas of waste, water and air quality would not be sufficient to meet the requirements of paragraphs 3(a) and (b) of decision VI/8b.<sup>10</sup> The Committee had accordingly invited the Party concerned, as a matter of urgency, to arrange for a review of the relevant body of national law to identify the outstanding areas of law "relating to the environment" that require adaptation in order to comply with the requirements of paragraph 3(a) and (b) of decision VI/8b.<sup>11</sup>

41. The Committee also invited the Party concerned to provide with its second progress report a complete list of the areas of law identified as requiring to be adapted in this context, together with details of the proposed legislative measures considered necessary to address any implementation gaps and the indicative time frame for the relevant legislative processes.<sup>12</sup>

42. Since the Party concerned failed to do so, in its second progress review the Committee reiterated its invitation for the Party concerned to undertake such a review as a matter of urgency, and to provide with its final progress report a complete list of the areas of law identified as requiring to be adapted in this context, together with details of the proposed legislative measures considered necessary to address any implementation gaps and the indicative time frame for the relevant legislative processes.<sup>13</sup>

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<sup>8</sup> Statement delivered at the open session on decision VI/8b at the Committee's 71st meeting by the communicant of communication ACCC/C/2010/48, p. 1

<sup>9</sup> ECE/MP.PP/C.1/2014/3, para. 52.

<sup>10</sup> Committee's first progress review, 22 February 2019, para 31.

<sup>11</sup> Committee's first progress review, 22 February 2019, para. 32.

<sup>12</sup> Committee's first progress review, 22 February 2019, para. 32.

<sup>13</sup> Committee's second progress review, 1 March 2020, para. 36.

43. The Committee therefore expresses its serious disappointment that in its final progress report the Party concerned still provides no indication that it has as yet carried out, or even taken steps to commence, a review to identify the outstanding areas of its law “relating to the environment” that will yet require amendment in order to comply with paragraphs 3(a) and (b) of decision VI/8b.

44. With respect to the laws amended through the Aarhus Participation Act, in the light of the comments from the communicant of communication ACCC/C/2011/48 alleging the limited scope of those amendments (see para. 35 above), the Committee in its second progress review set out questions to the Party concerned for its reply in its final progress report.

45. With regards to the Water Act 1959, the Party concerned submits that environmental NGOs are entitled to file complaints against infringements both with regards to projects with significant effects on water quality and projects underneath this “materiality threshold value” that cause adverse effects on the status of water bodies, like the deterioration of surface or groundwater bodies.<sup>14</sup> While welcoming this information, the Committee queries whether there may be other acts and omissions that may contravene the Water Act that are not covered by the above. The Committee invites clarification on this point.

46. The Committee welcomes the information provided by the communicant that a proposed amendment to the Waste Management Act will remove the limitation on the right to appeal to violations of European Union law. The Committee however regrets that, based on the information before it, the proposed amendment will not address omissions by private persons or public authorities or access to justice regarding plans and programmes.

47. On this point, the Committee expresses its concern that the Party concerned has not answered the Committee’s question as to whether the right for environmental NGOs to challenge omissions by private parties and public authorities is limited to challenges under the Air Pollution Control Act. Likewise, the Party concerned has not addressed the Committee’s question as to whether the right for environmental NGOs to challenge plans and programmes that contravene national environmental law is limited to plans and programmes regarding air quality.<sup>15</sup>

48. Lastly, the Committee notes that, in the context of preparing its reply to the European Commission by October 2021 (see para. 34 above), the Party concerned will review the amendments to its federal laws in the light of the concerns raised by the Commission in its additional letter of formal notice. The Committee invites the Party concerned to take the opportunity presented by this review to address the points identified by the Committee in paras. 38 - 47 above.

49. Based on the foregoing, the Committee, while welcoming the progress made, finds that the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 3(a) of decision VI/8b with respect to standing for environmental NGOs under article 9(3) at the federal level.

#### Standing criteria for environmental non-governmental organisations

50. In its first progress review on decision VI/8b, the Committee observed that the provisions inserting access to justice rights in the sectors of water, waste and air each refer to “environmental organisations recognised pursuant to section 19 of the Environmental Assessment Act 2000.”<sup>16</sup> The Committee accordingly concluded that, to the extent that section 19 of the Environmental Assessment Act (EIA Act) determines the standing criteria that NGOs must meet to qualify to challenge acts and omissions within the meaning of article

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<sup>14</sup> Party’s final progress report, 1 October 2020, pp. 1-2.

<sup>15</sup> Committee’s second progress review, 1 March 2020, para. 37 (c) and (d).

<sup>16</sup> Committee’s first progress review, 22 February 2019, para. 18.

9(3) of the Convention, the amendments to section 19 of the EIA Act fall squarely within the ambit of the Committee's review of decision VI/8b.<sup>17</sup>

51. On this point, the Committee makes clear that for the purposes of its review of decision VI/8b, it examines only the new requirements introduced through the 2018 amendment to section 19 EIA Act. While this would not preclude the Committee from examining the other criteria in section 19 of the EIA Act in a future case if brought before it, in reviewing the progress made by the Party concerned to implement decision VI/8b, the Committee's focus is on the measures taken by the Party concerned since the adoption of that decision.

52. In its first progress review, the Committee indicated that in order to assess the implications for NGO standing of the amendment to section 19 of the EIA Act, it required further information from the Party concerned. Specifically, it invited the Party concerned to provide: the text of the amended provision; the rationale for the amendment inserting new membership criteria; the basis on which the specific membership quotas were selected; and the likely implications of the amendment in practice.<sup>18</sup> In particular, the Committee invited the Party concerned to explain how the amendment fits with the recommendations in paragraph 3(a) of decision VI/8b. It also sought clarification on the evidence that the Party concerned would consider necessary for NGOs to demonstrate that membership quotas are met.<sup>19</sup>

53. In its second progress report, the Party concerned stated that the amendment to the EIA Act entered into force at the beginning of December 2018.<sup>20</sup> The amendments concerning additional requirements for the recognition of NGOs were introduced in the final phase of the parliamentary deliberations.<sup>21</sup> The Party concerned submitted an English translation of section 19 of the EIA Act with its second progress report.

54. It is the Committee's understanding that the most significant of these amendments are:

(a) The insertion in Article 19(6) EIA Act of the following:

The association shall have at least one hundred members. A federation shall comprise at least five member associations that meet the criteria of paragraph 6 numbers 1 to 3 and that, together, reach the minimum number required for five recognised environmental organisations. The authority shall be provided with credible evidence of the number."<sup>22</sup>

(b) The insertion in article 19(9) EIA Act of the following:

"Upon request by the Federal Minister for Sustainability and Tourism, but at any rate every three years from admission, the environmental organisation shall submit suitable documents proving that the criteria defined in paragraph (6) are still met. Such review shall also be carried out at the request of an EIA authority."<sup>23</sup>

The Committee accordingly focuses its examination on the amendments to article 19(6) and 19(9) EIA Act set out above.

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<sup>17</sup> Committee's first progress review, 22 February 2019, para. 18.

<sup>18</sup> Committee's first progress review, 22 February 2019, para. 36.

<sup>19</sup> Committee's first progress review, 22 February 2019, para. 36.

<sup>20</sup> Party's second progress report, 1 October 2019, p. 4.

<sup>21</sup> Party's second progress report, 1 October 2019, p. 4.

<sup>22</sup> Party's second progress report, 1 October 2019, annex 2, p. 3.

<sup>23</sup> Party's second progress report, 1 October 2019, annex 2, p. 3.

55. As regards the rationale for adding additional criteria to article 19 to obtain recognition and, as a result, standing, in its second progress report the Party concerned explained that the political parties in the Parliament that proposed this particular amendment considered that “environmental organisations are granted considerable rights on access to justice with regard to the Aarhus Participation Act and therefore only active environmental organisations with a certain number of members should have legal standing.”<sup>24</sup>

56. With respect to the basis on which the specific membership quotas were selected, in its second progress report the Party concerned referred to the judgment of the Court of Justice of the European Union in Case C-263/08 *Djurgården*,<sup>25</sup> in which the Court determined that a minimum requirement of 2,000 members was not compatible with European Union law.<sup>26</sup> The Party concerned reported that legislators therefore considered that requiring an association to have a minimum of 100 members was feasible.<sup>27</sup> The Party concerned also reported that a federation of at least five associations will obtain recognition if, taken together, the five associations comprise the required minimum total membership of 500 members.<sup>28</sup>

57. In reply to the Committee’s invitation to provide further information concerning the evidence that the Party concerned would consider necessary for NGOs to demonstrate that membership quotas are met, in its second progress report the Party concerned stated that the recognition process does not require an organisation to provide a list of members.<sup>29</sup> Rather the number of members “has to be made credible”, for example by certification of a notary or an independent auditor.<sup>30</sup>

58. In its final progress report, the Party concerned provided its reply to some, though not all, of the questions put to it by the Committee in its second progress review.

59. Concerning the requirement in article 19(6) of the EIA Act that an association must have a minimum of one hundred members, the Party concerned states that the requirement of a minimum number of members had been considered useful by the legislator to ensure that an organisation actually exists and is active in promoting environmental protection.<sup>31</sup> However, the Party concerned reports that the Ministry is currently preparing a draft law to amend the EIA Act and that one element of the ongoing discussions in that regard was to reconsider the requirement of a minimum of one hundred members for the recognition of environmental NGOs.<sup>32</sup>

60. With regards to standing for foundations, the Party concerned explains that these are entitled to the status of a recognised environmental organisation if they meet the criteria under article 19 of the EIA Act.<sup>33</sup>

61. The Party concerned reports that prior to the amendment of article 19 of the EIA Act, fifty-seven environmental organisations had been recognised, out of which fifty-one needed to be reviewed by 1 December 2019. In that process, the status of forty organisations was confirmed, amounting to seventy-eight percent of the total number of organisations reviewed. Nine environmental organisations previously recognised had not submitted the necessary

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<sup>24</sup> Party’s second progress report, 1 October 2019, p. 4.

<sup>25</sup> Case C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening v Stockholms kommun genom dess marknämnd* EU:C:2009:631.

<sup>26</sup> Party’s second progress report, 1 October 2019, p. 4.

<sup>27</sup> Party’s second progress report, 1 October 2019, p. 4.

<sup>28</sup> Party’s second progress report, 1 October 2019, p. 4.

<sup>29</sup> Party’s second progress report, 1 October 2019, p. 5.

<sup>30</sup> Party’s second progress report, 1 October 2019, p. 5.

<sup>31</sup> Party’s final progress report, 1 October 2020, p. 4.

<sup>32</sup> Party’s final progress report, 1 October 2020, p. 6.

<sup>33</sup> Party’s final progress report, 1 October 2020, pp. 3-4.

documents for the review of their recognition, although they were repeatedly informed of the review and the consequences of the non-submission of the necessary documents. Accordingly, their recognition was withdrawn. Two further organisations submitted incomplete documents, one of which was currently contesting the withdrawal of its recognition before the Federal Administrative Court.<sup>34</sup>

62. The Party concerned furthermore provides that six new organisations had been recognised after the amendment of the EIA Act entered into force, so that currently, fifty-three organisations are recognised under the EIA Act. It also submits that most organisations which were no longer recognised under the amended EIA Act seemed to not have been active in EIA procedures during the preceding years.<sup>35</sup>

63. According to the Party concerned, almost half of all environmental organisations were recognised for the whole federal territory, while others were recognised in certain provinces only and, in some cases, in the neighbouring provinces also.<sup>36</sup>

64. Concerning the Committee's request that the Party concerned conduct a survey among environmental organisations on the number of workdays required to prepare the application for recognition under the amended EIA Act, and the costs incurred to do so, the Party concerned submits that it has no information on the number of workdays that it took the organisations to prepare the relevant documents, since there is no legal basis for such an enquiry according to the EIA Act. The Party concerned maintains that this would rather be a question to be answered by the communicant or by the concerned organisations themselves.<sup>37</sup>

65. The Party concerned further submits that the rationale for requiring environmental organisations to re-apply for recognition every three years is transparency. It states that this requirement serves the purpose of checking whether the organisations are still active in matters of environmental protection and that it cannot be considered as an obstacle to submit reports of their work and further documents to the Ministry every three years.<sup>38</sup>

66. Regarding the rationale for granting the Federal Ministry and any EIA authority the power to request an environmental organisation to re-apply for recognition at any time, the Party concerned states that such requests can be made "if there are doubts whether a criterion is still fulfilled".<sup>39</sup>

67. In its comments on the Party concerned's second progress report, the communicant of communication ACCC/C/2010/48 submitted that the amendment of article 19 of the EIA Act is not in line with the Convention as it determines the minimum requirement of 100 members to be an absolute prerequisite and does not allow for any other proof, such as support from the public or professional expertise.<sup>40</sup> It claimed moreover that, in practice, the amendments to the EIA Act concerning the new recognition requirements place "a significant burden" on environmental NGOs.<sup>41</sup> The communicant submitted that for many NGOs the collection and proof and creation of relevant documentation is resource intensive and can involve up to 10 workdays. It stated that, because the Federal Ministry does not accept affidavits by executive boards of associations, notarial certifications or confirmations by statutory auditors are

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<sup>34</sup> Party's final progress report, 1 October 2020, p. 5.

<sup>35</sup> Ibid.

<sup>36</sup> Party's final progress report, 1 October 2020, p. 6.

<sup>37</sup> Ibid.

<sup>38</sup> Party's final progress report, 1 October 2020, p. 4.

<sup>39</sup> Ibid.

<sup>40</sup> Statement of the communicant of communication ACCC/C/2010/48, 14 March 2019, p. 1.

<sup>41</sup> Comments on the Party's second progress report from the communicant of communication ACCC/C/2010/48, 28 October 2019, p. 6.

necessary, thereby creating additional costs for associations.<sup>42</sup> The communicant of communication ACCC/C/2011/63 “fully endorses” the above comments by the communicant of communication ACCC/C/2010/48.<sup>43</sup>

68. In its comments on the Party concerned’s final progress report, the communicant of communication ACCC/C/2010/48 submits that the withdrawal of recognition from ten environmental organisations is an even larger number than originally expected and given that only 53 organisations in total are recognised, this means a severe reduction in public environmental engagement.<sup>44</sup>

69. The communicant of communication ACCC/C/2010/48 moreover submits that the Party concerned has not presented any reasons why it should be required that NGOs provide proof that they fulfil the recognition criteria both every three years and at any time upon request by the Federal Ministry. It holds that, if at all, one of these two review options should be more than sufficient.<sup>45</sup>

70. The Committee takes note of the replies received from the Party concerned in response to the questions included in the Committee’s second progress review, while expressing its concern that the Party concerned did not reply to all the questions raised.

71. In this regard, the Committee also expresses its disappointment that the Party concerned has not conducted a survey or other research regarding the potential burden placed on environmental organisations by the additional recognition criteria imposed by the amendment of the EIA Act, as requested by the Committee in its second progress review.<sup>46</sup> The Committee emphasizes that whether the amended recognition procedure imposes too high a burden on environmental organisations, to the effect that it in practice forecloses a significant number of these organisations from access to justice, is essential information for the Committee in order to assess whether the Party concerned has fulfilled the requirements of paragraph 3(a) of decision VI/8b.

72. With regards to the Party concerned’s suggestion that any question concerning potential additional burdens or costs incurred by the amended recognition requirements could be answered more adequately “by the communicant on behalf of environmental organisations or by the organisations themselves”,<sup>47</sup> the Committee stresses that it is for the Party concerned to demonstrate that the additional new requirements for the recognition of environmental NGOs imposed by it are not overly burdensome.

73. The Committee takes note of the information provided by the Party concerned that it is currently preparing a draft law to amend the EIA Act, including the possible reconsideration of the minimum of one hundred members for an environmental organisation to be recognised. Based on the information available to it, the Committee is, however, not convinced that to remove this criterion alone would fulfil the requirements of article 9(3) of the Convention. The Committee therefore considers that the ongoing discussion to amend the

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<sup>42</sup> Comments on the Party’s second progress report from the communicant of communication ACCC/C/2010/48, 28 October 2019, p. 6.

<sup>43</sup> Comments on the Party’s second progress report from the communicant of communication ACCC/C/2011/63, 30 October 2019, p. 2.

<sup>44</sup> Comments on the Party’s final progress report from the communicant of communication ACCC/C/2010/48, 2 November 2020, p. 2.

<sup>45</sup> Comments on the Party’s final progress report from the communicant of communication ACCC/C/2010/48, 2 November 2020, p. 2.

<sup>46</sup> Committee’s second progress review, 2 March 2020, para. 54

<sup>47</sup> Comments on the Party’s final progress report from the communicant of communication ACCC/C/2010/48, 2 November 2020, p. 6.

EIA Act is a timely opportunity to reconsider the need for the other newly added requirements set out in paragraph 54 above also.

74. Based on the foregoing, and as already indicated in its first and second progress review, the Committee considers that the amendment to section 19 of the EIA Act is a step in the wrong direction in terms of compliance with article 9(3).<sup>48</sup>

Concluding remarks regarding the federal level

75. The Committee welcomes the progress made by the Party concerned since the adoption of decision VI/8b in granting access to justice for environmental NGOs at the federal level in the areas of waste management, water and air quality through the adoption of the Aarhus Participation Act 2018 and the 2018 amendment of the Environmental Liability Act. At the same time, the Committee is concerned about the limited scope of access to justice under the above laws and about the ongoing failure by the Party concerned to take measures to provide access to justice for environmental organisations regarding other sectoral laws relating to the environment. The Committee is also concerned about additional limitations to NGO standing added by the amendments to section 19(6) and (9) of the EIA Act.

76. In light of the above, the Committee finds that, while welcoming the progress made, the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 3(a) of decision VI/8b with respect to standing for environmental NGOs under article 9(3) at the federal level.

*The provincial level*

77. Together with its final progress report, the Party concerned provided English translations of the following legislative amendments adopted by eight of its nine provinces:

- (a) Burgenland Nature Conservation and Countryside Protection Law;<sup>49</sup>
- (b) Carinthian Aarhus and Environmental Liability Amending Act;<sup>50</sup>
- (c) Lower Austrian Hunting Act and Nature Conservation Act;<sup>51</sup>
- (d) Salzburg Aarhus Participation Act;<sup>52</sup>
- (e) Styrian Amendment of the Law on Institutions for the Protection of the Environment;<sup>53</sup>
- (f) Tyrolian Aarhus Participation Act;<sup>54</sup>
- (g) Upper Austrian Fishing and Hunting Act and Nature and Landscape Conservation Act Amendment 2019;<sup>55</sup>
- (h) Vorarlberg Aarhus Participation Act, Fishing Act, Hunting Act, Lake Constance Fishing Act and Law on Nature Conservation and Landscape Development.<sup>56</sup>

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<sup>48</sup> Committee's first progress review, 22 February 2019, para. 37; Committee's second progress review, 2 March 2020, para. 54.

<sup>49</sup> Party's final progress report, annex 1.

<sup>50</sup> Ibid, annex 2.

<sup>51</sup> Ibid, annexes 3 and 4.

<sup>52</sup> Ibid, annex 5.

<sup>53</sup> Ibid, annex 6.

<sup>54</sup> Ibid, annex 7.

<sup>55</sup> Ibid, annexes 8 and 9.

<sup>56</sup> Ibid, annexes 10-14.

78. The Party concerned also subsequently provided the text of the law amending the province of Vienna's National Park Act, Nature Conservation Act and Hunting Act, which entered into force on 1 May 2021.<sup>57</sup>

79. Finally, the Party concerned reports that the additional letter of formal notice issued by the European Commission in June 2021, also raises concerns regarding shortcomings in the legislative amendments at the provincial level listed in paragraphs 77 - 78 above. The deadline for the Party concerned to provide its reply to the European Commission is early October 2021.<sup>58</sup>

80. The communicant of communication ACCC/C/2010/48 contends that the text of the amendment to the Styrian Law on Institutions for the Protection of the Environment provided by the Party concerned is, in fact, an earlier draft of the amendment which differs from the one that entered into force in October 2019.<sup>59</sup>

81. The communicant submits, moreover, that:

(a) The following legislative amendments provide for access to justice only with respect to violations of provisions implementing European Union law: Burgenland Nature Conservation and Countryside Protection Law, article 52b; Carinthian Fishing Act, article 35c; Carinthian Nature Conservation Act 2002, article 54a; Salzburg Nature Conservation Act 1999, article 55a; Salzburg Fishing Act 2002, article 49a; Styrian Law on Institutions for the Protection of the Environment, article 8(3); Upper Austrian Nature and Landscape Conservation Act, article 39b; Upper Austrian Fishing Act 2020, article 46(3); Upper Austrian Hunting Act, article 91a.

(b) Regarding access to justice regarding protected species, only Vorarlberg and Tyrol provide access to justice outside the scope of species protected by European Union law;

(c) None of the provincial legislative amendments provide for the possibility to challenge omissions relating to the environment;

(d) None of the provincial legislative amendments provide for the possibility to challenge plans and programmes relating to the environment;

(e) Some provinces, including Salzburg, Lower Austria and Carinthia, have begun permitting via ordinance (*Verordnung*). However, environmental NGOs have no standing to challenge ordinances;

(f) Some of the provincial legislative amendments impose a time limit of one year within which appeals must be brought against the contested act;

(g) While the preclusion requirements in the provincial legislative amendments concern review procedures under article 9(2), rather than article 9(3) of the Convention, this demonstrates the short-sighted attitude of the provinces towards access to justice under the Convention;

(h) The provincial legislative amendments expressly exclude appeals brought by environmental NGOs from having suspensive effect.<sup>60</sup>

<sup>57</sup> Party's update, 18 June 2021, and annex.

<sup>58</sup> Party's comments on the Committee's draft report, 15 July 2021, p. 1.

<sup>59</sup> Comments on the Party's final progress report from the communicant of communication ACCC/C/2010/48, 2 November 2020, p. 4.

<sup>60</sup> Comments on the Party's final progress report from the communicant of communication ACCC/C/2010/48, 2 November 2020, pp. 5-7.

82. Lastly, the communicant submits that the law amending the province of Vienna's National Park Act, Nature Conservation Act and Hunting Act, which entered into force on 1 May 2021, likewise limits access to justice for environmental NGOs to violations of provisions implementing European Union law and does not provide for a possibility to challenge plans and programmes or omissions.<sup>61</sup>

83. The Committee welcomes the provincial legislative amendments listed in paragraphs 77 and 78 above, which constitute significant progress towards meeting the requirements of paragraph 3(a) of decision VI/8b at the provincial level.

84. Regarding the communicant's comments in paragraph 81(g) above, the Committee points out that paragraph 3(a) and (b) of decision VI/8b concern access to justice under article 9(3) only. Thus, matters concerning access to justice under article 9(2) of the Convention are outside the scope of the Committee's review of that decision. Likewise, as regards paragraph 81(h) above, injunctive relief, such as suspensive effect, is addressed by article 9(4) of the Convention and is likewise outside the scope of the present review.

85. Regarding paragraph 81(a) and (b) above, having reviewed the legislative amendments provided to it, the Committee notes with concern that most of these do indeed appear to limit access to justice for environmental organisations to the right to challenge contraventions of provisions implementing European Union law and likewise to species protected by European Union law. As the Committee already pointed out in its second progress review, article 9(3) concerns contraventions of any law relating to the environment. Accordingly, restricting access to justice only to the right to challenge contraventions of environmental legislation implementing European Union law is insufficient to meet the requirements of paragraph 3(a) of decision VI/8b.<sup>62</sup>

86. Regarding paragraph 81(c) above, the Committee notes that the Party concerned has not pointed the Committee to any provisions granting access to justice with respect to omissions within the scope of article 9(3) of the Convention. In its second progress review, the Committee already pointed out that "it is clear from the express wording of article 9(3), as well as from paragraph 3(a) and (b) of decision VI/8b, that access to justice must be provided with respect to omissions within the scope of article 9(3)".<sup>63</sup>

87. Concerning paragraph 81(d) and (e) above, the Committee points out that article 9(3) covers *any* act or omission that contravenes national law relating to the environment. This clearly includes plans and programmes and activities permitted by ordinance that contravene national law relating to the environment.

88. As regards paragraph 81(f) above, the Committee invites the Party concerned to explain how the time-limit operates in practice. For example, if the holder of a permit that was granted prior to the time-limit set out in the legislation subsequently breaches the environmental conditions of its permit, could environmental NGOs challenge the breach of the permit conditions?

89. In its second progress review, the Committee moreover queried whether the legislative amendments listed in paragraph 77 and 78 above constitute the entirety of provincial law relating to the environment. The Committee invites the Party concerned to clarify this point.

90. The Committee takes note that, in the context of preparing its reply to the European Commission by October 2021, the Party concerned will review the amendments to its

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<sup>61</sup> Statement delivered at the open session on decision VI/8b at the Committee's 71st meeting by the communicant of communication ACCC/C/2010/48, p. 1.

<sup>62</sup> Committee's second progress review, 2 March 2020, para. 64.

<sup>63</sup> Committee's second progress review, 2 March 2020, para. 64.

provincial laws in the light of the concerns raised by the Commission in its additional letter of formal notice regarding access to justice for environmental NGOs. The Committee invites the Party concerned to take the opportunity presented by this review to address the points raised by the Committee in paras. 85-89 above.

#### Concluding remarks regarding the provincial level

91. In light of the points set out in paragraphs 85 - 89 above, the Committee finds that, while welcoming the significant progress made, the Party concerned has not yet demonstrated that it has fully met the requirements of paragraphs 3(a) of decision VI/8b with respect to standing for environmental NGOs under article 9(3) at the provincial level.

#### **Paragraph 3(b) of decision VI/8b: access to justice to challenge contraventions of administrative penal laws and criminal laws relating to the environment**

92. In its findings on communication ACCC/C/2011/63, the Committee found that “members of the public, including environmental NGOs, have in certain cases no means of access to administrative or judicial procedures to challenge acts and omissions of public authorities and private persons which contravene provisions of national laws, including administrative penal laws and criminal laws, relating to the environment”.<sup>64</sup> In making these findings, the Committee had considered in particular:

- (a) Section 7 of the Wildlife Trade Act (*Artenhandelsgesetz*)
- (b) Sections 9 and 10 of the Vienna Nature Conservation Act (*Naturschutzgesetz*),
- (c) Sections XIV to XVI of the Nature Conservation and Landscape Care Act of one of the Austrian provinces (*Burgenland Naturschutz- und Landschaftspflegegesetz*)
- (d) The Animal Protection Act (*Tierschutzgesetz*).<sup>65</sup>

93. In its second progress review, the Committee invited the Party concerned, in its second progress report, “to explain which legislative provisions are now in place to grant environmental NGOs standing to challenge contraventions of each of the laws listed in paragraph 22 of the Committee’s findings on communication ACCC/C/2011/63” (see para. 92 above) and to “provide, together with its final progress report, the text of each legislative measure, together with an English translation thereof, that grants environmental NGOs standing to challenge contravention of those laws”.<sup>66</sup>

94. Regarding paragraph 92 (a) above, in its final progress report, the Party concerned reports that it has initiated “the internal process” for amending the Wildlife Trade Act and that the planned amendment will include “a broad range of necessary changes and will take into account the findings” on communication ACCC/C/2010/63.<sup>67</sup>

95. Concerning paragraph 92 (b) above, the Party concerned reports that an amendment providing for access to justice under the Vienna Nature Conservation Act entered into force on 1 May 2021.<sup>68</sup>

96. Regarding paragraph 92 (c) above, the Party concerned reports that article 52(1), part 1, of the Nature and Landscape Conservation Act introduces a right to appeal for environmental organisations alleging possible infringements of any provisions of that law that were adopted in implementation of the European Union Habitats Directive and the Wild

<sup>64</sup> ECE/MP.PP/C.1/2014/3, para. 63.

<sup>65</sup> ECE/MP.PP/C.1/2014/3, para. 22.

<sup>66</sup> Committee’s second progress review, 2 March 2020, para. 69.

<sup>67</sup> Party’s final progress report, 1 October 2020, p. 8.

<sup>68</sup> Party’s update, 18 June 2021 and annex.

Birds Directive, as well as of “decisions on exceptions as far as they concern protected animal and plant species listed in those Directives”.<sup>69</sup> It further states that, based on the introduced amendments, “the province of Burgenland considers article 9(3) of the Convention implemented in its legislation on nature protection.”<sup>70</sup>

97. With respect to paragraph 92 (a) above, while noting the information provided by the Party concerned that it has initiated the “internal process” to amend the Wildlife Trade Act to address the Committee’s findings, the Committee regrets that the Party concerned has not provided the Committee with the text of the proposed amendment. The provision of the draft legislative measures at an early stage enables the Committee to more effectively assist the Party concerned in bringing its legislation into full compliance with article 9(3) of the Convention.

98. Regarding paragraph 92 (b) above, the Committee notes that the Party concerned has not pointed the Committee to any provision of the amendment of the Vienna Nature Conservation Act which provides for access to justice regarding sections 9 and 10 of that Act.<sup>71</sup>

99. Concerning paragraph 92 (c) above, the Committee notes that the new article 52b of the Burgenland Nature Conservation and Countryside Protection Law<sup>72</sup> appears in fact not to provide for access to justice regarding sections XIV to XVI of that law at all. The Committee is therefore concerned by the Party concerned’s statement that the province of Burgenland “considers article 9(3) of the Convention implemented in its legislation on nature protection”.<sup>73</sup>

100. Finally, as regards 92 (d) above, the Committee expresses its disappointment that, nearly eight years after the findings on communication ACCC/C/2010/63 were adopted in September 2013, the Party concerned has still not provided any information on any planned amendment of the Animal Protection Act (*Tierschutzgesetz*).

101. In light of the points set out in paragraphs 97 - 100 above, the Committee finds that the Party concerned has not yet met the requirements of paragraph 3(b) of decision VI/8b.

### **Paragraph 3(c) of decision VI/8b: detailed plan of action on paragraph 3(a) and (b)**

102. In its first progress report, the Party concerned provided a general update on its progress as at 2 October 2018 to implement paragraphs 3(a) and (b) of decision VI/8b, but not a detailed plan of action for the Committee to consider. Accordingly, in its first progress review, the Committee invited the Party concerned, by 1 October 2019, to provide:

“a detailed plan of action on how it will implement paragraphs 3(a) and (b) of decision VI/8b. Such a plan should include for both paragraph 3(a) and (b) of decision VI/8b: the specific actions proposed to be taken by Austria at both the federal and provincial level; the procedural steps associated with these actions; and the anticipated timeframe to complete these actions”.<sup>74</sup>

103. Notwithstanding the Committee’s clear guidance, the Party concerned’s second progress report again provided only a general update on legislative developments as at 1 October 2019 regarding paragraphs 3(a) and (b) of decision VI/8b, but no detailed plan of

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<sup>69</sup> Party’s final progress report, 1 October 2020, pp. 8-9.

<sup>70</sup> Party’s final progress report, 1 October 2020, p. 9.

<sup>71</sup> Party’s update, 18 June 2021.

<sup>72</sup> Party’s final progress report, 1 October 2020, annex 1.

<sup>73</sup> Party’s final progress report, 1 October 2020, p. 9.

<sup>74</sup> Committee’s first progress review, 22 February 2019, para. 43.

action. This is notwithstanding the Committee's first progress review having identified specific areas where further action would be required from the Party concerned.

104. For example, as noted in paragraph 40 above, in its first progress review, the Committee had already made clear that "amending the law to provide for access to justice only in the sectoral areas of waste, water and air quality is not sufficient to meet the requirements of paragraphs 3(a) and (b) of decision VI/8b".<sup>75</sup> The Committee in its first progress review thus called on the Party concerned, to "as a matter of urgency, arrange for a review of the relevant body of national law (at both the federal and provincial level) to identify the outstanding areas of law "relating to the environment" that require adaptation in order to comply with the requirements of paragraph 3(a) and (b) of decision VI/8b". The Committee indicated that "a complete list of the areas of law identified as requiring to be adapted in this context, together with details of the proposed legislative measure(s) considered necessary to address any implementation gaps and the indicative time frame for the relevant legislative process(es) should be provided to the Committee with Austria's second progress report due on 1 October 2019."<sup>76</sup>

105. However, as the Committee observes in paragraphs 42 and 43 above, neither the Party concerned's second progress report or final progress report contain any indication that it has either undertaken such a review or that it is planning to do so. Nor does it indicate any proposed legislative measures to address any implementation gaps and the indicative time frame for the relevant legislative processes. The Committee considers that each of these actions should have formed part of the detailed plan of action to be provided by the Party concerned in accordance with paragraph 3(c) of decision VI/8b.

106. In its final progress report, the Party concerned provides that it "dismisses the assessment that to date no detailed plan of action on how to implement the recommendations has been submitted to [the] Committee" and argues that with its past progress reports it has explained in detail the steps it has taken regarding the Aarhus Participation Act 2018 and the legislative measures taken at the provincial level.<sup>77</sup> The Party concerned furthermore points to its active participation at the audioconferences during the Committee's meetings. It considers that it "has already shown its willingness to implement the recommendations which lead to the adaptation of and the introduction of new legislation and by informing the Committee accordingly".<sup>78</sup>

107. The Committee points out that the request by the Meeting of the Parties that the Party concerned submit "detailed progress reports" is set out in paragraph 3(e) of decision VI/8b. Likewise, the Meeting of the Parties' request that the Party concerned participate in the meetings of the Committee at which the progress of the Party concerned in implementing decision VI/8b is to be considered is set out in paragraph 3(g) of decision VI/8b. These requests are completely separate to the Meeting of the Parties' request for the Party concerned to submit a detailed plan of action as soon as possible, and by 1 October 2018 at the latest, on how it will implement the recommendations in paragraphs 3(a) and (b) of decision VI/8b.

108. The Committee makes clear that the requirement to submit a plan of action is not a mere formality. The failure of the Party concerned to provide the Committee with a clear plan of action, and to undertake the review requested by the Committee in both its first and second progress reviews, means that the Committee has before it only incomplete and fragmented information on the legislative measures that will be necessary for the Party concerned to meet the requirements of paragraphs 3(a) and (b) of decision VI/8b.

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<sup>75</sup> Committee's first progress review, 22 February 2019, para. 31.

<sup>76</sup> Committee's first progress review, 22 February 2019, para. 32.

<sup>77</sup> Party's final progress report, 1 October 2020, p. 9.

<sup>78</sup> Ibid.

109. Based on the foregoing, since the Party concerned has not to date provided the Committee with a detailed plan of action on how it will fully implement the recommendations set out in paragraphs 3(a) and (b) of decision VI/8b, and appears to be of the view that there is no need for it to do so, the Committee finds that the Party concerned has not yet fulfilled the requirements of paragraph 3(c) of decision VI/8b and expresses its serious concern that the Party concerned appears to consider that it need not do so.

**Paragraph 3(d) of decision VI/8b: capacity-building programme for judges, prosecutors and lawyers**

110. In its first progress report, the Party concerned reported on a then-upcoming seminar to be held in December 2018 on the Aarhus Convention's three pillars organized by the Austrian Academy for Administrative Courts (*Österreichische Akademie der Verwaltungsgerichtsbarkeit*) of the Johannes Kepler University of Linz. In its final progress report, the Party concerned states that the seminar attracted great interest among administrative judges and was attended by twelve judges from the Provincial Administrative Courts.<sup>79</sup>

111. The Party concerned in its first progress report also informed the Committee about a capacity-building project entitled "KOMM-Recht Reloaded", led by the environmental NGO Umweltdachverband, which focused on legal questions regarding access to justice under the Convention and European Union environmental law, including the jurisprudence of the Court of Justice of the European Union. In its final progress report, the Party concerned states that this project resulted in a practical guidebook on public participation in environmental matters (published in November 2017) and a legal study (published in August 2018) on article 9(3) of the Convention. It reports that "environmental organisations have confirmed that these publications form the basis analytical material when it comes to specific questions on the implementation of the Aarhus Convention and its third pillar into the Austrian law."<sup>80</sup> The Party concerned states that further information on the project and related events is available on the website of the NGO Umweltdachverband.<sup>81</sup>

112. In its final progress report, the Party concerned reports that the Advisory Board on Further Education (*Fortbildungsbeirat*) of the Ministry of Justice was informed about the Committee's findings on communications ACCC/C/2010/48 and ACCC/C/2011/63 during its programme sessions in September 2020.

113. The Party concerned also reports that the Ministry of Justice encouraged the Advisory Board to develop training activities in the field of environmental criminal law and that the implementation and funding of such training activities falls within the competence of the four Higher Regional Courts. It states that the Ministry of Justice invests a major part of its budget into training of the Court's and Prosecutor's staff.<sup>82</sup>

114. Finally, the Party concerned refers in its final progress report to a programme on environmental criminal law organised by the Austrian Federal Criminal Agency and financed by the European Commission. It states that two training events for judges and prosecutors are envisaged as part of this programme in 2022. It indicates that an experienced Dutch public prosecutor for environmental criminal cases and an Austrian University professor specialising in criminal law are to be involved in this programme, which is currently in the planning phase, and that, as part of the programme, it is planned to also address the Aarhus

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<sup>79</sup> Party's final progress report, 1 October 2020, p. 10.

<sup>80</sup> Ibid.

<sup>81</sup> Party's final progress report, 1 October 2020, pp. 10-11.

<sup>82</sup> Party's final progress report, 1 October 2020, pp. 9-10.

Convention. It expresses its willingness to provide further information on the progress and results of the related events in due course.<sup>83</sup>

115. The Committee recalls that in its first progress review it stressed that, in order to fulfil the requirements of paragraph 3(d) of decision VI/8b, the Party concerned would need to provide information to the Committee to demonstrate that it has developed a capacity building programme, and provided training (or arranged for such training to be provided) for its judges, prosecutors and lawyers, and that the information to be provided to the Committee should include: (a) the specific content of the trainings, including the detailed programme with the titles of the presentations delivered, (b) the organizers of the trainings and the profession and relevant experience of each trainer and speaker, and (c) the number of judges, prosecutors and lawyers who have attended the trainings and in which court and town or region each judge, prosecutor and lawyer is based.<sup>84</sup>

116. Based on the information provided by the Party concerned in its three progress reports, the Committee understands that the Party concerned has to date undertaken the following actions to address paragraph 3(d) of decision VI/8b:

(a) Trained 12 provincial judges at the seminar on the Aarhus Convention in December 2018 organized by the Austrian Academy for Administrative Courts;

(b) Funded the preparation and publication of a practical guidebook and legal study in 2017 and 2018 which, inter alia, address access to justice under article 9(3) of the Convention; and

(c) In September 2020, informed the Advisory Board on Further Education (*Fortbildungsbeirat*) of the Ministry of Justice about the Committee's findings on communications ACCC/C/2010/48 and ACCC/C/2011/63 and encouraged the Advisory Board to develop training activities in the field of environmental criminal law.

117. In addition, the Committee understands that two training events on environmental criminal law for judges and prosecutors, organised by the Austrian Federal Criminal Agency and financed by the European Commission, are to be held in 2022 and that the trainings will inter alia address the Aarhus Convention.

118. The Committee welcomes each of the above initiatives. It however makes the following observations:

(a) With regard to the December 2018 seminar, apart from a very brief announcement of the seminar that was provided along with its first progress report,<sup>85</sup> the Party concerned has provided no information regarding the content of the seminar or the relevant experience of the speakers. Moreover, given that the Party concerned has nine provinces, it is clear to the Committee that 12 judges would constitute only a fraction of the judiciary that would decide cases within the scope of the Convention at the provincial level. The Committee also points out that the Party concerned has reported on no training with respect to the judiciary at the federal level. Accordingly, in addition to the points set out in the Committee's first progress review (see para. 115 above), the Party concerned will need to demonstrate to the Committee that a significant proportion of its judiciary dealing with matters within the scope of the Convention have been subject to capacity building regarding the Convention.

(b) The practical guide and legal study may indeed be very useful resources to contribute to the fulfilment of paragraph 3(d) of decision VI/8b. However, as already pointed

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<sup>83</sup> Party's final progress report, 1 October 2020, p. 10.

<sup>84</sup> Committee's first progress review, 22 February 2019, para. 48.

<sup>85</sup> See Party's first progress report, 2 October 2018, annex.

out in its first progress review,<sup>86</sup> having not received an English translation of the relevant parts of these publications the Committee is not yet in a position to assess this. In addition, it will be important that the Committee is provided with details of how these publications have been disseminated to the judiciary, prosecutors and lawyers handling cases within the scope of the Convention, including the number of each of these groups in each province and at the federal level that the publications had been disseminated to, and likewise the approximate number of judiciary, prosecutors and lawyers handling cases regarding the Convention in each province and at the federal level.

(c) Regarding the Ministry of Justice informing the Advisory Board of the Committee's findings on communication ACCC/C/2011/48 and ACCC/C/2012/63, the Committee will need to receive information as to what actions the Advisory Board has taken as a result. For example, has it since actively disseminated the findings to the judiciary and prosecutors, and if so, how many of each in each province and at the federal level have received them? Have the findings been included in subsequent training for the judiciary and prosecutors and if so, how many of each, from each province and at the federal level, have participated in that training?

119. In light of the foregoing, the Committee finds that, while welcoming the actions undertaken to date, the Party concerned has not yet fulfilled the requirements of paragraph 3(d) of decision VI/8b.

#### **Final observations**

120. The Committee expresses its disappointment at the minimal level of engagement demonstrated by the Party concerned during this intersessional period. Already in its first progress review, the Committee had invited the Party concerned to arrange for a review of its national law to identify the outstanding areas of law "relating to the environment" that would require adaptation in order to comply with paragraphs 3(a) and (b) of decision VI/8b. Despite the Committee repeating this invitation in its second progress review, the Party concerned has provided no indication that it has yet undertaken such a review. Similarly, the Party concerned failed to reply at all to a number of important questions in the Committee's second progress review. Moreover, while welcoming the fact that the Party concerned has, together with its final progress report, provided translations of the relevant provincial legislative amendments, the Committee regrets that the Party concerned has not informed the Committee of which provision of each of these fourteen amendments is relevant to paragraph 3(a) and (b) of decision VI/8b, nor has it provided the text of the provisions of the existing law to which the relevant amended provisions refer. The Committee makes clear that the failure by the Party concerned to provide this basic level of information has made the Committee's task of reviewing the Party concerned's progress much more difficult than it should have been.

## **IV. Conclusions**

121. The Committee finds that:

(a) While welcoming the progress made, the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 3(a) of decision VI/8b with respect to standing for environmental NGOs under article 9(3) at the federal level;

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<sup>86</sup> Committee's first progress review, 22 February 2019, paras. 12-13.

(b) While welcoming the significant progress made, the Party concerned has not yet demonstrated that it has fully met the requirements of paragraph 3(a) of decision VI/8b with respect to standing for environmental NGOs under article 9(3) at the provincial level;

(c) The Party concerned has not yet met the requirements of paragraph 3(b) of decision VI/8b;

(d) The Party concerned has not yet fulfilled the requirements of paragraph 3(c) of decision VI/8b and expresses its serious concern that the Party concerned appears to consider that it need not do so;

(e) While welcoming the actions undertaken to date, the Party concerned has not yet fulfilled the requirements of paragraph 3(d) of decision VI/8b.

122. The Committee recommends to the Meeting of the Parties that it reaffirm its decision VI/8b and request that the Party concerned:

(a) As a matter of urgency, take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that criteria for NGOs to have standing to challenge acts or omissions by private persons or public authorities which contravene national law relating to the environment under article 9, paragraph 3, of the Convention are revised and specifically laid down in sectoral environmental laws, in addition to any existing criteria for NGO standing in its laws on environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability;

(b) Also ensure that, when addressing subparagraph (a) above, members of the public, including NGOs, have access to adequate and effective administrative or judicial procedures and remedies in order to challenge acts and omissions of private persons and public authorities that contravene national law, including administrative penal laws and criminal laws, relating to the environment;

(c) As a matter of urgency, arrange for a review of the relevant body of national law (at both the federal and provincial level) to identify the outstanding areas of law “relating to the environment” that require adaptation in order to comply with the requirements of paragraph 3(a) and (b) of decision VI/8b and provide the review to the Committee as soon as possible and no later than by 1 July 2022;

(d) Develop a capacity-building programme and provide training on the implementation of the Convention for judges, prosecutors and lawyers;

(e) Provide the Committee as soon as possible and no later than 1 July 2022 a plan of action, including a time schedule, on how it will implement subparagraphs (a), (b) and (d);

(f) Provide detailed progress reports to the Committee by 1 October 2023 and 1 October 2024 on the measures taken and the results achieved in the implementation of the plan of action and the above recommendations;

(g) Provide such additional information as the Committee may request in between the above reporting dates in order to assist the Committee to review the progress by the Party concerned in implementing the above recommendations;

(h) Participate (either in person or by virtual means) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered.