

Dr. Josef Unterweger

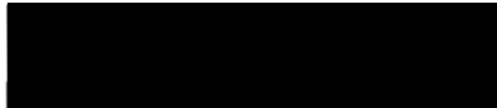
Secretary to the Compliance Committee
Aarhus Convention Secretariat
United Nations Economic Commission for Europe
Palais des Nations
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CH-1211 GENEVA 10, SWITZERLAND
via Email: aarhus.compliance@un.org



Vienna, July 19th 2023
VierPf/ACCC23 / u/ui / 3A

Decision VII/8b

Communicant:



Representative:

Dr. Josef Unterweger
Lawyer



A handwritten signature in black ink, appearing to be 'J. Unterweger', written over the redacted address area.

Party concerned:

Republic of Austria
p.a. Federal Ministry of Climate Action, Environment, Energy,
Mobility, Innovation and Technology
Radetzkystraße 2
A-1030 Vienna

Ref:

Communication to the Aarhus Convention Compliance Committee
concerning compliance by Austria with provisions of the
Convention in connection with access to justice in criminal
proceedings regarding contravention of national environmental law
(ACCC/C/2010/48, ACCC/C/2011/63)
here: Decision VII/8b
Plan of Action Austria October 10th 2022

The Communicant wishes to bring to the Committee's attention that the Party concerned is still in non-compliance of article 9, paragraph 3 and paragraph 4 of the Convention – and it is deliberately in non-compliance.

The Communicant states

- That there is still no sufficient access to justice for members of the public.
- That there are still no sufficient remedies to challenge acts or omissions of authorities in the disputed cases concerning environment, wildlife, endangered Species or CITES.

In Detail

1. The Communicant shares the Committee's view laid out in Decision VII/8b. The Communicant also shares the Committee's view that the proposed plan of action submitted by the Party concerned on 10 October 2022 does not suffice.
2. In light of the continued disregard on the part of the Party concerned, the Communicant states the Party concerned still implements laws to bar members of the public and environmental NGOs from access to justice.
3. In its plan of action from 10 October 2022 the Party concerned states:

“The Austrian Academy for Administrative Courts will continue to offer seminars about the Aarhus Convention for administrative judges. The Carinthian Administrative Academy offers such seminars for the local authorities in September 2022 and for the administrative judges in spring 2023.”

Regretfully, the Communicant must report that Austrian administrative judges continue to disregard the Aarhus Convention. Contrary to the Party concerned's view, Austrian administrative judges do not seem to be aware of the rights set out in the convention. They are either unwilling or unable to apply the Convention properly.

4. As an example, the Communicant wishes to shed light on a recent case before the regional administrative court for Upper Austria:
 - 4.1. Through a direct daughter the Communicant runs an animal protection farm, where it receives and fosters abandoned, runaway or administratively seized animals.
 - 4.2. Earlier this year, Austrian authorities seized more than fifty animals and delivered them into the Communicant's trust. Those animals were used in an allegedly illegal animal breeding operation. The former owner was prohibited from owning any further animals. To this day the Communicant still receives further animals.
 - 4.3. The former owner subsequently appealed both the seizure and the ban on keeping animals. The competent court is the regional administrative court for Upper Austria.

- 4.4. The Communicant was not granted party status, even though the Communicant is directly affected by the court's decision. Nonetheless, the Communicant as well as multiple representatives of the concerned authorities attended the open oral proceedings on 6 June 2023 as spectators.
- 4.5. Under Austrian administrative law, oral proceedings are open to the public. Only in certain very narrowly defined circumstances set out in § 25 administrative court proceedings act (Verwaltungsgerichtsverfahrensgesetz) is the court allowed (or obliged) to preclude the public or certain members thereof from the hearing. In this case, none of those provisions applied.
- 4.6. However, the competent judge at the beginning of the session took the decision to exclude the Communicant, its lawyer and other members of the public nonetheless.
- 4.7. Under Austrian law, such a decision to exclude the public or certain members thereof from the open oral proceedings is not subject to appeal. Rather it can only be appealed in combination with an appeal against the final verdict. Herein lies the loophole in legal protection. The Communicant cannot appeal the final decision because it was not party to the proceedings but a mere spectator. But because the Communicant cannot appeal the final decision, it cannot appeal the exclusion from the proceedings.
- 4.8. The Communicant argued that under the provisions of the Convention, the Communicant cannot be excluded from the oral proceedings. The Communicant argued that it must have a remedy concerning the unlawful exclusion from the open oral proceedings to its disposal. Regretfully, the regional administrative court for Upper Austria denied the Communicant its rights under the Convention. The Communicant could not appeal to court.
- 4.9. Furthermore, the Communicant was barred from accessing the records. The Communicant did not get party status which would have allowed it to appeal those decisions. The Communicant is not informed of the proceedings and the dates of the oral arguments.

The Communicant therefore states

- that there is still no sufficient access to justice for members of the public
- that there are still no sufficient remedies to challenge acts or omissions of authorities in the disputed cases concerning environment, wildlife, endangered Species or CITES.

The party concerned is still in non-compliance both with article 9 paragraph 3 and article 9 paragraph 4 of the Convention – and the party concerned is deliberately in non-compliance.

Vier Pfoten - Stiftung für Tierschutz gemeinnützige Privatstiftung