

GEULEN & KLINGER
Rechtsanwälte

Dr. Reiner Geulen*
Prof. Dr. Remo Klinger*
Dr. Caroline Douhaire LL.M.
Karoline Borwieck
David Krebs
Lukas Rhiel

10719 Berlin, Schaperstraße 15
Telefon +49/ 30 / 88 47 28-0
Telefax +49/ 30 / 88 47 28-10
E-Mail geulen@geulen.com
klinger@geulen.com

www.geulenklinger.com

Statement PRE/ACCC/C/2023/203 communicant Deutsche Umwelthilfe e.V.

Good morning,

DUH is a German environmental, nature and consumer protection organisation. Due to its great commitment in the field of environmental law, the NGO is regularly involved in the procedure of association participation within the meaning of Article 8 of the Convention.

We claim a violation of the rights arising from this article. During the process of the amendment of the national Climate Protection Act, DUH was only given a period of one working day and two hours to comment on the draft law. The four days that Mr. Clement mentioned in his statement were interrupted by a weekend. The draft law was sent on Thursday 5:28 pm. The deadline was set Monday, 10 pm.

Looking at margin number 116 of the Guide to the ACCC a complaint is declared admissible if the notifier has made sufficient use of available domestic administrative or legal review procedures. Therefore there has to be a possible way of judicial review.

This is not the case here:

Public participation in legislative procedures is governed in Germany by Section 47 of the Joint Rules of Procedure of the Federal Ministries (Gemeinsame Geschäftsordnung der Bundesministerien GGO).

According to this rule participation must take place at an early stage, whereby the timing, scope and selection are left to the discretion of the lead federal ministry.

The problem of the GGO is, that it is only an internal administrative provision without external effect. Associations or private individuals, therefore, cannot derive any duties or rights directly from the GGO. Thus, the regulations cannot be subject to judicial review. A possibility to legal review in cases of internal administrative provisions only arises in Germany if a person can claim a violation of the principle of equal treatment, which is laid down in Article 3 of the German Grundgesetz, the Basic Law.

Such a violation is given, if a fixed administrative practice has developed and comparable issues were treated unequally without reason. This fixed administrative practice leads to the principle of the so-called “self-binding of the administration.”

If there is no such practice, no „self-binding of the administration,“ there cannot be a violation of the principle of equal treatment and therefore no legal protection.

This is the case here:

The deadlines set by the federal ministries differ considerably. Sometimes it is only a few days, sometimes some weeks. A fixed administrative practice of some kind has not developed. Therefore, the complainant could not claim a violation of equal treatment to be applied before a national court. The only recourse was to complain to the Committee about a violation of its rights under Article 8 of the Convention.

Further, we would like to add, that at the federal hearing, which the party concerned mentioned, cannot be seen as public participation within the meaning of Article 8 of the Convention, since only a few members are invited. There is no right to participate. Also, the fact that civil society is able to place their opinion in the media is not a guarantee given by the government and no formal participation.

Karoline Borwieck