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FOEN;

United Nations Economic Commission for Europe
Aarhus Convention and its Protocol on Pollutant
Release and Transfer Registers
Mr. Michel Forst
Palais des Nations, A. de la Paix 10
1211 Geneva 10
Switzerland

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Berne, October 30th, 2023

Dear Mr. Forst,

Thank you for your letter of August 21st, 2023 to the Federal Department of Foreign Affairs (FDFA), which has been transferred to the competent federal authority, the Federal Office of Environment (FOEN).

Switzerland has been closely monitoring Mr. Choc's case for several years and is concerned by the facts reported by him. As already stated in previous sessions and in national implementation reports, Switzerland supports efforts to protect environmental defenders and does not condone the penalization, persecution or harassment thereof for seeking to exercise their rights under the Aarhus Convention.

As you have mentioned, Mr. Choc, along with representatives of Swiss NGOs, was received on two occasions by representatives of the FDFA and the State Secretariat for Economic Affairs (SECO) on November 29th, 2019 and on April 20th, 2023. On both occasions, Mr. Choc and the NGO representatives depicted the various difficulties, obstacles and threats which journalists, including Mr. Choc, were facing in the region. During both meetings, the NGO representatives and Mr. Choc highlighted the support granted by the Embassy of Switzerland in Guatemala.

After a thorough legal analysis, Switzerland considers that the Aarhus Convention does not apply in Mr. Choc's situation. To our understanding, the applicability of Article 3 (8) AC is linked, among other things, to the following criteria:

- Firstly, the text of the provision does not contain any reference to an extraterritorial scope of application. According to a statement by the Compliance Committee of the Aarhus Convention, the provision in Article 3 (8) AC applies to the «penalization, persecution or harassment by private natural or legal persons *that the Party concerned did not take the necessary measures to prevent.*»¹ It seems plausible, that measures of this nature can only be taken on the Party's respective territory, hence that we can only guarantee and safeguard the free exercise of the Aarhus Convention's three pillars within Switzerland.

¹ See the Compliance Committee's findings on communication ACCC/C/2014/102 (Belarus), ECE/MP.PP/C.1/2017/19, para. 70, <https://unece.org/fileadmin/DAM/env/pp/compliance/CC-58/ece.mp.pp.c.1.2017.19.e.pdf>.



- Secondly, Article 1 AC requires parties to guarantee rights of access to information, public participation in decision-making and access to justice in environmental matters. So, while Article 3 (8) AC does protect environmental defenders, it only does so in the context of these three pillars. Due to the territorial aspects mentioned above, it also seems reasonable that the exercise of the affected right must take place in the territorial scope of the Convention, so that the protection can take effect and be enforced. In other words, the acts must occur in relation to an exercised right guaranteed by the Convention within the sphere of power of a party.

To our knowledge, however, it seems the activities carried out by Mr. Choc are outside the scope of protection of the Convention (both in terms of location and subject matter) and the facts take place in Guatemala. Consequently, several circumstances imply, that the aforementioned conditions for applicability are not met in the present case.

However, Switzerland is taking Mr. Choc's fate very seriously. The Embassy of Switzerland in Guatemala has attended several of Mr. Choc's court audiences prior to the COVID-19 pandemic and is in regular telephone contact with Mr. Choc. The Embassy will continue to monitor his situation closely and remains committed to following the latest developments with regards to the deteriorating protection of human rights in the country. Together with other like-minded embassies present in Guatemala, it reminds the authorities, through bilateral dialogues, of Guatemala's obligations in terms of international treaties.

We shall continue our efforts to uphold the rights established in the Convention and the protection of environmental defenders invoking these rights in Switzerland.

Yours sincerely,

Federal Office for the Environment



Katrin Schneeberger
Director