

Dr. Josef Unterweger

A-1080 Wien
Buchfeldgasse 19a
T +43 1 405 42 67
F +43 1 405 04 62
E office@unterweger.co.at
www.unterweger.co.at

Secretary to the Compliance Committee
Aarhus Convention Secretariat
United Nations Economic Commission for Europe
Palais des Nations
8-14 avenue de la Paix
CH-1211 GENEVA 10, SWITZERLAND
via Email: aarhus.compliance@un.org

Vienna, October 24th 2022
VierPf/ACCC20 / u/ul / 3A

Decision VII/8b

Communicant: Vier Pfoten - Stiftung für Tierschutz
gemeinnützige Privatstiftung
Linke Wienzeile 236, A-1150 Vienna

Representative: Dr. Josef Unterweger
Lawyer
Buchfeldgasse 19a
A-1080 Vienna

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 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 of article 9, paragraph 3 and paragraph 4 of the Convention –
and it is deliberately in non-compliance.

In Detail:

1. The Communicant welcomes the Meeting of the Parties' decision VII/8b which clearly reaffirms its decision VI/8b with regard to compliance by the Party concerned.
2. Through paragraph 2 (e) of decision VII/8b concerning the compliance of Austria, the Meeting of the Parties to the Aarhus Convention has requested the Party concerned to submit a plan of action, including a time schedule, to the Committee by July 1st 2022 regarding the implementation of the recommendations contained in paragraphs 2 (a), (b) and (d) of that decision.
The Committee provided the Party concerned with an information note on preparing its plan of action as well as a sample template.
3. The Party concerned submitted a draft Plan of Action, including a time schedule, to the Committee by 1st of July 2022.
 - 3.1. The Party concerned submitted a draft and not the final document. The party concerned thus failed to submit – as requested – a full plan of action by 1st of July 2022.
 - 3.2. The Party concerned stated, that the draft plan had been subject to public participation between 13th of July and 31st of August 2022. The Communicant must stress, that it did not partake in said process. The Party concerned did not invite the Communicant to provide any comment. The Communicant doubts, that the process rendered any meaningful discussions or changes.

4. The Party concerned submitted its final Plan of Action on 10th of October 2022.
- 4.1. The Party concerned's Plan of Action mirrors its draft Plan of Action to a tee. The Party concerned did not add or expand a single measure. Considering the Party concerned – by its own account – held a public participation process on its draft Plan of Action and came to the conclusion that no further steps were necessary the Communicant feels reassured that the Party concerned has no intention of fulfilling its obligations under the Convention.
- 4.2. The Plan of Action provided by the Party concerned is a plan of action in name only. The Party concerned still is in non-compliance with decision VII/8b. The Communicant upholds its concerns raised in its statement dating 19th of July.
- 4.3. Firstly, the Party concerned still did not provide any Plan of Action regarding paragraph 2 (a) of decision VII/8b. As a matter of fact, the Party concerned did not take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that criteria for nongovernmental organizations to have 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 sectoral environmental laws, in addition to any existing criteria for non-governmental organization standing in its laws on environmental impact assessment, integrated pollution prevention and control, waste management or environmental liability. The Party concerned fails to explain why.
- 4.4. Secondly, the issued Plan of Action in regards to paragraph 2 (b) of decision VII/8b does not suffice by any metric. The proposed amendments to laws at the federal and provincial level are not doing nearly enough to ensure that members of the public, including non-governmental organizations, 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.
The Party concerned issued commonplace legislative actions but fails to show how any of those proposed measures would lead to sufficient change. To top it off, most measures are “in preparation”, “in revision”, or “in discussion”. Those measures that actually got implemented do not suffice.
- 4.5. Lastly, the Plan of Action concerning paragraph 2 (d) of decision VII/8b offers little to no improvements. While there are already seminars about the Aarhus Convention on offer, the issue lies within the domestic translation, implementation and execution of the Convention.

5. The party concerned implements laws to bar members of the public and environmental NGOs from access to justice.
- 5.1. The “Federal Law on the Development and Advancement of the Economic Location Austria” (“Standortentwicklungsgesetz” – StEntG) was adopted in 2018. This law grants automatically permission to projects in EIA proceedings twelve months after the date of application if a board, which is nominated by the government, says so. The law states that the authority is obliged to grant permission. This law supersedes other environmental laws such as the Environmental Impact Assessment Act, which in itself is not in accordance with the Convention.
- 5.2. The Party concerned adopted amendments to the Environmental Impact Assessment Act (Novelle zum Umweltverträglichkeitsprüfungsgesetz 2000). Access to justice for the public concerned has been drawn to an even smaller scale.

The status “Environmental Organisation” under Austrian law ended for all environmental NGOs with the end of 2019. Environmental Organisations have to prove to meet the new implemented criteria until 1st of December 2019 as to gain the status “Environmental Organisation” granted by the Federal Minister for three years. Since then, all NGOs are obliged to regularly submit documents in order to gain a 3-year extension on their status as an “Environmental Organisation”

The access to justice is limited to NGOs with at least 100 members. Environmental organisations with less than 100 members do not have access to justice.

Paragraph 19 Environmental Impact Assessment Act grants access to justice only for two kinds of environmental organisations: “Verein” (organisation) or “Verband” (federation – a collective of organisations or associations).

Environmental NGOs organized as “Verein” must prove that they have over 100 members. Environmental Organisations in smaller, especially rural communities, are barred from justice.

Many environmental organizations in rural areas are already ceasing to exist with matters only going to get worse.

Environmental NGOs organized as “Verband” must prove to have five member organizations.

But there are environmental organizations based on different forms of organisation than the two mentioned in paragraph 19 Environmental Impact Assessment Act.

Most prominent are foundations. Foundations by law have neither members nor member organisations.

Whilst the communicant “Vier Pfoten” obtained the status as “environmental organisation” under Austrian law, many others did not and ceased to exist.

6. Concluding, the Communicant wants to shine light on the fact that the European Commission once more initiated an infringement procedure concerning the Party Concerned both on federal as well as state level.

The European Commission shares the Communicant's view that the Party Concerned is in non-compliance with the Convention and specifically the Bird and the Habitats Directives. The Party Concerned did not meet its obligations to fully designate sites in the Natura 2000 network (Special Protection Areas SPA, Sites of Community Importance SCI, Special Areas of Conservation SAC).

Regrettably, the Communicant is not able to submit the Commission's letter because the Party Concerned chose not to make it public. Despite filing an according motion und the Convention and the Directive 2003/4/EC on public access to environmental information, the Party Concerned did not provide a copy of the letter. The Party Concerned thus is in (further) non-compliance with the Convention.

While the Communicant is not in possession of the Commission's letter, many a press reports corroborate its content, for example the public service broadcaster.¹

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.

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.

The Communicant

Vier Pfoten - Stiftung für Tierschutz gemeinnützige Privatstiftung

¹ 12th of October: "Again EU infringement-procedure due to Natura 2000"
<https://tirol.orf.at/stories/3177679/>.