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Vienna, July 18<sup>th</sup> 2024  
VierPf/ACCC23 / u/ul / 3A

**Decision VII/8b**

Communicant: Vier Pfoten - Stiftung für Tierschutz – gemeinnützige Privatstiftung  
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Vienna

Representative: Dr. Josef Unterweger  
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Party concerned: Republic of Austria  
p.a. Federal Ministry of Climate Action, Environment, Energy,  
Mobility, Innovation and Technology  
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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

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. 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.
2. 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.
3. In its statement from July 19<sup>th</sup> 2023, the Communicant already informed the Committee of a legal case before the regional administrative court for Upper Austria. Through a direct daughter the Communicant runs an animal protection farm, where it receives and fosters abandoned, runaway or administratively seized animals. Earlier that 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. 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. 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. 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. 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. 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.

- 3.1. Subsequently the Communicant filed a complaint with the competent regional administrative court for Upper Austria. The Communicants' complaint was rejected on formal grounds. The Communicant appealed this decision to the Supreme Administrative Court. Regretfully, the Supreme Administrative Court also rejected the appeal on formal grounds.
- 3.2. In the eyes of the court, Austrian administrative procedural law simply does not know a legal remedy through which the Communicant would have been able to receive judicial review. The judge, who barred the Communicant from attending the oral proceedings, is part of the judicial branch and thus – according to the court – there is no legal remedy under Austria law. Legal protection is only granted regarding acts of public officials who are attributable to the executive branch. This is not in accordance with the Convention. The Convention does not distinguish between acts of the judiciary and acts of the executive.
- 3.3. The Communicant argued that under the provisions of the Convention, the Communicant cannot be excluded from the oral proceedings (be it by a judge or by a public official who is attributable to the executive branch). The Communicant was not granted party status, the Communicant was not even allowed to observe 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 courts denied the Communicant its rights under the Convention.

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