

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
UN Economic Commission for Europe
S. 348, Palais des Nations
CH-1211 GENEVA 10
SWITZERLAND

Vienna, 30 October 2018
VierPf/ACCC17 / u / 3A

Decision VI/8b
GZ: ACCC/C/2011/63

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

Representative: Dr. Josef Unterweger
Lawyer
Buchfeldgasse 19a
1080 Wien

Party concerned: Republic Austria
p.a Federal Ministry of Agriculture, Forests, Environment and
Water Management
Stubenbastei 5
1010 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 VI/8b

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.

The Communicant considers the progress reports of the party concerned near to contempt of court.

In Detail:

1. The “Aarhus-Beteiligungsgesetz 2018” does not improve access to justice in environmental matters. It was rejected unanimously^{1,2}
2. The Communicant considers the stated “Capacity building” rather a matter of fiction not a matter of fact. These Meetings are not evaluated.
3. 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 even to a smaller scale. Now – for example - NGOs have to disclose their members by name and address. The access to justice is limited to NGOs with at least 100 members. NGOs with less than 100 members do not have access to justice. This legislative proposal was also rejected unanimously^{3,4}
4. The party concerned will adopt an Industrial Location Development Act (Standort-Entwicklungsgesetzes – StEntG). The target of this proposal to grant 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. This proposal was rejected unanimously^{5,6}

¹ https://www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME_00061/index.shtml#tab-Stellungnahmen

² Statement of the representative: https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_02090/imfname706717.pdf

³ https://www.parlament.gv.at/PAKT/VHG/XXVI/I/I_00275/index.shtml#tab-Stellungnahmen

⁴ Statement of the representative: https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_02091/imfname706718.pdf

⁵ https://www.parlament.gv.at/PAKT/VHG/XXVI/ME/ME_00067/index.shtml#tab-Stellungnahmen

5. Even in cases where NGOs have access, there is no sufficient remedy to challenge decisions - for example:

The projected motorway S1 („Lobau-Autobahn“) in the south of Vienna touches a Natur 2000-Area. The project has a volume of two Billion Euro.

The project has to be profitable to reach permission. The profitability of the project is stated by the Minister of Transport (Bundesminister für Verkehr, Innovation und Technik). The Minister of Transport is also the competent authority to decide the EIA and the profitability of the project.

The statement of the Minister of Transport, which states the profitability of the project was not disclosed to the parties of the EIA-procedure. This statement is crucial for permission. Parties demanded to see the statement.

The Minister of Transport stated:

„Other parties [than the Minister of Transport, the author] and participants are not effected in their legal sphere by this statement [of the Minister of Transport, the author], which only concerns the profitability of the project, therefore they have no right of hearing“

(Decision BMVIT 26.3.2015, GZ BMVIT-312.401/0020-IV/ST-ALG/2015, 83)⁷

The Federal Administrative Court (Bundesverwaltungsgericht) held that decision: “Neither Neighbours (no subjective-public right) nor Environmental NGOs (no environmental protection regulation) are entitled to challenge the lack of profitability of a project. ... Hence the Federal Administrative Court had not to deal with this issue.”⁸

(Bundesverwaltungsgericht, 18.5.2018, W104 2108274-1/243E, 176)

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 in non-compliance both with article 9 paragraph 3 and article 9 paragraph 4 of the Convention.

Moreover: The party concerned implements laws to bar members of the public from access to justice.

Vier Pfoten - Stiftung für Tierschutz gemeinnützige Privatstiftung

⁶ Statement of the representative: https://www.parlament.gv.at/PAKT/VHG/XXVI/SNME/SNME_02191/imfname707344.pdf

⁷ „Andere Parteien und Beteiligte sind von dieser Stellungnahme [des BMVIT, d.A.], die lediglich die Frage der Wirtschaftlichkeit des Bauvorhabens zum Inhalt hat, nicht in ihrer Rechtssphäre betroffen und waren daher diesbezüglich auch nicht zu hören.“

Bescheid BMVIT 26.3.2015, GZ BMVIT-312.401/0020-IV/ST-ALG/2015, 83

⁸ „2.11. Wirtschaftlichkeit

Die ins Treffen geführte fehlende Wirtschaftlichkeit des Vorhabens kann weder von Nachbarn (kein subjektiv-öffentliches Recht) noch von Umweltorganisationen (keine Umweltschutzvorschrift) geltend gemacht werden (vgl. VwGH 24.8.2011, 2010/06/0002, A5 Schrick-Poysbrunn, Pkt. 3.4.). Das Bundesverwaltungsgericht hatte sich mit diesem Thema daher nicht auseinanderzusetzen.

(BVwG , 18.5.2018, W104 2108274-1/243E, 176)“