

Rechtsanwalt MMag. Johannes Pfeifer

Von: Edith Pfeifer [edith.pfeifer@aon.at]
Gesendet: Dienstag, 31. März 2009 19:29
An: Johannes Pfeifer
Betreff: Dear sirs

Dear sirs or mesdames

I like to thank you for the invitation on behalf of the organization which I represent, the organisation nett.

This organisation has some thousand members, mainly citizens of the enns valley. The enns valley is a narrow valley in the Austrian alps, through which a two track motorway leads, the Ib 320. This was an important transit road in the 60s and 70s for the traffic from germany to former jugoslawia especially for migrant workers. Since then two other motorways (autobahnen) were improved and build in the west and east of the enns valley, thus there is now much less traffic on this road and the Ib320 is no busy road anymore. The economics is mainly farming, tourism, and small sized industrial units.

The first plans to build a four lane motorway through the enns valley are from the seventies; when there was a high traffic volume. There were demonstration against this plans, and the government abolished the plans after the necessary permissions were not granted, for instance from the authority for water management.

In the nineties large parts of the enns valley were declared as protected regions according to the Habitats directive by the eu because of the rare flora and fauna in the valley, especially the corn crane bird.

In 2000 new plans for a so called traffic solution were made by the styrian government. Now there are only traffic jams 3 or 4 times a year, when there are holidays in germany or Austrian states and people drive to their skiing vacations or to slovenia. This jams last about a day or half a day. So the styrian government charged experts with the result of the so called basler study, which essentially said that the existing two-lane-track is sufficient for the traffic, but the road should be improved, for instance bypasses should be made, side roads should be build for tractors and noise protection walls.

After this study the government appointed several committees for the discussion of a traffic solution:

A community forum consisting of the mayors and representatives of the local councils

A provincial forum existing of experts from the administrative bodys. There actually were no meetings in this body

A regional planning advisory board existing of 9 representatives of different chambers, an one member per community of the region, and the district commissioner. There is a law from 95 that this board has to be constituted before important decisions eg about traffic and spatial planning,

are made by the styrian government. The constitution of this board is also fixed in this law. This board has to be consulted by the government before the decisions are made, but the board decisions are not strictly binding. Practically there has been no case in the past when the decision of the board was not followed by the government.

For the ngos like the organisation nett ,the wwf, and other environmental protection organisations a so called round table was constituted. There is no law in Styria or Austria that before a decision with environmental impact is made, this ngos have to be heard in the planning process or such a round table has to be constituted, thus this was voluntary decision by the government.

We think that according to the Aarhus convention and the relating eu directives a consulting mechanism should be established that ngos should obligatory be consulted when all options are open before such decisions are made already in the planning process and the Austrian and styrian laws should be adapted in this way.

The organisation nett tried to get a seat in the regional planning advisory board, but the government refused. We did appeal against this decision, and the highest constitutional courting Austria decided in december 2008 that there was no right for anyone, who was not mentioned in the law from 95 to get a set in this board. There was no reasoning why this is not possible, the court only said the constitution of the board did not interfere with the sphere of rights of the organisation. There was also no reasoning why it should be politically reasonable that for instance a member of the chamber of engineers or of the union of industrialists or from the local job centers or from the churches or the mayor of the city of graz, which is a hundred miles away, should be members, but no environmental organisation. We think that this law should be changed and ngos given a seat in this board.

In the beginning of the planning process all mayors involved and al ngos demanded that a environmental mediation process should be started, with an independent mediator and al experts elected unanimously. First the responsible county commissioner proposed this, then after elections another commissioner was appoinned who refused.

So in the different board meetings were held, also in the round table board. There was no information and communication between the different boards. The protocols from the meetings were not accessible for the other boards. There was no possibility to attend the the other meetings even as a listener. Expertises were not provided to the different boards at the same time, for instance the round table was informed about expertises months after this information was provided to the planning board. No joint meeting of all the boards were provided for. There was no possibility for the public to attend a meeting as a listener. There were no public hearings. There was no meeting of the state board, in which for instance the environmental commissioner (environmental advocate) which duty is to care for environmental issues had a seat. The public was not informed about the different options and their effects. Only after the styrian government in 2008 decided to pursue only the plan for four lane motorway they presented the public noise and fumes maps for this motorway and photomontages of the planned motorway. No expertises of the expected effects of the motorway for tourism and farming and the protected regions were made or presented to the public before this decision. No expertises are made until now how the motorway

will change the traffic volume and the living and working conditions of the citizens of the Enns valley.

The organisation nett also demanded that they were allowed to present to the board the result of a recent survey about the opinion of the people of the valley about the traffic situation. The survey showed that a vast majority did want the improvement of the existing road and the public traffic, but no four lane motorway, as this would harm the environment and their living conditions and also tourism and a motorway would cut through the protected regions, which are used by the population for leisure activities. The chairman of the board refused to hear the results of the survey.

We think that for these reasons there was no sufficient public participation and information of the public in the planning process and think this constitutes a violation of art. 6 of the convention.

After 2 or three meetings the round table was informed that furthermore only the option of a four lane motorway should be discussed, in the way whether this four lane motorway should be built in the north, middle or south of the Enns valley. The organisation nett and other members of the round table demanded that all other options, eg improving the existing two lane road, building a tunnel should also be discussed and demanded access to the proceedings of the other boards. This was refused, and the government declared, only the location of the four lane motorway should further be discussed. Thus the organisation nett and all other organisations left the round table, and there were no further meetings of the round table.

Afterwards the planning board decided that the best location of the motorway should be in the middle of the valley, the second best in the south. This decision was announced to the Styrian government, and the government decided in April 2008 to pursue only the option of the four lane motorway in the middle, and perhaps in the south and the responsible commissioner should take the necessary steps to enforce this decision. The commissioner then requested the responsible government department to conduct the so called strategic traffic examination for the middle variant of the four lane motorway, a rough examination of the effect of this motorway. In the past, all these examinations were successful, and in the next step the environmental impact assessment will be made.

Since 2004 about 8 municipalities in the Enns valley and NGOs like nett requested a ban on heavy lorries over 7.5 tons on the B320 from the district commissioner, as there are already such bans on other roads in Styria. No decision has been made yet. The ban would have a significant effect on the environment, within the meaning of Art 6 N 1 lit b of the convention, as the negative environmental effects would be drastically improved without the lorry traffic. More to the point, without the traffic of these heavy lorries there would be much less necessity for a four lane motorway, and much less pressure from the transport business and industrialists for this motorway, which are the main lobbyists for the motorway besides the construction industry.

We are of the opinion that the public should therefore have the right of participation and access to information and justice also in the decision process over this ban. If the public would succeed in imposing this ban, very likely the motorway will not be built, as the parameters for the decision on

the motorway would drastically change, especially the traffic parameters. Although this ban is no activity mentioned in annex 1 of the convention per se, this decision would change the parameters for an activity and their meaningfulness mentioned in the annex significantly.

The ban would imposed by means of a decree by the district commissioner. According to Austrian law, no one has a right to comment in the process of the preparation of this degree, or to make representations, or to challenge for instance the decision which expertises are made and by whom. Also no one has the right to examine the files, for instance the expertises. If there is no decision, as in this case for over five years, no one has the right to demand that a decision should be made in reasonable time. If the commissioner decides that no ban should be imposed, no one has a right to appeal against this decision, and there is no review procedure as it is laid down in Art 9 of the convention. The organisation nett demanded that the expert opinions that were obtained by the commissioner should be conveyed to the organisation, for instance an expertise over the medical and environmental effects of the ban, for instance the reduction of fine particles, and the commissioner refused.

We think that this a gross violation of art 6 to 9 of the convention, as there is no public participation, information of the public, access to information and access to a review procedure. We also think that the public should not only have the right to challenge the legality of a decision subject to the convention, but also should have the possibility to demand executive regulations which improve their living and environmental conditions within reasonable time, and should be entitled to challenge omissions in this respect.

In the last months, in two other adjoining counties in Salzburg and Styria several municipalities have also requested for such bans for heavy lorries on roads. One of these roads is an extension of the Ib 320 concerned: the other is a connecting road from the Ib320 to Salzburg. These requests are also based on environmental and touristic reasons. The decision over our communication will also affect the enforceability of their request and other road projects in Austria.

Thank you for your attention

Dear Sirs or Mesdames !

As may closing remarks I would like to mention that the resistance against the building of motorways has long history in Austria. Unfortunately the opposition was rarely successful. There is no case in which legal remedies were successful. The only case when a motorway building was prevented was the motorway in the enns valley in the 70s, because of the massive demonstrations which dwinded into scuffles.

The accession of Austria to the Eu, The Aarhus convention and the according eu directives massively improved the legal possibilities and the possibilities for participation of the public in the

decision making process, at a point in time when all options are open. As in our case, in reality the decision making process does need meet all this statutory provisions yet, but we are hopeful that your decision will contribute to a improved reception of the purposes of the Aarhus convention in Austrian laws and plans, programs and policies and will contribute to the resumption of an open discussion over the traffic solution for the enns valley.

Thank you for your attention

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