

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
Environment Division
S. 348, Palais des Nations
CH -1211 Geneva 10, Switzerland

Wien, am 19. January 2015

VierPf/ACCC11 / u / 3BSZ

GZ: ACCC/C/2011/63

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

representative: Dr. Josef Unterweger
Rechtsanwalt
Buchfeldgasse 19a
1080 Wien



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

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)

The communicant replies to the response of the party concerned in due time.

1. The Party concerned concedes
 - a. that there is still no access to justice for members of the public
 - b. that there are still no remedies to challenge acts or omissions of authorities in the disputed cases concerning wildlife/Endangered Species/CITES.
2. The Party concerned concedes to be still in non-compliance of article 9, paragraph 3 and paragraph 4 of the Convention.
3. To the Annex Questions concerning Decision V/9b
 - a. The alleged measures – if put into practice - will not be helpful in cases of wildlife/Endangered Species/CITES. The Party concerned concedes that there are no and there will be no criteria for access to justice for the public in these cases.
 - b. The communicant doubts that the party concerned takes sufficient measures to comply with the findings and recommendations stated in ACCC/C/2010/48.
 - i. Draft findings and recommendations were released on 10. November 2011.
Measures could have been implemented since that date.
 - ii. Since 10. November 2011 the party concerned released 2.863 Publications of Federal Laws (Bundesgesetzblätter, abb.; BGBl) which implemented far more than 2.863 Laws and Changes of Law.
Since 1. January 2012 until to-date the party concerned released 2679 Publications of Federal Laws.
 - iii. Since 10. November 2011 the Environmental Impact Assessment Act [*Umweltverträglichkeitsprüfungsgesetz*] was changed five times
(<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010767>).

The party concerned did not take the opportunities to comply with the findings and recommendations. The said changes of EIAA are:

- BGBl. I Nr. 144/2011: proposal in parliament: 28. Nov 2011, adopted: 7. Dec. 2011
- BGBl. I Nr. 51/2012: proposal in parliament: 20. Dec. 2011, adopted: 5. May 2012
- BGBl. I Nr. 77/2012: proposal in parliament: 9. June 2012, adopted: 5. July 2012
- BGBl. I Nr. 95/2013: proposal in parliament: 22. May 2013, adopted 18. June 2013
- BGBl. I Nr. 14/2014: proposal in parliament: 25. February 2014, adopted 13. March 2014

- iv. The party concerned concedes that there was just one (1) change in law to comply with the findings.

This one and only change was an amendment to the Environmental Information Act (*Umweltinformationsgesetz UIG*).

(<https://www.rls.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010766&ShowPrintPreview=True>)

The amendment does not comply with the recommendations made by the Committee:

“ 3. ...

(a) Take the necessary legislative, regulatory, and administrative measures and practical arrangements to ensure that:

(i) The procedure for having a refusal of a request for information reviewed is simplified for the requester. This could preferably be done by requiring any written refusal of a request for information to have the legal status of an “official notification ...”

(Excerpt from the addendum to the report of the fifth session of the Meeting of the Parties (ECE/MP.PP/2014/2/Add.1))

The Environmental Information Act states, that the requester has to ask for an "official notification" if there is a full or partial refusal of request (UIG § 8 Abs 5).

The "official notification" has to be released within six months after the request to do so (UIG § 8 Abs 2).

Not before the reception of the "official notification" is the requester entitled to file an application as a remedy against refusal of information.

The plain objective of the Committee was the simplification of the procedure for the requester. This objective was missed by the party concerned.

- v. The party concerned has not adopted relevant legislation to comply with the findings V/9b.

The party concerned concedes that solely the Environmental Information Act was amended. The assignment of ACCC was to amend the “national laws, including administrative penal laws and criminal laws relating to the environment”.

The party concerned altered, redrafted and changed considerably laws in the said sector. The party concerned did not take the opportunity to comply with the findings and recommendations of the Committee.

vi. Changes since 10. November 2011 in relevant laws – for example:

- o The Waste Management Act [*Abfallwirtschaftsgesetz*] was changed four times.
(<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20002086>)
 - a. BGBl. I Nr. 35/2012: proposal in parliament: 28. March 2012, adopted 25. April 2012
 - b. BGBl. I Nr. 97/2013: proposal in parliament: 22. May 2013, adopted 19. June 2013
 - c. BGBl. I Nr. 103/2013: proposal in parliament: 22. May 2013, adopted 21. June 2013
 - d. BGBl. I Nr. 193/2013: proposal in parliament: 05. July 2013, adopted 17. September 2013

- o The Code of Criminal Procedures [*Strafprozessordnung*] was changed fourteen times.
(<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326>)
 - a. BGBl. I Nr. 103/2011: proposal in parliament: 20. October 2011, adopted 22. November 2011
 - b. BGBl. I Nr. 29/2012: proposal in parliament: 29. March 2012, adopted 21 April 2012
 - c. BGBl. I Nr. 35/2012: proposal in parliament: 28. March 2012, adopted 25. April 2012
 - d. BGBl. I Nr. 50/2012: proposal in parliament: 19. April 2012, adopted 24. May 2012
 - e. BGBl. I Nr. 61/2012: proposal in parliament: 27. June 2012, adopted 25. July 2012
 - f. BGBl. I Nr. 2/2013: proposal in parliament: 05. December 2012, adopted 11. January 2013
 - g. BGBl. I Nr. 83/2013: proposal in parliament: 26. April 2013, adopted 24. May 2013
 - h. BGBl. I Nr. 116/2013: proposal in parliament: 12. June 2013, adopted 12. July 2013
 - i. BGBl. I Nr. 195/2013: proposal in parliament: 05. July 2013, adopted 24. September 2013
 - j. BGBl. I Nr. 71/2014: proposal in parliament: 10. July 2014, adopted 12. August 2014
 - k. BGBl. I Nr. 92/2014: proposal in parliament: 19. November 2014, adopted 17. December 2014
 - l. BGBl. I Nr. 101/2014: proposal in parliament: 10. December 2014, adopted 30. December 2014
 - m. BGBl. I Nr. 106/2014: proposal in parliament: 11. December 2014, adopted 30. December 2014
 - n. BGBl. I Nr. 13/2015: proposal in parliament: 11. December 2014, adopted 14. January 2015

- The General Administrative Procedures Act [*Allgemeines Verwaltungsverfahrensgesetz*] was changed three times:
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10008768>
 - a. BGBl. I Nr. 100/2011: proposal in parliament: 19. October 2011, adopted 22. November 2011
 - b. BGBl. I Nr. 33/2013: proposal in parliament: 30. January 2013, adopted 14. February 2013
 - c. BGBl. I Nr. 161/2013: proposal in parliament: 04. July 2013, adopted 31. July 2013

- The Administrative Penal Act [*Verwaltungsstrafgesetz*] was changed three times.:
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005770>
 - a. BGBl. I Nr. 100/2011: proposal in parliament: 19. October 2011, adopted 22. November 2011
 - b. BGBl. I Nr. 50/2012: proposal in parliament: 19. April 2012, adopted 24. May 2012
 - c. BGBl. I Nr. 33/2013: proposal in parliament 30. January 2013, adopted 14. February 2013

- Since 10. November 2011 the Animal Welfare Act [*Tierschutzgesetz*] was changed two times:
<https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20003541>
 - a. BGBl. I Nr. 114/2012: proposal in parliament: 06. December 2012, adopted 29. December 2012
 - b. BGBl. I Nr. 80/2013: proposal in parliament: 26. April 2013, adopted 24. May 2013

Members of the Public are still barred from justice in environmental proceedings especially concerning wildlife/Endangered Species/CITES.

Vier Pfoten - Stiftung für Tierschutz gemeinnützige Privatstiftung