

## **Decision V/9b on compliance by Austria with its obligations under the Aarhus Convention, Second progress report on behalf of Austria**

By decision V/9b the Meeting of the Parties (MoP) endorsed the findings of the Aarhus Convention Compliance Committee with regard to communication ACCC/C/2010/48 and ACCC/C/2010/63 and thereby welcomed the Committee's recommendations in relation to Articles 4 (7) and 9 (4) as well as Article 9 (3) of the Convention.

Following that decision Austria has provided its first progress report on the implementation of decision V/9b on 22 December 2014. By letter of 20 October 2015 the Compliance Committee submitted its first progress review of Austria's first progress report. Therein, the Committee invited Austria as a Party to the Convention to provide, together with its second progress report or otherwise by 31 December, information and specific comments on the Committee's recommendations set out in the aforementioned decision.

Against this background Austria would like to take the opportunity to inform the Committee about the continued discussion process that has started in Austria since the findings of the Compliance Committee were adopted by the MoP as well as recent developments taking into account the requests made by the Committee in its progress review.

With regard to para. 21 (a) of the Committee's progress review report Austria has adopted an amendment of the Environmental Information Act (*Umweltinformationsgesetz UIG*) at federal level which has been published in the Federal Law Gazette in August 2015.<sup>1</sup> Aim of that amendment was to comply with the respective recommendations by the Compliance Committee. The amended Environmental Information Act now explicitly states that if the environmental information requested is not at all or not to the requested extent provided, a decree shall be issued on this fact without undue delay, but two months after receipt of the request for information at the latest (§ 8 para. 1 of the Act). With that amendment Austria sees the Committee's recommendation in para. 3 (a) (i) of decision V/9b as fulfilled when it comes to the federal level. For the provincial level, several Provinces of Austria (*Bundesländer*) have already started to amend their corresponding legislation accordingly. The Federal Act is attached to the report as well as an English translation thereof since this request has been made by the Compliance Committee in its progress review.

On para. 21 (b) and (d) concerning the implementation of the third pillar of the Aarhus Convention Austria has highlighted in its first progress report the internal discussion process

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<sup>1</sup> Federal Law No. 95/2015, published in the Federal Law Gazette on 3 August 2015

that has been started in order to seek for possibilities to improve access to justice in environmental matters for environmental NGOs. The working group between the Austrian Environment Ministry (Federal Ministry of Agriculture, Forestry, Environment and Water Management) and the Provinces which has been installed in June 2014 has met since then regularly. The latest of five meetings took place on 15 December 2015. Also, in February 2015 a workshop comprising of officials dealing with environmental matters within authorities at federal and provincial level has been organised to discuss possible elements on how NGOs and affected neighbours could be better involved in various environmental procedures. In that context, the Legal Service of the Federal Chancellery has also been consulted since issues of compatibility with the Austrian Constitution have arisen. The outcome of the workshop and the working group meetings was reported back to the Conference of Government Members of the Provinces responsible for environmental issues (*Landesumweltreferentenkonferenz*) which took positively note of the progress at its meeting on 29 May 2015. Furthermore, the working group has been advised to continue its work towards implementation as early as possible.

Since the Provinces (*Bundesländer*) have legislative competences in the field of environment policy as well, especially in the area of nature protection, a separate working group dealing with those legal matters has been installed by the Provincial Administration Chief Executives (*Landesamtsdirektoren*) in April 2015. Aim of that group is to deal with issues of implementation at provincial level in a common approach while ensuring that the two groups are working in close consultation. As key issue towards implementation has been singled out in both groups the creation of legal standing or review mechanisms for environmental NGOs.

To give a résumé, Austria stays committed to the discussion processes that have been started underlining the serious efforts to improve its compliance with the Aarhus Convention. However, the various processes have not reached the status yet to present draft laws or to define a concrete timeline for legislative procedures already. Nevertheless, it is envisaged to table draft laws adjusting the corresponding environmental laws with regard to remedies especially for environmental NGOs during the course of next year.

Concerning capacity-building activities as referred to in para. 21 (c) of the progress review report a project is due to start at the beginning of next year where an Austrian environmental NGO (as umbrella organisation) will develop a capacity-building programme focussing on administrative authorities dealing with environmental procedures. These capacity-building activities with a focus on the requirements set out by the Aarhus Convention will also involve academia. These are, however, not the only activities to be mentioned when it comes to

discussing the implementation of the Convention in Austria. Within academia it can be noted that the Aarhus Convention is more frequently chosen as topic for various conferences such as the *Umweltrechtsforum* in June 2015 or the *Umweltrechtstage* in September 2014. These conferences are normally attended by a wide number of legal professionals of both academia and administration as well as lawyers who are practising environmental law.

In order to complete that picture, it has to be stated that the Austrian administration, administrative courts as well as the Supreme Court are dealing with legal affairs involving the Aarhus Convention more frequently than in the past. NGOs or individuals have started to demand for the (direct) application of the Aarhus Convention and its third pillar especially also when it comes to policy programmes or acts of a more general legal nature.

As an example can be cited the appeal by the environmental NGO, ÖKOBÜRO, who filed an application for additional measures concerning air quality and which was dealt with by the Provincial administration of Salzburg. Against the decision by the Administrative Court of the Province of Salzburg an appeal by ÖKOBÜRO was raised in May 2015; a judgement by the Supreme Administrative Court is pending. With regard to air quality measures concerning the city of Graz („*Hoffmann*“) the Supreme Administrative Court has affirmed in May 2015 the right to demand for measures in a case where an individual asked for additional measures against air pollution, this in accordance with the relevant ECJ case law (C-237/07 *Janecek* and C-404/13 *Client Earth*). However, following that ruling it is now on the Administrative Court of the Province of Styria to decide on the matter. In addition, it is also referred to a pending case before the Constitutional Court where an environmental NGO has challenged the legality of a spatial planning act in the Province of Burgenland because of nature protection concerns. The court case is pending since 2014.

As a final conclusion, Austria would like to highlight that discussions to prepare drafts for legal provisions implementing access to justice are already underway. During the course of next year it should be clear which steps will be taken to further implement the third pillar of the Aarhus Convention in respect of the relevant environmental laws.