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Secretary to the Compliance Committee
Aarhus Convention Secretariat
UN Economic Commission for Europe
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SWITZERLAND

Vienna, 9 March 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
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Party concerned: Republic Austria
p.a Federal Ministry of Agriculture, Forests, Environment and
Water Management
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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 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 wildlife/Endangered Species/CITES.

The Party concerned is still in non-compliance of article 9, paragraph 3 and paragraph 4 of the Convention.

Examples of cases from the past four months in which members of the public were denied access to information on the environment or barred from justice are provided below:

A) Denial of access to the courts, refusal to release information on the environment

The energy utility owned by the federal province of Tyrol plans to build a hydropower plant in Tauerntal, Lienz district, federal province of Tyrol. These areas contain the “East Tyrol Isel, Schwarzach and Kalserbach glacial rivers” FFH conservation area (AT3314000). The following types of habitat pursuant to the Habitats Directive can be found in the area covered by the project:

Alpine rivers and their ligneous vegetation with *Myricaria germanica* (type 3230); Species-rich *Nardus* grasslands (type 6230); Residual alluvial forests (*Alnion glutinoso-incanae*) (type 91E0); Alpine rivers and their ligneous vegetation with *Salix eleagnos* (type 3240); and *Tilio-Acerion* forests of slopes, screes and ravines (type 9180).

1) Denial of access to legal proceedings

The project manager, the energy utility owned by the federal province of Tyrol, applied for permission to remove parts of the protected plant species *Myrica germanica*. The local authority granted permission without providing information and without consulting the members of the public concerned.

An officially recognised environmental protection organisation took legal action against the notice. The court excluded this organisation from participating in the legal proceedings and exercising its right to legal redress. The reasoning given was that the organisation had not adopted an internal resolution to lodge a complaint. The association's management body and chairman stated that such resolutions had been adopted and the association had resolved to lodge a complaint.

The court barred the organisation from the legal proceedings and rejected its complaint.

2) Refusal to release information on the environment

In response to this application for permission to remove plants from habitat type 3220, namely *Myricaria germanica*, on 21 September 2017 an officially recognised environmental protection organisation submitted an application for the release of information on the environment, namely: information on the application for permission to remove protected plants of the species *Myricaria germanica*, the relevant expert opinion, and the Federal Republic of Austria's opinion on the matter.

The requested information on the removal of the plants has so far not been provided. The environmental protection organisation's appeal was dismissed by the court on the grounds that the organisation had not adopted a corresponding internal resolution. The association's management body and chairman stated that such resolutions had been adopted.

B) Denial of access to legal proceedings

Lienzer Seewand; *Bubo bubo*; *Falco peregrinus*

Annex I of the Birds Directive (Directive 2009/147/EC) designates the peregrine falcon and the owl as specially protected species. Article 4(1) of the Directive states that "special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution" must be implemented. The member states have a duty to ensure that the requisite measures to protect these species are taken. The member states are also obliged to prohibit "deliberate disturbance of these birds particularly during the period of breeding and rearing" (Article 5[d]).

Under this obligation, deliberate disturbance of the specially protected species specified in Annex I of the Birds Directive is prohibited, in particular during the breeding and rearing period (section 25[1][d] Tiroler Naturschutzgesetz [Tyrolean Nature Conservation Act] 2005).

On 22 May 2016 a well-known ornithologist notified the relevant authorities that the peregrine falcon (*Falco peregrinus*) and the owl (*Bubo bubo*) have breeding sites around the Lienzer Seewand, a sheer rock face. Cables for a via ferrata lead past these sites.

The ornithologist submitted a request for a ban on climbing during the breeding and rearing seasons of the peregrine falcon and the owl. The authorities did not instigate proceedings and did not take any protective measures. Under Austrian law it is not possible to censure the authority for its failure to take action.

C) Denial of access to legal proceedings, Schwarze Sulm:

Planning permission has been granted for construction of a hydropower plant with a high-pressure inlet pipe in the area around the Schwarze Sulm stream, Deutschlandsberg district, federal province of Styria, close to the Schwarze Sulm special conservation area no. 3 (AT2242000).

In April 2017, two landowners ascertained that the pipe would cross their properties as well as the Schwarze Sulm special conservation area no. 3 (AT2242000), but they played no part in the related legal proceedings. The landowners also did not receive copies of the approval notices.

The landowners submitted an application to be involved in the legal proceedings and to receive copies of the approval notices. The application was rejected by the authorities and the court on the grounds that the notice approving the route of the pipe across the landowners' properties had been issued erroneously as far as this point was concerned. It is not possible to determine whether the notice has been amended with regard to this point, because the landowners have not received information to this effect.

Members of the Public are still barred from justice in environmental proceedings concerning wildlife/Endangered Species/CITES. Therefore Austria is in non-compliance both with article 9 paragraph 3 and article 9 paragraph 4 of the Convention.

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Vier Pfoten - Stiftung für Tierschutz gemeinnützige Privatstiftung