



Measures on access to justice in environmental
matters
(Article 9(3))

Country report for Austria

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Executive summary

Austria is a federal state with a strict division of powers between the federal government and the provinces as well as between the legislation, executive and judiciary. Austria is a party to the Aarhus Convention.

Violations of environmental law are administrative law issues, as long as they are not criminal offences or cause harm subject to compensation. The power of judicial review regarding administrative decisions or rulings belongs to the administrative authorities, the Administrative Court and the Constitutional Court. While the authorities (as an appellate body) and the Administrative Court (as a purely cassation court) deal with decisions, the Constitutional Court also determines the legality of regulations. The right to appeal is restricted to persons directly affected by the decision or regulation.

As regards Article 9(3) of the Aarhus Convention, the Parliament and the Federal Ministry for the Environment stated that there is no imperative need for action since there is an existing system protecting individual interests and other remedies (*e.g.*, ombudsman). No legislation has been adopted to specifically implement Article 9(3) and there are no concrete plans to do so.

Nevertheless, it has to be stated that this existing system is quite restrictive. Individuals are entitled to appeal only if they are a party in the procedure. Third parties do not have any legal standing; they can only report the (presumptive) violation of environmental law to the administrative authorities, and then it is largely up to the latter whether or not they modify an illegal decision. This kind of supervisory control does not provide effective access to justice for the members of the public. However, in exceptional cases, an official liability (*Amtshaftung*) is issued if the inaction causes the complainant harm.

Regarding environmental organisations, specific NGOs very rarely have the right to assert environmental law and to appeal to the next instance. At the moment it seems that in Austria access to justice for NGOs is the exception, not the presumption. Environmental organisations are blocked across a wide range of environmental issues.

1. Introduction

1.1. Overview of the administrative and judicial structures in Austria

Administrative structure

Austrian administrative structures are based on the republic's federal system. Austria has nine provinces (*Länder*), which are further divided into 99 political regions. The first level's administrative body of 84 regions is the district authority (*Bezirksverwaltungsbehörde*); the other 15 regions are towns with an own statute, which must – according to the constitution – carry out municipal administration in addition to the obligations of the district authority. The district authorities are created, organised and staffed by the provinces and the province government is responsible for their supervision. The municipalities have a certain autonomy but they are bound to the province government's instructions regarding “transferred issues”.¹

The Constitution empowers the federal legislature to create federal authorities for specific issues. Regarding environmental topics, the relevant provision (Art. 102 § 2 Constitution) mentions traffic, mining and the registration of seeds. All other topics are to be administered by the above mentioned district authorities and towns with own statute. These provincial authorities act under the supervision² of the province governor³ and the federal ministers.

Judicial structure

Austria applies the principle of separation of executive and judicial powers.

Civil and criminal branch

Regarding civil and criminal matters, the Austrian Constitution establishes a Supreme Court as the highest tribunal. A system of lower-level trial and appeal courts functions on the basis of a Law on Court Organisation (*Gerichtsorganisationsgesetz*).

Beginning at the lowest level, there are more than 100 District Courts (*Bezirksgericht*); Regional Courts (*Landesgericht*) function as courts of first instance in the more important cases and also act as appeals courts vis-à-vis the District Courts; four courts of Appeals (*Oberlandesgericht*) hear appeals from cases decided by the Regional Courts as trial courts. At the highest level is the Supreme Court for Civil and Criminal Affairs (*Oberster Gerichtshof*).

¹ “Transferred issues” are those that have to be administered by municipalities without the scope of self-government. The Constitution forces the legislation to determine issues of self-government (*e.g.*, local territorial planning) and issues of transferred competence (*e.g.*, registration of citizens). Towns with an own statute have a much broader responsibility since they have to act as district authorities. They are involved in the first instance in many environmental law procedures (*e.g.*, water, air, forest).

² Supervisory control is not designed to provide access to justice for the public. According to Section 68 of the Administrative Procedure Act, a next level authority is able to revoke decisions (see below 2.1.) that grant no rights; additionally, he can modify decisions to remedy abuses endangering the life or health of people if this is necessary and unavoidable. Private persons or NGOs can inform the authorities about administrative decisions harming the environment. Nevertheless, the next level authority has a great margin of discretion. Owing to its restricted scope and its marginal role, supervisory control of administrative decisions is not further examined.

³ According to the Constitution, the governor is the second – and usually last – instance in administrative procedures. Only in exceptional cases is there a third instance (federal minister) or is the governor first instance (and the minister second instance).

Civil courts or criminal courts do not have the power of judicial review regarding decisions or rulings issued by administrative authorities. The Austrian Constitution assigns this power to the Administrative Court, which is also a Supreme Court.

Administrative branch

Administrative cases are first and foremost addressed within the administrative hierarchy itself. For some cases, Independent Administrative Review Panels (*Unabhängiger Verwaltungssenat*) are installed as second instance; these panels are tribunals in the sense of Art. 6 ECHR, but they are not courts since their members are not judges.

After all administrative appeals have been exhausted; illegal administrative action may be appealed to a court of last instance (Administrative Court, *Verwaltungsgerichtshof*). This court exercises a purely cassational function: it quashes the illegal administrative decision and remands the case to the respective authority. In further proceedings, the administrative authority is bound by the Administrative Court's opinion.

The power of review regarding administrative decisions or rulings belongs to administrative authorities, the Administrative Court and the Constitutional Court. While the authorities (as an appellate body) and the Administrative Court (as a purely cassational court) deal with decisions, the Constitutional Court also decides about the legality of regulations. The right to appeal is restricted to persons directly affected by the decision or regulation.

Judicial review of the legality of administrative decisions or rulings, administrative regulations and the constitutionality of laws is reserved to the Constitutional Court (*Verfassungsgerichtshof*). The competence to decide about an administrative decision depends on the violation's scale of gravity: breaches of constitutional law legitimate a complaint to the Constitutional Court, while "minor" breaches of procedural or material provisions are subject to Administrative Court proceedings. Thus in the case of violation of fundamental rights by public authorities the Constitutional Court is competent. And in case of illegal decision, misinterpretation or violation of procedural rights, the Administrative Court is competent.

To summarise, *administrative decisions* can be reviewed by the administration (if there are stages for appeal), the Administrative Court (if it is a last instance-decision) and Constitutional Court (if it is a last instance decision violating fundamental rights). As regards the Administrative Court and the Constitutional Court, the competence to decide about an administrative decision depends on the complaint. In the judicial review, the competence to review the legality of the administrative decision will depend on the grounds raised to declare it void. If there is a violation of fundamental rights, it will be the Constitutional Court; in other cases (illegality, misinterpretation of the law, violation of procedural rights), the Administrative Court will be competent. Administrative decisions can only be contested by those persons affected by the decision.

Regarding the review of administrative regulations, Article 139 of the Constitution allows the right to appeal to a limited group of persons beyond the government, the courts and the ombudsman (Art. 148e Constitution). The complainant has to be affected directly by the illegality of the regulation (*Individualantrag*). According to the Constitutional Court's case law, some additional requirements exist, such as the no suitable detour (*e.g.*, to appeal a penalty with the argument that this decision was based on an unlawful regulation). The Constitutional Court is quite restrictive about accepting "private requests" to review administrative regulations.

To summarise, only the Constitutional Court has competence to review the legality of *administrative regulations* and standing is limited to those persons who are directly affected and do not have a suitable detour.

The Constitutional Court has no power to review the judgements of the Administrative Court or the Supreme Court for Civil and Criminal Affairs. According to the Constitution, Austria has three supreme courts.

1.2. Environmental protection within that context

There is no specific procedure for challenging violations of environmental law.

A citizen or NGO that discovers a violation by a private person, a company, an official or an authority can report to the administrative authority or to the prosecutor. Violations by an authority could be corrected by next level authorities. Violations by officials might lead to a criminal or disciplinary procedure. Violations by private persons can lead to immediate administrative instruction and to an administrative offence or a criminal procedure. However, in the latter case, only the administrative authority or the prosecutor deals with the notice and both have a margin of discretion about the next steps, to which citizens and NGOs reporting environmental law offences are not parties.

The separation of powers between the federal state and the provinces favours the federal level. Most environmental issues are within the scope of federal legislation and administration (*e.g.*, air, water, forest, facilities). Province issues are, *e.g.*, nature protection, hunting, fishing and territorial planning. These issues are administered by the district authorities/towns with own statute and the province government. The administration of federal environmental issues is mainly done by the district authorities/town with own statute (first instance) and the province governors (second instance). The federal minister is responsible for supervision, administrative regulations and providing internal guidelines but carries out very few administrative procedures. As mentioned above, for some cases, Independent Administrative Review Panels (*Unabhängiger Verwaltungssenat*) are installed as second instance (*e.g.*, permitting trading or producing facilities).

Environmental protection is mainly undertaken by administrative law, which protects air, water, soil, animals and plants by stipulating a system of individual permissions granted by the authorities and general regulations and a system of fines for violations of the law.

Violations of environmental law vary, as do the consequences. The Austrian Penal Code (*Strafgesetzbuch*) stipulates sanctions for specific violations (*e.g.*, harm to environment, massive harm by noise, endangering the environment by waste treatment or by running a facility, endangering animals or plants). These violations are punished by criminal courts. Appeals go to the Regional Courts or Courts of Appeal and, in exceptional cases (*e.g.*, missing case law), to the Supreme Court. One important characteristic of these violations is the accessoriness to administrative law. The violation of administrative law (*e.g.*, polluting a river with oil) is indeed a prerequisite for criminal judgement. If this violation causes harm or danger to a number of people or endangers species, the Penal Code's provisions are also applicable. So the offender can be fined twice: for polluting and for endangering by polluting. Only in very specific situations could it also apply to officials: that is, if they pollute or endanger while acting as an official, which cannot be the case when they issue permits or regulations.

However, regarding illegal administrative decisions, or so-called "official offences" – when an Austrian official consciously misuses his power – the Penal Code allows anyone to report that misuse to the prosecutor, who can decide to initiate criminal proceedings. The public neither has a legal claim on the official's conviction nor is it a party to the criminal proceeding. Additionally, the authority's superior can exercise his disciplinary powers, though no one other than the official is party to that procedure.

Some laws empower administrative authorities to react with immediate administrative instruction and compulsion (*e.g.*, Sect. 360 Trade Act (*Gewerbeordnung*) regarding business facilities; Sect. 172 Forest Act (*Forstgesetz*); Sect. 138 Water Act (*Wasserrechtsgesetz*)). Immediate administrative instruction or compulsion can be reviewed by the Independent Administrative Review Panels on request of the person concerned (*e.g.*, the owner of the facility, the owner of the forest...). Decisions by that Panel can be appealed at the Administrative Court or the Constitutional Court. The public or NGOs can inform the authority about a problem that needs immediate administrative action, but that is the furthest extent of their legal position.

2. Access to justice in environmental matters

2.1. Administrative procedure

2.1.1. General aspects

According to Sect. 68 § 3 of the Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*), a decision can be modified by the issuing authority or the “next level” authority (*sachlich in Betracht kommende Oberbehörde*) insofar as is necessary and unavoidable to eliminate nuisances to the life or health of people or to prevent enormous economic harm. Therefore, this provision is not applicable if, *e.g.*, the authority allows an amount of emissions that do not endanger health or life. Sect. 68 § 2 of the Administrative Procedure Act enables the issuing authority or the “next level” authority to withdraw or modify a decision which does not have any effect on third parties. This provision has a limited scope in environmental affairs (*e.g.*, the revocation of a protection decision for a specific tree). Sect. 68 § 7 of the Administrative Procedure Act explicitly states that the use of these possibilities is at the discretion of the authority, and that it cannot be required by the public.

Austrian legislation does not provide an administrative procedure for public access to justice in environmental matters. Only in very specific situations, directly concerned citizens or recognised NGOs⁴ can participate (with limited procedural rights). For instance, regarding waste facility procedures, recognised NGOs have the right to assert environmental law and to appeal to the Independent Administrative Review Panel; according to the relevant provision, they are not entitled to appeal to the Administrative Court. Usually, the public is simply allowed to report to the administrative authorities, who will then decide whether or not to initiate a procedure; in exceptional cases an official liability (*Amtshaftung*) is issued if the inaction causes harm to the complainant.

2.1.2. Legal standing

Only in very specific cases are citizens entitled to an administrative procedure “based” on a violation of environmental law (*e.g.*, a facility emits substances that harm a neighbour’s health; in which case a “regular” proceeding against the private offender (*e.g.*, the facility owner) will be initiated and can be appealed to the second instance and/or the Administrative Court). In that case, the authority only has limited discretion and is subject to official liability if it does not react properly.

In general, as long as they are not directly concerned, citizens and NGOs do not have legal standing in administrative proceedings regarding environmental issues. To be a party to the administrative procedure requires having had a “subjective right” affected. As long as the law does not grant a specific right to a person, he/she is not a party to administrative procedures.

⁴ See below 2.1.2 about waste management.

For NGOs, an exception was created by Directive 2003/35/EC regarding EIA decisions and the approval of IPPC facilities. Although this exception does not fall into the scope of this study, it is relevant since it also applies to waste facilities. According to Sect. 42 of the Waste Act (*Abfallwirtschaftsgesetz*),⁵ for procedures concerning waste facilities NGOs that are registered according to the EIA Act⁶ and those from abroad have the right to assert environmental law and to appeal to the next instance (*e.g.*, the Panel), but not to appeal to the Administrative Court or the Constitutional Court (Sect. 356b § 7 of the Trade Act (*Gewerbeordnung*)).

Regarding nature protection, which falls within the jurisdiction of the provinces (*Länder*), a specific institution has been created – “environmental attorneys”/“ombudsmen for the environment” (*Landesumweltanwalt*) – by provincial law and appointed and financed by the province government. The period of appointment varies. Most of them do not answer to the government and are quite independent. Their main competence is to participate in nature protection and environmental impact assessment procedures. They are parties to the proceedings and have the power to file an appeal to the second instance, *i.e.*, the Province Government or the Administrative Court.

Access to a review of the authority’s act is restricted to the parties of the first instance procedure and to the environmental attorneys. “Ordinary members of the public” are not entitled to appeal an authority’s decision. Their only recourse is to encourage authorities to modify the decision.

2.1.3. Possibilities of appeal

The right to appeal lies with the person or business affected by the decision. Members of the public usually do not have a general right of appeal. Only some specific institutions representing (some of) the public are entitled to appeals in certain procedures. As already mentioned above, the Environmental Impact Assessment Act provides the possibility for NGOs to be recognised as an “Environment NGO” entitled to participate in EIA proceedings, but also to assert environmental law in waste facility procedures and IPPC facility procedures and to appeal to the second instance.

The appeal to the second instance must be submitted within two weeks (for waste facilities or IPPC facilities) and has suspensive effect. Appeals in EIA proceedings have to be submitted within four weeks.

The appeal to the Administrative Court must be submitted in writing by an attorney within six weeks of the final decision. It does not have suspensive effect, but the Court can grant it as long as there are no opposing public interests and if it is necessary to prevent a disproportional disadvantage for the claimant.

2.1.4. Costs and length of procedure

Appealing to the second instance is free of charge. Of course, there might be costs for gathering evidence or legal council, which are not reimbursed by the losing party. Regarding facility procedures, the administrative authority must decide within six months.

⁵ This provision grants the right to appeal to the Administrative Court.

⁶ Sect. 19 § 6 EIA Act defines “environmental organisation” as an association (*Verein*) or foundation (*Stiftung*) which has for at least the last three years – according to its statute - the purpose to protect the environment and – according to tax law - an charitable (non-profit) status. These NGOs can apply to be registered by the Federal Minister for the Environment.

In the Administrative Court procedure, the losing party pays court costs as well as the costs of the administration. If the citizen is the winning party, the authority has to pay for the pleadings. These remunerations are fixed by regulation at about €1,170. Otherwise, the winning authority receives about €380. Administrative Court procedures last at least two years.

The Administrative Court Act has a specific provision about legal aid (*Verfahrenshilfe*). It refers to those provisions applicable in civil court procedures. The prerequisite for legal aid is that the party is not able to pay the procedural costs without endangering its necessary maintenance and that the procedure is not obviously wilful or without any chance. Since the costs in Administrative Court procedures are limited and registered NGOs are only those with many members (like WWF, Global 2000, Friends of Nature, etc.), there is no real possibility that they will receive legal aid.

2.2. Judicial procedure

Criminal procedure – Misuse of powers

Regarding judicial procedures, everyone (citizens and NGOs) is entitled to report a criminal act (e.g., an authority's misuse of power) to the prosecutor. While they might subsequently be heard as witnesses, they have no say in whether the prosecutor takes the case to court. Thus citizens or NGOs can report wrongdoing cannot participate in the prosecution. Remedies against court decisions are restricted to the prosecutor and the accused.

Civil procedure

In civil law, there are a few provisions for neighbours in environmental matters. Emission control is granted by Sect. 364 and 364a of the Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*). But neighbours do not have to accept unusual or harmful emissions that cause considerable impairment to the customary use of their property. Neighbours are entitled to permanent injunctive relief and compensation. A specific situation is regulated by Sect. 364a of the Civil Code: no injunctive relief is provided if the disturbance is the result of a facility that has been approved by the administrative authority. In that case the neighbour has to tolerate the impact, though he is entitled to compensation. If neighbours' life or health is endangered, the authority can impose additional restrictions on the facility. "Neighbours" is defined as all persons living within an area affected by the facility; they do not have to be abutters. Since the public (neither citizens abroad nor NGOs) cannot be "neighbours", it is not entitled to start a court procedure to stop emissions that are beyond the administrative permit.

Specific provisions about liability for emissions can be found in the Forest Act and the Water Act; they entitle forest and water owners to act against the polluter. The Genetic Engineering Act (*Gentechnikgesetz*) provides for an absolute liability (*Gefährdungshaftung*) to everyone and injunctive relief for neighbouring farmers.

To summarise the overall existing situation regarding legal standing in Austria, public individuals not directly concerned are entitled to initiate neither an administrative procedure nor a judicial procedure alleging violation of environmental law. This counts for "private" violations and violations by a public authority's act or omission. All they can do is claim official liability if the harm is caused by an illegal permission or not prevented owing to the authority's inaction. Some (registered) NGOs have the right to assert environmental law and to appeal to the next instance; this right is restricted to a very limited scope of cases: waste facilities, IPPC facilities and EIA-decisions.

Constitutional Court procedure

Persons and NGOs can complain if they are addressees of a last instance administration authority's **decision** which, in their views, violates constitutional law (especially fundamental rights). NGOs are not entitled to complain on behalf of concerned citizens. If the complainant loses the case, there is no reimbursement of the authority's costs. If the complainant wins the case, he/she receives a lump sum of €1.635.

In a specific Constitutional Court procedure, persons and NGOs can complain against **regulations** if they are directly affected. There has to be a violation of legal positions (*e.g.* if a planning law regulation converts a development area (*Bauland*) into grassland (*Grünland*) and therefore reduces the possibilities to build a house). Not taking into account the environment's needs usually does not violate the NGO's legal position and therefore in most cases a NGO's complaint against a regulation will fail. Private persons complaints against regulations have to deal with the same problem: there has to be a violation of the person's legal position (- economic effects – *e.g.* reduced value of an area – are not sufficient -) and there is no suitable detour. The first prerequisite reduces the personal scope of this possibility to neighbours (*e.g.* because they might be directly affected by illegal facilities). The Austrian legal order does not provide for a claim on correct decisions or regulations for persons not directly concerned. Or in other words: The personal scope of Constitutional Court remedies to achieve a correct legal order is restricted to persons directly concerned.

3. Assessment of the legal measures for implementing Article 9(3) requirements on access to justice

There are no specific acts implementing Article 9(3) of the Aarhus Convention. The Convention was published in the Federal Law Gazette III 2005/88. The legislative materials regarding the relevant provision state: "Article 9(3) is very vague and has to be developed by the States. The provision is subject to different interpretations; for Austria there is no imperative need to react and the system of protecting individual interests and other remedies (*e.g.*, ombudsman) could be used".

Ratified Conventions are part of Austrian national law. Sufficiently clear convention provisions can be relied on directly without the need of implementing legislation. But it is quite uncertain whether Art. 9(3) can be relied on directly.

According to Austrian academic literature, Article 9(3) does not oblige the creation of an *actio popularis* (*Popularklage*). According to the Convention's wording the right to sue depends on national criteria. This room to manoeuvre could also be exploited by not creating an *actio popularis* (see, *e.g.*, Grabenwarter (2007) 387; Schulev-Steindl (2004) 132). Additionally, constitutional law requirements have to be considered. Therefore, the rule of law and multiplicity of competences have to be kept in mind. The academics suggested that it would be unconstitutional to create a blanket clause that entitles everyone to access justice for any environmental issue (see Hecht (2001) 118). It would be necessary (and possible) to amend the relevant acts (Trade Act, Water Act, *etc.*) and create a broader definition of "party". Then "environmental attorneys"/"ombudsmen for the environment" and "environment NGOs" could be granted a legal claim that has to be accompanied by a procedural standing. When transposing Directive 2003/35/EC, the EIA Act created a specific procedure to admit NGOs. This system could also be used for other environmental acts.⁷ Therefore, it is not necessary to create

⁷ Amendments to various environmental law acts could provide better access to the public. The restriction to IPPC-facilities or specific waste facilities is unnecessary. It is up to the Parliament to provide access to procedures regarding "regular" business facilities, clearing woodland, building water plants and so on. From a constitutional or objective point of view, it would be wise not to differentiate between NGOs and "environmental attorneys"/"ombudsmen for the environment".

additional associations' suits (*Verbandsklage*), which is – for Austria – a specific issue of civil court procedures (*e.g.*, within the Consumer Protection Act, the Act against Unfair Competition, the Antitrust Act or the Act on Insurance Treaties).

The Federal Ministry for the Environment, which is responsible for the transposition of the Aarhus Convention, provides a website (www.partizipation.at) with information about the Convention and its implementation.

One of the main obstacles for members of the public to introduce action against a breach of environmental law is that they must have a procedural standing. Austria is not forced to establish a system of popular action in which anyone can challenge any decision, act or omission relating to the environment. But it seems that there have not been any changes regarding better access to justice for indirectly concerned members of the public.

Regarding environmental organisations, there have been some amendments (mainly when transposing Directive 2003/35/EC). Regarding environmental impact assessment and the approval of a waste facility, specific NGOs have the right to assert environmental law and to appeal to the next instance (but not to appeal to the Administrative Court or the Constitutional Court). The fact that Parliament does not see any further need for additional amendments shows that Austria uses the clause “where they meet the criteria, if any, laid down in its national law” in a quite restrictive way. Even facilities beyond the scope of the waste facility regime can cause environmental harm and, therefore, it would be quite useful to provide environmental organisations access to justice in additional cases.

4. Conclusions

Regarding Article 9(3) of the Aarhus Convention, Parliament and the Federal Ministry for the Environment state there is no imperative need for action since there is an existing system of protecting individual interests and other remedies (*e.g.*, ombudsman). But this existing system is quite restrictive. Individuals are entitled to appeals only if they are party to the procedure. Third parties do not have any legal claims; they can only report the (presumptive) violation of environmental law to the administrative authorities and only the latter decide whether or not to withdraw or modify an illegal decision. In exceptional cases an official liability (*Amtshaftung*) is issued if the inaction causes the complainant harm. Only specific NGOs in very few cases have the right to assert environmental law and to appeal to the next instance, and they cannot appeal to the Administrative Court or the Constitutional Court. Access to justice for NGOs is the exception, not the presumption. Environmental organisations are blocked across a wide range of environmental issues.

Article 9(3) of the Aarhus Convention cannot be said to have been implemented when members of the public have no participatory rights in administrative procedures. The public's ability to inform authorities of violations that could result in supervisory control proceedings, immediate administrative action or criminal proceedings is obviously insufficient.

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Annex: List of compiled national measures implementing the requirements of Article 9(3) of the Aarhus Convention

The following provisions are not part of an implementation process, but they provide access to justice for some NGOs in very specific situations.

EIA-Act

Umweltverträglichkeitsprüfungsgesetz 2000
(Federal Law Gazette 697/1993 as amended by I 153/2004)

Partei- und Beteiligtenstellung sowie Rechtsmittelbefugnis

§ 19. (1) Parteistellung haben

1. Nachbarn/Nachbarinnen: Als Nachbarn/Nachbarinnen gelten Personen, die durch die Errichtung, den Betrieb oder den Bestand des Vorhabens gefährdet oder belästigt oder deren dingliche Rechte im In- oder Ausland gefährdet werden könnten, sowie die Inhaber/Inhaberinnen von Einrichtungen, in denen sich regelmäßig Personen vorübergehend aufhalten, hinsichtlich des Schutzes dieser Personen; als Nachbarn/Nachbarinnen gelten nicht Personen, die sich vorübergehend in der Nähe des Vorhabens aufhalten und nicht dinglich berechtigt sind; hinsichtlich Nachbarn/Nachbarinnen im Ausland gilt für Staaten, die nicht Vertragsparteien des Abkommens über den Europäischen Wirtschaftsraum sind, der Grundsatz der Gegenseitigkeit;
 2. die nach den anzuwendenden Verwaltungsvorschriften vorgesehenen Parteien, soweit ihnen nicht bereits nach Z 1 Parteistellung zukommt;
 3. der Umweltanwalt gemäß Abs. 3;
 4. das wasserwirtschaftliche Planungsorgan zur Wahrnehmung der wasserwirtschaftlichen Interessen gemäß § 55 Abs. 4 WRG 1959;
 5. Gemeinden gemäß Abs. 3;
 6. Bürgerinitiativen gemäß Abs. 4, ausgenommen im vereinfachten Verfahren (Abs. 2) und
 7. Umweltorganisationen, die gemäß Abs. 7 anerkannt wurden.
- (2) Im vereinfachten Verfahren können Bürgerinitiativen gemäß Abs. 4 als Beteiligte mit dem Recht auf Akteneinsicht am Verfahren teilnehmen.
- (3) Der Umweltanwalt, die Standortgemeinde und die an diese unmittelbar angrenzenden österreichischen Gemeinden, die von wesentlichen Auswirkungen des Vorhabens auf die Umwelt betroffen sein können, haben im Genehmigungsverfahren und im Verfahren nach § 20 Parteistellung. Sie sind berechtigt, die Einhaltung von Rechtsvorschriften, die dem Schutz der Umwelt oder der von ihnen wahrzunehmenden öffentlichen Interessen dienen, als subjektives Recht im Verfahren geltend zu machen und Beschwerde an den Verwaltungsgerichtshof zu erheben.
- (4) (Verfassungsbestimmung) Eine Stellungnahme gemäß § 9 Abs. 5 kann durch Eintragung in eine Unterschriftenliste unterstützt werden, wobei Name, Anschrift und Geburtsdatum anzugeben und die Unterschrift beizufügen ist. Die Unterschriftenliste ist gleichzeitig mit der Stellungnahme einzubringen. Wurde eine Stellungnahme von mindestens 200 Personen, die zum Zeitpunkt der Unterstützung in der Standortgemeinde oder in einer an diese unmittelbar angrenzenden Gemeinde für Gemeinderatswahlen wahlberechtigt waren, unterstützt, dann nimmt diese Personengruppe (Bürgerinitiative) am Verfahren zur Erteilung der Genehmigung für das Vorhaben und nach § 20 als Partei oder als Beteiligte (Abs. 2)

teil. Als Partei ist sie berechtigt, die Einhaltung von Umweltschutzvorschriften als subjektives Recht im Verfahren geltend zu machen und Beschwerde an den Verwaltungsgerichtshof oder den Verfassungsgerichtshof zu erheben.

(5) Vertreter/in der Bürgerinitiative ist die in der Unterschriftenliste als solche bezeichnete Person, mangels einer solchen Bezeichnung die in der Unterschriftenliste an erster Stelle genannte Person. Der Vertreter/die Vertreterin ist auch Zustellungsbevollmächtigter gemäß § 9 Abs. 1 des Zustellgesetzes, BGBl. Nr. 200/1982. Scheidet der Vertreter/die Vertreterin aus, so gilt als Vertreter/in der Bürgerinitiative die in der Unterschriftenliste jeweils nächstgereichte Person. Der Vertreter/die Vertreterin kann mittels schriftlicher Erklärung an die Behörde durch eine/n andere/n ersetzt werden. Eine solche Erklärung bedarf der Unterschrift der Mehrheit der Bürgerinitiative.

(6) Umweltorganisation ist ein Verein oder eine Stiftung,

1. der/die als vorrangigen Zweck gemäß Vereinsstatuten oder Stiftungserklärung den Schutz der Umwelt hat,
2. der/die gemeinnützige Ziele im Sinn der §§ 35 und 36 BAO, BGBl. Nr. 194/1961, verfolgt und
3. der/die vor Antragstellung gemäß Abs. 7 mindestens drei Jahre mit dem unter Z 1 angeführten Zweck bestanden hat.

(7) (Verfassungsbestimmung) Der Bundesminister/die Bundesministerin für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft hat im Einvernehmen mit dem Bundesminister/der Bundesministerin für Wirtschaft und Arbeit auf Antrag mit Bescheid zu entscheiden, ob eine Umweltorganisation die Kriterien des Abs. 6 erfüllt und in welchen Bundesländern die Umweltorganisation zur Ausübung der Parteienrechte befugt ist. Gegen die Entscheidung kann auch Beschwerde an den Verfassungsgerichtshof erhoben werden.

(8) Dem Antrag gemäß Abs. 7 sind geeignete Unterlagen anzuschließen, aus denen hervorgeht, dass die Kriterien des Abs. 6 erfüllt werden und auf welches Bundesland/welche Bundesländer sich der Tätigkeitsbereich der Umweltorganisation erstreckt. Eine Ausübung der Parteienrechte ist in Verfahren betreffend Vorhaben möglich, die in diesem Bundesland/in diesen Bundesländern oder daran unmittelbar angrenzenden Bundesland/Bundesländern verwirklicht werden sollen. Der Bundesminister/die Bundesministerin für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft veröffentlicht auf der Homepage des Bundesministeriums für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft eine Liste jener Umweltorganisationen, die mit Bescheid gemäß Abs. 7 anerkannt wurden. In der Liste ist anzuführen, in welchen Bundesländern die Umweltorganisation zur Ausübung der Parteienrechte befugt ist.

(9) Eine gemäß Abs. 7 anerkannte Umweltorganisation ist verpflichtet, den Wegfall eines in Abs. 6 festgelegten Kriteriums unverzüglich dem Bundesminister/der Bundesministerin für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft zu melden. Auf Verlangen des Bundesministers/der Bundesministerin für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft hat die Umweltorganisation geeignete Unterlagen vorzulegen, aus denen hervorgeht, dass die Kriterien des Abs. 6 weiterhin erfüllt werden. Wird dem Bundesminister/der Bundesministerin für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft bekannt, dass eine anerkannte Umweltorganisation ein Kriterium gemäß Abs. 6 nicht mehr erfüllt, ist dies mit Bescheid im Einvernehmen mit dem Bundesminister/der Bundesministerin für Wirtschaft und Arbeit festzustellen. Die Liste gemäß Abs. 8 ist entsprechend zu ändern.

(10) Eine gemäß Abs. 7 anerkannte Umweltorganisation hat Parteistellung und ist berechtigt, die Einhaltung von Umweltschutzvorschriften im Verfahren geltend zu machen, soweit sie

während der Auflagefrist gemäß § 9 Abs. 1 schriftlich Einwendungen erhoben hat. Sie ist auch berechtigt, Beschwerde an den Verwaltungsgerichtshof zu erheben.

(11) Eine Umweltorganisation aus einem anderen Staat kann die Rechte gemäß Abs. 10 wahrnehmen, wenn eine Benachrichtigung des anderen Staates gemäß § 10 Abs. 1 Z 1 erfolgt ist, sich die Auswirkungen auf jenen Teil der Umwelt des anderen Staates erstrecken, für deren Schutz die Umweltorganisation eintritt und sich die Umweltorganisation im anderen Staat am Verfahren zur Umweltverträglichkeitsprüfung beteiligen könnte, wenn das Vorhaben in diesem Staat verwirklicht würde.

Trade Act

Gewerbeordnung 1994

(Federal Law Gazette 194/1994 as amended by I 85/2005)

§ 356b. (1) Bei nach diesem Bundesgesetz genehmigungspflichtigen Betriebsanlagen, zu deren Errichtung, Betrieb oder Änderung auch nach anderen Verwaltungsvorschriften des Bundes eine Genehmigung (Bewilligung) zum Schutz vor Auswirkungen der Anlage oder zum Schutz des Erscheinungsbildes der Anlage erforderlich ist, entfallen, soweit in den folgenden Absätzen nicht anderes bestimmt wird, gesonderte Genehmigungen (Bewilligungen) nach diesen anderen Verwaltungsvorschriften, es sind aber deren materiellrechtliche Genehmigungs-(Bewilligungs-)Regelungen bei Erteilung der Genehmigung anzuwenden. Dem Verfahren sind Sachverständige für die von den anderen Verwaltungsvorschriften erfassten Gebiete beizuziehen. Die Betriebsanlagengenehmigung bzw. Betriebsanlagenänderungsgenehmigung gilt auch als entsprechende Genehmigung (Bewilligung) nach den anderen Verwaltungsvorschriften des Bundes. Die Mitanzuwendung der Bestimmungen des Wasserrechtsgesetzes 1959 - WRG 1959, BGBl. Nr. 215, in der jeweils geltenden Fassung, bezieht sich auf folgende mit Errichtung, Betrieb oder Änderung der Betriebsanlage verbundene Maßnahmen:

1. Wasserentnahmen für Feuerlöschzwecke (§§ 9 und 10 WRG 1959);
2. Erd- und Wasserwärmepumpen (§ 31c Abs. 5 WRG 1959);
3. Abwassereinleitungen in Gewässer (§ 32 Abs. 2 lit. a, b und e WRG 1959), ausgenommen Abwassereinleitungen aus Anlagen zur Behandlung der in einer öffentlichen Kanalisation gesammelten Abwässer;
4. Lagerung von Stoffen, die zur Folge haben, dass durch Eindringen (Versickern) von Stoffen in den Boden das Grundwasser verunreinigt wird (§ 32 Abs. 2 lit. c WRG 1959);
5. Abwassereinleitungen in wasserrechtlich bewilligte Kanalisationsanlagen (§ 32b WRG 1959).

Insbesondere sind die Bestimmungen des Wasserrechtsgesetzes 1959 betreffend Stand der Technik einschließlich der Gewährung von Ausnahmen vom Stand der Technik, persönliche Ladung von Parteien, Emissions- und Immissionsbegrenzungen sowie Überwachung jedenfalls mitanzuwenden. Dem wasserwirtschaftlichen Planungsorgan (§ 55 Abs. 4 WRG 1959) kommt in allen Verfahren, durch die wasserwirtschaftliche Interessen berührt werden, Parteistellung zur Wahrung dieser Interessen einschließlich der Beschwerdelegitimation vor dem Verwaltungsgerichtshof zu.

(2) Die Behörde hat das Betriebsanlagengenehmigungsverfahren gemäß Abs. 1 mit den anderen zuständigen Behörden zu koordinieren, wenn nach anderen nicht gemäß Abs. 1 mitanzuwendenden Verwaltungsvorschriften eine Genehmigung, Bewilligung oder eine Anzeige zum Schutz vor Auswirkungen der Betriebsanlage oder zum Schutz des Erscheinungsbildes der Betriebsanlage erforderlich ist.

(3) Die nach anderen Verwaltungsvorschriften des Bundes im Sinne des Abs. 1 bestehenden behördlichen Befugnisse und Aufgaben zur Überprüfung der Ausführung der Anlage, zur Kontrolle, zur Herstellung des gesetzmäßigen Zustands, zur Gefahrenabwehr, zur nachträglichen Konsensanpassung, zur Vorschreibung und Durchführung von Maßnahmen bei Errichtung, Betrieb, Änderung und Auflassung, der Wiederverleihung von Rechten sind von der Behörde, hinsichtlich des Wasserrechtsgesetzes 1959 nur für die im Abs. 1 Z 1 bis 5 genannten Maßnahmen, wahrzunehmen. Die Zuständigkeit des Landeshauptmanns nach § 17 des Altlastensanierungsgesetzes, BGBl. Nr. 299/1989, zuletzt geändert durch das Bundesgesetz BGBl. Nr. 760/1992, bleibt unberührt. Die Bestimmungen betreffend die allgemeine Gewässeraufsicht (§§ 130ff WRG 1959) bleiben unberührt.

(4) Die Abs. 1 bis 3 gelten nicht für die Errichtung, den Betrieb oder die Änderung von Anlagen, die dem § 37 des Abfallwirtschaftsgesetzes 2002 - AWG 2002, BGBl. I Nr. 102, in der jeweils geltenden Fassung, oder dem Umweltverträglichkeitsprüfungsgesetz 2000 - UVP-G 2000, BGBl. Nr. 697/1993, in der jeweils geltenden Fassung, unterliegen.

(5) Die Absätze 1 bis 3 gelten auch für forstrechtliche Verfahren nach § 50 des Forstgesetzes 1975, BGBl. Nr. 440, in der jeweils geltenden Fassung.

(6) Abs. 3 ist hinsichtlich der Aufgaben und Befugnisse, die nach dem Arbeitsinspektionsgesetz 1993, BGBl. Nr. 27, in der jeweils geltenden Fassung den Arbeitsinspektionen obliegen, nicht anzuwenden.

(7) In Verfahren betreffend die Genehmigung oder die Genehmigung einer wesentlichen Änderung (§ 81a Z 1) einer in der Anlage 3 zu diesem Bundesgesetz angeführten Betriebsanlage haben auch folgende Umweltorganisationen Parteistellung:

1. Gemäß § 19 Abs. 7 UVP-G 2000 anerkannte Umweltorganisationen, soweit sie während der Auflagefrist im Sinne des § 356a Abs. 2 Z 1 schriftliche Einwendungen erhoben haben; die Umweltorganisationen haben das Recht, die Einhaltung von Umweltschutzvorschriften im Verfahren geltend zu machen und Rechtsmittel zu ergreifen;
2. Umweltorganisationen aus einem anderen Staat,
 - a) sofern für die genehmigungspflichtige Errichtung, den genehmigungspflichtigen Betrieb oder die genehmigungspflichtige wesentliche Änderung eine Benachrichtigung des anderen Staates gemäß § 356a Abs. 3 erfolgt ist,
 - b) sofern die genehmigungspflichtige Errichtung, der genehmigungspflichtige Betrieb oder die genehmigungspflichtige wesentliche Änderung voraussichtlich Auswirkungen auf jenen Teil der Umwelt des anderen Staates hat, für deren Schutz die Umweltorganisation eintritt,
 - c) sofern sich die Umweltorganisation im anderen Staat am Verfahren betreffend die genehmigungspflichtige Errichtung, den genehmigungspflichtigen Betrieb oder die genehmigungspflichtige wesentliche Änderung einer im anderen Staat gelegenen dem § 77a unterliegenden Betriebsanlage beteiligen könnte, und
 - d) soweit sie während der Auflagefrist gemäß § 356a Abs. 2 Z 1 schriftliche Einwendungen erhoben haben; die Umweltorganisationen haben das Recht, die Einhaltung von Umweltschutzvorschriften im Verfahren geltend zu machen und Rechtsmittel zu ergreifen.

Waste Act:

Abfallwirtschaftsgesetz 2002

(Federal Law Gazette I 102/2002 as amended by I 34/2006)

Parteistellung

- § 42. (1) Parteistellung in einem Genehmigungsverfahren gemäß § 37 Abs. 1 haben
1. der Antragsteller,
 2. die Eigentümer der Liegenschaften, auf denen die Anlage errichtet werden soll,
 3. Nachbarn,
 4. derjenige, der zu einer Duldung verpflichtet werden soll,
 5. die Inhaber rechtmäßig geübter Wassernutzungen gemäß § 12 Abs. 2 WRG 1959,
 6. die Gemeinde des Standortes und die unmittelbar an die Liegenschaft der Behandlungsanlage angrenzende Gemeinde,
 7. das Arbeitsinspektorat gemäß dem Arbeitsinspektionsgesetz 1993, BGBl. Nr. 27, und das Verkehrs-Arbeitsinspektorat, soweit es sich um Betriebe oder Tätigkeiten handelt, die dem Bundesgesetz über die Verkehrs-Arbeitsinspektion, BGBl. Nr. 650/1994, unterliegen,
 8. der Umweltschutzanwalt; der Umweltschutzanwalt kann die Einhaltung von naturschutzrechtlichen Vorschriften im Verfahren geltend machen; dem Umweltschutzanwalt wird das Recht eingeräumt, Rechtsmittel zu ergreifen und Beschwerde gemäß Art. 131 Abs. 2 B-VG an den Verwaltungsgerichtshof zu erheben,
 9. Gemeinden oder Wasserversorgungsunternehmen zur Wahrung der Versorgung ihrer Bürger oder Kunden mit Trinkwasser hinsichtlich der Genehmigungsvoraussetzungen gemäß § 43 Abs. 2 Z 5,
 10. diejenigen, deren wasserwirtschaftliche Interessen gemäß den §§ 34 Abs. 6 oder 35 WRG 1959 gefährdet werden könnten,
 11. diejenigen, deren wasserwirtschaftliche Interessen durch eine wasserwirtschaftliche Rahmenverfügung als rechtliche Interessen anerkannt wurden, und
 12. das wasserwirtschaftliche Planungsorgan in Wahrnehmung seiner Aufgaben,
 13. Umweltorganisationen, die gemäß § 19 Abs. 7 UVP-G 2000 anerkannt sind, in Verfahren betreffend IPPC-Behandlungsanlagen, soweit sie während der Auflagefrist gemäß § 40 schriftliche Einwendungen erhoben haben; die Umweltorganisationen können die Einhaltung von Umweltschutzvorschriften im Verfahren geltend machen und Rechtsmittel ergreifen,
 14. Umweltorganisationen aus einem anderen Staat,
 - a) sofern für die zu genehmigende Errichtung, den zu genehmigenden Betrieb oder die zu genehmigende wesentliche Änderung der IPPC-Behandlungsanlage eine Benachrichtigung des anderen Staates gemäß § 40 Abs. 2 erfolgt ist,
 - b) sofern die zu genehmigende Errichtung, der zu genehmigende Betrieb oder die zu genehmigende wesentliche Änderung der IPPC-Behandlungsanlage voraussichtlich Auswirkungen auf jenen Teil der Umwelt des anderen Staates hat, für deren Schutz die Umweltorganisation eintritt,
 - c) sofern sich die Umweltorganisation im anderen Staat am Genehmigungsverfahren betreffend eine IPPC-Behandlungsanlage beteiligen könnte, wenn die IPPC-Behandlungsanlage im anderen Staat errichtet, betrieben oder wesentlich geändert wird, und
 - d) soweit sie während der Auflagefrist gemäß § 40 schriftliche Einwendungen erhoben haben; die

Umweltorganisationen können die Einhaltung von
Umweltschutzvorschriften im Verfahren geltend machen und
Rechtsmittel ergreifen.

(2) Die Fischereiberechtigten können anlässlich der Genehmigung einer Behandlungsanlage mit nachteiligen Folgen für ihre Fischwässer Maßnahmen zum Schutz der Fischerei begehren. Dem Begehren ist Rechnung zu tragen, sofern die Errichtung oder der Betrieb der Behandlungsanlage nicht unverhältnismäßig erschwert wird. Für sämtliche aus der Errichtung oder dem Betrieb einer Behandlungsanlage erwachsenden vermögensrechtlichen Nachteile gebührt den Fischereiberechtigten eine angemessene Entschädigung. § 46 Abs. 2 ist anzuwenden.