

## Statements on behalf of OEKOBÜERO; ACCC meeting July 2021

### 07 July 2021, Decision VI/8b (Austria)

The communicant appreciates the conclusions made in the draft report by the Committee. There has been little change since ÖKOBÜRO commented on the Party's concerned final progress report in October 2020.

Only in a recent proposal for the amendment of the Waste Management Act<sup>1</sup> has the limitation of the right to appeal to violations of European Union law been withdrawn and the preclusion provision been adapted. There is, however, still no access to justice with regards to plans and programmes or omissions by private parties and public authorities.

### Regarding access to justice under the Federal Forestry Act

The ruling of the Supreme Administrative Court in December 2019<sup>2</sup> has not led to any legislative changes. However, the Regional Administrative Court Salzburg<sup>3</sup> granted an environmental NGO legal standing in form of party status in proceedings according to the Federal Forestry Act<sup>4</sup> and the EU Habitats Directive<sup>5</sup> based on the ruling of the Supreme Administrative Court.

While the approach by the courts ensures public participation and access to justice, it again shows the legal uncertainty caused by the lack of legislative implementation of the Aarhus Convention in Austria. We therefore once more call upon Austria to fully implement the Convention in all relevant legal areas, including full party status for environmental organisations.

### Implementation on provincial level

Vienna is the last province to introduce an amendment to nature and species protection legislation<sup>6</sup> which entered into force on 1 May 2021. Similarly to other Federal provinces, access to justice for environmental organisations is limited to issues determined by European Union law and there is no possibility to challenge plans and programmes or omissions.

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<sup>1</sup> Entwurf eines Bundesgesetzes, mit dem das Abfallwirtschaftsgesetz 2002 geändert wird (AWG-Novelle Kreislaufwirtschaftspaket), GZ 2021-0.301.743.

<sup>2</sup> VwGH 20. December 2019, Ro 2018/10/0010.

<sup>3</sup> LVwG Salzburg 1.2.2021, 405-1/575/1/6-2021.

<sup>4</sup> Forstgesetz 1975, BGBl 440/1975, last amended by BGBl I 56/2016.

<sup>5</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, ABl L 1992/206, 7–50.

<sup>6</sup> Gesetz, mit dem das Gesetz über den Nationalpark Donau-Auen (Wiener Nationalparkgesetz), das Gesetz, mit dem das Wiener Naturschutzgesetz erlassen wird, das Gesetz betreffend das Fischereiwesen im Gebiete der Stadt Wien (Wiener Fischereigesetz) und das Gesetz über die Regelung des Jagdwesens (Wiener Jagdgesetz) geändert werden, LGBl 27/2021.