Access to justice in environmental matters

Austria

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Access to justice at Member State level

1. Access to justice at Member State level

1.1. Legal order – sources of environmental law

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

Austria is a federal republic with nine federal provinces (*Bundesländer*) and environmental law is divided between the federal government, the federal states and district authorities. Environmental law in Austria is largely subject to administrative law – aside from certain single provisions on environmental criminal law and environmental civil law.

According to the Austrian Federal Constitutional Law (*Bundes-Verfassungsgesetz – B-VG*), the power of legislation and execution in Austria is divided between the Federation and the nine different provinces. Article 10 B-VG lists all areas falling under the legislative and executive authority of the Federation, such as civil law affairs, railways and aviation or mining. Article 11 lists areas where legislation is the business of the Federation and execution that of the provinces, e.g. traffic police, environmental impact assessment or animal protection. According to Article 12, for certain issues, legislation as regards principles is the business of the Federation, while the issue of implementing laws and execution is the business of the provinces. All matters not expressly assigned to the Federation for legislation or also execution remain within the provinces' autonomous sphere of competence. Environmental protection is thus a cross-sectoral issue which is distributed between the federal government and the federal provinces. Thus, to regulate environmental protection, federal legislation (e.g. Waste Management Act, Industrial Code, Environmental Impact Assessment Act, Water Act, Forestry Act) exists alongside provincial legislation (e.g. acts concerning nature protection or construction law).

The General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG*) regulates all general administrative proceedings (e.g. in environmental matters). In certain areas, respective laws governing a particular matter provide additional or exceptional provisions. Natural or legal persons are generally granted procedural rights if their subjective or legal interests are likely to be affected by a decision. In certain legal areas, such as water, waste, clean air, nature protection or environmental impact assessment, environmental NGOs are granted specific rights, including access to justice.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The general constitutional framework in Austria is defined in the Federal Constitutional Law (*Bundes-Verfassungsgesetz – B-VG*). There is no constitutional right to protection of the environment as such, but Austria recognises the protection of the environment in its State Goal Resolution including, in particular, the protection of air, water, soil and the prevention of disturbances caused by noise. This resolution is laid down in the Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research (*BVG über die Nachhaltigkeit, den Tierschutz, den umfassenden Umweltschutz, die Sicherstellung der Wasser- und Lebensmittelversorgung und die Forschung*)[1]. It is a mandate for action by all state organs of legislation, administration and jurisdiction to take measures for environmental protection and sustainability. However, the resolution establishes a programmatic norm at the constitutional level that does not entail an individual right that can be taken to Court and legally enforced. Nevertheless, it can be of importance in weighing and balancing interests in a decision and is, thus, of relevance in the Court's decision-making process.

The Administrative Courts (*Verwaltungsgerichte*) decide on complaints against acts or omissions by administrative authorities. According to Article 132 B-VG, a complaint against the ruling of an administrative authority for illegality may be raised by someone who alleges infringement of his rights. Complaint may also be raised against the exercise of direct administrative power or compulsion by someone who alleges infringement of his rights because of these. For breach of the duty to reach a decision appeal may be raised by someone who claims as party in an administrative procedure to be entitled to get a decision. The Supreme Administrative Court (*Verwaltungsgerichtshof – VwGH*) decides, inter alia, on final complaints against the decision of an Administrative Court for illegality and motions to set a deadline for violation of the breach of the duty to reach a decision by an Administrative Court. A person who claims to have had his rights infringed by the ruling may raise final complaint.

Regarding constitutional rights, Article 144 B-VG provides for individuals to make claims before the Constitutional Court (*Verfassungsgerichtshof – VfGH*), if their fundamental rights are infringed. Its basic requirements are interference with the individual's "subjective right", i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual's fundamental right on the other hand. In Austria, the European Convention on Human Rights (ECHR) has constitutional status. It protects a number of rights that can be linked to environmental protection (e.g. right to justice, the right to life, the right to health, the right to respect for private and family life).

Furthermore, by adopting the Federal Constitutional Act for a Nonnuclear Austria (*BVG für ein atomfreies Österreich*), Austria renounced the use of nuclear energy.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

The right for individuals such as neighbours or environmental organisations to participate or file an appeal against a decision in environmental matters is not specified in any single legal act. However, within the scope of some highly relevant legal acts, access to justice in environmental matters is guaranteed.

On a federal level, key environmental provisions with regard to access to justice are the Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000*), the Industrial Code (*Gewerbeordnung 1994 – GewO 1994*), the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*), the Air Emission Act (*Emissionsgesetz-Luft 2018 – EG-L 2018*), the Waste Management Act (*Abfallwirtschaftsgesetz 2002 – AWG 2002*), Water Act (*Wasserrechtsgesetz 1959 – WRG 1959*), the Environmental Liability Act (*Bundes-Umwelthaftungsgesetz*), the Environmental Information Act (*Umweltinformationsgesetz*). The Aarhus Participation Act (*Aarhus Beteiligungsgesetz 2018*) as an amendment of WRG, AWG, and IG-L introduced provisions on access to justice in the areas of waste, water and air protection.
On a provincial level, main provisions on access to justice can be found in the different Nature protection acts of the federal provinces, i.e. the Nature and Landscape Conservation Act of Burgenland (*Burgenländisches Naturschutz- und Landschaftspflegegesetz – NG 1990*), the Carinthian Nature Protection Act (*Kärntner Naturschutzgesetz 2002 – K-NSG 2002*), the Lower Austrian Nature Protection Act (*NÖ Naturschutzgesetz 2000 – NÖ NSchG 2000*), the Nature Protection Act of Salzburg (*Salzburger Naturschutzgesetz 1999 – NSchG*), the Styrian Nature Protection Act (*Steiermärkisches Naturschutzgesetz 2017 – StNSchG 2017*), the Tyrolian Nature Protection Act (*Tiroler Naturschutzgesetz 2005 – TNSchG 2005*), the Act on Nature Protection and Landscape Development of Vorarlberg (*Gesetz über Naturschutz und Landschaftsentwicklung*), the Upper Austrian Nature and Landscape Protection Act (*Oö. Natur- und Landschaftsschutzgesetz 2001 – Oö. NSchG 2001*). The province of Vienna has recently sent out for public consultation a draft law amending its corresponding legislation (*Wiener Nationalparkgesetz, Wiener Naturschutzgesetz,* *Wiener Fischereigesetz* and *Wiener Jagdgesetz*).

4) Examples of national case-law, role of the Supreme Court in environmental cases

The Constitutional Court assesses governmental ordinances for conformity with legislation as well as legislation for conformity with constitutional provisions. The Supreme Administrative Court, on the other hand, has control over the conformity of rulings by administrative authorities (such as permits or other decisions) with legal provisions. Both act as Courts of cassation.
Important case-law on the matter includes the *Protect* case, which was also subject to a preliminary ruling[2] by the European Court of Justice. Following the specifications of the ECJ, the Supreme Administrative Court granted the environmental NGO concerned access to justice in water law proceedings including party status to participate in the administrative proceedings by directly applying relevant EU legislation.[3] In further rulings[4], the Supreme Administrative Court confirmed the party status of environmental NGOs with retrospective effect, at least to the date of entry into force of the European Charter of Fundamental Rights. Nevertheless, Austrian authorities seem to consider that it applies only in a single specific case. Despite this ruling, most federal acts and the federal provinces limit retroactive effect to one or two years – some of them to back to the date of the ruling following the Protect case.
Austrian Courts have been increasingly prepared to directly grant access to justice in cases regulated by EU law, even where national legislation does not provide for any remedies. E.g. the adaptation of different federal acts within the Aarhus Participation Act 2018 was a reaction to recent case-law, such as that of the Supreme Administrative Court (*Verwaltungsgerichtshof– VwGH*) on the Air Quality Plan of the province of Salzburg[5] granting an environmental organisation access to justice against omissions and to review ordinances. In its judgement, the Administrative Court also referred to the European Court of Justice (ECJ) in the *Protect* case.
As Administrative Courts are bound by the Supreme Administrative Court's ruling, they followed the case-law in other areas too, e.g. within the framework of the Flora-Fauna-Habitats Directive[6].

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

In general, parties can only rely directly on International agreements if they have constitutional or statutory status and if their content is sufficiently determined.[7] The competent bodies (Parliament, Federal Government, Federal President) can decide to what extent an international agreement is to be fulfilled by separate acts or regulations.[8]
As an exception, courts have granted environmental NGOs direct party status in certain environmental procedures, although national legislation did not provide for this standing. This was due to the ECJ ruling in the *Protect* case[9], which had not yet been sufficiently transferred into national law. However, the Supreme Administrative Court considers Article 9(3) of the Aarhus Convention itself as to be too indefinite to be directly applied,[10] so direct applicability was always limited to cases regulated by EU environmental law.
Austria ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) in 2005 without proposing to incorporate the agreement by separate acts or regulations into the Austrian legal framework. However, to date, different steps have been made to implement the Aarhus Convention on a national level based on a number of decisions of the European Court of Justice. For example, the federal Aarhus Participation Act 2018 aims to grant the public a larger say in approval procedures and subsequent review rights in certain waste, water and air-related procedures. The Environmental Information Act enhances transparency in the field of environmental information and access to environmental data.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Generally, there are two levels in the Austrian Court system. In **administrative matters**, decisions are made by an administrative authority, which can be appealed against before the provincial Administrative Courts (*Landesverwaltungsgericht – LVwG*). In specific cases such as the EIA, the Federal Administrative Court (*Bundesverwaltungsgericht – BVwG*) decides on appeals against decisions of an administrative authority as specified in Article 102 of the Federal Constitutional Law (B-VG). An appeal to the Supreme Administrative Court (*Verwaltungsgerichtshof – VwGH*) is admissible against the decision of an Administrative Court if it depends on the resolution of a legal question of fundamental importance. This is in particular the case if the ruling departs from the case-law of the Supreme Administrative Court, such case-law does not exist or the legal question to be resolved has not been answered in a uniform manner by the previous case-law of the Supreme Administrative Court. Most Aarhus Participation Acts limit the legal review of NGOs to one level. In this case, according to the prevailing view, they do not have a right of final appeal to the Supreme Administrative Court.
There is an exception to this rule regarding decisions of municipalities within their own sphere of competency. This includes areas such as land use, building control, areas constructed for traffic and disaster control. In these cases, an appeal has to be at first addressed to the municipal council or its board in accordance with Section 63 General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG*). Only after the administrative action has been exhausted on a municipal level, one can make an appeal before the respective Administrative Court.
In **civil and criminal procedures**, the District Courts (*Bezirksgerichte – BG*) decide as first instance. Provincial Courts (*Landesgerichte – LG*) serve as courts of first instance in more severe cases and also act as appeal courts in relation to the district courts. There are four different Courts of Appeal (*Oberlandesgerichte – OLG*), which function as appellate courts solely vis-à-vis the district courts. The Supreme Court (*Oberster Gerichtshof – OGH*) is the court of final instance in civil and criminal suits.
In certain cases, the Austrian **Constitutional Court** (*Verfassungsgerichtshof – VfGH*) can also be addressed regarding decisions of an Administrative Court if the complainant claims to have been infringed in his/her constitutionally guaranteed rights by the decision. Furthermore, a person who claims to be infringed in his/her rights directly by an ordinance contrary to law may address the Constitutional Court if the ordinance has become effective without a judicial decision or a ruling having been rendered.

2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?

While ordinary courts are competent to decide on criminal and civil matters, administrative matters, including administrative penal law, fall within the responsibility of administrative authorities and courts. The material jurisdiction of courts is defined in the relevant federal or provincial acts. If no specific regulation can be found in the relevant administrative legislation, the District Administrative Authority (*Bezirksverwaltungsbehörde*) is responsible. If the Federal Administrative Court is not responsible, the territorial jurisdiction in administrative penal matters depends on the location of the authority that issued or did not issue the administrative decision. Otherwise, the territorial jurisdiction depends on the place in which an exercise of direct administrative power and compulsion was commenced or on the place in which the conduct occurred or activities were carried out.

According to Article 138 of the Federal Constitutional Law (B-VG), the Constitutional Court decides on conflicts of competence (1) between courts and administrative authorities, (2) between Courts of Justice and Administrative Courts or the Supreme Administrative Court as well as between the Constitutional Court itself and all other courts, and (3) between the Federation and a province or between the provinces amongst themselves.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

For **large-scale proceedings**, i.e. if more than 100 people are expected to be involved, there are specific administrative rules (Sections 44a-44g AVG). This structure is especially relevant in EIA procedures. In these cases, the authority may publicly announce submissions by edict. If a submission has been announced by edict, persons will lose their party standing in the relevant administrative procedure if they do not object in writing to the authority in due time.

A particularity for environmental procedures is the **Ombudsman for the Environment**. Environmental Ombudsmen have standing rights in environmentally relevant administrative procedures as well as party rights in EIA or Waste Management procedures. Their action is especially relevant within environmental conservation procedures. Their task is to enforce observance of objective environmental law. They are a formal/official party to the procedure (*Formalpartei*). As parties in the above mentioned environmental procedures they are also competent to challenge administrative decisions.[11] According to Section 19(3) Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000*), Environmental Ombudsmen are entitled to require observance of legal provisions serving to protect the environment or the public interests in their competence as a subjective right in the procedure and to complain to the Administrative Court. They are not generally entitled to file complaints with the Administrative Courts as they do not base their status on a subjective right. However, in certain cases, they have been legally given a right to complain (e.g. in EIA or waste management procedures). Environmental Ombudsmen are not entitled to have access to the Administrative Court in Environmental Liability procedures. As the Environmental Ombudsmen have the status of a formal party they do not have the competence to file complaints with the Constitutional Court.

There are no special environmental tribunals and no judges explicitly responsible for environmental matters; however, all Austrian Administrative Courts have organisational units responsible for environmental matters.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion.

The Federal Administrative Court as well as the Supreme Administrative Court cannot initiate a review process of the administrative decision on their own motion. If an appeal is filed, both courts can review the decision in terms of its procedural as well as substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

Provisions relevant to the proceedings before the Administrative Courts are regulated by the Proceedings of Administrative Courts Act (*Verwaltungsgerichtsverfahrensgesetz – VwGVG*). Regarding complaints against decisions of authorities, the Administrative Courts decide on the merits of a case if (1) the relevant facts have been established or (2) the establishment of the relevant facts by the Administrative Court itself is in the interest of fixed proceedings or results in a substantial cost saving.[12] If neither of these prerequisites is met, the Administrative Court shall decide on the merits of the case if the authority does not object when submitting the complaint. If the authority failed to carry out required investigations into the facts, the Administrative Court can set aside the contested administrative decision by means of an order and refer the matter back to the authority for the issue of a new administrative decision. If the authority has to exercise discretion in its decision, the Administrative Court may set aside the contested administrative decision and remand the matter to the authority for the issue of a new administrative decision. In both cases, the authority is bound by the legal evaluation of the Administrative Court.

Decisions of the Administrative Courts can be appealed against before the Supreme Administrative Court, who does not decide in the matter itself.

Free consideration of evidence (*freie Beweiswürdigung*) is the basic principle in evidence procedures. For further elaboration see section 1.5.

The basic rule in administrative evidence (as well as criminal) proceedings is manifested by the states' duty to find all relevant facts on a certain case (*Offizialmaxime*). Thus, the authority is obliged to conduct evidence procedures on its own motion. This rule must also be followed by the Administrative Courts in appeal procedures. Evidence procedures before ordinary civil courts are governed by the principle of disposition (*Dispositionsgrundsatz*). Hence, it is basically up to the parties to begin a process to stop it or change the subject of proceedings they initiated.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Issues of environmental protection are mainly regulated in public administrative law with action taken by the federal or state authorities. Important environmental areas regulated on the federal level are industrial pollution, water, waste management, clean air and in horizontal issues such as EIA. The nine Federal Provinces have important legislative competences in the area of nature protection. Permits issued by public authorities are the prevailing instrument used in environmental administration law (other instruments being bans on serious environmental damage, or codes of conduct). They precede a formal application by an applicant.

In the case of federal legislation, the Governor and the provincial authorities subordinate to him generally exercise the executive power of the Federation. In matters of indirect federal administration, the Governor is bound by instructions from the Federal Government and individual Federal Ministers. In this form of "indirect federal administration", the responsible authority is usually the District Administrative Authority. In independent cities (*Statutarstädte*) this is the City Administration, otherwise the District Commission (*Bezirkshauptmannschaft*). For certain environmental areas (e.g. mining, water protection and usage, or environmental impact assessments) other authorities such as the provincial Government (*Landesregierung*) or the responsible Federal Ministers (*Bundesministerinnen/Bundesminister*) or other Federal Authorities are in charge of administrative matters as well ("direct federal administration"). The legal areas in which direct federal administration can be instituted, are listed exhaustively in Article 102(2) Federal Constitutional Law (*Bundes-Verfassungsgesetz – B-VG*). They include demarcation of frontiers, customs, federal finances, matters pertaining to association and assembly, patent matters and the protection of designs, the traffic system, river and navigation police, mining, Danube control and conservation, fodder and fertilisers as well as plant preservatives, and plant safety appliances including their admission and, in the case of seed and plant commodities or the preservation of monuments.

In the field of provincial legislation, the supreme administrative authority is the provincial Government (*Landesregierung*). Other key provincial administrative authorities are the District Administrative Authorities (*Bezirksverwaltungsbehörden*).

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Generally, decisions of an administrative authority must be appealed against to the relevant Administrative Court within four weeks after the decision has been issued. The appeal needs to be made in written form and must include the name of the decision, the authority concerned, the reasons for appeal and actions required. Within a municipality's own sphere of competence, appeals must be filed by the party within a two week period with the authority that issued the administrative decision of first instance.[13] The period starts for each party with the receipt of the written copy of the administrative decision, in the case of oral pronouncement simultaneously with it.

If the authority has not made a decision on a matter within six months or, if the law provides for a shorter or longer period allowed for a decision, within that period, parties can file a complaint alleging breach of the duty to reach a timely decision (*Säumnisbeschwerde*) with the respective Administrative Court. Unless otherwise provided in federal or provincial legislation, an Administrative Court is required to decide on requests initiating proceedings filed by parties and complaints without undue delay, however, at the latest within six months after receipt of the request or complaint. The Administrative Court can suspend proceedings on a complaint if (1) the Administrative Court has to resolve a legal issue in a considerable number of proceedings pending or expected to become pending in the near future and if, at the same time, proceedings on a final complaint against a ruling or an order by an Administrative Court are pending with the Supreme Administrative Court in which the same legal issue must be resolved, and (2) there are no rulings by the Supreme Administrative Court to resolve that legal issue, or the previous rulings by the Supreme Administrative Court do not answer the legal issue to be resolved in a uniform manner.[14]

3) Existence of special environmental courts, main role, competence

There is no special environmental court in Austria.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

Decisions of administrative authorities

In case of a complaint against the decision of an administrative authority, the respective authority may set aside or modify the contested administrative decision or dismiss the complaint for formal reasons or on the merits within two months (preliminary decision on a complaint). If the authority wants to dispense with issuing a preliminary decision on a complaint, the authority submits the complaint, together with the files of the administrative proceedings, to the Administrative Court.[15] Within two weeks of service of the preliminary decision on a complaint, each party can file a request with the authority that the complaint be submitted for decision to the Administrative Court (request for the Administrative Court to hear a complaint).[16]

Rulings of Administrative Courts

Final complaint (*Revision*) against the ruling of an Administrative Court is admissible if (1) the resolution depends on a legal question of essential importance, in particular because the ruling departs from the case-law of the Supreme Administrative Court, (2) such case-law does not exist or (3) the legal question to be resolved has not been answered in a uniform manner by the previous case-law of the Supreme Administrative Court.[17] Each Administrative Court ruling must contain information on the possibility to file an ordinary or extraordinary final complaint with the Supreme Administrative Court.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references.

The federal Environmental Liability Act offers the possibility of an environmental complaint for private individuals who have been violated in their rights due to an environmental damage. The complaint is a request to the authorities to take action. If the authority does not react, there is usually no legal remedy. In certain cases, official liability (*Amtshaftungsbeschwerde*) can be claimed if a financial loss and the guilt of the authority can be proven.

Regarding constitutional rights, Article 144 of the Federal Constitutional Law (*Bundes-Verfassungsgesetz – B-VG*) provides for individuals to make claims before the Constitutional Court (*Verfassungsgerichtshof*) if their fundamental rights are infringed. Its basic requirements are interference with the individual's "subjective right", i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual's fundamental right on the other hand. There are a number of constitutional rights that can be linked to environmental protection, e.g. the right to justice, the right to life, the right to health, the right to respect for private and family life.

The Administrative Court may find in its ruling that a final complaint is not admissible in accordance with Article 133(4) B-VG). In this case, a final complaint must separately contain the reasons for which it is deemed admissible contrary to the finding of the Administrative Court ("extraordinary final complaint").

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

There is the possibility of extrajudicial dispute settlement (*außergerichtliche Streitschlichtung*). Support can be provided by mediators, which are listed here on the website of the Ministry of Justice. Mediation is indeed used for conflict settlement in Austria. A study commissioned by the former Federal Ministry for Agriculture, Forestry, the Environment and Water Management[19] on the basis, potential and instruments of environmental mediation in Austria stated that mediation procedures are used in environmental matters and that these procedures can have quite productive outcomes.

For example, the Austrian Environmental Impact Assessment Act (EIA Act)[20] explicitly provides for an interruption of the EIA procedure for a mediation procedure at the request of the project applicant. One example of mediation in a large-scale environmental procedure was the extension of Vienna Airport.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

The **ombudsman for the environment** (*Umweltanwaltschaft*) advocates for the protection of the environment and is regulated differently in all federal states. These institutions serve as a key point of contact for citizens who notice environmental problems. They have standing rights in some environmentally relevant administrative procedures – they especially act within environmental conservation procedures. Furthermore, they have legal standing in EIA and certain other procedures, e.g. in the field of waste management or nature protection.[21] As a formal party to the procedure (*Formalpartei*), their task is to claim the observance of objective environmental law. As parties to the abovementioned environmental procedures they are competent to challenge these administrative decisions.

Burgenland
Carinthia
Lower Austria
Upper Austria
Salzburg
Styria
Tyrol
Vorarlberg
Vienna

The task of **general ombudspersons** (*Volksanwaltschaft*) is to control the actions of administrative organs. All citizens can lodge a complaint free of charge about an Austrian administrative authority. Complaints against administration authorities can be lodged throughout Austria, on any administrative issue including water or forestry legislation and other environmental issues. Complaints against provincial and local authorities can be lodged in all provinces except Vorarlberg and Tyrol, where local ombudspersons are available. Complaints about ongoing proceedings can only be lodged if they relate, for example, to the duration of the proceedings, errors with deliveries, refusal to provide information or gross discourtesy on the part of officials.

General ombudspersons: website https://volksanwaltschaft.gv.at/en, Email: post@volksanwaltschaft.gv.at

Local ombudspersons Tyrol: website https://www.tirol.gv.at/en/, Email: landesvolksanwaltschaft@tirol.gv.at
Local ombudspersons Vorarlberg: website https://www.landesvolksanwalt.at/, Email: buero@landesvolksanwalt.at
The **public prosecutor** is responsible for the public prosecution in criminal proceedings. Neither the Austrian Criminal Code (*Strafgesetzbuch – StGB*) nor the Administrative Penalty Code (*Verwaltungsstrafgesetz – VStG*) provide for private criminal prosecution in environmental matters. Nevertheless everyone who suspects that criminal offenses have been committed is entitled to report this to the respective law enforcement agencies.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

The general rule for standing in Administrative Courts only gives parties to administrative proceedings access to review proceedings. These are persons "who make use of the services performed by an authority or who are affected by the activity of such authority, are persons involved, and to the extent they are involved in the matter on the grounds of a legal title or a legal interest".[22] The question of who qualifies as a legal subject with such a legal right or legal interest is specified in the applicable administrative provisions – e.g. the Industrial Code (*Gewerbeordnung 1994 – GewO 1994*), trade regulations, the Water Act (*Wasserrechtsgesetz 1959 – WRG 1959*), the Waste Management Act (*Abfallwirtschaftsgesetz 2002 – AWG 2002*), Forestry Act (*Forstgesetz 1975 – ForstG*), the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*), etc.

While the plaintiff is always considered a party, legal standing is not granted to individuals and environmental associations in all areas of environmental protection. It is a general rule in the Austrian judicial system that individuals are only granted standing if and as far as their individual rights are affected. Individuals are not entitled to plead laws protecting not their personal legal interests, but the environment in general.

In certain legal areas, such as environmental impact assessment, waste management, IPPC and Seveso sites, water management, clean air or nature protection, the relevant acts regulating administrative procedure also grant recognised environmental NGOs standing to challenge environmental administrative decisions.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

As there is no single legal act granting private persons and NGOs access to justice in environmental matters, the situation differs for each legal area. The question of who qualifies as a legal subject is specified in the applicable administrative provisions – e.g. the Industrial Code (*Gewerbeordnung 1994 – GewO 1994*), trade regulations, the Water Act (*Wasserrechtsgesetz 1959 – WRG 1959*), the Waste Management Act (*Abfallwirtschaftsgesetz 2002 – AWG 2002*), Forestry Act (*Forstgesetz 1975 – ForstG*), the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*), etc.

On a federal level, key environmental provisions with regard to access to justice are the Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000*), the Industrial Code (*Gewerbeordnung 1994 – GewO 1994*), the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*), the Air Emission Act (*Emissionsgesetz-Luft 2018 – EG-L 2018*), the Waste Management Act (*Abfallwirtschaftsgesetz 2002 – AWG 2002*), Water Act (*Wasserrechtsgesetz 1959 – WRG 1959*), the Federal Environmental Liability Act (*Bundes-Umwelthaftungsgesetz, B-UHG*), the Environmental Information Act (*Umweltinformationsgesetz*). On a provincial level, main provisions on access to justice can be found in the different nature protection acts of the federal provinces, i.e. the Nature and Landscape Conservation Act of Burgenland (*Burgenländisches Naturschutz- und Landschaftspflegegesetz – NG 1990*), the Carinthian Nature Protection Act (*Kärntner Naturschutzgesetz 2002 – K-NSG 2002*), the Lower Austrian Nature Protection Act (*NÖ Naturschutzgesetz 2000 – NÖ NSchG 2000*), the Nature Protection Act of Salzburg (*Salzburger Naturschutzgesetz 1999 – NSchG*), the Styrian nature Protection Act (*Steiermärkisches Naturschutzgesetz 2017 – StNSchG 2017*), the Tyrolian Nature Protection Act (*Tiroler Naturschutzgesetz 2005 – TNSchG 2005*), the Act on Nature Protection and Landscape Development of Vorarlberg (*Gesetz über Naturschutz und Landschaftsentwicklung*), the Upper Austrian Nature and Landscape Protection Act (*Oö. Natur- und Landschaftsschutzgesetz 2001 – Oö. NSchG 2001*). The province of Vienna has recently sent out for public consultation a draft law amending its corresponding legislation (*Wiener Nationalparkgesetz, Wiener Naturschutzgesetz,* *Wiener Fischereigesetz* and *Wiener Jagdgesetz*).

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

Standing rules for NGOs

Generally, the following acts grant standing rights for NGOs in matter of environmental protection: Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000*), the Industrial Code (*Gewerbeordnung 1994 – GewO 1994*), the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*), the Air Emission Act (*Emissionsgesetz-Luft 2018 – EG-L 2018*), the Waste Management Act (*Abfallwirtschaftsgesetz 2002 – AWG 2002*), Water Act (*Wasserrechtsgesetz 1959 – WRG 1959*), the Environmental Liability Act (*Umwelthaftungsgesetz*), the Environmental Information Act (*Umweltinformationsgesetz*) as well as the provincial nature protection acts.

The requirements for the recognition of an environmental organisation as a party are laid down in Section 19 EIA Act (UVP-G *2000*). This provision requires it to be organised in the form of a non-profit organisation for at least three years, to have at least 100 members and to have environmental protection as its main objective. Federations must comprise at least five member associations. All organisations must prove every three years that they still meet the recognition requirements. A list of all recognised environmental organisations is available on the Website of the Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology.[23]

As a party, NGOs can make objective claims regarding compliance with environmental protection regulations as subjective rights[24] and have a right of appeal to the Supreme Administrative Court (*Verwaltungsgerichtshof – VwGH*). Most acts granting NGOs standing to challenge, do not grant them full party status, but rather a kind of standing to challenge decisions – a system which was specially introduced when Austrian legislators started to implement the Aarhus Convention. In this case, according to the prevailing view, they do not have a right of final appeal to the Supreme Administrative Court.

Standing rules for citizens' groups

Citizens' groups (*Bürgerinititativen*) have subjective standing rights exclusively in EIA proceedings. The requirement for admission to the proceedings is a statement, which needs to be signed by at least 200 people who are entitled to vote in the relevant local municipality. This statement, including a list of signatures, has to be submitted to the EIA authority during the period for public inspection. Only with this formal act is the Citizens' group under the EIA Act established and thus granted party status in the EIA procedure. As a party, the citizens' group can also claim in respect of objective environmental law.

Standing rules for neighbours/individuals

In specific cases such as procedures regarding plant installations (*Genehmigung von Betriebsanlagen*) and EIA proceedings, neighbours can be granted legal standing when they are directly affected by "smell, noise, smoke, dust, vibration or otherwise".[25] Their legal standing can be lost if objections are not raised in due time and objections are only admissible to the extent that they concern their "subjective right". E.g.: the Waste Management Act names landowners and neighbours as individuals that have legal standing. In the water protection process, neighbours are to be involved in the proceeding if the party's property is affected. They are entitled to present their interests in the proceedings, but cannot raise objections.

In the nature conservation process, neighbours and citizens' groups have no legal standing, but environmental organisations and the regional ombudsmen for the environment do in certain cases.

Although various steps have been taken, the on-going procedure before the Aarhus Convention Compliance Committee shows that, according to environmental organisations, a lack of implementation concerning access to justice in environmental proceedings remains. Apart from clean air regulation, the different acts do not provide for standing concerning plans or programmes, or omissions by authorities or private persons.

4) What are the rules for translation and interpretation if foreign parties are involved?

If a party or a person does not have sufficient command of the German language, is deaf or dumb, or their hearing is severely impaired, an official interpreter or translator available to the authority must be called in. All interpreters or translators provided are officially accredited and listed. Except for administrative penal proceedings, where according to Article 6 EHRC translation costs must not be imposed on the accused, costs of a translator are to be paid by the respective party – and ultimately by the losing party (unless the party was entitled to legal aid).

According to the Ethnic Groups Act (*Volksgruppengesetz*), in certain regions with Slovenian, Croatian or Hungarian minorities, proceedings must be held in the respective language or bilingually without causing translation costs for the parties.

1.5. Evidence and experts in the procedures

Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

Before the authority can make a legally binding decision, unless facts are already clear beforehand,[26] it must conduct an investigation. The only exception is if there is a stipulation of cash benefits according to a legal, statutory or tariff-based standard or in the event of danger of delay (*Mandatsbescheid*).[27]

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

The basic rule in evidence proceedings is the State's duty to gather all relevant facts on a given case (*Offizialmaxime*). Thus, the authority is obliged to conduct evidence procedures on its own motion. Anything feasible and suitable for ascertaining the relevant facts of a case can constitute evidence.[28] This includes expert opinions.

Regarding limits to obtaining evidence, there is generally no ban on the use of illegally obtained evidence (*Verwertungsverbot*). However, evidence that undermines laws or other legal provisions or violates the rights of third parties (e.g. the right to privacy) is inadmissible. For example, an individual who was not allowed as a witness to the proceedings cannot instead be interviewed as a person to provide information as part of the expert evidence. Furthermore, evidence resulting from anonymous statements which are not revealed to the party is inadmissible.[29]

Rules on gathering and evaluating evidence in administrative procedures, including expert opinions, also apply to Administrative Court procedures. Additionally, if the courts deem it necessary or a party requests so, an oral hearing must be conducted. In this case, any evidence must be directly presented in the hearing.

2) Can one introduce new evidence?

Regarding decisions of municipalities within their own sphere of competency,[30] parties can introduce new evidence in first instance administrative procedures as well as second instance procedures.[31] They have a right to provide information on all relevant aspects of the case and are entitled to request the presentation of evidence.[32] The authority is entitled to reject the request if it deems it irrelevant to the case.

If there are new facts or evidence presented in a complaint that the authority or court considers material, the authority or the court must notify the other parties without delay and give them the opportunity to acknowledge the contents and comment on them within a reasonable period of no longer than two weeks.[33]

In EIA procedures, the authority can declare the investigation procedure closed when the case is ready for decision.[34] After this declaration, no new facts and evidence may be presented at the instance in question.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

The authority must call upon officially registered independent experts (*Sachverständige*) if an unclear fact of the case requires clarification. A list of all official experts and interpreters is available on the website of the Ministry of Justice.[35]

Unofficial experts may only be called upon by the authority if official experts are either unavailable or if the nature of the case requires a specific expert or a significant acceleration of the procedure is to be expected.[36]

As there are no specific rules on expert opinions within the Administrative Court procedures, the rules of the administrative procedure apply accordingly.[37]

3.1) Is the expert opinion binding on judges, is there a level of discretion?

Free consideration of evidence (*freie Beweiswürdigung*) is the basic principle in evidence procedures, which is why the expert opinion is not binding. However, the authority or court must not proceed arbitrarily, making decisions at their own discretion. The main difference between "free discretion" and "free consideration of evidence" is to assess any evidence based on the laws of logic and to form a will within a legal framework.

The authority or court must check the opinion on accuracy, conclusiveness and completeness. If the authority or court is not convinced of the quality of the opinion, a second expert opinion must be solicited.

3.2) Rules for experts being called upon by the court

The expert is generally appointed by the court ex officio. In general, the role of the expert is not to answer questions of law but to share his expert opinion regarding unclear facts of the case. The expert must disclose the basis (his specialist knowledge) and key facts on which the report is based in order to ensure accountability and conclusiveness. The latter is fundamental for the expert evidence to be considered in the decision-making process. Experts can gather their own evidence for their report (e.g. interrogate the parties or third parties).

A conclusive expert opinion can only be countered by an expert opinion at the same professional level. However, parties can always contest the expert opinion due to a lack of conclusiveness or incompleteness without introducing a counter-expert opinion. The authority or court must examine such an intervention and take it into consideration in the decision-making process.

Court-appointed experts must be rejected ex officio in cases of impartiality. Experts can also be rejected by a party if they can demonstrate their impartiality or lack of expertise.[38]

3.3) Rules for experts called upon by the parties

Parties to administrative and court review procedures have the right to submit their own evidence in the course of the hearing, including expert opinions, or to submit an evidence request for a court-appointed expert. A motion by the party to hear evidence can only be rejected if the evidence is assumed to be true or if the evidence is considered irrelevant or unsuitable.

It is also possible for the parties to engage "private experts" (*Privatsachverständige*) to provide a report on a topic. However, these reports are only treated as private documentation and prove nothing but the opinion of the author.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

In general, each party involved in an administrative proceeding will bear all of its own costs.[39] Unless provided otherwise, the authority bears the costs incurred for its activities performed in the administrative proceeding ex officio. Unless provided otherwise by specific legislation, this also applies to procedures before the Administrative Courts.

For administrative procedures there is a cost category for every motion. The cost categories are stated in the Austrian Official Tax Regulation (*Bundesverwaltungsabgabenverordnung 1983 – BvwAbgV*). This regulation provides environmentally relevant cost categories, such as water authorisations,

industrial and commercial matters, electricity, or railway issues. Furthermore, the provisions of the Public Charges Act (*Gebührengesetz 1957 – GebG*) apply on writings and official acts undertaken by administrative bodies and the Regulation on Commission Charges (*Bundes-Kommissionsgebührenverordnung 2007 – BKommGebV*) applies on the acts set by an administrative body outside of its office. The court fees in civil procedures depend on the value in litigation the Austrian Judicial Charges Act (*Gerichtsgebührengesetz – GGG*).
The fee for filing an appeal with the Administrative Court is EUR 30. The fee for filing an appeal with the Supreme Administrative Court or the Constitutional Court is EUR 240.

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

Legal assistance is required in certain civil and criminal procedures as well as in proceedings before the Supreme Administrative and Constitutional Court. Legal aid (*Verfahrenshilfe*) is solely guaranteed within civil and criminal procedures or in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR[40] in these cases as well as in administrative penal procedure. In environmental matter, this might e.g. be the case in the field of environmental criminal law. Legal aid, however, applies only to the defendant. If the Administrative Court has decided to grant legal aid, it notifies the committee of the bar association to appoint a lawyer as a representative can be requested. An application for legal aid within regular administrative procedures is therefore usually not possible.
The federal bar associations also offer an introductory consultation free of charge (*erste anwaltliche Auskunft*).[41] On the website, contact details of lawyers can be accessed, also according to their specific field of expertise (e.g. environmental law).

1.1 Existence or not of pro bono assistance

The federal bar associations offer an introductory consultation free of charge (*erste anwaltliche Auskunft*).**[42]**
Environmental lawyers provide a free-of charge legal advice on environmental law for individuals, citizens' initiatives and eNGOs.[43] There are no conditions for accessing the legal counselling – every individual person can have access, as well NGOs and the ombudsman for the environment. ÖKOBÜRO does not provide legal representation within environmental administrative and review procedures.
Furthermore, the Green Alternative Association for the support of citizens' groups (*Grün-Alternativer Verein zur Unterstützung von BürgerInnen-Initiativen – BIV*) supports citizens' initiatives financially in environmental review procedures.**[44]**

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

If someone has a low income and is in a precarious financial situation, it is possible to apply for legal aid (*Verfahrenshilfe*). Part of the legal aid might be temporary exemption from the procedural costs. Legal aid must be applied for by the date of filing the complaint at the latest.

1.3 Who should be addressed by the applicant for pro bono assistance?

An application for legal aid must be filed within the timeframe for the relevant submission or remedy and addressed to the responsible Court. As cases of legal aid are assigned to the responsible advocate, lawyers are usually not contacted directly by the defendant or acting individual.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

A list of all lawyers active in Austria including their contact data and filterable by legal areas is available on the website of the Federal Bar Association.**[45]**

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

The following environmental organisations are active in the field of access to justice:

- BirdLife Austria
- Four Paws Austria
- Global 2000 (Friends of the Earth Austria)
- Greenpeace Austria / CEE
- Naturschutzbund Austria and Provincial organisations
- ÖAV - Österreichischer Alpenverein
- Ökobüro – Alliance of the Austrian Environmental Movement
- Umweltdachverband
- WWF Austria

A full list of environmental organisations recognised under Section 19 EIA Act (UVP-G *2000*) can be accessed on the Website of the Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology.**[46]**

4) List of international NGOs, who are active in the Member State

The environmental law network association Justice and Environment has the eNGO ÖKOBÜRO – Alliance of the Austrian Environmental Movement as a member organisation active in Austria.
Other international organisations have Austrian sub-organisations such as:

- atomstopp_atomkraftfrei leben!
- BirdLife Austria
- Eurosolar Austria
- Four Paws Austria
- Global 2000 (Friends of the Earth Austria)
- Greenpeace Austria / CEE
- WWF Austria

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).

Generally, decisions of an administrative authority must be appealed against **within four weeks** after the decision has been issued. However, shorter or longer time limits may be applicable based on the specific applicable law. The specific time limit for appeal is also highlighted in the decision itself.
The time limit begins for each party with notification of the decision by post or with the deposit of the notice at the post office. If the decision is announced in a hearing, the time limit starts from the day of the announcement. The appeal must reach the authority within the time limit. It is sufficient for the appeal to be delivered to the post office within the given time limit.
Challenging an administrative environmental decision is not possible if the party has expressly waived the complaint after the notification has been delivered.

2) Time limit to deliver decision by an administrative organ

The authority must decide on the matter **within six months** unless a shorter or longer decisions period is provided by the specific applicable law. E.g., according to the Environmental Information Act (*Umweltinformationsgesetz – UIG*), the authority must react to requests of information within one month or, in complex cases, within two months. Official notifications rejecting request for information must be issued at latest within two months.
If the authority exceeds the legally stipulated time limit to make a decision, a default complaint (*Säumnisbeschwerde*) can be filed by the concerned party.[47] The expiry of the decision period must be certified. Premature default complaints will be rejected. The defaulting authority then has the option of presenting the matter to the administrative court or deciding on the matter themselves within three months. In the first case, the Administrative Court can only make a decision on relevant legal issues regarding the matter and the defaulting authority has up to eight weeks to make a decision based on the legal assessment of the Administrative Court. If the defaulting authority still does not make a decision, the Administrative Court ultimately has to decide on the matter based on the factual and legal situation at the time.
In matters within the municipalities' own sphere of competence, the concerned party must file a motion for devolution (*Devolutionsantrag*), but only when the responsible municipality body has exceeded its decision deadline. In this case, the responsibility to decide on the matter is transferred to the municipal authority of second instance. Only if this authority also exceeds its decision period is a default complaint admissible.

3) Is it possible to challenge the first level administrative decision directly before court?

There is a right to appeal directly to an Administrative Court (*Verwaltungsgericht*) against first level administrative decisions. However, there is an exception to this principle regarding decisions of municipalities that lie within their competency. This includes areas such as land use, building control, areas constructed for traffic and disaster control. In these cases, an appeal can only be addressed to the municipal council or its board in accordance with Section 63 General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG*).
The appeal to the Administrative Court against a first level administrative decision must be submitted to the authority that issued the decision in first instance. This authority then has the option of settling the complaint by means of a preliminary decision (*Beschwerdevorentscheidung*), which has to be issued within two months. The concerned party can then file an application for submission (*Vorlageantrag*) within two weeks to the authority that issued the decision and ask for the complaint to be submitted to the Administrative Court for decision. The administrative court subsequently decides on the matter (unless the complaint is to be dismissed or the proceedings to be discontinued). If the authority has failed to investigate the matter sufficiently, the administrative court can overturn the contested decision and refer the matter back to the authority to issue a new decision. The authority is bound by the legal assessment on which the administrative court based its decision.

4) Is there a deadline set for the national court to deliver its judgment?

Generally, the administrative court must deliver its judgment without unnecessary delay and at least within **six months**, unless a different decisions period is provided by the specific applicable law. If the administrative court violates its decision-making obligation, an infringement application (*Fristsetzungsantrag*) can be filed by the lawyer representing the concerned party before the Supreme Administrative Court. Legal representation by a lawyer during the infringement proceedings is obligatory. The Supreme Administrative Court does not decide on the case itself but orders the defaulting administrative court to issue a decision within a period of grace.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

Legal aid (*Verfahrenshilfe*) must be applied for at the latest when filing the complaint. If the party has applied for legal aid within the complaint period, it starts to run from the point when the decision regarding the appointment of the lawyer reached the representative and the decision to be appealed was delivered to the lawyer.
If new facts or evidence are presented during a complaint procedure which appear significant to the authority or the administrative court, the other parties must be informed immediately and given the opportunity to take note of the content of the complaint and comment on it. For this possibility to comment, parties must be granted a reasonable period of time, but not exceeding two weeks. The submission of new objections or arguments in the legal review is generally only admissible if they could not have been made during the administrative procedure. According to some provincial acts, the person or organisation may elaborate in its appeal why points in questions are raised for the first time.
The complainant must request a hearing to be held as part of the complaint or in the request for a preliminary ruling. The other parties must be given the opportunity to submit an application to hold a hearing within a reasonable period of time, but not exceeding two weeks.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

Generally, an appeal has suspensive effect. As a result, the obligations imposed in the contested decision must not be provided for the time being, granted /revoked rights do not apply for the time being and the decision is not yet binding. During the preliminary proceedings, the administrative authority can exclude the suspensive effect of the appeal, if – after weighing public interests and interest of other parties concerned – early enforcement of the decision is required due to the risk of delay. The Administrative Court can rule out the suspensive effect for the same reason.
However, some material laws provide explicit legal exclusions from the suspensive effect.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

In case of measures that cannot be postponed because of imminent danger, the authority may issue an administrative decision without any prior investigation procedure. Against such an administrative decision, an appeal may be lodged with the issuing authority within two weeks. The appeal does not have suspensive effect. Within two weeks after receipt of the appeal, the authority must institute the investigation procedure, otherwise the administrative decision becomes ineffective.[48]

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

There is no possibility to apply for injunctive relief during the administrative appeal by the authority or the superior authority.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Unless the appeal leads to a suspensive effect (see 1.), the administrative decision comes into force once the deadline to appeal has expired and no further legal remedies are permitted.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Generally, decisions of an administrative Court can be challenged (“asked to be revised”) before the Supreme Administrative Court (*Verwaltungsgerichtshof – VwGH*). Such appeals (*Revision*) usually do not have suspensive effect. However, if the execution of the contested decision threatens the appealing party to suffer a disproportionate disadvantage, a suspensive effect can be granted on request.

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

There are no national regulations to this regard.

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can one calculate what costs will be involved when one intends to initiate a procedure – administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

Legal costs and fees consist of court fees (to be paid when filing a claim or appeal), lawyers' fees and actual expenses such as expert/translator costs and travel costs of witnesses. The parties' own costs, such as internal investigation costs or the costs to prepare for the proceedings, are not considered as reimbursable. For administrative procedures, there is a cost category for every motion. The cost categories are stated in the Austrian Official Tax Regulation (*Bundesverwaltungsabgabenverordnung 1983 – BvwAbgV*).
In general, each party involved in an administrative or judicial review proceeding shall bear all its costs incurred.[49] Unless provided otherwise, the authority bears the costs incurred for its activities performed in the administrative proceedings ex officio.
There are no administrative review procedures, as complaints against decisions must be addressed to the Administrative Courts. The Attorney's Tariff Act (*Rechtsanwaltstarifgesetz*) regulates lawyer's fees. Lawyers have to be paid for each individual performance which the lawyer makes in the course of the proceeding.
As general rule in all Administrative Court procedures, also in relation to the environment, the court may call in official experts (*Amtssachverständige*) to gather evidence on a specific matter. However, the parties are free to appoint a private expert at their own expenses in order to obtain the relevant expert knowledge they wish in order to be able to argue in the procedure. The private experts are not experts within the meaning of the General Administrative Procedure Act (*AVG),* but the opinion of private experts can be presented to the court as evidence to support the legal position of the parties.
Private expert fees are subject to wide fluctuations, depending on every individual case. The expert fees for evaluation of major projects in different fields (e. g. a project with an area of 10 acres or transport infrastructure at least 10 km in length) without detailed on-site research can range up to EUR 50.000.
The fee for filing an appeal with the Administrative Court is EUR 30. The fee for filing an appeal with the Supreme Administrative Court or the Constitutional Court is EUR 240.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

There are no regulations on deposits regarding injunctive relief or interim measures.

3) Is there legal aid available for natural persons?

If someone has a low income and is in a precarious financial situation, it is possible to apply for legal aid. Part of the legal aid might also be temporary exemption from procedural costs. Legal aid must be applied by the date of filing the complaint at the latest. Pro bono legal assistance is solely guaranteed within civil and criminal procedures as well as in administrative penal procedure and in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR: if a defendant in a criminal administrative procedure before an Administrative Court is not able to bear the costs of his defence without impediment to the requirements for the basic necessities of life, the Administrative Court may assign a defence lawyer to the defendant whose costs do not have to be borne by the defendant if this is required in the interests of dispensing justice, in particular in the interest of adequate defence, and pursuant to Article 6(1)(3)(c) ECHR or Article 47 ECFR.**[50]**
Forms for the application for legal aid can be access on the websites of the Federal Ministry for Justice,[51] the Federal Administrative Court,[52] the Supreme Administrative Court,[53] the Constitutional Court.**[54]**

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

Pro bono legal assistance (*Verfahrenshilfe*) is solely guaranteed within civil and criminal procedures in these cases as well as in administrative criminal procedures, in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR and in final complaint procedures before the Supreme Administrative Court. This might e.g. be the cases in the field of environmental criminal law. In these cases, it is possible to apply for legal aid if someone has a low income and is in a precarious financial situation. Part of the legal aid might be as well the temporary exemption from procedural costs. Legal aid must be applied for by the date if filing the complaint at the latest.
Legal persons can be granted legal aid mutatis mutandis, if bearing the costs of conducting proceedings is not possible without impediment to the requirements for the basic necessities by the party or a person with a financial involvement in the proceedings.**[55]**
Apart from this, in environmental matters, no legal aid can be requested. An application for legal aid within regular administrative procedures is therefore not possible.
The federal bar associations offer an introductory consultation free of charge (*erste anwaltliche Auskunft*).**[56]**
The association ÖKOBÜRO (Alliance of the Austrian Environmental Movement) is the only Austrian environmental NGO and public interest environmental law organisation that provides legal counselling on environmental matters. Environmental lawyers provide a free-of charge legal advice on environmental law for individuals, citizens' initiatives and eNGOs.[57] There are no conditions for accessing the legal counselling – every individual person can have access as well NGOs and the ombudsman for the environment. ÖKOBÜRO do not provide legal representation within environmental procedures.

5) Are there other financial mechanisms available to provide financial assistance?

The Green Alternative Association for the support of citizens' groups (*Grün-Alternativer Verein zur Unterstützung von BürgerInnen-Initiativen – BIV*)[58] supports citizens' initiatives financially in environmental procedures.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

The "loser party pays" principle applies only in civil proceedings. Under this principle, the defeated party has to bear all costs including experts/witnesses /lawyers costs (as far as those costs were reasonable and necessary) as well as all other costs of the litigation at the end of the proceeding. In the case of partial success, the costs are divided aliquot.
In administrative proceedings each party shall bear all its costs incurred.[59] Apart from administrative penal proceedings, this principle applies to Administrative Court proceedings accordingly. Unless provided differently, the authority or court bears the costs incurred for its activities performed in the administrative proceeding ex officio.

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

Part of the legal aid in administrative penal procedures as well as in procedures before the Supreme Administrative Court can be temporary exemption from procedural costs such as special handling charges, cash expenses or administrative charges.
If a defendant in a criminal administrative procedure before an Administrative Court is not able to bear the costs of his defence without impediment to the requirements for the basic necessities of life, the Administrative Court, may assign of a defence lawyer to the defendant whose costs do not have to be borne by the defendant if this is required in the interests of dispensing justice, in particular in the interest of adequate defence, and pursuant to Article 6(1)(3)(c) ECHR or Article 47 ECFR.**[60]**

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

The government of Austria provides a legal information system (*Rechtsinformationssystem – RIS*) online, where all legal provisions including case law can be accessed. A selection of Austrian Laws in English can be found here, including the Federal Constitutional Law, the Environmental Impact Assessment Act and the General Administrative Procedure.

The Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology provides structured information regarding EIA, see here. Practical information on SEA and EIA is available at http://www.partizipation.at/. The Austrian public administration also provides a Business Service Portal (*Unternehmensserviceportal*) which offers information for businesses regarding environmental legal issues including the Environmental Information Act and the EIA procedure.
Structured dissemination focusing on environmental access to justice for affected individuals, NGOs and other third-parties is mainly provided by the ombudsman for the environment in the federal states as well as NGOs such as the environmental umbrella organisations ÖKOBÜRO – Alliance of the Austrian Environmental Movement and Umweltdachverband.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

The specific rules on public participation in environmental procedures are determined in the respective material laws. Generally, any planned project must be publicised in an appropriate and timely manner (e.g. official notice in the municipality, advertisement in newspapers, information on the website of the respective authorities). An applicant is advised to access information at the respective authority, where the application has to be filed as well.
For **large-scale proceedings**, i.e. if more than 100 people are expected to be involved, there are specific administrative rules regarding access to information.[61] This structure is especially relevant in the case of EIA procedures. In these cases, the authority may publicly announce submissions by edict.
Within the implementation of Article 9(3) Aarhus Convention, different electronic online platforms have been introduced, both on Federal and Provincial level.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There must be a period for public inspection of the application as well as all relevant documents relating to the planned project, where objections to the planned project can be raised. The public has the right to comment on the project or to put forward counter-opinions. These comments must be taken into account in EIA procedures when preparing the environmental impact assessment and in EIA and IPPC procedures when deciding on the application for approval. The decision including the taken measures and the discussions regarding the comments must be made public.
In EIA procedures a timetable for the procedure must be published online. The authority as well as the affected municipality or municipalities must make the application available for at least six weeks and, if possible, electronically. Additionally, they must publish information on the internet, in a widely-read newspaper in the region and in another regular newspaper. Large-scale proceedings include stricter rules on access to information. Official documents must be delivered by edict[62] and the authority must make clear that all documents are accessible at the authority's office.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

As a general rule, all administrative decisions or court rulings must contain the operative part and the information regarding appeals (*Rechtsmittelbelehrung*).[63] The instructions on the right to appeal must indicate whether or not an appeal may be filed against the decision, and, if so, indicate the contents and form that the appeal must have and the authority to which and the period by which it must be submitted.**[64]**
Regarding EIA procedures, the administrative decision and judgment must be made public and must include information regarding access to justice (e.g. regarding the possibility to appeal).
Decisions by the Federal Administrative Court on EIA cases must be published on the website for at least eight weeks and must be made publicly and physically available at the local authority during the office hours for public inspection. This possibility must be pointed out at the public municipality's official board.**[65]**

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

The rules on translation and interpretation are regulated in the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG*). See details in section 1.4.4.

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) – provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

The Environment Agency Austria (*Umweltbundesamt GmbH*) provides an overview of all relevant published information regarding EIA procedures on its website.**[66]**
In Austria, the EIA procedure is structured as a "concentrated approval procedure" (*konzentiertes Genehmigungsverfahen*) for a project. There is only a single approval procedure, deciding on all the necessary authorisations for a project. This applies to all permits required under federal or state law and covers a wide range of materials, such as water law, nature conservation law, building law, protection of historical monuments, etc.

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

The purpose of a screening process (*Feststellungsverfahren*) is to estimate the environmental impact of a project and to determine whether or not an environmental impact assessment is necessary. The screening can be done ex officio by the authority. In some cases, e.g. regarding individual case examinations (*Einzelfallprüfungen*), a screening is required by law. The project applicant, a cooperating authority and the ombudsman for the environment can also request a screening. In certain procedures (e.g. federal highways/high-speed railways) the local municipalities are also entitled to request a screening.**[67]**
During the screening process, only the cooperating authority and the water management planning body have the right to be heard.
The authority has to issue a decision regarding the results of the screening (*Feststellungsbescheid*) within six weeks.**[68]**
In case of a decision stating that no EIA procedure is needed, recognised environmental NGOs and neighbours have a right to appeal within four weeks, starting on the day the decision was made public online.[69] However, the right to appeal does not imply a right to apply for a screening process or grant legal standing in a screening process. Citizens' groups do not have the right to appeal.
According to Section 19(1) EIA Act (UVP-G *2000*), neighbours are "persons who might be threatened or disturbed or whose rights in rem might be harmed at home or abroad by the construction, operation or existence of the project as well as the owners of facilities in which persons stay temporarily on a regular basis with regard to the protection of such persons." This definition does not include persons who stay temporarily in the vicinity of the project and do not have rights in rem.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

A preliminary scoping procedure (*Vorverfahren*) can be initiated at the request of the project applicant.[70] The application must include an outline of the project as well as a concept regarding the environmental impact declaration (*Umweltverträglichkeitserklärung*). The goal of a preliminary scoping procedure is to ensure a time-efficient EIA procedure, identifying any deficiencies in the project or submitted concept or other obstacles regarding the actual EIA procedure. The authority must react to the application within three months after consulting the participating authorities and, if necessary, also third parties.
Other parties aside from the project applicant, including the public, cannot request a preliminary scoping procedure nor challenge a lack thereof.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

Neighbours, citizens' groups, officially recognised environmental NGOs[71], the Ombudsman for the Environment (see details under 1.2.3), the Ombudsman for Economic Location[72], affected immediately adjacent Austrian municipalities and the water management planning body have party status in EIA procedures. Other parties may be determined based on the applicable material law in an EIA procedure. As parties, they have the right to file a complaint

with the Federal Administrative Court (*Bundesverwaltungsgericht – BVwG*) or, if necessary, a final appeal to the Supreme Administrative Court (*Verwaltungsgerichtshof – VwGH*).
The administrative decision from the EIA authority must be made public for at least eight weeks. Access to information regarding the decision must be provided online as well. Two weeks after publishing the decision, it is considered to be delivered to those persons who did not also participate in the EIA procedure (or not in time).
The complaint against the administrative decision from the EIA authority must be submitted to the authority **within four weeks** after the decision was made public. Otherwise the decision is final and legally binding.
An appeal can also be filed with the Federal Administrative Court against administrative decisions regarding whether or not the project falls under the requirements of an EIA procedure (*Feststellungsbescheid*).

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

The administrative decision must be appealed against within four weeks, otherwise the decision is final and legally binding. The right to appeal also applies to neighbours and officially accredited NGOs. The decision by the Federal Administrative Court (*Bundesverwaltungsgericht – BVwG*) can be challenged by neighbours, citizens' groups and officially recognised environmental NGOs before the Supreme Administrative Court (*Verwaltungsgerichtshof – VwGH*). An appeal before the Constitutional Court (*Verfassungsgerichtshof – VfGH*) is only possible if individual rights are violated. For neighbours and local citizens' groups, this is usually easier to proof than for NGOs.
With regard to individuals abroad, according to Section 19(1) EIA Act (UVP-G *2000*), the principle of reciprocity applies to neighbours in states not parties to the Agreement on the European Economic Area. According to Section 19(11) EIA Act (UVP-G *2000*), an environmental organisation from another state may exercise the rights of a party if this state has been notified pursuant to the regulations on cross-border procedures, if the effects impact that part of the environment in the foreign state whose protection is pursued by the environmental organisation and if the environmental organisation could participate in an EIA procedure and a development consent procedure if the project was implemented in the respective state.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

The Federal Administrative Court as well as the Supreme Administrative Court cannot initiate a review process of the administrative decision on their own motion. If an appeal is filed, both courts can review the decision in terms of its procedural as well as substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.
A review of decisions of Administrative Courts before the Constitutional Court is only possible with regard to violations of constitutionally guaranteed rights or a violation in the form of an illegal act alleged by the complainant. An individual application (*Individualantrag*) is possible when the applicant can claim that his /her fundamental rights are directly violated by law. This is the case if the law, for example, has become effective for an individual without the basis of a judicial decision.

6) At what stage are decisions, acts or omissions challengeable?

The official EIA procedure starts with the submission of the application by the project applicant. The project applicant must submit an environmental impact statement (*Umweltverträglichkeitserklärung*) along with the application, where the main alternatives examined, the environmental impact of the project and the measures to avoid or reduce these effects are described. This application must be made public for at least six weeks (see 1.7.4.3.). During this period, the public is entitled to comment on the submitted application documents and the project applicant's environmental impact statement.
Further points of intervention of the public are the right to inspect the EIA report as well as the right to comment in hearings.
As pointed out above, an appeal from affected neighbours or a recognised environmental organisation can be made to the Federal Administrative Court against administrative decisions as to whether the project falls under the requirements of an EIA procedure (*Feststellungsbescheid*). The environmental report as part of the final EIA decision can be challenged before the Federal Administrative Court (see Section 1.8.1.4.). Furthermore, an appeal can be filed with the Federal Administrative Court if decisions are not made within the given deadline (*Säumnisbeschwerde*).

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Decisions as to whether or not the project falls under the requirements of an EIA procedure as well as final administrative EIA decision can (only) be challenged directly at the Federal Administrative Court, which serves as the administrative review body in EIA procedures.

8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

The EIA procedure binds the party status to participation during the administrative procedure. This includes participation during the public consultation phase as well as participation in hearings, which can be scheduled ex officio or at the request of a party. Parties must submit interventions during the public consultation phase in order to be granted standing.
Except for the project applicant, any party loses its party status if it does not raise any objections until at least one day before the hearing or during the hearing (*Präklusionswirkung*). However, preclusion can only occur if the hearing was published properly as determined in Section 42 General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG*). (See details for publication also under 1.7.4.2.)
If the party can demonstrate that an unforeseen or inevitable event prevented it from raising objections in due time and that it is not at fault or only by a minor oversight, it can apply for reinstatement of its party status (*Antrag auf Wiedereinsetzung*). This application has to be filed within two weeks after the cause preventing the party to raise objections has been removed.
Regarding the EIA procedure before the Administrative Courts: If objections are put forward for the first time in the complaint, they are only admissible if the complaint justifies why they could not have been raised earlier during the objection period in the administrative procedure and the complainant demonstrates that he or she is not at fault or only due to a minor failure to object during the objection period.

9) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction?

The right to a fair trial derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has constitutional status in Austria. This includes the right to a fair trial in administrative justice. Furthermore, the right to party status derives from the constitutional principle of equality.[73]
The guarantee of equality of arms within procedures is also embedded in the obligation to provide necessary guidance (*Manuduktionspflicht*). Authorities and courts are required to give persons not represented by professional counsel instructions on steps they need to take in the proceedings and to instruct them on the legal consequences connected directly with such acts or the failure to perform them.[74] This obligation can be regarded as general procedural principle.[75]
Access to justice for members of the public aims to grant standing to all actors who are perceived as having a substantial interest in the respective case. They have the possibility to make known the elements on which their claim is based and can discuss any claim, evidence or document presented to the judge through an intervention mechanism. However, the economic inequalities between parties (despite pro bono legal assistance) as well as newly introduced counterweights such as the Ombudsman for Economic Location (*Standortanwalt*) as a party in EIA procedures, have raised concerns regarding the equality of arms within civil society.

10) How is the notion of "timely" implemented by the national legislation?

Regarding interventions by parties, the notion of "timely" is interpreted as "submitted within the legal timeframe", or in case of a hearing, until the hearing. Regarding the decision-making obligation, authorities and Courts are generally asked to issue decisions as soon as possible and "without unnecessary delay" (*ohne unnötigen Aufschub*), latest until the given deadline.[76]

Administrative Courts must decide within a timeframe of at maximum **6 months**.[77]

11) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

Details on the general rules regarding injunctive relief can be found under 1.7.2. The EIA Act (UVP-G *2000*) does not provide specific rules for EIA procedures. In general, the appeal against administrative decisions has a suspensive effect unless the Federal Administrative Court ruled out the possibility in an individual case.

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

The authorisation procedure for IPPC sites is regulated in the Industrial Code (*Gewerbeordnung 1994 – GewO 1994*), the Waste Management Act (*Abfallwirtschaftsgesetz 2002 – AWG 2002*), the Emission Protection Act for Steam Boilers (*Emissionsschutzgesetz für Kesselanlagen*) and the Mining Act (*Mineralrohstoffgesetz – MinroG*). According to these acts, neighbours and environmental organisations, including foreign NGOs are provided party status (legal standing) and full legal review in IPPC/IED procedures.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

Neighbours are defined as persons who might be threatened or disturbed or whose rights in rem might be harmed as well as the owners of facilities in which persons stay temporarily on a regular basis with regard to the protection of such persons. Following the principle of reciprocity, neighbours are also owners of nearby land outside the Austrian territory.

Regarding environmental NGOs, these acts all refer to Section 19 EIA Act (UVP-G *2000*) which requires them to be organised in the form of a non-profit organisation for at least three years, to have at least 100 members and to have environmental protection as their main objective. Federations must comprise at least five member associations. All organisations must prove every three years that they still meet the recognition requirements.

Foreign NGOs are granted party status to the extent they raised written complaints during the period for public inspection, if (a) there has been an official cross-border notification of the respective state, (b) the project is likely to have significant effects on the area of the state for which the environmental organisation advocates, and (c) the organisation is entitled to participate in similar procedures in its state of origin.

In the regular EIA procedure, neighbours and environmental NGOs have the status of a party and thus are entitled to participate in the procedure and challenge possible procedural decisions (such as the appointment of an expert) as well as the final EIA decision. In their respective area of recognition, in procedures concerning IPPC/IED waste treatment plants, mining facilities, steam boilers >50 MW and industrial sites, environmental organisations are entitled to claim the observance of environmental provisions in the procedure and to resort to remedies if and to the extent they raised written complaints during the period for public inspection. If objections are raised for the first time, they are permissible only if the complaint gives reasons why it has not been possible to raise them already during the objection period in the application procedure and if the complainant demonstrates that the fact that he failed to raise the objections during the objection period is not or only to a minor degree his fault.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Only the project applicant – in waste management procedures also the Ombudsman for the Environment – has party status in the screening procedure. There are no rules on access to justice of members of the public within screening procedures.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

There are no rules on access to justice for members of the public within scoping procedures.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

Environmental NGOs and neighbours can challenge decisions to permit or significantly change a waste treatment permit, mining facilities, steam boilers >50 MW and industrial sites within the IED regime.

6) Can the public challenge the final authorisation?

Environmental NGOs and neighbours are entitled to challenge the final authorisation of waste treatment, mining facilities, steam boilers >50 MW and industrial sites within the IED regime.

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

Foreign and Austrian environmental NGOs are entitled to judicial review regarding permitting decisions or decisions significantly amending a site to the extent they raised written complaints during the period for public inspection.

There are no general provisions granting members of the public the option to challenge omissions. If the authority has not made a decision on a matter within six months or, if the law provides for a shorter or longer period allowed for a decision, within that period, parties can file a complaint alleging breach of the duty to reach a timely decision (*Säumnisbeschwerde*) with the respective Administrative Court. Parties to the procedure may also challenge the omission to serve or issue a permit.

The Federal Administrative Court as well as the Supreme Administrative Court cannot initiate a review process of the administrative decision on their own motion. If an appeal is filed, both courts can review the decision in terms of its procedural as well as substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

8) At what stage are these challengeable?

Procedural decisions or omissions by the responsible authority may be challenged at any stage during the authorisation procedure.

9) Before filing a court action, is there a requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The administrative decision can (only) be challenged directly at the Federal Administrative Court, which serves as the administrative review body in IPPC/IED procedures.

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

In general, the principle of preclusion applies:[78] If an oral hearing has been properly announced, a person may lose party standing unless he or she raises an objection with the authority by the day preceding the hearing or during the hearing itself. A person presenting prima facie evidence of having been prevented to raise objections in due time by an unforeseeable or unavoidable event, may raise objections within two weeks after the reason for being prevented has ceased to exist, at the latest however by the date of the legally effective decision of the subject matter (see also answer 1.8.2.2).

Foreign and Austrian environmental NGOs are entitled to judicial review to the extent they raised written complaints during the period for public inspection. In procedures according to the Waste Management Act, their right to challenge decisions is limited to violation of environmental protection provisions set under Union law (Section 42(3) AWG *2002*).

11) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction?

The right to a fair trial derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has constitutional status in Austria. This includes the right to a fair trial in administrative justice. Furthermore, the right to party status derives from the constitutional principle of equality.[79]

Public access to justice in environmental procedures aims to grant standing to all actors who are perceived as having a substantial interest in the respective case. They have the possibility to make known the elements on which their claim is based and can discuss any claim, evidence or document presented to the judge through an intervention mechanism.

12) How is the notion of "timely" implemented by the national legislation?

Regarding interventions by parties, the notion of "timely" is interpreted as "submitted within the legal timeframe", or in case of a hearing, until the date of the hearing.

Regarding the decision-making obligation, authorities and courts are generally asked to issue decisions as soon as possible and "without unnecessary delay" (*ohne unnötigen Aufschub*), latest until the given deadline.[80]

If the authority has not made a decision on a matter within six months or, if the law provides for a shorter or longer period allowed for a decision, within that period, parties can file a complaint alleging breach of the duty to reach a timely decision (*Säumnisbeschwerde*) with the respective Administrative Court. Administrative Courts must decide within a timeframe of at maximum **6 months**.[81]

13) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

There is no injunctive relief, but an appeal generally has suspensive effect according to the general administrative rules of procedure. During the preliminary proceedings, the administrative authority may exclude the suspensive effect of the appeal, if – after weighing public interests and interest of other parties concerned – early enforcement of the decision is required due to the risk of delay. The Administrative Court can rule out the suspensive effect for the same reason.

14) Is information on access to justice provided to the public in a structured and accessible manner?

Regarding IPPC/IED procedures, the administrative decision and judgment must be made public and must include information regarding access to justice (e. g. regarding the possibility to appeal). As of the expiry of a period of two weeks following announcement on the authority's website – according to some procedure also in a common newspaper – the official notice is considered as delivered vis-à-vis environmental organisations entitled to take legal action.

1.8.3. Environmental liability[82]

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?

According to Section 13 of the Federal Environmental Liability Act (*Bundes-Umwelthaftungsgesetz – B-UHG*), natural and legal persons have the right to appeal a decision on environmental remediation if they are parties to the procedure. They can be parties to the procedure if they have filed an environmental complaint (*Umweltbeschwerde*) according to Section 11 B-UHG or requested in writing to be a party to the procedure on remediation measures within two weeks after its publication.

The right to file an environmental complaint is granted to environmental organisations recognised according to Section 19 EIA Act (UVP-G *2000*) as well as natural and legal persons whose individual rights or interests might be infringed by environmental damage. Relevant individual rights or interests are considered to be the protection of human life and health, individual rights to use certain water bodies, fishing rights, property and other rights in rem related to real estate.

2) In what deadline does one need to introduce appeals?

An appeal to the respective Provincial Administrative Court must be filed within four weeks after the respective person's notification on the relevant decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

Within the environmental complaint, the person must submit the relevant information and data providing proof of the environmental damage in question. Furthermore, the procedural requirements – i.e. the official recognition in case of environmental NGOs or the interference with individual rights in case of other persons – must be proven.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

There are no specific requirements regarding 'plausibility' for showing that environmental damage occurred.

5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?

The authority must publish a notice of the essential content of the decision on remedial measures "appropriately" (*entsprechend*). Parties involved are to be notified in person. There are no special regulations on time limits or the manner of notification.

6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?

The Federal Environmental Liability Act (*Bundes-Umwelthaftungsgesetz – B-UHG*) as well as the Provincial Environmental Liability Acts are applicable to damage as well as imminent threat of such damage.

7) Which are the competent authorities designated by the MS?

The competent authority according to environmental liability legislation is the District Administrative Authority (*Bezirksverwaltungsbehörde*) responsible for the area in which preventive or remedial measures are to be or should have been taken.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

The administrative decision can (only) be challenged directly at the Federal Administrative Court, which serves as the administrative review body in environmental liability procedures.

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

In cross-border EIA procedures, the affected foreign parties need to be informed of the proposed activity, the possible cross-border environmental impacts, and the nature of possible decisions that can be taken in the EIA procedure. The competent authority is obliged to send this information to the affected

foreign parties. The EIA documentation has to include a description of the project, reasonable alternatives, a description of the actual environmental conditions at the project site, and an enumeration of mitigation measures. The notification must be given as early as possible, if adequate already during the scoping procedure and latest at the time of notification of the public in Austria.[83]
If an IPPC/IED project or a major change thereto may significantly affect the environment in another state or if a state likely to be concerned requests it, the responsible authority must notify the respective state. The notification must be given no later than the date of the national notification. It must include relevant information on possible cross-border impact as well as the relevant administrative procedure. The authority must set an appropriate timeframe to express the desire to participate in the procedure.
In case of cross-border environmental damage, the concerned state must be notified.
An environmental organisation recognised pursuant to Section 19(7) EIA Act has locus standi and is entitled to claim the observance of environmental provisions in the procedure if and to the extent it filed written complaints during the period for public inspection. It is also entitled to lodge a complaint with the Federal Administrative Court and to appeal to the Supreme Administrative Court.[84] An environmental organisation from a foreign state may exercise the same rights, if this state has been notified, if the effects impact that part of the environment in the foreign state whose protection is pursued by the environmental organisation and if the environmental organisation could participate in an EIA procedure and a development consent procedure if the project were implemented in this foreign state.[85]

2) Notion of public concerned?

The notion of the public concerned is similar to that of the public in Austria. Individuals must meet the criteria of “neighbours”; i.e. persons who might be threatened or disturbed or whose rights in rem might be harmed as well as the owners of facilities in which persons stay temporarily on a regular basis with regard to the protection of such persons. Environmental organisations must meet the criteria applicable to participate in the respective environmental procedures in their state.

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

On the basis of reciprocity, NGOs have standing in Austrian EIA procedures, subject to certain conditions which also apply to their Austrian “counterparts”: NGOs of the affected country have legal standing according to Section 19(11) EIA Act (UVP-G *2000*) if (1) the foreign state has been notified of the planned activity, (2) the environment in the relevant area of the foreign state might be affected by the proposed activity and its protection is pursued by the NGO, and (3) if the NGO could participate in an EIA procedure if the project was implemented in this foreign state.
If an NGO has expressed its wish to participate in the procedure, it may submit statements and, to this extent, file an appeal to the Administrative Court within four weeks. The decision by the competent authority must contain information on the possibility to appeal, including timeframe and the institution to which it must be addressed.
There is no legal aid granted or pro bono assistance in environmental administrative procedures in Austria.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

On the basis of reciprocity, neighbours in the affected country have standing in Austrian EIA and IPPC/IED procedures if they meet the criteria of “neighbours”. Neighbours are considered persons who might be threatened or disturbed or whose rights in rem might be harmed as well as the owners of facilities in which persons stay temporarily on a regular basis with regard to the protection of such persons.
Foreign neighbours and municipalities (acting as neighbours) are guaranteed legal standing according to Section 19(1) EIA Act (UVP-G *2000*). The above-mentioned parties will enjoy the same party rights as Austrian NGOs or neighbours do.
Foreign citizens’ groups do not have legal standing in cross-border EIA as they do not fulfil the criteria established for national citizens’ groups – namely the foreign individuals lack the right to vote in Austria.[86]

5) At what stage is the information provided to the public concerned (including the above parties)?

Information must be provided as early as possible, if adequate already during the EIA scoping procedure and latest at the time of the notification of the public in Austria.[87]

6) What are the timeframes for public involvement including access to justice?

A copy of the application, of the other relevant documents and of the environmental impact statement must be available for public inspection **for at least six weeks**. Decisions can be appealed within **four weeks** after delivery of the decision. For persons who did not become party to the procedure, decisions are considered delivered two weeks after publication of the decision.

7) How is information on access to justice provided to the parties?

Information on access to justice is provided within the decision/official notice by the responsible authority.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

If a party or a person does not have sufficient command of the German language, an interpreter (official interpreter) or translator available to the authority must be called in. All interpreters or translators provided are officially accredited and listed. Interpretation costs and costs of a translator are to be paid by the party needing interpretation.

9) Any other relevant rules?

If the party can demonstrate that an unforeseen or inevitable event prevented it from raising objections in due time and that it is not at fault or only by a minor oversight, they can apply for reinstatement of their party status (*Antrag auf Wiedereinsetzung*). This application has to be filed within two weeks after the cause preventing the party to raise objections has been removed.

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[1] See Article 3 leg cit.
[2] ECJ C-664/15, *Protect*, ECLI:EU:C:2017:987.
[3] VwGH 28 March 2018, Ra 2015/07/0055.
[4] VwGH 25 April 2019, Ra 2018/07/0410-9, Ra 2018/07/0380 to 0382-9.
[5] Supreme Administrative Court (VwGH) 19 February 2018, Ra 2015/07/0074.
[6] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, *OJ L 1992/206, 7*.
[7] Article 18 Federal Constitutional Law (B-VG).
[8] Article 50(2) 2 BV-G.
[9] ECJ C-664/15, *Protect*, ECLI:EU:C:2017:987.
[10] VwGH 20 May 2015, 2012/10/0016 et al.

[11] As their role is not foreseen by EU law, however, one federal province (Upper Austria) excludes in its Aarhus Participation Act the Ombudsman for the Environment from procedures concerning European environmental law.
[12] Section 28(2) Proceedings of Administrative Courts Act (VwGVG).
[13] Section 63 (5) General Administrative Procedure Act (AVG).
[14] Section 34 VwGVG.
[15] See Section 14 Proceedings of Administrative Courts Act (VwGVG).
[16] Section 15 VwgVG.
[17] Official Journal L 1992/206, 7.
[18] Article 133(4) Federal Constitutional Law (B-VG).
[19] Umweltmediation imösterreichischen Recht (8 May 2020).
[20] Section 16(2) EIA Act (UVP-G).
[21] However, as mentioned in footnote 11, according to the Upper Austrian Aarhus Participation Act, Environmental Ombudsmen are excluded from procedures concerning European environmental law.
[22] Section 8 General Administrative Procedure Act (AVG).
[23] Liste der anerkannten Umweltorganisationen (23 July 2020).
[24] Section 19(4) EIA Act (UVP-G).
[25] Section 72(2) Industrial Code (GewO).
[26] Section 56 General Administrative Procedure Act (AVG). NR26
[27] Section 57 General Administrative Procedure Act (AVG).
[28] Section 46 General Administrative Procedure Act (AVG).
[29] Supreme Administrative Court (VwGH) 29 May 2006, 2005/17/0252; *Grabenwarter, C./Fister M.* (2016). Veraltungsverfahrensrecht und Verwaltungsgerichtsbarkeit5. Vienna: Verlag Österreich. (p 85)
[30] See Sec 1.2.1.
[31] Section 65 General Administrative Procedure Act (AVG).
[32] Section 43 (4) General Administrative Procedure Act (AVG).
[33] Section 10 Proceedings of Administrative Courts Act (VwGVG).
[34] Section 16 (3) EIA Act (UVP-G).
[35] Gerichtssachverständigen- und Gerichtsdolmetscherliste (8 May 2020).
[36] Section 52(2) and (3) General Administrative Procedure Act (AVG).
[37] Section 17 Proceedings of Administrative Courts Act (VwGVG).
[38] Section 53 General Administrative Procedure Act (AVG).
[39] Section 74 General Administrative Procedure Act (AVG).
[40] Section 8a Proceedings of Administrative Courts Act (VwGVG).
[41] Erste Anwaltliche Auskunft (8 May 2020).
[42] Erste Anwaltliche Auskunft (8 May 2020).
[43] https://oekobuero.at/en/rechtsservice/umweltrecht/ (8 May 2020).
[44] http://www.buergerinitiativen.at/ (8 May 2020).
[45] https://www.rechtsanwaelte.at/en/ (8 May 2020).
[46] Liste der anerkannten Umweltorganisationen (23 July 2020).
[47] Article 130(1) (3) Federal Constitutional Law (B-VG).
[48] Section 57 General Administrative Procedure Act (AVG).
[49] Section 74 General Administrative Procedure Act (AVG).
[50] Section 40 Proceedings of Administrative Courts Act (VwGVG).
[51] https://portal.justiz.gv.at/at.gv.justiz.formulare/Justiz/Verfahrenshilfe.aspx (8 May 2020).
[52] https://www.bvwg.gv.at/service/formulare/formulare_start.html (8 May 2020).
[53] https://www.vwgh.gv.at/verfahren/verfahrenshilfe/index.html (8 May 2020).
[54] https://www.vfgh.gv.at/kompetenzen-und-verfahren/verfahrenshilfe/verfahrenshilfe_details.de.html (8 May 2020).
[55] Section 8a(1) Proceedings of Administrative Courts Act (VwGVG).
[56] https://www.rechtsanwaelte.at/buergerservice/servicecorner/erste-anwaltliche-auskunft/ (8 May 2020).
[57] https://oekobuero.at/en/rechtsservice/umweltrecht/ (8 May 2020).
[58] http://www.buergerinitiativen.at/ (8 May 2020).
[59] Section 74 General Administrative Procedure Act (AVG).
[60] Section 40 Proceedings of Administrative Courts Act (VwGVG).
[61] Sections 44a-44g General Administrative Procedure Act (AVG).
[62] Section 44f General Administrative Procedure Act (AVG).
[63] Section 58(1) General Administrative Procedure Act (AVG); Section 30 Proceedings of Administrative Courts Act (VwGVG).
[64] Section 61 General Administrative Procedure Act (AVG).
[65] Section 40 (7) EIA Act (UVP-G).
[66] https://www.umweltbundesamt.at/umweltsituation/uvpsup/uvpoesterreich1/kundmachung (8 May 2020).
[67] See section 3 of the EIA Act (UVP-G).
[68] Regarding certain procedures (e.g. federal highways/high-performance railways) the deadline for decisions is eight weeks.
[69] This right is based on the following decisions: ECJ C-570/13, *Gruber*, ECLI:EU:C:2015:231.
[70] Section 4 EIA Act (UVP-G).
[71] For details on the standing rules for citizens' groups, neighbours and NGOS see 1.4.3.
[72] With the amendment of the EIA Act 2018, the Ombudsman for Economic Location (*Standortanwalt*) was introduced as a "counterweight" to the ombudsman of the environment and NGOs, who has party status in EIA procedures as well. It is a Federal or Provincial institution, usually located with the Chamber of Commerce (*Wirtschaftskammer*).
[73] *Schulev-Steindl, E. (2018)*, Veraltungsverfahrensrecht6. Vienna: Verlag Österreich. (p 27)

[74] Section 13a General Administrative Procedure Act (AVG).
[75] See e.g. *Raschauer, B., (2013)*, Allgemeines Verwaltungsrecht4. Vienna: Verlag Österreich. (para 1259)
[76] Section 34 Proceedings of Administrative Courts Act (VwGVG).
[77] Ibid., para 1.
[78] Section 42 General Administrative Procedure Act (AVG), Section 77a (9) Industrial Code (GewO).
[79] *Schulev-Steindl, E. (2018)*, Veraltungsverfahrensrecht6. Vienna: Verlag Österreich. (p 27)
[80] Section 34 Proceedings of Administrative Courts Act (VwGVG).
[81] Ibid, para 1.
[82] See also case C-529/15
[83] Section 10 EIA Act (UVP-G).
[84] Section 19(10) EIA Act (UVP-G).
[85] Section 19(11) EIA Act (UVP-G).
[86] *Note*: On this issue, procedure ACCC/C/2019/163 (Austria) is currently pending before the Aarhus Convention Compliance Committee (ACCC).
[87] Section 10 EIA Act (UVP-G).

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Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

The Aarhus Participation Act 2018 (*Aarhus Beteiligungsgesetz 2018*) – an amendment of the Waste Management Act (*Abfallwirtschaftsgesetz 2002 – AWG 2002*), Water Act (*Wasserrechtsgesetz 1959 – WRG 1959*) and Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*) – and the Air Emission Act (*Emissionsgesetz-Luft 2018*) introduced provisions on access to justice in the areas of waste, water and air protection on federal level.

On the provincial level, main provisions on access to justice can be found in the different Nature Protection Acts of the federal provinces. Apart from Styria and Upper Austria, provinces have also introduced provisions on access to justice in their hunting legislation (*Jagdgesetze*). Burgenland, Carinthia, Salzburg, Tyrol, and Vorarlberg have additionally introduced similar provisions in their Fisheries Acts (*Fischereigesetze*). The province of Vienna has recently sent out for public consultation a draft law amending its corresponding legislation (*Wiener Nationalparkgesetz,* *Wiener Naturschutzgesetz,* *Wiener Fischereigesetz* and *Wiener Jagdgesetz*).

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The appeal against the first level administrative decision must be submitted to the authority that issued the decision in first instance. This authority then has the option of settling the complaint by means of a preliminary decision (*Beschwerdevorentscheidung*), which has to be issued within two months. The concerned party can then file an application for submission (*Vorlageantrag*) within two weeks to the authority that issued the decision and ask for the complaint to be submitted to the administrative court for decision. The administrative court subsequently decides on the matter (unless the complaint is to be dismissed or the proceedings discontinued). If the authority has failed to investigate the matter sufficiently, the Administrative Court can overturn the contested decision and refer the matter back to the authority to issue a new decision. The authority is bound by the legal assessment on which the administrative Court based its decision.

The requirements for the recognition of an **environmental NGO** as being entitled to appeal are laid down in Section 19 EIA Act.[2] This provision requires it to be organised in the form of a non-profit organisation for at least three years, to have at least 100 members and to have environmental protection as its main objective. Federations must comprise at least five member associations. All organisations must prove every three years that they still meet the recognition requirements.

Individuals are entitled to review procedures if their subjective rights are affected by a decision. This can be the case in water, clean air, waste management or hunting and fishing procedures.

Generally, decisions of an administrative authority must be appealed against **within four weeks** after the decision has been issued. The appeal needs to be made **in written form** and must include the name of the decision, the authority concerned, the reasons for appeal and actions required.

Even before the entry into force of the Aarhus Participation Act, national courts were inclined to grant access to justice by direct application of EU legislation with reference to European case-law.[3] Recent cases show that this practice remains in areas not regulated by the Aarhus Participation Act, such as the Forestry Act (*Forstgesetz 1975 – ForstG*).[4]

Although authorities may not directly grant access to justice where it is not provided by national law, for cases determined by European law access to justice rights are mainly granted before regional Administrative Courts. There are however still decisions by these courts, even within the realm of EU law, denying legal standing and access to justice or restricting it.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

If an appeal is filed, Administrative Courts can review the decision in terms of its procedural as well as substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Administrative decisions in environmental law can (only) be challenged directly at the Federal Administrative Court, which serves as the administrative review body in environmental procedures. The appeal, however, must first be submitted to the authority that issued the decision in first instance. This authority then has the option of settling the complaint by means of a preliminary decision (*Beschwerdevorentscheidung*; see 2.1.1.).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In general, the principle of preclusion (*Präklusion*) applies:[5] Except for the project applicant, any party loses its party status and thus standing if it does not raise any objections until at least one day before the hearing or during the hearing. However, preclusion can only occur if the hearing was published properly as determined in Section 42 General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG*) and in the area-specific legislation (in most environmental procedures, an electronic online platform is used).

Regarding **environmental organisations**, the preclusion rules differ in each legislative act. Sometimes it is sufficient for the NGO to elaborate in its appeal why the points in question are being raised for the first time; in other cases it is not possible to file an appeal if the NGO has not submitted a statement in the preceding administrative procedure.[6]

5) Are there some grounds/arguments precluded from the judicial review phase?

Individuals, apart from the project applicant, must allege interference with the subjective publicly granted rights.

In water procedures, environmental organisations may only raise arguments concerning potentially significant adverse effects on water quality.[7] In waste management procedures, access to justice for environmental organisations is limited to breaches of EU environmental law.[8] In procedures regarding air quality plans or national air pollution control programmes, persons need to be directly concerned.[9] Similar limitations can be found in most provincial provisions.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

The right to a fair trial derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has constitutional status in Austria. This includes the right to a fair trial in administrative justice. Furthermore, the right to party status derives from the constitutional principle of equality.[10]

Access to justice by the public in environmental trials aims to grant standing to all actors who are perceived as having a substantial interest in the respective case. They have the possibility to make known the elements on which their claim is based and can discuss any claim, evidence or document presented to the judge through an intervention mechanism. However, economic inequalities between parties (despite pro bono legal assistance), e.g. because of costly expert opinions, remain.

7) How is the notion of "timely" implemented by the national legislation?

Regarding interventions by parties, the notion of "timely" is interpreted as "submitted within the legal timeframe", or in case of a hearing, until the date of the hearing. This is mostly decided on a case-by-case basis. E.g. if there are new facts or evidence presented in a complaint, the authority or the court must notify the other parties thereof without delay and give them the opportunity to comment within a reasonable period of no longer than two weeks", or in case of a hearing, until the hearing.

Regarding the decision-making obligation, authorities and courts are generally asked to issue decisions as soon as possible and "without unnecessary delay" (*ohne unnötigen Aufschub*), no later than the given deadline.[11] If the authority or court has not made a decision on a matter within six months or, if the law provides for a shorter or longer period allowed for a decision, within that period, parties can file a complaint alleging breach of the duty to reach a timely decision. In case of authorities the respective Administrative Court decides on the complaint (*Säumnisbeschwerde*), in case of Administrative Courts (*Fristsetzungsantrag*), the Supreme Administrative Court. The complaint is first filed with the court or authority who has the chance to make up for its omission within two weeks.

Administrative courts must decide within a timeframe of at maximum **6 months**.[12]

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There is no injunctive relief system, but an appeal generally has suspensive effect according to the general administrative rules of procedure. During the preliminary proceedings, the administrative authority may exclude the suspensive effect of the appeal, if – after weighing public interests and interest of other parties concerned – early enforcement of the decision is required due to the risk of delay. The Administrative Court can rule out the suspensive effect for the same reason. According to certain provisions such as Section 43a of the Upper Austrian Nature and Landscape Protection Act (*Oö. Natur- und Landschaftsschutzgesetz 2001 – Oö. NSchG 2001*), the suspensive effect of appeals is excluded unless the authority grants it upon application.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

Legal costs and fees in judicial review consist of court fees (to be paid when filing a claim or appeal), lawyers' fees and actual expenses such as expert /translator costs and travel costs of witnesses. Lawyers have to be paid for each individual performance which the lawyer makes in the course of the proceeding. The parties' own costs, such as internal investigations costs or the costs to prepare the proceedings, are not considered as reimbursable.

There are no administrative review procedures, as complaints against decisions must be addressed to the Administrative Courts. In review proceedings before the administrative Courts each party shall bear all its costs incurred.[13] Unless provided differently, the authority bears the costs incurred for its activities performed in the administrative proceeding ex officio.

For administrative procedures there is a cost category for every motion. The cost categories are stated in the Austrian Official Tax Regulation (Bundesverwaltungsabgabenverordnung 1983 – BvwAbgV).

The most costly part of filing an administrative appeal is usually the submission of expert opinions. Expert fees are subject to wide fluctuations, depending on every individual case. The expert fees for the evaluation of major projects in different fields (e.g. a project with an amplitude of 10 acres or transport infrastructure of at least 10 km length) without detailed on-site research can range up to EUR 50.000,-. It is also possible that the parties engage "private experts" to provide a report on a topic. However, these reports are only treated as private documentation and prove nothing but the opinion of the author. There are no statutory provisions avoiding prohibiting costs of expert opinions.

10) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

If someone has a low income and is in a precarious financial situation, it is possible to apply for legal aid. Legal aid may be granted if it is covered by Article 6 ECHR or Article 47 ECFR. Part of the legal aid might be as well he temporary exemption from procedural costs. Legal aid must be applied for by the date of filing the complaint at the latest. Part of the legal aid might be temporary exemption from the procedural costs.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[14]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Implementing provisions to the SEA Directive on Federal and Provincial level currently do not grant members of the public access to review procedures. There is no option to challenge either the substance or procedural issues such as ineffective or missing public participation.

The only option to challenge a plan or programme exists if it was issued as a law[15] or ordinance[16]. This right to review before the Constitutional Court, however, is limited to a small number of persons (see 2.2.2.)

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Regarding constitutional rights, Article 144 of the Federal Constitutional Law provides for individuals to make claims before the Constitutional Court (*Verfassungsgerichtshof – VfGH*) if their fundamental rights are infringed. Its basic requirements are the interference with the individual's "subjective right", i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual's fundamental right on the other hand. Constitutional rights that can be linked to environmental protection are, for example, the right to justice, the right to life, the right to health, the right to respect for private and family life.

The scope of review if the Constitutional Court includes the conformity of ordinances with constitutional or legal provisions as well as with provision of underlying ordinances – from a procedural as well as a substantive aspect.[17] If the Constitutional Court pronounces an act or ordinance to be unconstitutional or illegal, all courts and administrative authorities are bound by the Constitutional Court's decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

For an application to the Constitutional Court, administrative review procedures must be exhausted in case of administrative decisions. However, as pointed out above under 2.2.1, SEA legislation in general does not provide for administrative review of members of the public.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

As there are no specific regulations on access to justice in the area of SEA, there are no relevant requirements.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no rules on injunctive relief in this regard.

If the Constitutional Court pronounces an act or ordinance to be unconstitutional, all courts and administrative authorities are bound by the Constitutional Court's decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The fee for filing an appeal with the Constitutional Court is EUR 240. Legal assistance is required. Legal aid or pro bono legal assistance (*Verfahrenshilfe*) can be granted in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR.

Apart from the regulated lawyer's fees according to the Attorney's Tariff Act (*Rechtsanwaltstarifgesetz*) (see 2.1.9), there are no statutory guarantees that costs are not prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[18]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There are no general provisions granting members of the public access to review procedures according to Article 7 of the Aarhus Convention. There is neither an option to challenge the substance nor procedural issues such as ineffective or missing public participation.

The only option to challenge a plan or programme exists if it was issued as a law[19] or ordinance[20]. This right to review before the Constitutional Court, however, is limited to a small number of persons.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Regarding constitutional rights, Article 144 of the Federal Constitutional Law provides for individuals to make claims before the Constitutional Court (*Verfassungsgerichtshof – VfGH*) if their fundamental rights are infringed. Its basic requirements are the interference with the individual's "subjective right", i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual's fundamental right on the other hand. Constitutional rights that can be linked to environmental protection are, for example, the right to justice, the right to life, the right to health, the right to respect for private and family life.

The scope of review if the Constitutional Court includes the conformity of ordinances with constitutional or legal provisions as well as with provision of underlying ordinances – from a procedural as well as a substantive aspect.[21] If the Constitutional Court pronounces an act or ordinance to be unconstitutional or illegal, all courts and administrative authorities are bound by the Constitutional Court's decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

For an application to the Constitutional Court, administrative review procedures must be exhausted. However, as pointed out above under 2.3.1, SEA legislation in general does not provide for administrative review of members of the public.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

As there are no specific regulations on access to justice in the scope of Article 7 Aarhus Convention, there are no relevant requirements.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no rules on injunctive relief in this regard.

If the Constitutional Court pronounces an act or ordinance to be unconstitutional, all courts and administrative authorities are bound by the Constitutional Court's decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is excepted from this rule.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The fee for filing an appeal with the Constitutional Court is EUR 240. Legal assistance is required. Legal aid or pro bono legal assistance (*Verfahrenshilfe*) can be granted in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR. Apart from this option and from the regulated lawyer's fees according to the Attorney's Tariff Act (*Rechtsanwaltstarifgesetz*), there are no statutory guarantees that costs are not prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[22]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The only regulatory frameworks currently granting access to justice regarding plans or programmes are the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*) and the Air Emission Act (*Emissionsgesetz-Luft 2018 – EG-L 2018*). When filing such application, natural persons must demonstrate that they are directly concerned. A person is directly concerned if their health may be endangered as a result of the breach of a limit value. Environmental organisations must append information and data supporting their official recognition pursuant to Section 19 EIA Act.[23]

To date, it is not clear how effective access to justice in this area is, as these rights have only been introduced recently and practical experience has still to be gained. However, already existing case law shows that the effectiveness of an appeal crucially depends on its timing as breaches of limit values are either diminishing or subject to meteorological circumstances which lead to years with breaches followed by years where limit values are met.

It should be noted that even before the entry into force of the amendments to the IG-L and the EG-L 2018 introducing access to justice, access to justice has been granted by direct application of EU law in conjunction with the Aarhus Convention in the area of air protection.[24] It therefore could be possible that national courts directly apply other EU environmental provisions in conjunction with the Aarhus Convention in a similar way.[25] From the existing case-law it can be assumed that environmental organisations should be recognised according to Section 19 of the EIA Act and individuals should be affected in the subjective publicly granted rights.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

Applications to the Constitutional Court to challenge a plan or programme are only admissible if they are adopted in the form of an act or ordinance.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

According to the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*) and the Air Emission Act (*Emissionsgesetz-Luft 2018 – EG-L*) the application or the complaint must be established in a clearly and well-argued fashion explaining why the requirements for the establishment or the revision of an air quality plan or the National Air Pollution Programme are met or why, in their entirety, the measures provided for in the plan or programme are inappropriate to ensure compliance with the relevant limit values or emission reduction commitments.

The Administrative Court can review the plan or programme in terms of its procedural and substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Within a period of eight weeks following the announcement of a national air pollution control programme or air quality plan, natural persons directly concerned by the breach of a limit value as well as environmental organisations recognised pursuant to Section 19 EIA Act (UVP-G *2000*), within their relevant geographical scope of recognition, must file a reasoned application for examination of the programme or plan with respect to the appropriateness of the measures it sets out in their entirety, to ensure compliance with the emission reduction commitments in due time or limit values as soon as possible, with the Provincial Governor (air quality plan) or the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology (national air pollution control programme). The responsible authority must decide on this application by way of official notice. It is also possible to file a reasoned application for the establishment of a plan or programme or, if a plan or programme has already been established, an application for its revision with the Provincial Governor or Federal Minister.

Subsequently, the entitled members of the public may file a complaint against official notices issued in the matters described above at the Provincial Administrative Court (in case of national air pollution control programmes with the Administrative Court of Vienna).

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

According to the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*) and the Air Emission Act (*Emissionsgesetz-Luft 2018 – EG-L 2018*) it is not necessary to participate in the public consultation phase in order to have standing to challenge a plan or programme.

6) Are there some grounds/arguments precluded from the judicial review phase?

In order to be admissible, an application or complaint according to the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*) or the Air Emission Act (*Emissionsgesetz-Luft 2018 – EG-L 2018*) must establish the reasons in a clearly and well-argued fashion of why the requirements for the establishment or the revision of a plan or programme are met or why, in their entirety, the measures provided for in the plan or programme are inappropriate to ensure compliance with the relevant limit values or emission reduction commitments. These are the only arguments that can be brought by environmental NGOs. Individuals may only file a complaint on the grounds that they are directly affected by the relevant plan or programme.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

The right to a fair trial derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has constitutional status in Austria. This includes the right to a fair trial in administrative justice. Furthermore, the right to party status derives from the constitutional principle of equality.[26]

Access to justice by the public in environmental trials aims to grant standing to all actors who are perceived as having a substantial interest in the respective case. They have the possibility to make known the elements on which their claim is based and can discuss any claim, evidence or document presented to the judge through an intervention mechanism.

8) How is the notion of "timely" implemented by the national legislation?

The general rules on administrative procedures apply: If a member of the public applies for a review of an air quality plan according to the Air Pollution Control Act (*Immissionsschutzgesetz – Luft – IG-L*) or a national air pollution control programme according to the Air Emission Act (*Emissionsgesetz-Luft 2018 – EG-L 2018*), the Provincial Governor or Federal Minister must react by official notice within 6 months from the date of the application. In case of an appeal to the Administrative Court, the Court must decide within another 6 months.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no provisions on injunctive relief in this regard.

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The fee for filing an appeal with the Administrative Court is EUR 30. There are no statutory provisions to ensure that costs are not prohibitive. Apart from optional fees for expert opinions or legal assistance, however, there should generally not be any relevant additional costs.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[27]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Executive regulations and/or generally applicable legally binding normative instruments may, under certain circumstances, be challenged before the Constitutional Court, if they have the legal form of an act or ordinance.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Regarding constitutional rights, Article 144 of the Federal Constitutional Law provides for individuals to make claims before the Constitutional Court (*Verfassungsgerichtshof*) if their fundamental rights are infringed. Its basic requirements are the interference with the individual's "subjective right", i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual's fundamental right on the other hand. Constitutional rights that can be linked to environmental protection are, for example, the right to justice, the right to life, the right to health, the right to respect for private and family life.

The Constitutional Court can also be addressed regarding decisions of an Administrative Court if the complainant claims to have been infringed in his/her constitutionally guaranteed rights by the decision. Furthermore, a person who claims to be infringed in his/her rights directly by an ordinance contrary to law, may address the Constitutional Court if the ordinance has become effective without a judicial decision having been rendered or without a ruling having been rendered.

The scope of review if the Constitutional Court includes the conformity of ordinances with constitutional or legal provisions as well as with provision of underlying ordinances – from a procedural as well as a substantive aspect.[28] In case of administrative decisions, the Constitutional Court has full competency of cognition (*volle Kognitionsbefugnis*) and may also collect new evidence.[29]

If the Constitutional Court pronounces an administrative decision, an act or ordinance to be unconstitutional or illegal, all courts and administrative authorities are bound by the Constitutional Court's decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

For an application to the Constitutional Court, administrative review procedures must be exhausted.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

As the procedure before the Constitutional Court is of exceptional character, there are no relevant requirements apart from the exhaustion of administrative review.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no rules on injunctive relief in this regard.

If the Constitutional Court pronounces an act or ordinance to be unconstitutional, all courts and administrative authorities are bound by the Constitutional Court's decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is excepted from this rule.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The fee for filing an appeal with the Constitutional Court is EUR 240. Legal assistance is required. Legal aid or pro bono legal assistance (*Verfahrenshilfe*) can be granted in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR. Apart from this option and from the regulated lawyer's fees according to the Attorney's Tariff Act (*Rechtsanwaltstarifgesetz*), there are no statutory guarantees that costs are not prohibitive.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[30]?

Administrative Courts must issue a preliminary request according to Article 267 TFEU if they deem it adequate. The Supreme Administrative Court and the Constitutional Court as final instance are obliged to do so if they have doubts regarding the application or interpretation of EU law. An applicant may suggest a preliminary procedure in the appeal.

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[1] This category of case reflects recent case-law of the CJEU such as *Protect C-664/15, the Slovak brown bear case C-240/09, see as described under the Commission Notice C/2017/2616 on access to justice in environmental matters*

[2] All federal and provincial acts currently granting access to justice refer to the requirements of Section 19 EIA Act.

[3] E.g. Supreme Administrative Court (VwGH) 28 March 2018, 2015/07/0555; Administrative Court of Lower Austria (NÖ LVwG) 9 April 2018, LVwG-AV-751/001-2017.

[4] Supreme Administrative Court (VwGH) 20. December 2019, Ro 2018/10/0010.

[5] Section 42 General Administrative Procedure Act (AVG).

[6] E.g. according to the Nature Protection Acts of Vorarlberg or Carinthia.

[7] Section 102(5) Water Act (WRG).

[8] Section 42(3) Waste Management Act (AWG).

[9] Section 9a(12) Air Pollution Control Act (IG-L); Section 6(9) Air Emission Act (EG-L).

[10] *Schulev-Steindl, E. (2018)*, Veraltungsverfahrensrecht6. Vienna: Verlag Österreich. (p 27)

[11] Section 34 Proceedings of Administrative Courts Act (VwGVG).

[12] Ibid., para 1.

[13] Section 74 General Administrative Procedure Act (AVG).

[14] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[15] Article 140 Federal Constitutional Law (B-VG); Sections 62-65a Constitutional Court Act (*Verfassungsgerichtshofgesetz 1953 – VfGG*).

[16] Article 139 Federal Constitutional Law (B-VG); Section 57-61a Constitutional Court Act (*Verfassungsgerichtshofgesetz 1953 – VfGG*).

[17] *Berka, W.* (2012), Verfassungsrecht4. Vienna: SpringerWienNewYork (para 1113 et seq)

[18] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[19] Article 140 Federal Constitutional Law (B-VG); Section 62-65a Constitutional Court Act (*Verfassungsgerichtshofgesetz 1953 – VfGG*).

[20] Article 139 Federal Constitutional Law (B-VG); Section 57-61a Constitutional Court Act (*Verfassungsgerichtshofgesetz 1953 – VfGG*).
[21] *Berka, W.* (2012), Verfassungsrecht4. Vienna: SpringerWienNewYork (para 1113 et seq)
[22] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.
[23] This requires them to be organised in the form of a non-profit organisation for at least three years, to have at least 100 members and to have environmental protection as their main objective. Federations must comprise at least five member associations. All organisations must prove every three years that they still meet the recognition requirements. (See above, Sec 1.4.3.)
[24] Supreme Administrative Court (VwGH) 19 February 2018, Ra 2015/07/0074 *et al*.
[25] E.g. provisions regarding the positioning of sampling points in accordance with the criteria laid down in the Ambient Air Quality Directive 2008/50/EC as dealt with in Case C-723/17 (*Craeynest*).
[26] *Schulev-Steindl, E. (2018)*, Veraltungsverfahrensrecht6. Vienna: Verlag Österreich. (p 27)
[27] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774
[28] *Berka, W.* (2012), Verfassungsrecht4. Vienna: SpringerWienNewYork (para 1113 et seq)
[29] *Frank, S. L.* (2019), Gerichtsbarkeit des öffentlichen Rechts und europäische Gerichtsbarkeit. Vienna: Verwaltungsakademie des Bundes (123)
[30] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774
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Other relevant rules on appeals, remedies and access to justice in environmental matters

If the authority violates the legally stipulated time limit to make a decision, a **default complaint (*Säumnisbeschwerde*)** can be filed by parties to the relevant procedure.[1] The expiry of the decision-making period must be certified. Premature default complaints will be rejected. The defaulting authority then has the option of presenting the matter to the Administrative Court or deciding on the matter themselves within three months. In the first case, the Administrative Court can only make a decision on relevant legal issues regarding the matter and the defaulting authority has up to eight weeks to make a decision based on the legal assessment of the Administrative Court. If the defaulting authority still does not make a decision, the Administrative Court ultimately has to decide on the matter based on the factual and legal situation at the time.

If public organs enforce the law through illegal or culpable behaviour or omission, there is the possibility of suing the Federation, the Provinces, municipalities, or other bodies of public law and the institutions of social insurance. This **official liability (*Amtshaftung*)** is the liability of the state (e.g. the federal government, the provinces and the municipalities). According to the Liability of Public Bodies Act (*Amtshaftungsgesetz – AHG*) the legal entities are liable under the provisions of civil law for any damage to any person or any property caused by unlawful acts of persons at fault when implementing the law on behalf of them. The persons implementing the law themselves are not liable vis a vis the persons injured. The state can only replace the damage in money. The legal process must be exhausted before an official liability claim can be asserted. The injured party must therefore first try to avert the damage through legal remedies/complaints/revision.

If the official authority deliberately abuses its power (***Amtsmissbrauch***), the individual may face severe **legal consequences under criminal law**.[2]

Apart from the above-mentioned constellations, there is no general rule on remedies against omissions, e.g. against lack of inspections or lack of appropriate measures to address breach of environmental laws.

If an individual does not comply with a judgement, an execution procedure will be initiated by the court. Even in cases of financial penalties, e.g. an administrative penalty, failed execution attempts can lead to imprisonment.

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[1] Article 130(1) (3) Federal Constitutional Law (B-VG).
[2] Section 302(1) and (2) of the Criminal Code (*Strafgesetzbuch – StGB*).
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