Access to justice in environmental matters

I. Constitutional Foundations

The Austrian Federal Constitution does not enshrine a subjective right to (clean, healthy, favorable, etc.) environment.

Austria fully embraces the overall goal of environmental protection. This confession is since 1984 enshrined within the Federal Constitutional Law (Bundes-Verfassungsgesetz - B-VG) for the Comprehensive Protection of the Environment (B-VG über den umfassenden Umweltschutz) but does not provide for a fundamental right to the protection of the environment. The Federal Constitutional Act for a Nonnuclear Austria (B-VG über ein atomfreies Österreich) refers to the prohibition of nuclear energy production in Austria. The Federal Constitutional Law provides for the distribution of competences between the federal state, the regions and district authorities in the field of environmental protection.

According to the Austrian Federal Constitutional Law (B-VG) environmental protection is a cross-sectoral issue which is distributed between the federal government and the federal provinces. Thus, federal legislation (e.g. Waste Management Act, Industry Code 1994, Environmental Impact Assessment Act 2000, Water Act, Forestry Act) exists next to provincial legislation (e.g. acts concerning nature protection or construction law) to regulate environmental protection.

The European Convention on Human Rights (ECHR) having constitutional status in Austria states the right to a fair trial for everyone regarding their civil rights and obligations as well as penal procedures (Art. 6 ECHR). Everyone is entitled to have access to justice – embodied by an independent and impartial tribunal established by law. Procedures have to be conducted in public and orally. The provision furthermore incorporates the right to reasonable duration of procedures. Art. 13 ECHR guarantees the right to an effective remedy.

For Austrian citizens it is not possible to directly invoke a right to environment in an administrative or judicial procedure. Neither the Austrian Constitution nor the European Convention on Human Rights or the Charta of Fundamental Rights of the European Union enshrine such a fundamental right.

Parties can rely directly on International agreements if they have constitutional or law status and if their content is sufficiently determined (Art. 18 Federal Constitutional Law). If the competent bodies (Parliament, Federal Government, Federal President) decide to adopt an international agreement by separate acts, regulations etc. no direct invocation is possible (Art. 50 para. 2 item 4 Federal Constitutional Law).

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) was ratified without stating to adopt the agreement by separate acts, regulations etc. into the Austrian legal framework. If the content of its provisions was sufficiently determined direct invocation would be possible.

II. Judiciary

Austria applies the principle of separation of executive and judicial powers – That is why there has to be distinguished

a.) The civil and criminal judicial branch, and

b.) The administrative judicial branch

In **civil and criminal matters** four different types of courts exist (listed from the lowest to the highest judicial level):

District Courts

Regional Courts

Serve as courts of first instance in more important cases

Also act as appeal courts in relation to the district courts

Four Courts of Appeal

Function as appellate courts solemnly vis-à-vis the district courts

Supreme Court for Civil and Criminal Affairs

Civil and criminal courts have no competence to review decisions or rulings issued by administrative authorities.

Basically in **administrative matters** no such judicial system exists. Only some decisions made by administrative bodies can be subject to review by Independent Administrative Tribunals in the Laender (Unabhängige Verwaltungssenate UVS). If all administrative remedies have been exhausted an extraordinary complaint to a court of last instance (Administrative Court – Verwaltungsgerichtshof) is the only possibility to access a court in administrative matters. The Constitutional Court (Verfassungsgerichtshof) is competent for judicial review of the legality of administrative decisions or rulings, administrative regulations and the constitutionality of laws. E.g. in the case of violation of fundamental rights by public authorities the Constitutional Court is competent.

General administrative bodies decide environmental matters (e.g. Federal Ministers, Regional Governors ec.) and special administrative authorities are established to decide these issues. The above mentioned Independent Administrative Tribunals function as review bodies in certain federal or regional

environmental cases and act as appellate bodies in environmental penalty proceedings. A separate environmental authority can be invoked exclusively in Environmental Impact Assessments – The Independent Environmental Senate (unabhängiger Umweltsenat - US) functions here as appellate authority.
Generally 'forum shopping' (choosing the competent court by a party to the proceedings) is not possible in Austria - one has to file the case with the competent (e.g. administrative or general) court, of the right level and in the right place (town). Anyway, in some civil procedures a possibility exists that the parties may mutually decide which court has jurisdiction in case legal action is taken.
An appeal is described as a formal challenge of governmental – most often juridical decisions (e.g. judgments). You use an ordinary appeal to challenge judgments which are not yet legally binding (i.e. the appeal period did not expire). Different types of ordinary appeals do exist within the Austrian legal framework, as there are
Berufung
Rekurs and
Revision.
Extraordinary legal remedies are meant to challenge legally binding decisions. The law determines under what special conditions such an extraordinary remedy can be applied.
The Administrative Court. can dismiss the appeal as unfounded, remand the decision or carry out a content review (Sec. 42 para. 1 Administrative Court Act – Verwaltungsgerichtshofgesetz – VwGG). This can be done if the case is ready for a decision and if it is better considering the factors simplicity, fitness for purpose and saving of expenses (Art. 42 para. 3a Administrative Court Act) that the decision is taken by the Administrative Court. In case of a remand the administrative authority is then bound by the Administrative Court's opinion.
Principally most environmental matters are subjected to administrative procedures – Nevertheless some environmental issues are to be decided under criminal and civil jurisdiction.
In criminal procedures, everyone is entitled to report criminal acts (e.g. misuse of power by certain authorities) to the prosecutor. They can participate and witness at the proceedings but have no authority to decide if the case is taken to court. Remedies against court decisions are restricted to the prosecutor and the accused.
Austrian civil law provides just for a few provisions in environmental matters. Immission control is granted by Sec. 364 and 364a of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch – ABGB). Legal standing is conceded to 'Neighbours' – neighbour is defined as all persons living within an area affected by an immission or facility. They are entitled to permanent injunctive relief and compensation – If the operation of the facility is covered by an administrative permit, the neighbour has to tolerate the immissions which are produced by the facility (though he is entitled to compensation). Only in the case that the immissions produced by the authorized facility endanger life or health of the neighbours further restrictions can be set.
Principally, **access to justice** is to be guaranteed to every person whose **subjective rights** have been violated by state action. A subjective right is guaranteed by those norms, which are designed to serve and protect amongst others as well individual interests. In this context a special role is dedicated to fundamental rights the sole purpose of which is to protect individuals' interests against state's action.
According to the above mentioned rules, a person has legal standing in administrative procedures regarding environmental issues just if he/she is directly concerned – so a "subjective right" has to be affected and the law has to grant specific party right's so someone can start an or participate within administrative procedures.
Principally, courts are bound by the content of the motions submitted by the parties to the proceedings – meaning they do not act on their own motion.

III. Access to Information Cases

Environmental information has to be provided by administrative bodies and further institutions bearing environmental responsibilities. If these bodies refuse to provide environmental information or provide it wrongfully or inadequately the information seeker or the person directly affected by the refusal or wrongful information can **demand the enactment of a formal negative decision** (Sec. 8 Environmental Information Act/Umweltinformationsgesetz – UIG). Subsequently the applicant is entitled to appeal against the formally issued negative decisions with the Independent Administrative Tribunal. After this the applicant can complain (Bescheidbeschwerde) with the Constitutional or Administrative Court.
The refusal or inadequate fulfillment of the request for information **has to be justified** (Sec. 5 UIG) and the information seeker has to be **informed on the available remedies** provided for by Sec. 8 Environmental Information Act (UIG).
The procedural rules applicable for environmental information requests are basically set by the Environmental Information Act (UIG) itself. For all questions not addressed by this Act, the procedural provisions of the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz - AVG) have to be applied.
For the enactment of the formal decision the General Administrative Procedure Act has to be applied subsidiary if sectoral provisions for the matter in question do not provide special procedural rules (Sec. 8/2 UIG).
According to the General Administrative Procedure Act the **formal requirements** for an appeal are:
written form
basically written in German language
deadline of two weeks after the delivery of the formal negative decision
The appeal has to be filed with the administrative body that issued the negative decision
In administrative procedures mandatory counsels are not to be involved. But appeals to the Administrative Court or Constitutional Court, have to be filed by an authorised attorney (meaning a mandatory counsel) (Sec. 24 para. 2 Administrative Court Act and Sec. 17 para. 2 Constitutional Court Act – Verfassungsgerichtshofgesetz –VfGG).
Courts do have access to information the accessibility of which is disputed. The court builds its decision on the basis of the information which is disputed – thereby balancing the reasons in favor and in contra given by the claimant and the authority.
If the Independent Administrative Tribunal finds the appeal justified, the decision refusing the information is nullified. The authority is bound by the court's decision and interpretations, and obliged to disclose the information.
The environmental information scheme regulated under public law (öffentliches Recht) consists of one Federal Environmental Information Act (Bundes-Umweltinformationsgesetz - UIG) and nine regional Environmental Information Acts (Landes-Umweltinformationsgesetze - L-UIGs), covering requests for Environmental information within the legislative competences of the nine Austrian provinces (i.e. nature protection).

IV. Access to Justice in Public Participation

It has to be noted that Austria has not one single legislative act on environmental law nor a separate individual competent authority being responsible for proceedings concerning environmental law. Austrian provisions concerning environmental protection can rather be found in several legal acts concerning the area of civil law (especially the so called environmental private law), criminal law and – in most cases - administrative law (e.g. the Water Management Act – Wasserrechtsgesetz - WRG, the Waste Management Act – Abfallwirtschaftsgesetz _AWG, the Trade and Industry Act – Gewerbeordnung – GewO etc.). The most significant share of Austrian provisions on the protection of the environment exists in the area of administrative law. Austrian administrative law is part

of public law (Öffentliches Recht) which governs the relationship between individuals (citizens, companies) and the state. It has to be stressed that the Republic of Austria is a federal state. This means that the legislation and the execution of laws are distributed between the federal government and the nine federal provinces ("*Länder*") according to their respective assigned competences. The Austrian Federal Constitutional Law (B-VG) regulates the legislative and executive competences assigned to the federal government on the one hand and to the federal provinces on the other hand. Unless the sectoral laws contain special provisions on the administrative procedure, the General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz – AVG) applies to the implementation of these laws.

The procedures concerning civil law and administrative law are separate. Both systems function independently. However, their legal remedies supplement and support one another. With regard to environmental private law, the Austrian Civil Code (ABGB) provides for a set of general and specific rules. In general, anybody who is or fears to be endangered by pollution is entitled to file a lawsuit against the polluter and to seek an injunction. In particular, Art 364 et seq. of the Austrian Civil Code (ABGB) provide the possibility for neighbours to file a claim concerning the defence against inadmissible immissions coming from adjacent properties. Furthermore neighbours are entitled to prohibit immissions exceeding a certain level. In this context direct or indirect immissions having an impact from one property to another (e.g. waste water, smell, noise, light and radiation) are deemed as impairments.

Next to the general concept of neigbours' rights in the Civil Code and the possibility to file a claim on this basis, neighbours and their given rights as parties in the procedure are often explicitly included in the separate administrative environment laws (e.g.. EIA Act, Waste Management Act, Industrial Code).

First instance administrative decisions cannot be taken to court directly. Nevertheless for some cases an appeal to Independent Administrative Tribunals (Unabhängige Verwaltungssenate) installed as second instance, is legally provided for.

Administrative remedies must be exhausted before parties can challenge decisions with the Administrative Court or the Constitutional Court by filing a complaint (extraordinary remedies).

The Administrative Court is not only a cassational court – it is entitled to review the substantive and procedural legality of administrative decisions and remand the respective cases and the authority which took the decision may carry out a new procedure and take an adapted decision – but he Administrative Court is also competent to decide on the merits of those cases (Sec. 42 para. 1 and 3a Administrative Court Act).

An important legal instrument covering a broad range of environmentally relevant activities is the Environmental Impact Assessment Act – EIA Act (Umweltverträglichkeitsprüfungsgesetz – UVP-G 2000). It provides for its own procedural rules concerning the environmental effects of both private and public projects which have to undergo a special Environmental Impact Assessment (EIA).

All parties of the EIA proceedings are entitled to appeal against the final EIA decision. In addition to the project applicant the following people can be parties to EIA procedures (Sec.19 EIA Act):

Neighbours
The Ombudsman for the Environment
Co-operating authorities
Citizen's groups
Environmental Organizations
The water management planning body
Parties stipulated by the relevant administrative provisions

Final EIA authorizations can be reviewed by the Independent Environmental Senate (Unabhängiger Umweltsenat) in the second instance (Sec. 40 EIA Act), which is competent for reviewing the first instance decision in every direction, and at last by the Constitutional or Administrative Court. Only the Constitutional Court or Administrative Court may review the EIA authorizations granted by the Federal Minister for Transport, Innovation and Technology. Appeals against EIA decisions have to be submitted within four weeks. The decision of the Independent Environmental Senate can be both reformatory or cassatory. The appeal has suspensive effect (Sec. 64 General Administrative Procedure Act). Evidence shall be taken by the tribunal itself (immediacy of taking evidence) – therefore an oral hearing can be conducted if the Independent Environmental Senate deems it necessary or a party to the proceedings so requires. Basically the oral hearings have to take place under inclusion of the public.

With the most recent amendment to the EIA Act in 2012, a additional legal remedy has been established for environmental organizations which are now entitled to file an application for reviewing the screening decision on whether an EIA has to be carried out on a certain project or not.

Regarding screening decisions on federal roads and high-speed railway lines issued by the Federal Minister for Transport, Innovation and Technology, the Independent Environmental Senate does not act as appellate body. A complaint against these decisions may be filed with the Administrative Court by the project applicant, the co-operating authority, the ombudsman for the environment and the host municipality.

The complaint to the **Administrative Court** must be submitted in writing **by an attorney within six weeks** of the final decision. It does not have suspensive effect, but the Court can grant it as long as there are no opposing public interests and if it is necessary to prevent a disproportional disadvantage for the claimant. The decision of the Administrative Court can be cassatory or a decision based on the merits of the case (Sec. 42 para. 1 and 3a Administrative Court Act).

As general rule, injunctive relief is granted in Austrian environmental proceedings – so as well in EIA procedures. The ongoing permission or appellate procedure inhibit the initiation of the project.

Exceptions are EIA proceedings regarding national roads and railway high-speed lines – as the Federal Minister for Transport, Innovation and Technology is competent in the first instance, the appellate body is the Administrative Court, and before the Administrative Court, no suspensive effect is granted. The project can be initiated due to a procedure before the Administrative Court. This is not applicable if the Administrative Court explicitly grants the suspensive effect within the appeal procedure.

As regards industrial activities in the context of Integrated Pollution Prevention and Control, two different appeal stages are possible in IPPC procedures:

If the IPPC facility fulfills the conditions for the performance of an EIA an appeal can be filed with the Independent Environmental Senate in the second instance.

Final IPPC authorizations – not subject to EIA authorizations - can be reviewed by the respective Independent Administrative Tribunal – which is to be classified similar to the organizational quality of the Independent Environmental Senate.

Furthermore the Administrative or Constitutional Court can be addressed by extraordinary remedies.

In principle, IPPC permits must be made available to the public, which has to have the possibility to give its opinion before the administrative authority concedes the industrial license.

Certain credited national or international environmental organizations do have standing in the course of IPPC licensing procedures (Sec. 356b Trade and Industrial Code – Gewerbeordnung)

The **Independent Administrative Tribunal** and the **Independent Environmental Senate** are entitled to review the procedural and substantive legality of IPPC decisions and verify material and technical findings and calculations as well as the IPPC Documentation.

Standing in IPPC Decisions:

To preserve party rights in IPPC procedures and in further appellate proceedings neighbours to the planned facilities basically need to raise their objections against the project as the latest by the oral hearing – otherwise their rights preclude. Subject of their objections need to be an infringement of their subjective right.
The party rights of the above mentioned environmental organizations preclude if they do not raise their written objections within six weeks from the publication of the IPPC application.
Basically the initiation of an appeal procedure inhibits the beginning of the in the first instance authorized project (suspensive effect of an appeal).
However in the course of IPPC authorization procedures the administrative body is under certain circumstances (if the preliminary proceedings will have a long duration and an authorization is predictable) entitled to enact an operating license before the final authorization enters into force (Sec. 354 Trade and Industrial Code). Within appeal proceedings this pre-authorization ends by the enactment of the appeal decision.
When the Administrative Court annuls an IPPC authorization, the IPPC facility can be still operated up to one year after the Administrative Court's decision (Sec. 359c Trade and Industrial Code). This is not applicable if the Administrative Court grants the suspensive effect within the appeal procedure.

V. Access to Justice against Acts or Omissions

In Austria a general civil environmental liability scheme does not exist so far. Apart from the already above mentioned

a) neighbourly immission control and liability (Sec. 364 and 364a Civil Code) claimed at the civil courts, also
b) the civil fault-based liability (Sections 1293 ff Civil Code) claimed at civil courts,
c) specific environmental laws (e.g. Water Management Act, Forestry Act) claimed at civil courts are to be mentioned here.

Ad a)

In accordance to the civil liability rules – the liability to pay damages calls culpability on part of the polluter. The act or omission needs to be illegal and has to be causal with regard to the damage produced. The claim in such procedures ranges over the natural restitution or if not possible the compensation of the damages produced.

Ad b)

For the immission control liability no culpable act is demanded - The neighbour is entitled to permanent injunctive relief and compensation – An exception states Sec. 364a of the Austrian Civil Code, as no injunctive relief is provided if the disturbance is the result of a facility approved by the administrative authority. In that case the neighbour has to tolerate the impact (though he is entitled to compensation)

Ad c)

The liability provisions within environmental laws are specific and therefore applied preferably in relation to the civil liability regime. This provides for an absolute liability irrespective of culpability and shifts the burden of proof to favor the claimant within the procedure.
In accordance with the Austrian liability of public bodies, claims against state bodies for the unlawful and culpable actions of their organs within their duties may be filed with the competent regional court (Liability of Public Bodies' Act). Regarding environmental matters, for instance, the culpable provision of wrongful environmental information could be enumerated here.
The aggrieved party can claim the financial reimbursement of the damage caused (Sec. 1 AHG).
Furthermore if the state does not implement EU-law adequately it is possible to claim state liability at the competent regional court. If the Austrian legislator liable for the 'damage' caused (e.g. by late implementation of EU-law), the complaint has to be submitted to the Constitutional Court.
The environmental liability scheme regulated under public law consists of one Federal Environmental Liability Act (B-UHG) and nine regional Environmental Liability Acts (L-UHG).
In accordance with the Austrian Environmental Liability Acts the locally responsible administrative district authority (Bezirksverwaltungsbehörde) is competent to decide in environmental liability matters.
The environmental complaint (Sec. 11 Environmental Liability Act - - Bundes-Umwelthaftungsgesetz - B-UHG) can be filed by natural or legal persons whose rights might have been violated by the occurred environmental damage or by environmental organizations and the ombudsman for the environment. Those persons can direct a written request on redevelopment measures to the competent district authority. The complainant might prove his/her allegations by providing respective information or evidence (Sec.11/3 Environmental Liability Act).
By placing the environmental complaint or submitting a statement within two weeks after the announcement of the environmental damage by the authority the persons referred to in Sec. 11 (1) Federal Environmental Liability Act have – in addition to the operator – legal standing in the administrative remediation procedure.
Decisions made by the administrative district authority in application of the Environmental Liability Act can be challenged at the respective local Independent Administrative Tribunal by the parties – e.g. decisions with which the administrative district authority denied the right to file an environmental complaint.
The Independent Administrative Tribunal is entitled to review the procedural and substantive legality of environmental liability decisions. If this body renders reformatory decisions it can conduct a procedure of taking-evidence and is authorized to verify material, technical findings etc.
The Administrative and Constitutional Court can be accessed if the appellant's subjective rights have been violated by the Independent Administrative Tribunal's decision. The Federal Minister of Agriculture, Forestry, Environment and Water Management has the right to file an official complaint with the Administrative Court as far as cost recovery proceedings are concerned.
The Ombudsman for the environment and environmental organizations do not have access to the Administrative Court in environmental liability matters.

Process to go to Court to Enforce Environmental Liability:

The person must have been a party (his subjective rights have been affected) at the foregoing procedure with the administrative district authority.
The written appeal for the Administrative Review Panel has to be filed with the first instance authority.
The appeal needs to be filed within two weeks after the first instance decision has been enacted.
The reasons for the appeal need to be explained and the actions required made clear. Furthermore the decision against which the appeal is filed needs to be named.
The Administrative Court can be accessed by extraordinary remedy.
The complaint needs to be filed with
The complaint has to be filed within six weeks from the enacting of the last instance decision
The complaint needs to be filed by an authorised attorney

VI. Other Means of Access to Justice

Other Means:
The task of **general ombudspersons** is to control the actions of administrative organs.
The ombudsperson can act on his/her own motion or due to a complaint by someone subjectively affected of maladministration:
The general ombudsperson may provide a recommendation to the administrative organ.
The general ombudsperson provides an annual report to the parliament on his/her activities.

The general ombudsperson is entitled to challenge administrative regulations filing a complaint with the Constitutional Court (Art. 139 and Art 148e Constitutional Law).
The **ombudsman for the environment** does have standing rights in environmentally relevant administrative procedures – they especially act within environmental conservation procedures. Furthermore they have party rights in EIA or Waste Management procedures.
Their task is to claim the 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 competent to challenge these administrative decisions.
Basically they are not entitled to file complaints with the Administrative Courts as they do not base their status on a subjective right. In some cases they have been legally given a right to complain (e.g. in EIA procedures, Waste Management procedures)
They are not entitled to have access to the Administrative Court in Environmental Liability procedures.
As they have the status of a formal party they do not have the competence to file complaints with the Constitutional Court.
The **public prosecutor** is responsible for the public prosecution in criminal proceedings. He/she leads the investigation in those proceedings. He is bound to the instructions of his supervising administrative body. These powers do not vary within criminal proceedings in environmental matters.
Neither the Austrian Criminal Code nor the Administrative Penalty Code (Verwaltungsstrafgesetz) 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.
Administrative bodies are under the direction and supervision of the supreme administrative organs and bound to their instructions. The Administrative Court executes superior judicial control. In certain cases the competent Federal Minister is entitled to file a complaint (Amtsbeschwerde) with the Administrative Court against a supposedly unlawful administrative decision. The ombudsperson may be contact and is competent to act on inappropriate administrative actions or omissions.
Furthermore there is the official and state liability scheme (s.o. V/2) regarding claims against state bodies for the unlawful and culpable actions of their organs.
The prosecutor on corruption issues is competent in the field of official corruption.

VII. Legal Standing

Legal Standing	Administrative Procedure	Judicial Procedure
Individuals	Need to show a legitimate interest provided by law Party rights preclude if the do not act in time	Need to show a legitimate interest provided by law. No rights if their party rights precluded within the administrative procedure (first instance) Complaint to the Administrative and Constitutional Court
NGOs	NGOs have legal standing if the fulfill certain conditions provided by law - Accreditation (e.g. in EIA proceedings) Need to show a public interest Party rights preclude if the do not act in time	Legal standing through representation of public interests. No standing if their party rights precluded in the course of administrative procedure (first instance) Are not entitled to file a complaint to the Administrative or Constitutional Court (except in certain EIA cases)
Other legal entities	Host municipality and other affected municipalities Claim the observance of legal provisions and of public interests (as subjective right)	The host municipalities or other affected municipalities are entitled to file a complaint to the Administrative Court
Ad hoc groups	Citizen's groups need to fulfill certain standards – (amount of people, residence etc.) Need to show a legitimate interest provided by law Party rights preclude if the do not act in time	Legal standing in procedures before the Administrative and Constitutional Court guaranteed as these groups can demonstrate a subjective right.
foreign NGOs	Projects with international reference State were foreign NGO has its registered office must have been notified by Austria on the project. The project and its potential effects need to be covered by the NGO's scope of activity. (cp. Standing of Austrian NGOs) Potential party rights within their home country	Cp. Above: Standing of Austrian NGOs
Any other #_ftn1[1]		
	Ombudsperson for the Environment Acts in the interest of compliance with environmental laws (Formal Party) No preclusion of Party rights	Is entitled to file a complaint to the Administrative Court

(1) Environmental NGOs have legal standing solely within EIA proceedings, IPPC authorization proceedings and environmental rehabilitation proceedings (Umweltsanierungsverfahren). In EIA proceedings they are entitled to access the Administrative Court. In EIA screening procedures and in the case that the authority has decided that a project shall not be subject to an environmental impact assessment, a legally recognized environmental organization has the right to file an application for reviewing compliance with EIA obligations with the Environmental Senate.
(2) Citizen's groups do have legal standing solely in EIA proceedings – further sectoral legislation does not foresee any party rights of citizen's groups.
(3) Austria's legal framework does not provide for the possibility of an actio popularis.
(4) The **general ombudsperson** has legal standing in the procedure challenging administrative regulations with the Constitutional Court (Art. 139 and Art 148e Constitutional Law).
(5) Legal standing is conceded to the **ombudsman for the environment** in
Nature conservation proceedings regulated by regional laws (Landesgesetze) and
in certain proceedings regulated by federal law (Bundesgesetz) – EIA proceedings, proceedings according to the Waste Management Act or environmental rehabilitation proceedings
They have legal standing in proceedings at the Administrative Court in EIA and Waste Management issues.

(6) Private prosecutors have legal standing within criminal or administrative penalty proceedings if this is provided by substantive laws.
(7) The water management planning body has standing within EIA procedures. It protects the interests of water management (formal Party). Its party rights cannot preclude and it is entitled to file a complaint with the Administrative Court.
Basically, EIA and IPPC rules are exceptional at least regarding legal standing of NGOs. The General Administrative Procedure Act provides the general rule concerning the legal standing. The party rights are bound on legitimate interests regarding the case in question. The mentioned legitimate interests or subjective rights are stated within the sectoral laws. In environmental matters basically the "neighbours" do have legal standing – but the concept of the 'neighbour' is interpreted differently within the respective laws.

VIII. Legal Representation

The lawyer is acting as legal counsel in juridical matters. For this purpose they give legal advice and represent their clients in judicial or administrative proceedings. Representation by a lawyer is possible in any proceedings before courts or administrative authorities. In the course of a criminal trial, the lawyer is acting as defender. In civil proceedings before the Regional Courts and the Supreme Court representation by a lawyer is obligatory.
Legal counsel is not compulsory in administrative environmental procedures – the General Administrative Procedure Act states only the opportunity for legal representation (freely determined representation).
In proceedings before the Administrative and Constitutional Court legal counsel is compulsory in all matters.
The Austrian bar association provides information on registered lawyers by region and field of activity.#_ftn2[2]
In Austria lawyers generally do specialize on certain legal areas – as well environmental law offices and lawyers do exist all over the country.

IX. Evidence

Parties to administrative procedures can initiate a site visit by the judge, can submit expert opinions or require the appointment of an in-house expert. They can also provide private or public records or testimonies.
Free consideration of evidence (freie Beweiswürdigung) is the basic principle in evidence procedures. The authority or court has to consider on its own persuasion whether a fact has to be regarded as given or not. Thereby the authority or court has to apply the overall considered empirical laws (as provided by natural science or psychology etc). Principally each kind of the above-mentioned evidences has to be treated equally – it all depends on its persuasive content.
The only exception is the evidence of public records – they build full evidence on the accuracy of their content.
Parties can introduce new evidence in first instance administrative procedures as well as second instance procedures. They have a right to provide information on all relevant aspects of the case and are entitled to request the presentation of evidence (Sec. 43/4 General Administrative Procedure Act). The authority is entitled to reject the request if it evaluates it as irrelevant for the case.
The basic rule in evidence proceedings (within environmental and general in administrative proceedings) is manifested by the states duty to find all relevant facts on a certain case (Offizialmaxime). So the authority is obliged to conduct evidence procedures on its own motion. This rule is to be followed also by the independent tribunals acting as 'court-like' organs in administrative procedures.
Evidence procedures before ordinary civil courts are governed by the principle of disposition (Dispositionsgrundsatz). This means, that it basically is for the parties to begin a process to stop it or change the subject of proceedings they initiated.
The utilization of expert opinions is admitted if this is absolutely necessary within the procedure:
This is the case if the law provides for an expert opinion, or
If the resolution of decision-relevant questions is dependent on specialized knowledge the authority does not have
If an expert opinion is necessary for deciding the case, then the authority primarily has to access official experts (which in contrary to private experts are appointed permanently by the administrative authorities).
The expert opinion is not binding for the authorities due to the principle of free consideration of evidence. The authority might check the opinion on accuracy, conclusiveness and completeness. If the authority is not convinced of the quality of the opinion, a second expert opinion has to be solicited.

X. Injunctive Relief

The appeal with the Independent Administrative Tribunal does have suspensive effect, whereas the complaint with the Administrative Court basically does not have suspensive effect, unless a suspensive effect is explicitly conceded.
The suspensive effect of the appeal is excluded, if the immediate execution of the administrative decision
satisfies the interest of a party to the proceedings, or
satisfies public interests because of imminent dangers (Sec. 64 para. 2 General Administrative Procedure Act). However, the presence of public interest is not the only case when the existence of imminent danger is taken into consideration.
The authority needs to conduct a balancing of interests (the interest of the appellant on legal protection versus other public or private interests) in order to take a decision on the exclusion of the suspensive effect.
Basically within first instance procedures the planned project is not to be realized until the binding authorization is given.
Through the guarantee of suspensive effect for appeals within administrative procedures (Sec. 64 General Administrative Procedure Act) temporal legal protection is provided. Furthermore, if within court proceedings (here as well proceedings at the Independent Administrative Tribunals) community law might be applied wrongfully, the exclusion of suspensive effect of an appeal is not allowed. The tribunal has to take interim measures if necessary – even if national law does not provide for injunctive relief/interim measures.
Austrian civil law provides just for a few provisions in environmental matters. Immission control is granted by Sec. 364 and 364a of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch – ABGB). Legal standing is conceded to 'Neighbours' – neighbour is defined as all persons living within an area affected by an immission or facility. They are entitled to permanent injunctive relief and compensation – If the operation of the facility is covered by an administrative permit, the neighbour has to tolerate the immissions which are produced by the facility (though he is entitled to compensation). Only in the case that the immissions produced by the authorized facility endanger life or health of the neighbours further restrictions can be set.
Furthermore **preliminary injunction** is guaranteed against acts or omissions within civil immission control, namely when a claim on omission is filed and the claim needs to be indemnified. Apart from this the claimant is entitled to file an **action of trespass** – in the course of immission control proceedings – which is characterized by its very short duration of proceedings.

Action of trespass:

The complaint must be filed within 30 days after emergence of the trespass.
In the course of the hearing, only the fact of possession and the interference (e.g. unauthorized access) will be discussed.
The final decision contains a command or prohibition and possibly safeguarding measures are ordered.
The decision may be executed before it becomes valid.
In immission control proceedings the neighbour is entitled to permanent injunctive relief and compensation. Condition for demanding injunctive relief is that immissions exceed the usual local level and impair the use of the neighbour's property substantially.

An exception states Sec. 364a of the Austrian Civil Code, as no injunctive relief is provided if the disturbance is the result of a facility approved by the administrative authority. In that case the neighbour has to tolerate the impact (though he is entitled to compensation). Precondition for someone who wants to rely on Sec. 364a Civil Code is that the neighbour was party to the preceding administrative procedure on the operating license for the plant or facility.
Preliminary injunction is issued on request only. Responsible for issuing a preliminary injunction is the court where the main proceedings are held. Condition for preliminary injunction is, that the substance or condition of the object which the procedure is about is endangered and cross-undertaking in damages is rendered. The claim of a preliminary injunction is directed on measure preserving the actual status so no impairment will take place.
In procedures on an injunctive relief which end by a judgment (permanent injunction – Unterlassungsurteil) the appeal has to be filed with the regional court.
In preliminary injunction proceedings two remedies – without suspensive effect – do exist:
The antinomy (Widerspruch)
The recourse (Rekurs)
In trespass proceedings Civil Procedural Law is to be applied. The appeal might be filed within four weeks with the regional court. Any further appeal is not possible (third instance).
The permanent injunction itself might be challenged (appeal) at the competent regional court.

XI. Costs

For administrative procedures there is a cost category for every motion. The catalogue is quite comprehensive. The cost categories are stated in the Austrian Official Tax Regulation (Bundesverwaltungsabgabenverordnung). This regulation provides environmental relevant cost categories e.g.:
Water Authorizations
Industrial and commercial matters
Electricity
Matters regarding steam boilers
Railway issues
Furthermore the provisions of the Public Charges Act (Gebührengesetz) apply on writings and official acts undertaken by administrative bodies and the Regulation on Commission Charges (Kommissionsgebührenverordnung 2007) 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) provides for the fees – here some examples:

Value in litigation	Court fee	Court fee in Appeal procedures
€ 700,--	€ 58,--	€ 37,--
€ 7.000,--	€ 285,--	€ 518,--
€ 70.000,--	€ 1.322	€ 1.945,--

Sec. 32 Austrian Judicial Charges Act (GGG)
The fee for filing an appeal with the Independent Environmental Senate is € 14,30.
The fee for filing an appeal with the Independent Administrative Tribunal is
a) € 14,30 regarding administrative environmental matters, and
b) 20% of the penalty imposed in administrative penalty proceedings.
The fee for filing an appeal with the Administrative Court is € 240,00.
The fee for filing an appeal with the Constitutional Court is € 240,00
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 be estimated as following:

Air Pollution:

15.000 - 40.000, - €

Noise:

20.000 - 50.000, - € (for transport projects)
10.000 – 40.000 (for other major projects)

Plants, animals, habitats:

25.000 - 50.000, - € (for transport projects)
10.000 - 30.000, - (for other major projects)
Basically lawyer fees always depend on the duration and complexity of the relevant proceedings. So the following estimations refer to individual cases and therefore are not to be generalized:

a) First instance EIA procedure:

The lawyers fee for composing a statement and participating in the oral hearing have been € 2.500,--

Second instance before the Independent Environmental Senate:

For filing the appeal, a further written submission and two written statements - € 4.130,--

b) EIA first instance procedure on a national highway:

For challenging a regulation - € 5.400,--

Procedure with the Administrative Court:

For filing a complaint against the second instance decision - € 5.000,--
The costs for interim measures in civil proceedings are calculated according to civil fee provisions – the Austrian Fees Act. The fees depend on the value in litigation:

Value in litigation	Court fee
€ 700,--	€ 28,--
€ 7.000,--	€ 142,50
€ 70.000,--	€ 661,--

Sec. 32 Austrian Judicial Charges Act (GGG)
The Austrian Enforcement Act requires cross-undertaking in damages in interim measure proceedings (Sec. 390 Exekutionsordnung – EO)
Cross-undertaking in damages is required under certain circumstances within administrative penalty proceedings on the suspect.

For administrative procedures (including EIA procedures and the appellate proceedings before the Independent Environmental Senate) the General Administrative Procedure Act contains provisions on which costs shall be borne by whom. Basically each party has to bear its own costs (e.g. for expert opinions). Cash expenditures of the authority (which are expenses incurred in a specific procedure which reach beyond the usual administrative expenses of the authority – e.g. fees for non-official expert opinions) have to be borne by the project applicant.
The rule for bearing the costs prevailing in procedures before the Administrative or Constitutional Court, the so-called "loser pays" principle: The losing party bears the costs of the winning party.
Requests for Environmental Information are exempt from stamp duty and fees and therefore exempt from charges (Sec. 16 Environmental Information Act/ Umweltinformationsgesetz – UIG and Sec. 14 Tarifpost 6 Eingaben para. 5 (23) Public Charges Act (Gebührengesetz)).

XII. Financial Assistance Mechanisms

Legal aid is provided for by civil procedural law.

Proceedings before the Administrative and Constitutional Court:

If someone has low income and is in a precarious financial situation, it is possible to apply for legal aid. Part of the legal aid might be as well the temporary exemption of the procedural costs. Legal aid must be applied by filing the complaint at the latest.
Basically an application for legal aid within **administrative procedures** is not possible:

EIA Proceedings:

To prevent that the ombudsman for the environment is not able to participate in or initiate EIA proceedings due to high costs (e.g. high cash expenditures – Sec. 76 General Administrative Procedure Act) they are expressly exempted from the obligation to replace cash expenditures (Sec. 3 EIA Act).
In Austria the "BIV - Grün-Alternativer Verein zur Unterstützung von BürgerInnen-Initiativen" (Green Alternative Association for the support of citizen's groups) supports citizens' initiatives financially in environmental procedures.
The ÖKOBÜRO is the only Austrian environmental NGO and public interest environmental law firm organization that provides legal counseling on environmental matters:
Environmental lawyers can legally advise individuals, but they do not provide legal
representation within environmental procedures.
There are no conditions for accessing the legal counseling – every individual person can have access as well NGOs and the ombudsman for the environment.
The ombudsman for the environment gives free advice on environmental question – but is principally acting as institution observing the compliance with objective environmental law within environmental procedures.
Pro bono legal assistance is solely guaranteed within civil and criminal procedures (Verfahrenshilfe), as well as in proceedings before the Administrative and Constitutional Court. Apart from this, in environmental matters, no legal aid can be requested.
The Ombudsman for the environment deals with environmental cases observing the compliance with objective environmental law within environmental procedures.

XIII. Timeliness

Administrative organs are obliged to decide on applications and appeals without unnecessary delay and have to render a decision at the latest within six months after the filing of an application or appeal (cp. Sec. 73 General Administrative Procedure Act and Sec.. 27 para. 1 Administrative Court Act; the violation of the obligation to decide can trigger claims according to the Liability of Public Bodies' Act (Amtshaftungsgesetz - AHG). But time limits can be regulated differently within the respective sectoral laws.
If the administrative organ has not yet decided, after six months, the party to the proceedings can file a devolution request (Devolutionsantrag) with the next instance authority. Then this authority has to render a decision without unnecessary delay and at the latest at the end of the six-month decision period.
If a party called the highest administrative authority in administrative proceedings (on appeal or within devolution procedures) and this authority does not render decision in time the party has the right to file a default complaint (Säumnisbeschwerde) with the Administrative Court. The Administrative Court then sets a deadline of 3 months for the delaying authority to render a decision. After this period decision making competence goes over to the Administrative Court.
Basically the above mentioned time limits have their validity for general administrative proceedings and subsidiary (if the substantive laws do not differ from the General Administrative Procedure Act) for environmental matters:
In certain EIA procedures the general principal is altered and the authority has to render a decision within nine months (Sec. 7/2 EIA Act).
The time limit for the performance of EIA procedures regarding national highways and high-speed railway lines is twelve months (Sec. 24b/2 EIA Act).
EIA screening procedures need to be accomplished within six weeks (Sec. 3/7 EIA Act) – regarding national highway or high-speed railway line projects eight weeks (Sec. 24/5 EIA Act).
In EIA procedures the parties are obliged to file their appeals within four weeks after the administrative decision was enacted.

Typical Durations:

In 2011 the average duration of regular EIA procedures was about seventeen months.
Within the simplified EIA procedures the average duration was little less than ten months.
The average duration of EIA screening procedures was a bit more than four months.
The average duration of procedures at the Independent Environmental Senate was less than six months.
In civil procedures, if the court does not render a decision within a reasonable period - an application (Fristsetzungsantrag) can be filed with the belated court– this court then has four weeks to deliver the judgment or take another action required by the applicant. If the court still inactive after these four weeks, the application is forwarded to the court of higher instance, who sets a new deadline for the court of first instance to decide the case. Other than these means designed to force the delivery of decisions, there are no sanctions against courts delivering delayed decisions.
Basically the authority has to render a decision without unnecessary delay and at the latest after six months after the initiation of the proceedings (Sec. 73 General Administrative Procedure Act). In administrative procedures the devolution request and the default complaint with the Administrative Court are the only legally binding deadlines/time limits administrative bodies are bound to.

XIV. Other Issues

An appeal only can be filed after the first instance proceedings are finished by rendering a formal decision.
The ÖKOBÜRO provides information on access to justice in environmental matters – the information material is on legal standing and rights of appeal in administrative procedures, explanations of party rights, procedural condition and content of EIA and IPPC procedures. Furthermore, information on environmental liability and environmental information proceedings, certain sectoral environmental laws on how to file an European Citizen's initiative etc. is provided. In addition important links on environmental law and contacts to relevant institutions are provided on their Homepage:
http://www.oekobuero.at/

Furthermore the Federal Environmental Agency provides information on access to justice:
http://www.umweltbundesamt.at/umweltsituation/uvpsup/uvpoesterreich1/verfahrensablauf/beteiligung/
The Federal Ministry of Agriculture, Forestry, Environment and Water Management provides information on public participation, Environmental information, EIA and the Aarhus Convention on the following web sites:
http://www.partizipation.at/
http://www.lebensministerium.at/umwelt/betriebl_umweltschutz_uvp/kontrolle-info.html
http://www.lebensministerium.at/umwelt/betriebl_umweltschutz_uvp/uvp.html
http://www.lebensministerium.at/umwelt/eu-international/umweltpolitik_internat/aarhus-konvention.html
The Austrian legal framework in criminal and civil matters use Alternative Dispute Resolution or modified forms of it, but within administrative procedures this instrument principally is not applied.
One sector in which Alternative Dispute Resolution (ADR) is accessible are the Environmental Impact Assessments (Sec. 16/2 UVP-G). ADR can be utilized during the regular EIA procedure – it is not possible with the simplified EIA procedure.
Mediation is indeed used for conflict settlement in Austria. An empirical investigation on practical experiences on environmental mediation in Austria expressed that mediation procedures are used in environmental matters and that these procedures can have quite productive outcomes.
As mentioned above, the Austrian Environmental Impact Assessment Act explicitly provides for an interruption of the EIA procedure for a mediation procedure upon request of the project applicant (Sec. 16/2 EIA-Act)

XV. Being a Foreigner

The rule of equality is enshrined in the Austrian Constitution. This means that the legislative body might not discriminate one citizen from another (Art 7 B-VG). Furthermore the Federal Constitutional Act on the Prohibition of Racial Discrimination (BVG betreffend das Verbot rassischer Diskriminierung) does not allow for discrimination between foreigners. Any distinction on the sole ground of race, color, descent or national or ethnic origin is prohibited. Even so the executive/administrative organs are bound by the rule of equality.
Different decisions on similar cases are just tolerated in case there is a factual justification.
The administrative organs are not allowed to decide arbitrarily
They infringe the rule of equality if they base their decision on a law which contradicts the BVG on Racial Discrimination
In court procedures German is the official language. If parties or testimonies to the procedure do not speak German – a translator will be provided.
Translation is provided by the government in court procedures – possible translators are officially credited and listed. The cost of a translator is to be paid by, the respective party - and ultimately by the losing party (unless it was entitled to legal aid).

XVI. Transboundary Cases

In transboundary EIA procedures the affected foreign parties need to be informed on
The proposed activity
The possible transboundary environmental impacts
the nature of possible decisions that can be taken in the EIA procedure
The project applicant needs to make sure that EIA documentation is completed. The competent authority is obliged to send this information to the affected foreign parties.
This EIA documentation has to include the following content:
A description of the project
Reasonable alternatives
Description of the actual environmental conditions at the project site
Enumeration of mitigation measures
According to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) the definition of “the public” is to be understood as “one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups. (cp. Art. 1/x Espoo Convention).”
NGOs and Neighbours of the affected country do 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 Sec. 19/11 EIA Act if:
the foreign state has been notified on the planned activity
that part of the environment in the foreign state might be affected by the proposed activity’s impact whose protection is pursued by the NGO, and
if the NGO could participate in an EIA procedure if the project was implemented in this foreign state.
Furthermore foreign neighbours and municipalities (acting as neighbours) is guaranteed legal standing according to Sec. 19/1/1 EIA Act.
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 transboundary EIA as they do not fulfill the criteria established for national citizen’s groups – namely the foreign individuals lack the right to vote in Austria.
No legal aid is granted in administrative procedures in Austria.
No possibility exists to choose between courts of different countries.

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