

COUNTRY STUDIES CONCERNING STATE AID



Austria
Justice and Environment 2024

CONTENTS

Contents.....	2
Background	3
Questions	4
Is administrative state aid case law available in your country?	4
Is judicial state aid case law available in your country?	4
In judicial cases, who had legal standing according to the state aid case law?.....	4
Is there any example where an NGO wanted to have legal standing in state aid related court procedure?.....	5
Are there environmental issues addressed in state aid cases in your country?	5
If yes, what are they?.....	5
Has there been a preliminary ruling case initiated by your country's judiciary in state aid cases?	5
If yes, what was the judgment of the EU Court?	5
Has there been an infringement case against your country at the Commission?.....	5
Did it go to the EU Court?	6
If yes, what was the judgment of the EU Court?	6
Has is changed anything in your respective case law?	6

Background

In March 2021, the Aarhus Convention Compliance Committee (ACCC) found in favor of J&E member organization ÖKOBÜRO and its member, GLOBAL 2000, in the communication they had brought, namely [ACCC/C/2015/128 \(EU\)](#). Specifically, the Committee [found that](#):

- (a) *By failing to provide access to administrative or judicial procedures for members of the public to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned fails to comply with article 9 (3) of the Convention;*
- (b) *By failing to provide any procedure under article 9 (3) of the Convention through which members of the public are able to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9 (4) of the Convention.*

Accordingly, the Committee made the following recommendation:

The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommends that the Party concerned take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with article 9 (3) and (4) of the Convention.

Questions

IS ADMINISTRATIVE STATE AID CASE LAW AVAILABLE IN YOUR COUNTRY?

One case that could fall under “state aid” in the broadest sense would be the Austrian climate lawsuit. This case dealt with the Austrian policy of (non-)taxation concerning kerosene (§ 4 (1) 1 *Mineralölsteuergesetz*) and international flights (§ 6 (1) 1 lit 3d *Umsatzsteuergesetz*). *Greenpeace* filed the application before the Austrian Constitutional Court as a collective complaint in 2020. The Constitutional Court rejected the lawsuit due to the alleged lack of effect on the applicants, but did not reject the idea of individuals not being able to challenge certain parts of the tax code outright.¹

The decision, as all Austrian decisions is accessible at the “RIS”, the Legal Information System of the Republic of Austria². The website is coordinated by the Federal Chancellery of Austria and contains all Austrian legal acts and all decisions by the Supreme Court and the Constitutional Court. It also contains some decisions by lower instances, but not all of them. The site is searchable with keywords or by certain legal norms.

IS JUDICIAL STATE AID CASE LAW AVAILABLE IN YOUR COUNTRY?

We are not aware of any judicial cases containing an environmental- or civil society element. The general rules for Civil court procedures are governed by the Code of Civil Procedure and primarily grant standing to the claimant and defendant. Remedies available to litigants include specific performance, damages, permanent injunctions, creation or alteration of legal status, and declaratory judgments, each addressing different legal needs and interests of the parties involved.

IN JUDICIAL CASES, WHO HAD LEGAL STANDING ACCORDING TO THE STATE AID CASE LAW?

The general rule for this in civil proceedings would be that third parties may join an ongoing case if they can prove an independent legal interest, which is difficult to establish in environmental cases, making it unlikely for NGOs or the public to challenge state aid. Austrian law does not provide for *amicus curiae*.

¹ Austrian Constitutional Court, G 144-145/2020, V 332/2020; available at: https://www.vfgh.gv.at/downloads/VfGH_Beschluss_G_144_2020_vom_30._September_2020.pdf

² <https://www.ris.bka.gv.at/defaultEn.aspx>

In administrative proceedings Legal standing is primarily granted to the claimant and the defendant of the procedure (e.g. the parties to the state aid civil law contract). Third parties may join an already pending case, if they prove their independent legal interest in the outcome of the dispute (*Nebenintervenient*). In case any law expressly declares an effect of the judgment on the intervening party, they might be entitled to rights as a party to the procedure. However, it must be proven that a subjective right of the party is violated to constitute legal interest. This is constantly denied for environmental issues. It is therefore unlikely that NGOs or other members of the public could initiate or file a case challenging potentially illegal state aid.

IS THERE ANY EXAMPLE WHERE AN NGO WANTED TO HAVE LEGAL STANDING IN STATE AID RELATED COURT PROCEDURE?

In the above-mentioned case before the Constitutional Court regarding the Austrian policy of (non-)taxation concerning kerosene (§ 4 (1) 1 *Mineralölsteuergesetz*) and international flights (§ 6 (1) 1 lit 3d *Umsatzsteuergesetz*) was filed as a collective complaint. The Constitutional Court, however, rejected the applicants standing, due to a lack of individual effects.

ARE THERE ENVIRONMENTAL ISSUES ADDRESSED IN STATE AID CASES IN YOUR COUNTRY?

We are not aware of any cases addressing environmental issues in relation to state aid.

IF YES, WHAT ARE THEY?

No answer, since we do not have any cases.

HAS THERE BEEN A PRELIMINARY RULING CASE INITIATED BY YOUR COUNTRY'S JUDICIARY IN STATE AID CASES?

We are not aware of any preliminary ruling cases that Austria's judiciary has initiated.

IF YES, WHAT WAS THE JUDGMENT OF THE EU COURT?

No answer, since we do not have any cases.

HAS THERE BEEN AN INFRINGEMENT CASE AGAINST YOUR COUNTRY AT THE COMMISSION?

We are not aware of any infringement cases concerning Austria at the Commission.

DID IT GO TO THE EU COURT?

IF YES, WHAT WAS THE JUDGMENT OF THE EU COURT?

HAS IS CHANGED ANYTHING IN YOUR RESPECTIVE CASE LAW?

Contact information

Association of Justice and Environment

European Network of Environmental Law Organizations

33 Udolní, 602 00 Brno, Czech Republic

e-mail: info@justiceandenvironment.org

web: www.justiceandenvironment.org



Funded by the European Union. The Work Plan of J&E has received funding from the European Union through its LIFE NGO Grant funding scheme. The sole responsibility for the present document lies with the author and the European Commission is not responsible for any use that may be made of the information contained therein.