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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE  
AND NATURAL HABITATS

**Standing Committee**

43<sup>rd</sup> meeting

Strasbourg, 28 November - 1 December 2023

**New complaint: 2022/02**

**Alleged violation of the Convention in relation to deliberate killing  
of *lutra lutra*  
(Austria)**

**- REPORT BY THE GOVERNMENT -**

*Document prepared by  
the Office of the Carinthian Provincial Government*

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**OFFICE OF THE CARINTHIAN PROVINCIAL  
GOVERNMENT**

Department 10 – Agriculture, Forestry and Rural Areas

Agricultural law section

LAND  KÄRNTEN

Sender.: Office of the Carinthian Provincial Government, Department 10, Agriculture,  
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am Wörthersee

Date	5 December 2022
Number	10-JAG-1/56-2022

Please quote the reference number in any submissions!

Subject:

***Berne Convention, Convention on the conservation of European wildlife and natural habitats;***

Complaint No. 2022/02, against Austria (Carinthia);

Carinthia Otter Ordinance;

Comments to the Council of Europe;

In Complaint Procedure No. 2022/02, against Austria (Carinthia) for "*alleged breach of the Berne Convention relating to the deliberate killing of otters*", the Council of Europe now asks Austria (Carinthia) to **comment on this allegation by 9.12.2022.**

On 3.2.2022, the Secretariat of the Berne Convention received a complaint from the Vienna Animal Protection Association (*Tierschutz Austria*) stating that the **Conibear traps** used on the basis of the Carinthian Otter Ordinance do not selectively catch otters, and that the **capture of female otters is also occurring during the period during which mother animals are subject to protection.**

On 12.1.2022, Department 10 had previously received the expert opinion of *Dr. Hans-Heinrich Krüger* (wildlife biologist and otter expert) "**On the question of the use of Conibear traps when culling otters in compliance with animal welfare requirements and in compliance with the protection afforded to mother animals**" from *Tierschutz Austria*. That association has likewise called upon the Province of Carinthia to do everything in its power to immediately stop the capture of otters with the use of Conibear traps.

By letter of 30.3.2022, VSt-897/442, the Province of Carinthia was requested by the Liaison Office of the Federal Provinces to submit comments by 9 December 2022.

The following comments are hereby made in response to the submissions of the Vienna Animal Protection Association [*Wiener Tierschutzverein*] (*Tierschutz Austria*):

### **On the legal situation in Carinthia:**

**Sec. 68 (1) (4) K-JG 2000:** In hunting grounds ... it is prohibited to use off-take traps – unless otherwise provided for in paragraph 3 – **and trapping devices which do not catch animals unharmed or which do not immediately kill animals**, unless otherwise provided for in sub-para. 1b....

**Sec. 68 (6) K-JG:** The Provincial Government shall, by ordinance, determine which trapping devices comply with the provisions of sub- 1 (4) and how these must be set up. The Provincial Government shall, by ordinance, prohibit the use of trapping devices which are not selective either in principal or based on their conditions of use, unless the use of such traps appears to be necessary for the protection of one of the interests referred to in sec. 51 (4a), and where there is no other satisfactory solution.

**In sec. 11 of the Implementing Ordinance to the Carinthian Hunting Act, LGBl. No. 32/2006, as amended by LGBl. No. 66/2022,** the Provincial Government has thus stipulated the following:

**Sec. 11 (2):** Trapping devices which immediately kill the captured wildlife are: the beating trap, the scissors trap, the *Conibear trap* and the off-take trap.

Sec. 11 (3) (d): of the Implementing Ordinance to the Carinthian Hunting Act : Capture is carried out:  
d) in the case of the *Conibear trap* and the off-take trap, by means of two irons rotating into each other.

Pursuant to the **Ordinance of the Provincial Government on Temporary Exemption from the Closed Season for Otters, LGBl. No. 81/2020**, otters may be caught with live traps from 1.March to 31 October.

From 1 November to the last day of February of each year, **all permissible means** and methods for trapping otters may be used or applied, or otters may be hunted and killed with long guns.

*Sec. 3 (1) of the cited Ordinance:*

From 1 January to 31 December, otters in all forms of development may only be trapped by specially trained hunting protection bodies as well as specially trained hunters in the vicinity of fishing waters, except in waters defined in sub-para. 3, as well as at non-fenceable pond sites with trapping devices that catch the animal unharmed (live traps).

From 1 March to 31 October, only captured males, female otters unaccompanied by juveniles and manifestly non-pregnant females may be culled. From 1 March to 31 October, captured females accompanied by juveniles and females which are obviously pregnant may not be culled but must be released unharmed and immediately at the place of capture.

*Sec. 3 (2) of the cited Ordinance:*

From 1 November to the last day of February of each year, otters in all forms of development may be hunted and culled by specially trained hunting protection bodies and specially trained hunters using permissible trapping methods or long guns, but live traps should be used as a matter of priority.

**The Ordinance of the Provincial Government on Temporary Exemption from the Closed Season for Otters, LGBl. No. 81/2020**, expired on 8 October 2022.

A new Ordinance of the Provincial Government on the Temporary Exemption from the Closed Season for Otters in 2022, for a further two years, is currently being evaluated. In addition to sec. 3 (1) and (2), this Ordinance now provides the following with regard to the capture of otters:

*Sec. 4 (1) of the cited Ordinance:*

For catches from 1 March to 31 October, only traps may be used which, due to their functionality, design and size, guarantee the physical integrity during capture. Only traps that are comparable in size to those used to catch other marten-like animal species under hunting law may be used. Live traps for otters must be designed in such a way that other game species cannot possibly be caught with them. The live traps must be checked at least twice a day.

*Sec. 4 (2) of the cited Ordinance:*

For catches from 1 November to the last day of February of each year, all permissible means and methods of trapping may be used, but live traps are to be used as a matter of priority. When using Conibear traps, only Conibear traps with a side length of 30cm may be used.

**The following comments are made in response to the objections raised by the Complainant:**

1. The trapping of female otters in Carinthia also takes place during the period during which mother animals are subject to protection, i.e. also in the winter months from 1 November – 28 February as per the Otter Ordinance.
2. The Conibear traps used to catch otters in Carinthia do not catch them selectively and do not immediately kill.

1. Live capture and/or dead capture of female otters, also in the period from 1 November to the last day of February

*Sec. 3 (1) of the Ordinance of the Provincial Government on the Temporary Exemption from the Closed Season for Otters, LGBL No. 81/2020*, provides that otters in all forms of development may only be caught by specially trained hunting protection bodies as well as specially trained hunters from 1 January to 31 December in the vicinity of fishing waters, except in waters as defined in sub-para. 3, as well as at non-fenceable pond sites, using trapping devices that catch the animals unharmed (live traps).

From 1 March to 31 October, only captured males, female otters who are not accompanied by juveniles and female otters who are manifestly not pregnant may be culled. From 1 March to 31 October, captured female otters accompanied by juveniles and female otters who are manifestly pregnant may not be killed, but must rather be released unharmed and immediately at the place of capture.

*Sec. 3 (2) of the cited Ordinance* stipulates that from 1 November to the last day of February, otters in all forms of development may be captured and culled by specially trained hunting protection bodies as well as specially trained hunters, using permissible trapping methods, or may be hunted or culled with long guns, but live traps are to be used as a matter of priority.

**The beginning of the closed season (1 March of each year) and thus the ban on culling female otters from 1 March to 31 October of each year takes into account the fact that the main mating season for otters takes place in February/March, ensuring that female otters are not killed during the gestation period and the first months of rearing their young.**

**Similarly, the now twice-daily inspection of live traps during the period 1 January to 31 December enables female otters who are caught live during this period to be released very quickly and unharmed.**

The previously valid Ordinance of the Provincial Government on the Temporary Exemption from the Closed Season for Otters, LGBl. No. 81/2020, expired on 8 October 2022.

*A new Ordinance of the Provincial Government on the Temporary Exemption from the Closed Season for Otters 2022 is currently being evaluated and is to be adopted by the Provincial Government before the end of 2022.*

This Ordinance now provides the following with regard to the capture of otters:

*Sec. 3 (1) of the cited (new) Ordinance:* Otters in all forms of development may only be caught from 1 January to 31 December in the vicinity of fishing waters, except in waters as defined in sub-para. 3 as well as at all non-fenceable pond facilities, with trapping devices that catch the animals unharmed (live traps), **only by specially trained hunting protection bodies as well as specially trained hunters.**

From 1 March to 31 October, only captured males, females unaccompanied by juveniles and female otters who are manifestly not pregnant may be culled. From 1 March to 31 October, captured female otters who are accompanied by juveniles and female otters who are manifestly pregnant may not be culled, but must rather be released unharmed and immediately at the place of capture.

*Sec. 3 (2) of the cited Ordinance:*

From 1 November to the last day of February of each year, otters in all forms of development may be hunted **by specially trained hunting protection bodies as well as specially trained hunters**, using permissible methods of capture or may be hunted and culled with long guns, **but live traps are to be used as a matter of priority.**

*Sec. 4 (1) of the cited Ordinance:*

For catches from 1 March to 31 October, only traps may be used which, due to their functionality, design and size, guarantee the physical integrity of the animals during capture. Only traps that are comparable in size to those used to catch other marten-like animal species under hunting law may be used. Live traps for otters must be designed in such a way that other game species cannot possibly be caught with them. The live traps must be checked at least twice a day.

*Sec. 4 (2) of the cited Ordinance:*

For catches from 1 November to the last day of February, all permissible means and methods of trapping may be used, but live traps are to be used as a matter of priority. When using Conibear traps, only Conibear traps with a side length of 30cm may be used.

## 2. Selectivity and immediate culling by Conibear traps – **no other satisfactory solution**

**In the fishing waters of regions containing trout and grayling (flowing waters) as well as at non-fenceable pond sites in Carinthia, it should be assumed that there is no other satisfactory solution in these areas.** Fencing of running waters and large natural ponds is not possible. Similarly, deterrents and scare measures such as noise, scent, hair residue, flashing lights, ultrasound etc. are usually only

effective in the very short term, because otters are very quick learners and can very quickly learn to "deal with" the measures taken to reduce damage.

Pursuant to *sec. 11 (2)* of the currently valid Implementing Regulation to the Carinthian Hunting Act, LGBL. No. 32/2006, as amended by LGBL. No. 66/2022, trapping devices which kill captured game immediately are: the beating trap, the scissors trap, Conibear traps and off-take traps.

The use of Conibear traps, in addition to live traps and long guns, to catch or kill otters has not only proven to be particularly effective, but also extremely selective when correctly baited.

Furthermore, trapping or removal by long guns may only be carried out by specially trained hunting protection bodies as well as specially trained hunters. These are specially trained for this purpose in connection with a special training course by the Carinthian Hunting Association.

**When used professionally and expertly, and when appropriate baits are applied, it should therefore be assumed that Conibear traps will in any case selectively catch and immediately kill the animal caught in them.**

The abolition and the shortening of the closed season for otters and the capture or culling of otters by means of this Ordinance serves solely to maintain a population density of otters that is sustainable for fish stocks in Carinthia and is not intended to eradicate the species. The population of this species in Carinthia will not be endangered in any way by culling of animals within the meaning of this Ordinance. The maintenance of a favourable status of conservation is ensured by, firstly, constant evaluation and review of the culling of individual animals, subject to territorial and temporal limitations and oversight, as well as, secondly, by regular monitoring to be conducted by the Carinthian Provincial Government, which is used as a basis for such exemptions.

**Thus, in the opinion of the Province of Carinthia, there is no other satisfactory solution to the use of lethal traps and long guns for catching or shooting otters in the period from 1 November to the last day of February of each year. Furthermore, the use of Conibear traps to catch otters is necessary to protect one of the interests listed in *sec. 51 (4a)* (specifically, as in Carinthia, to prevent significant damage to fishing areas) and is therefore necessary.**

The Carinthian Provincial Government