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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE

AND NATURAL HABITATS

Bureau of the Standing Committee

18-19 March 2024
Strasbourg

Complaint on Stand-by: 2022/02

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

(Austria)

- GOVERNEMENT REPORT -

Document prepared by
Office of the Carinthian Provincial Government

OFFICE OF THE CARINTHIAN PROVINCIAL GOVERNMENT
Department 10 - Agriculture and Forestry, Rural Areas
Agricultural law section

LAND KÄRNTEN

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To
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Subject:

Berne Convention; Convention on the Conservation of European Wildlife and Natural Habitats;
Complaint no. 2022/02, against Austria (Carinthia);
Carinthian Otter Ordinance;
New report to the Council of Europe;

By letter from this office dated 5 December 2022, 10-JAG-12/56-2022, a comprehensive statement on the points of criticism was previously submitted in re Complaint no. 2022/02 against Austria (Carinthia) for "*alleged breach of the Berne Convention relating to the deliberate killing of otters*".

By letter dated 20 April 2023, the Province of Carinthia, via the joint provincial representative for Austria, Dr. Simone Klais, was again asked by the Secretariat of the Berne Convention to submit an updated report for Carinthia to the Presidium of the Berne Convention on how the conditions set out in Article 9 of the Berne Convention are being met with regard to the exemption to the general obligation under the Berne Convention concerning protection of the habitat of the otter (Lutra lutra) and the prohibition on the use of non-selective traps.

An exemption from the general obligation under the Berne Convention is granted in Carinthia on the basis of the *Ordinance of the Provincial Government on the Temporary Exemption from the Closed Season for Otters, LGBl No. 101/2022*.

As regards protection of the otter's habitat:

The impacts of the exemptions granted in Carinthia from the general obligation under the Berne Convention with regard to the culling of otters are being monitored by the Province of Carinthia as part of **regular monitoring by the University of Graz - Institute of Biology**, *by surveying the current distribution of the otter in Carinthia, estimating the current population size of the otter in Carinthia and assessing the favourable conservation status of the Eurasian otter*.

As to those impacts, in the **Attachment** we now forward to you the respective final reports of the University of Graz, Institute of Biology, Universitätsplatz 2, 8010 Graz.

- ✓ ***Schenekar, T., Weiss, S. (2022) Study on the population size of the otter in Carinthian watercourses. [Studie zur Populationsgröße des Fischotters an den Kärntner Fließgewässern] Final report commissioned by the Office of the Carinthian Provincial Government.***
- ✓ ***Schenekar T., Weiss S. (2020) Otter monitoring Carinthia [Fischottermonitoring Kärnten] 2019/20. Final report commissioned by the Office of the Carinthian Provincial Government.***
- ✓ ***Schenekar T, Weiss S (2018) Genetic analyses of the population size of the Eurasian otter in Carinthian fishing waters. [Genetische Untersuchungen der Populationsgröße des Eurasischen Fischotters in den Kärntner Fischgewässern] Final report commissioned by the Office of the Carinthian Provincial Government***

Based on that regular monitoring, the following facts may be assumed in Carinthia:

- ✓ Due to the large-scale positive evidence of otters throughout the Province of Carinthia, it is generally assumed that the otter population extends over the entire area along the watercourses in Carinthia.
- ✓ It can also be assumed that the Eurasian otter population in Carinthia has developed positively since 2017.
- ✓ The Province of Carinthia is thus making a positive contribution to the favourable conservation status of the Eurasian otter in Austria's Alpine bioregion.

The abolition and shortening of the closed seasons 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 the culling of these animals within the meaning of this Ordinance. The maintenance of a favourable status of conservation is ensured, firstly, by constant evaluation and review of the culling of individual animals, subject to territorial and temporal limitations and oversight, and, secondly, by regular monitoring to be conducted by the Carinthian Provincial Government, which is used as the basis for such exemptions.

On the prohibition on the use of non-selective traps:

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-para. 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.

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

The currently applicable *Ordinance of the Provincial Government on the Temporary Exemption from the Closed Season For Otters, LGBl No. 101/2022* (in force until 15 December 2024), provides as follows with regard to the capture of otters:

Sec. 4 (2)

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.

The use of Conibear traps, alongside live traps and long guns, to capture or kill otters has not only proven to be particularly effective, but also extremely selective when correctly baited. Furthermore, trapping or removal with 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 as part of a special training course organised by the Carinthian Hunters' Association.

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

However, after expiry of the current *Ordinance of the Provincial Government on the Temporary Exemption from the Closed Season for Otters, LGBl No. 101/2022,* the Province of Carinthia intends to evaluate the trapping methods used, and, in particular, the necessity of using Conibear traps when trapping otters. As part of the process of amending the Carinthian Hunting Act and the Implementing Ordinance to the Carinthian Hunting Act, which is already underway in Carinthia in 2024, and once the results of the evaluation regarding the use of Conibear traps for capturing otters are available, it is anticipated that Conibear traps will no longer be permitted as from 2025 as part of the exemption to the closed season for otters and thus for capturing otters on land.

For the Carinthian Provincial Government:
MS Scherling, MA.

For information to:

Department 1 - Provincial Office Directorate, Constitutional Service, at the same premises

Annexe I: Studie zur Populationsgröße des Fischotters an den Kärntner Fließgewässern – Endbericht 2022

Annexe II: Beschwerdeverfahren Nr. 2022/02, gegen Österreich (Kärnten), Kärntner Fischotterverordnung; Neuerlicher Bericht er Bericht an den Europarat;

Annexe III: Details zu den untersuchten Monitoringbrücken

Annexe IV: Details zu den gesammelten Genetikproben