

2015-05-26

Case Summary posted by the Task Force on Access to Justice

SWEDEN: Änok; Supreme Administrative Court, HFD 2014:8

1. <i>Key issue</i>	ENGO standing – Procedural law shall be interpreted in order to give the public concerned broad opportunities to challenge in court decisions on forestry.
2. <i>Country/Region</i>	Sweden
3. <i>Court/body</i>	Supreme Court Administrative Court (Högsta förvaltningsdomstolen)
4. <i>Date of judgment /decision</i>	2014-02-14
5. <i>Internal reference</i>	HFD 2014:8
6. <i>Articles of the Aarhus Convention</i>	Art. 2, para. 5; art. 6, para. 1; art. 9 paras. 3-4.
7. <i>Key words</i>	Public concerned, ENGO standing, effective justice, standing rules, forestry, significant effect on the environment, environmental decision
8. <i>Case summary</i>	<p>The National Forest Agency permitted a clear-cutting operation in Northern Sweden in a mountain forest with high conservation value. The Swedish Society for Nature Conservation (SNF) appealed the decision and claimed that the operation was in breach of the Forestry Act. The Administrative Court granted standing and quashed the decision. The property owners and the Forest Agency appealed to the Administrative Court of Appeal, which decided that the ENGO lacked standing in the case. SNF appealed to the Supreme Administrative Court (HFD).</p> <p>HFD noted that there is no standing rule in the Forestry Act, and this is why the issue must be decided using general administrative law principles. In case law, those who have “noteworthy interest” in the matter shall be considered to have standing to appeal the decision at stake (RÅ 1994 ref. 82, RÅ 1995 ref. 77).</p> <p>HFD then went on to consider if the decision to permit clear-cutting in the area is an administrative act which is covered by the Aarhus Convention. According to the court, Article 9.2 is not applicable as forestry operations are not mentioned in the list in Annex I to the Convention (Article 6.1.a) and the operation in this case cannot be regarded as having a significant effect on the environment (Article 6.1.b). Concerning article 9, para.3, the court referred to the Implementation Guide 2013 (at page 206f) and noted that the provision covers decisions which relate to the environment. Furthermore, it is not necessary to establish that a breach of law has taken place in order to give standing, it suffices if the public concerned alleges that there has been such unlawful conduct. HFD then noted that according to the Forestry Act, nature conservation and environment protection shall be taken into account in the decision-making. Also, a permit for a clear-cutting operation in the mountains must not be issued if it “contravenes essential nature conservation values”. The Environmental Code can also be applied in these cases. HFD therefore concluded that the permit in question was clearly covered by article 9, para. 3, of the Aarhus Convention.</p>

Regarding the issue of ENGO standing, HFD pointed out that although the legal basis for the decision was national law, this situation was closely related to those to which EU law on the environment applies. The court then cited the *Slovak Brown Bear* (C-240/09), where CJEU established that it is a Union law requirement to interpret the national procedural rules widely in order to allow ENGO standing in environmental decision-making. HFD furthermore stated that there is also, on a more general level, a need for a common understanding of the standing rules, irrespective of whether national or Union law is applied. In sum, in order to secure effective legal remedies for the public concerned, they should be able to appeal a decision on clear-cutting in the mountains. Accordingly, SNF was granted standing in the case.

Note: After the case was remitted to the Administrative Court of Appeals, that court quashed the permit as well.

9. Link to judgement/
decision

<http://www.rattsinfosok.dom.se/lagrummet/index.jsp>

[http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SWED
EN/SE_HFD_2014_8_Anok/SE_HFD_2014_8_Anok_judgement.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SWED_EN/SE_HFD_2014_8_Anok/SE_HFD_2014_8_Anok_judgement.pdf)