



Ministry of the Environment Sweden

Division for Legal Services

Aarhus Convention Compliance Committee
Aarhus Convention Secretariat
Environment Division
United Nations Economic Commission for
Europe
Palais des Nations, Av. de la Paix 10
1211 Geneva 10
Switzerland

**Communication to the Aarhus Convention Compliance Committee
concerning compliance by Sweden with provisions of the Convention in
relation to permits issued for wind turbines and the applicable legislation in
general (ACCC/C/2013/81)**

The Committee has invited Sweden to comment on the update provided by the communicant, Mr. Bernd Stümer, on 18 September 2014.

The communication ACCC/C/2013/81

The communication ACCC/C/2013/81 has been summarized by the Compliance Committee as concerning:

“Compliance by Sweden with the provisions of the Convention on access to information, public participation and access to justice in relation to the permitting process for the issuance of permits for two wind turbines near the town of Strängnäs, Sweden, and the applicable legislation in general”

Sweden has in its response to the communication (dated 26 September 2013) contested the admissibility of the communication and urged the Committee to close the communication.

In the response Sweden expressed its view that the communication should not have been admitted since domestic remedies were still available. Relevant legal proceedings were still ongoing at the Land and Environmental Court at Nacka district Court (The District Court).

Sweden also expressed the view that even if the Committee allows the compliance procedures to continue in relation to this communication, there is - based on Sweden’s understanding of the allegations of non-

compliance - nothing in the communication that suggests that Swedish domestic law fails to comply with any of the articles of the Convention listed in the communication (i.e. articles 4, 5, 6, 7 and 9), hence the communication should be closed.

In a letter dated 12 March 2014 the Committee asked the parties (Sweden and Mr. Bernd Stümer) to clarify which aspects of the communication are within the scope of the proceedings before the national courts.

In order to be able to provide the requested information, Sweden asked the secretariat to clarify whether the communication ACCC/C/2013/81 is considered to be submitted by Bernd Stümer as a natural person or on behalf of a group or a legal entity (email 20 March 2014).

In a letter to Mr. Bernd Stümer dated the 27 June 2014, the secretariat asked Stümer to explain the current status of his proceedings before the national courts, and which aspects of his communication are within the scope of pending proceedings. The secretariat also asked Stümer to clarify whether the communication was submitted by him as an individual or on behalf of one or more public associations, as this is relevant as to the issue of ongoing domestic proceedings.

In a letter from Mr. Bernd Stümer to the secretariat dated 28 June 2014 Stümer informed the secretariat that his application ACCC/C/2013/81 is submitted by him as an individual. Stümer writes:

“The committee hereby is informed that my application ACCC/C/2013/81 is given by me Bernd Stümer and that organization FLIS, _Association Landscape Protection in Straengnaes, as certified, support my notification. Knowledge of the explicit support for my notification from hundreds of people is available on the Internet.”

In a letter from Mr. Bernd Stümer to the secretariat dated 18 September 2014 Stümer gave the secretariat an update regarding the proceedings before the national courts.

The Committee has invited Sweden to comment on the update provided by the communicant, Mr. Bernd Stümer, on 18 September 2014.

Swedish comments on the update provided by the communicant, Mr. Bernd Stümer on 18 September 2014

Sweden notes that the information given by Mr. Bernd Stümer in his letter dated 28 June 2014, clarifies that the communication is submitted by him as an individual only, and not on behalf of another individual or organization.

Regarding the information provided by Mr. Bernd Stümer in his letter dated 18 September 2014, Sweden confirms that Mr. Bernd Stümer has not been granted legal standing (*locus standi*) in the still ongoing case concerning the building permit for the two wind turbines. This is the more detailed background:

On 3 November 2010 the municipal Committee of Strängnäs (the local authority) issued a building permit for two wind turbines with a height of 140 meters each.

The building permit was appealed to the County Administrative Board of Södermanland by Mr. Bernd Stümer, other individuals living in the areas surrounding the location of the planned wind turbines and two environmental organizations. Stümer stated, among other things, that wind turbines are dangerous machines which must comply with directive 2006/42/EC of the European parliament and of the council of 17 May 2006 on machinery, and that the building of these two wind turbines means exposing him and other local residents for the risk of life-threatening injuries.

The County Administrative Board found the appeals by Mr. Bernd Stümer and about 30 other appellants inadmissible. These appellants were not considered being parties concerned since the real estate properties they owned or were living on were situated too far away from the intended location of the wind turbines. According to the decision Mr. Bernd Stümer's address is Väla 3, 645 92 Strängnäs, which correspond to the real estate property Helgarö-Väla 1:2, and the County Administrative Board more specifically stated that all of the real estate properties named Helgarö-Väla (except Helgarö-Väla 1:1) are located between 1,5 kilometres and 3 kilometres from the location of the closest intended wind turbine. Sweden's understanding of the facts in the case is therefore that Mr. Bernd Stümer doesn't live closer than 1.5 kilometres to the location of the closest intended wind turbine.

The County Administrative Board found ten appeals admissible, but not well-founded; hence those appeals were refused.

The decision by the County Administrative Board was appealed to The District Court by Mr. Bernd Stümer and others.

On 15 May 2014 The District Court rejected the appeal by Mr Bernd Stümer (case P 129-12). According to the court no information had been provided showing that Mr. Bernd Stümer's real estate property is located in a neighbourhood which would be particularly affected by the wind turbines; hence he had no right to challenge the permit decision.

Mr. Bernd Stümer appealed against the decision, but the Land and Environment Court of Appeal at Svea Court of Appeal (The Court of

Appeal), didn't grant him leave to appeal (decision 2014-08-21, case 5592-14). This decision by The Court of Appeal cannot be appealed.

On 15 May 2014 The District Court revoked the local authority's decision to issue a building permit for the two wind turbines. The reason given for the revocation was that no inventory of birds had been carried out (case P 635-12 and P 1924-12). This decision of revocation has been challenged and The Court of Appeal has granted leave to appeal, but not yet delivered its judgment. Mr. Bernd Stümer is in this case (P 5594-14) representing Mr. Johan Andersson (owner of real estate property Helgarö-Våla 1:1, which has a common border with the real estate property where the wind turbines are planned to be located).

Conclusions

Based on Sweden's understanding of the allegations of non-compliance there's nothing in the communication that suggests that Swedish domestic law fails to comply with any of the articles of the Convention listed in the communication (i.e. articles 4, 5, 6, 7 and 9).

As stated in Sweden's response to the communication (dated 26 September 2013) a construction permit or a detail plan for wind turbines may be appealed by an individual if that individual is considered to be a concerned party (22 §, the Administrative Procedure Act).

The term "concerned party" or "party in interest" has been generously interpreted by Swedish courts in cases concerning laws relating to the environment. In 1997 the Supreme Administrative Court, in a case which concerned the former Environmental Protection Act, stated:

"...in principle, every individual who may be harmed, or exposed to other kinds of inconvenience by an environmentally harmful activity allowed by a permit decision is considered a party in interest. However, a mere theoretical or completely insignificant risk of damage or detriment is not sufficient." (RÅ 1997 ref. 38).

Owning land near planned wind turbines or other installations or activities that might be harmful to the environment (i.e. environmentally hazardous activities) qualifies an individual as a party concerned. However an individual does not have to own nearby situated land to qualify as a party concerned. In case law, individuals living within sight and at a distance of 550 meters from the location of planned wind turbines have been considered parties of concern (RÅ 1992 ref. 81).

Sweden can also confirm the information given by Mr. Bernd Stümer concerning the recent case law by The Court of Appeal. An individual living about 800 metres from the location of a planned wind turbine has been considered a party concerned by the court and therefore allowed to

appeal the building permit allowing the wind turbine (case P 1574-13 delivered 2013-06-03).

Once it is established that the applicant is allowed to appeal, the scope of review is complete, meaning that the individual can invoke all kinds of interests. No arguments are precluded, thus the appellant can plead any private or public interest in the case.

The Swedish case law shows that a member of the public who meet the criteria in Swedish law, i.e. is considered to be a party concerned by the decision (22 §, the Administrative Procedure Act), has access to administrative or judicial procedures to challenge a decision by a Swedish public authority (e.g. a building permit for wind turbines) which may contravene provisions of Swedish national law relating to the environment (e.g. the Planning and Building Act).

The fact that The District Court didn't find Mr. Bernd Stümer to be a party concerned and therefore denied him legal standing in the case concerning the permitting process for the issuance of permits for the two wind turbines near the town of Strängnäs cannot be considered as a breach of the Aarhus Convention.

Yours sincerely,



Mr. Egon Abresparr
Director-General for Legal Affairs

