



**Ministry of the Environment and
Energy**

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

**Opening statement - Communication concerning compliance
by Sweden with provisions of the Convention in relation
to permits issued for wind turbines and the applicable
legislation in general (Ref. ACCC/C/2013/81)**

Mister Chairman, distinguished members of the Compliance
Committee, Mr Stümer, ladies and gentlemen.

The work of the Committee plays an important role in guiding Parties
in their implementation of the Convention ensuring that national
legislation meet the requirements of the Convention.

Sweden welcomes the examination by the Committee and this
opportunity to further clarify the issues relating to the Swedish
implementation of the obligations under the Aarhus convention
raised by the Communicant.

The Communication has been summarized by the 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 two wind
turbines near the town of Strängnäs, Sweden, and the applicable
legislation in general”.

Based on Sweden’s understanding of the allegations of non-
compliance raised by the Communicant there’s nothing in the

communication that indicates that Swedish law fails to comply with any of the articles of the Convention listed in the communication.

In response to the argument made by the communicant Sweden refers to what has previously been submitted by Sweden in respect of this communication and would like to take the opportunity to highlight the following points in respect of the articles in question:

Article 4 – Access to environmental information

The general rule on access to information held by Swedish public authorities is that official documents are public.

The right of access to information covers both documents received by and documents drawn up by a public authority or a court.

A document requested has to be made available forthwith or as soon as possible. A request for a copy has to be dealt with promptly.

The Swedish Constitution does not specify a timeframe, but according to firmly established case-law, the provisions mean that a reply in the matter of making a document available has to be given the same day, but that a delay of one or a few days can be accepted if it is necessary to enable the authority to determine whether the document can be made available or not.

A decision involving a rejection of a request to read an official document shall contain the reasons for the refusal and also contain instructions about how to appeal the decision.

A decision rejecting a request for environmental information can be appealed by the requester. An appeal against a decision to reject a request to read an official document has to be examined promptly.

Sweden note that nothing in the communication points to that the Communicant has been denied access to documents held by the municipality concerning the application of a building permit for the two wind turbines.

Article 5 – Dissemination of environmental information

According to Swedish law authorities have a general duty to provide service and a responsibility for supplying information about the documents they hold. The authorities are furthermore required to keep registers in the form of chronological records registering documents received and drawn up.

When a municipality receives an application for a building permit it is by law required to notify the public concerned about the existence of the application, where the relevant documents are kept and can be made available.

The Communicant has claimed that the public concerned did not receive any information before the decision to grant a building permit for the construction of the two wind turbines in Strängnäs was taken by the municipality and that Sweden is in non compliance with article 5.2 of the Convention.

On 31 March 2009 the municipality of Strängnäs sent information to concerned parties regarding the application for a building permit for construction of the two wind turbines in Strängnäs. In the same letter the parties were informed that the application was available for examination at the office of the municipality.

The Complainant was not considered as a concerned party by the municipality and did not receive the information just mentioned. However the same information was also published in the local newspaper, the Journal of Strängnäs (Strängnäs tidning) 3 April 2009.

It is the view of Sweden that Sweden has correctly implemented the requirements in article 5.2 of the Convention in its national law.

Article 6 – Public participation in decisions on specific activities

A permit for construction of two wind turbines is not an activity that falls under Annex 1 of the Convention nor is it a project that the Swedish legislator has decided on to by default be considered to may have a significant effect on the environment. Sweden therefore fails to see that the requirements of article 6 of the Convention are relevant in respect of the building permit procedure here in question.

The fact that construction of the two wind turbines in question does not fall under the obligation of article 6 of the Convention does by no mean mean that the Swedish legislation does not require the authorities and courts to ensure that the public is provided with opportunity to actively participate in the process leading up to a decision by the authority or a ruling by the court.

The Communicant has claimed that the Swedish law does not allow for public participation in respect of the construction of wind turbines and that no public participation has been allowed in the specific case of the construction of the two wind turbines in Strängnäs.

This is simply not true and Sweden notes that no evidence has been put forward to support this statement. In fact – and as described in Sweden's previous response - both the legislation regarding public participation and the way it has been carried out in the specific cases referred to by the Communicant shows that the public has been given extensive opportunities to participate in the process.

The public received notice of the process at an early stage both through letters sent to known members of the public concerned and through a notice in the local newspaper. Members of the public were asked to submit comments. The notice contained information about where the file with the documentation relevant for the case was kept and available for examination.

Also the Communicant himself appears to have taken an active part in the process already from the beginning, for example by submitting information in writing and attending on site inspections.

The fact that he was not considered to be a concerned party and given the right to appeal does not affect his rights to participate in the process through submitting information either orally or in writing. There is according to Swedish administrative law an obligation for the decision maker to base decisions on all relevant information provided in a case. That obligation includes information provided by the general public and is not restricted to information provided by parties concerned.

Sweden fails to see anything in the decision making process in question that indicates a violation of the requirements of the Aarhus Convention.

Article 7 – public participation concerning the municipal comprehensive plan

The communicant has also mentioned that he holds the view that the Swedish legislation in respect of plans do not meet the requirements of article 7 of the Convention.

The plan covering the area in question for this communication and hence the plan of relevance in the decision-making process for the construction of the two wind turbines is the municipal comprehensive plan and its amendment.

The process for adopting municipal comprehensive plans well meet the requirements of public participation as set out in article 7 which in turn points to article 6.3, 6.4 and 6.8 of the Convention.

Early participation is guaranteed by law. (chapter 3 section 7, 8 and 9 in the Planning and Building Act (2010:900)).

When the municipality draws up a comprehensive plan or an amendment to such a plan the municipality must consult with other public authorities and give the public concerned the opportunity to participate in the consultation process.

The purpose of the consultation process is to ensure that all relevant information reaches the municipality at an early stage of the decision making process and to give the public an opportunity to influence the decision making process.

Before a municipality adopts a comprehensive plan or an amendment the municipality shall make it available for public examination.

If the proposed comprehensive plan may have a significant impact on the environment, the plan must also - in addition to making it available for public examination - be subject to an additional public consultation process [which meet the requirements of Chapter 6, sections 11-18 and 22 in the Environmental Code].

From what we understand from this communication no information has been provided to indicate that the legislation in place have been breached by the municipality of Strängnäs when adopting its comprehensive plan and its amendment.

Article 9- access to justice and legal standing for individuals

In a letter dated 28 June 2014 the Communicant clarified that the communication is submitted by him as an individual only, and not on behalf of another individual or organization.

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.

The term "concerned party" has been generously interpreted by Swedish courts in cases concerning laws relating to the environment. Already in 1997 the Supreme Administrative Court 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 as a concerned party.

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 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 recent case law from the Land and Environmental 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.

In the cases regarding the construction of the two wind turbines in Strängnäs individuals living within a range of 1,5 kilometres from the intended location of the turbines were considered as parties concerned and given the right to appeal.

Once it is established that the individual is allowed to appeal, the scope of review is a full judicial review, 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 fact that The District Court didn't find the Complainant to meet the criteria in Swedish law to qualify him as a party concerned and therefore denied him legal standing in the case concerning the permitting process for the construction of the just mentioned two wind turbines cannot be considered as a breach of the Aarhus Convention.

In light of what has just been stated I now want to make the following concluding opening remarks

It is clear from Mr Stümers communication that he did not want the Swedish authorities to allow the construction of two wind turbines on Näs 1:4 and Knutsberg 1:2 in the municipality of Strängnäs. It is also clear that Mr Stümer is not content with the Swedish legislation relating to the permitting process of wind turbines nor the reasoning of the authorities and courts involved in these processes.

What remains unclear is in which respect the Communicant considers that the Swedish legislation and/or the findings of the authorities and courts in the specific case regarding the construction of two wind turbines in Strängnäs, does not meet the requirements of the Aarhus Convention.

The Committee has provided the Communicant with numerous opportunities to further clarify the allegations made. Unfortunately the supplementary information provided does not help in clarifying the communication and Sweden withholds its opinion that the Communication still lacks the clarity and specificity needed for the communication to be admissible at this point.

Sweden holds the view that it is apparent that the allegations made and the corroborating information provided so far in this process do not reveal any failure of implementing articles 4, 5, 6, 7 and 9 of the Convention.

Given the fact that the Communicant has been given multiple opportunities to further clarify the allegations made and have failed to do so the Communication should be determined to be non admissible at this point in time.

Should the Committee decide to admit the communication the Committee should reject the allegations made of breach of the Convention.

Thank you for your attention.