

Dear Ms Marshall,

Thank you for your email of 31 August in which you confirm that the Committee has reviewed both Sweden's email of 21 August and the communicant's emails and attachments of 28 August and has indicated that, in the light of these, the Party concerned (i.e. Sweden) may not need to translate the two decisions of the County Administrative Board dated 4 January and 23 March 2012 at this stage, provided that it can help to clarify certain issues described in the email.

### **Quotes of the issues described in your email of 31 August**

1. First, it seems that, as stated in your email of 21 August, in neither of the two decisions by the County Board (ie decision of 4 January 2012 in case 403-4718-2010, and decision of 23 March 2012 in cases 403-993-2012 and 403-994-2012) does Mr Stümer appear as a party in his own name. He only appears on the sending list ("Sändlista") for the decision of 4 January 2012 as a representative ("ombud") of Mr Johan Andersson. In the decision of 23 March 2012 his name does not appear at all. If he had indeed appealed the decisions in his own name, should he not then have been mentioned in the decisions, and should he not then have been on the sending lists at the end of the decisions in his own name, regardless of whether his appeal was accepted or rejected? Does this mean that he only acted as a representative for Mr. Johansson or did he also act on his own behalf?

2. Second, the reasoning of the Land and Environment Court to reject Mr Stümer's appeal is very short. According to the court, Mr and Ms Stümer were not parties to the decision appealed, and therefore the decision could not be deemed to have gone against them. Did the court come to that conclusion on formal grounds, because Mr. Stümer had not appealed the building permit in his own name, or did the court arrive at this conclusion because it simply accepted the reasoning of the County Board without re-considering Mr Stümer's evidence?

3. In light of the above, the Committee would like the Party concerned to (again) clarify whether Mr. Stümer did appeal in his own name, and whether this was relevant for the decision of the court to reject his appeal. The Committee also asks the Party concerned to provide a full list of all the persons who appealed the two building permits, and clarify whether they acted in their own name or as representatives.

The Committee expresses that it is still concerned with the capacity of Mr. Stümer when appealing, and whether that or other factors were decisive for the decision of the Environment and Land Court to reject his appeal.

### **Questions from the Party concerned regarding the issues described in your email of 31 August**

To be able to clarify the issues described above and to avoid unnecessary misunderstandings and costly and time-consuming delays, Sweden wishes that the Committee clarifies the following questions concerning the above described issues before answering the Committee's questions.

### Issue 1:

Which decisions are the Committee referring to in the sentence “If he (*i.e.* Mr Stümer) had indeed appealed **the decisions** in his own name, should he not then have been mentioned in the decisions, and should he not then have been on the sending lists at the end of the decisions in his own name, regardless of whether his appeal was accepted or rejected?”

Sweden has informed the Committee’s that Mr. Stümer was indeed one of the persons who, in his own name, appealed **the one decision** of the Planning and Building Committee of the Municipality of Strängnäs of 3 November 2010, § 276, granting a building permit for the construction of two wind turbines on the properties Strängnäs Näs 1:4 and Strängnäs Knutsberg 1:2.

In addition, Sweden would like to draw the Committee’s attention to what appears to be a typing error on the Committee’s part. Mr. Stümer appears on the sending list (“Sändlista”) for the decision of 4 January 2012 as a representative (“ombud”) of Mr. Johan Andersson. Sweden has no indications that Mr. Stümer has represented a Mr. Johansson.

### Issue 3:

Which building permits are the committee referring to in the sentence “The Committee also asks the Party concerned to provide a full list of all the persons who appealed **the two building permits**, and clarify whether they acted in their own name or as representatives?”

### Additional issues

In the email you express that the Committee is still concerned with the capacity of Mr. Stümer when appealing, and whether that or other factors were decisive for the decision of the Environment and Land Court to reject his appeal.

What is meant with the expression “**when appealing**”? Appealing which decision/decisions? And which “**decision of the Environment and Land Court**” is the Committee referring to?

As Sweden has previously explained, there were two parallel but separate legal processes (court cases) in Sweden relating to the building permit for the construction of two wind turbines on the properties Strängnäs Näs 1:4 and Strängnäs Knutsberg 1:2. Both processes came to an end in Svea Court of Appeal Land and Environment Court of Appeal (in Swedish “Svea Hovrätt Mark- och miljööverdomstolen”).

One of the legal processes was about the right of Mr. Stümer (and others) to appeal the decision of the Planning and Building Committee of the Municipality of Strängnäs of 3 November 2010, § 276, granting a building permit for the construction of two wind turbines on the properties Strängnäs Näs 1:4 and Strängnäs Knutsberg 1:2. The other legal processes concerned the building permit as such.

The question whether Mr. Stümer had a right to appeal the building permit was finally decided by Svea Court of Appeal Land and Environment Court of Appeal in its decision of 21 August 2014 in case P 5592-14. This decision has not been translated and the Committee has not asked for it to be translated. The same goes for the judgment of the lower court (Nacka District Court Land and

Environment Court, judgment of 15 May 2014 in case P 129-12) in the same process and the decision by the County Administrative Board (decision dated 15 December 2011, case no 403-2103-11) in the same process, which were passed prior to the Supreme Court's final decision concerning Mr. Stümer's right to appeal the building permit.

In the email of 21 August Sweden wanted to, again, inform the Committee that Nacka District Court Land and Environment Court (in Swedish "Nacka tingsrätt Mark- och miljödomstolen) passed two judgments relating to the legal process about the building permit for the construction of two wind turbines on the properties Strängnäs Näs 1:4 and Strängnäs Knutsberg 1:2 on same day (15 May 2014). One judgment with case number P 129-12, and another with case numbers P 635-12 and P 1924-12.

In order to further clarify the two parallel but separate legal processes, Sweden would like to bring the Committee's attention to the following. Sweden referred it its email of 21 August 2015 to the letter from Sweden dated 10 December 2014. When referring to that letter, the exact words of that letter was used, i.e. that "Nacka District Court had, in another judgment dated the same day as the cases concerning the substantive legality of the Planning and Building Committee's decision to grant a building permit (i.e. 15 May 2014) **rejected** the appeal by Bernd Stümer (Case no P 129-12), that Bernd Stümer had appealed that judgment, that Svea Court of Appeal (Land and Environment Court of Appeal) had not granted him leave to appeal (decision 2014-08-21, case 5592-14) and that the decision by the Court of Appeal could not be appealed."

The term used in Swedish in that judgment by Nacka District Court Land and Environment Court (case no P 129-12) is "avslår", which, according to the official glossary for the Courts of Sweden, may be translated with either the term "reject" or the term "refuse". In its letter dated 10 December 2014 Sweden chose to translate the term "avslår" with the term "rejected".

However, as the authorized translator who translated Nacka District Court Land and Environment Court's judgment of 15 May 2014 in the case with case numbers P 635-12 and P 1924-12 uses the term reject for the Swedish term "avvisa" and the term "refuse" for the Swedish term "avslå", the correct term to use for "avslå" is presumably refuse.

This being said Sweden would like the Committee to clarify which of the two judgments by Nacka District Court Land and Environment Court passed on 15 May 2014 is meant in its sentence "The Committee, however, is still concerned with the capacity of Mr. Stümer when appealing, and whether that or other factors were decisive for **the decision of the Environment and Land Court to reject his appeal.**"

Kind regards,

Lina Oskarsson, National Focal Point for the Aarhus Convention