

2019-03-01

Case Summary posted by the Task Force on Access to Justice

Country: Ukraine

1. Key issue	<i>ENGO standing in species protection case.</i>
2. Country/Region	Ukraine
3. Court/body	<i>The Grand Chamber of the Supreme Court</i>
4. Date of judgment /decision	2018-12-11
5. Internal reference	№ 910/8122/17
6. Articles of the Aarhus Convention	Art. 9 (3) and (4)
7. Key words	Access to justice, protection of species, public interest, violations of environmental law, compliance with the national environmental law, administrative judicial proceedings.

8. Case summary

On 31 October 2015, the dolphinarium “Oscar Truskavets” was opened in the city Truskavets, Lviv region. The dolphinarium has 6 Black Sea bottlenose dolphins and 3 seals. According to the national environmental law, dolphinariums without natural seawater are banned. The bottlenose dolphin is listed as an endangered species in the Red Book of Ukraine. The purpose of including animals into the Red Book is to establish a special legal regime for conservation and restoration of rare species.

In aim to protect animals from cruelty and stop illegal using of rare species in commercial activities, the ENGO Environment People Law (EPL) went to Kyiv commercial court to obtain a court order to stop using dolphins by the dolphinarium in their shows. However, the court refused to satisfy EPL’s claims, stating that EPL does not have the right to go to court because the Aarhus Convention does not give it such a right. At the same time, the court narrowly interpreted the Aarhus Convention and did not investigate all existing violations and circumstances of the case. EPL appealed the decision to The Kyiv Commercial Court of Appeal, which however upheld the position of the court of first instance.

EPL then appealed to the Supreme Court. The Grand Chamber of that court concluded that an environmental organization (charity, non-governmental organization) shall be authorized to represent society’s environmental interests and its separate members in court in order to protect human and citizen’s violated environmental rights or in order to remedy the violations of environmental law. By submitting such a claim to court, in fact, the ENGO exercises the authority of public administrative bodies, which shall perform control over the compliance with the legal requirements for the protection of animal welfare by economic entities. Thus, pursuant to the Aarhus Convention, public representatives shall have the right to appeal against the violations of the national environmental law irrespectively of whether or not such violations refer to the rights to information and the public participation in decision-making guaranteed by the Aarhus Convention. After all, this Convention requires access to justice with the purpose of ensuring the compliance with the national environmental law.

The Grand Chamber of the Supreme Court therefore considers that EPL shall be authorized to apply to court in order to remedy the violations of environmental law committed by the defendant. At the same time, since the claimant in this case can be said to play the role of the public administration body in terms of performing control over the compliance with environmental law, the dispute is of public nature. It should therefore be solved in an administrative court, not in commercial judicial proceedings.

9. Link to judgement/
decision

<http://reyestr.court.gov.ua/Review/78977479>

http://www.unece.org/fileadmin/DAM/env/pp/a.to.i/Jurisprudence_prj/UKRAINE/Ukraine_2018_Dolphinarium_judgment.pdf