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Case Summary posted by the Task Force on Access to Justice

SWITZERLAND: Federal Supreme Court; BGE 144 II 218

<i>1. Key issue</i>	Appeal against a federal decision of excluding organisations from certain authorisation processes; access to justice and access to information – a public authority cannot exclude organisations on the basis of a lack of spatial reference when taking decisions that may have an impact on nature protection concerns
<i>2. Country/Region</i>	Switzerland
<i>3. Court/body</i>	Federal Supreme Court (Bundesgericht)
<i>4. Date of judgment /decision</i>	2018-02-12
<i>5. Internal reference</i>	BGE 144 II 218
<i>6. Articles of the Aarhus Convention</i>	Art. 4; art. 9 para. 3
<i>7. Key words</i>	Access to court, Aarhus Convention, nature protection, biodiversity, standing for NGOs, legal standing, locus standi, public interest, sufficient interest, spatial reference, access to information, authorization of plant protection products
<i>8. Case summary</i>	<p>According to art. 29 para. 1 and 4 of the Ordinance on Plant Protection Products the Federal Office for Agriculture (FOAG) perform review procedures in order to be able to decide on the continuation, amendment or revocation of the corresponding authorizations.</p> <p>According to art. 12 para. 1 lit.b of the Federal Act on the Protection of Nature and Cultural Heritage (NCHA) organisations concerned with nature protection, cultural heritage protection, monument preservation or related subjects have the right of appeal against rulings of the federal or cantonal authorities is also accorded to organisations concerned with the protection of nature's subjects if they fulfil the following requirements: 1. the organisation has to be active throughout Switzerland; 2. it pursues a solely non-profit-making objective; 3. any commercial activities must serve to achieve its nonprofit-making objectives.</p> <p>In 2015, the non-governmental organisation WWF Switzerland has demanded access as a party to the revision procedure as well as access to all relevant information from the FOAG. The FOAG denied both claiming that in order to participate in such procedures art. 12 NCHA demands a spatial reference. An appeal by the WWF to the Federal Administrative Court was successful, and the Federal Supreme Court confirmed it in 2018.</p> <p>According to the Court, the appeal under art.12 NCHA is only open to appeal insofar as the contested decision concerns the fulfilment of a federal task and is based on sufficiently detailed, directly applicable federal law. Furthermore, it is required that the task be related to nature and heritage protection. The Federal Supreme Court considered these requirements as fulfilled. It further stated that no spatial reference is required, as far as the existence of a federal task is demanded. However, there is a reference of the federal task to nature and cultural heritage protection. This is given here. In summary, the Federal</p>

Supreme Court decided that the element of spatial relevance is of no importance for the application of art. 12 NCHA. According to the Court, there is not evidence for such a restricting, neither in the wording nor in the history of the norm's development or in its meaning and purpose. This also corresponds with art. 9 para. 3 of the Aarhus Convention.

In its decision the Federal Supreme Court underlined that a further examination of the effect of the Aarhus Convention on national law is not required given the fact that art. 12 NCHA already provides the standing of organisations concerned with nature protection as a party in these revision procedures.

9. *Link to judgement/
decision*

http://relevancy.bger.ch/php/clir/http/index.php?highlight_docid=atf%3A%2F%2F144-II-218%3Ade&lang=de&type=show_document

<https://unece.org/environment/documents/2018/02/aarhustfajchbge144ii218judgment>