

2020-11-17

Case Summary posted by the Task Force on Access to Justice

SWITZERLAND: Administrative Court of Canton Berne; VGE 100.2016.271/277U

<i>1. Key issue</i>	Appeal against a cantonal decision of prolonging a camping site located in a nature reserve; access to justice – a decision by public authorities that may have an impact on nature protection concerns has to be issued as a formal ruling; federal offices as well as organisation may demand access to justice in these cases.
<i>2. Country/Region</i>	Switzerland, Canton of Berne
<i>3. Court/body</i>	Administrative Court of the Canton of Berne
<i>4. Date of judgment /decision</i>	2017-12-08
<i>5. Internal reference</i>	VGE 100.2016.271/277U
<i>6. Articles of the Aarhus Convention</i>	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

8. Case summary

According to art. 23a ss. in relation with art. 18 ss. of the Federal Act on the Protection of Nature and Cultural Heritage (NCHA) mires and mire landscapes of national importance as well as indigenous flora and fauna ought to be protected.

According to art. 12 para. 1 lit.b 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.

According to art. 12g NCHA the Federal Office concerned also has the right to appeal against cantonal rulings under art. 12 para. 1 NCHA.

Several environmental organisation and the Federal Office for the Environment demanded the cancellation of contracts concerning the prolongation of a camping site. The canton of Berne shall provide all permissions and decisions as rulings that will be regarded as subject to appeal. The canton of Berne considered the conclusion of contract as a primarily private act and not as a public decision, which, therefore, cannot be subject to appeal according to art. 12 para. 1 lit. b NCHA.

In 2017, however, the Administrative Court of the Canton of Berne has affirmed a proven need for the (judicial) review of the decision of the Government Council concerning a prolongation of a camping site. This is because the operation of the campsite, which is situated in a nature protection area of national importance, is likely to compromise the protection goals of the NCHA. The Court concluded that, in the absence of effective alternative legal remedies, the decision of the Government Council concerning the extension of the camping site's contract was to be treated as a challengeable ruling. This

takes into account the requirements for legal protection under art. 12 NCHA and art. 9 para 3 of the Aarhus Convention.

9. *Link to judgement/decision*

https://entscheidsuche.ch/kantone/be_vg/BE-VG-100-2016-271.html

<https://unece.org/environment/documents/2017/12/aarhus-tfaj-database-ch-camping-site-berne-judgment>

Comments

The dates should be provided in the following format: year-month-day

1. The key issue(s) of the case in one sentence.
- 2.
3. The name of the court/body in English (in the original language in parentheses).
4. Date in the format of year-month-day.
5. Internal reference to be used when searching the case in the national/regional databases.
6. Articles of the Convention that may have relevance in relation to the content of the judgment or decision.
7. Key words to be used when searching on this web site.
8. To facilitate reading, the summary may start with a short description of the procedural framework (the kind of procedure, arguments of the parties, and findings of the previous instances). However, this must be kept short, one paragraph at the most.
As regards the main findings of the court/body, the purpose of the summary is only to give a short orientation of the case. As a main rule, if there are diverging opinions of the court/body, only the opinion of the majority should be referred to.
If the case directly relates to a communication submitted to the Aarhus Convention Compliance Committee, it should be stated clearly in the summary.
The summary as a whole should not exceed a page (A4), preferably no more than 600 words.
9. Link to the national/regional web site where the original judgment/decision can be found. To facilitate access to the judgment/decision in the national language, please provide the secretariat with the text of the judgment/decision either to be included in the file with the case summary or to be sent as a PDF file. You can also submit the translation of the judgment/decision into English, Russian or French.

Examples of the prepared case summaries are available from the following webpage:
<http://www.unece.org/env/pp/tfaj/jurisprudenceplatform.html>