

13.5.2015

To

Aarhus Convention Compliance Committee on the case (ACCC/C/2013/81)

E-mail: aarhus.compliance@unece.org

Ref: ACCC/C/2013/81

Answers from B.Stümer on Question from Aarhus Convention Compliance Committee 29.4.2015 concerning compliance by Sweden with provisions of the Convention in relation to permits issued for wind turbines and the applicable legislation in general (ACCC/C/2013/81)

Question 1

certificate is attached

This is the second time that I am requested to send a certificate.
If necessary I can send originals by post.

Translation of Fullmakt.

letter of access for Mr Stümer to before the United Nations in Geneva to bring , and execute and guard Association Landscape Protection in Strängnäs, FLIS, proceedings against the Swedish State in case ACCC / C2013 / 81 concerning violations of the Aarhus Convention, or otherwise represent FLIS in this the matter.

If considered necessary, the protocol can be sent from the Board meeting at which the power of attorney was decided

Question 2

Please explain precisely what information the Party concerned is alleged to have failed to collect and/or disseminate pursuant to **article 5** of the Convention.

Violation of Article 5 is when no information about the dangers of the wind turbines is given to the public.

Paragraph 1a) is violated when the authority Energy Agency does not provide accurate and relevant information about wind turbines being machines under EU law and not buildings.

Paragraph 1 b) is violated when the Swedish Work Environment Authority has not conducted Market surveillance of machinery wind turbines under EU law and by thus not acquired overview of if the wind machines are CE marked under EU law and therefore safe for the public and their domestic animals.

Paragraph 1c) is violated when each existing operational wind turbine constitutes a risk of injury to the public since information on market control and CE marking under EU law is not immediately distributed to the public

Paragraph 2 is violated when no environmental information as above has been provided.

Environmental information about the dangers from the machines has never been provided

Paragraph 2.II) is violated when officials refuses to enclose information relating to the safety of wind turbines under EU law.

Paragraph 3 is violated when the electronic databases have not been established.

a) Is neglected when no reports of the results referred to in the paragraph 4 has been created.

Authorities have not provided the requested information on how large the reduction of CO2 is on all the wind turbines in Sweden.

b) Is violated by the fact that no information according the safety of the MD under EU law has been provided.

Paragraph 4 is overridden since no periodic reporting exists on how much wind power in Sweden has reduced its CO2 emissions.

Sweden reports to the EU on the reduction of CO2 emissions, but in that report is not mentioned how much the wind turbines have reduced emissions in Sweden.

Paragraph 5 is violated when no actions to provide documents in a) b) and c) have been taken within the framework of laws. The action that anyone can find information on laws, etc. on the Internet is no action depending on the party.

Paragraph 7 a) is violated since absolutely no evidence or analysis on the result of the expansion of wind turbines in Sweden has been published.

The government has even been hiding the total cost of all the taxes and subsidies for wind power by not reporting them in the state budget, but by letting electricity consumers pay extra tax "certificate fee" directly on the electricity bill.

b) Is violated since that the Party has never communicated to the public about the Aarhus Convention.

c) Is violated since the public is not aware of any information about the performance of public functions or the provision of public services in matter of Wind Turbines in Sweden.

Question 3

The communicant alleges a breach of **article 7** of the Convention. With respect to which plan, programme or policy is this breach alleged?

We got never any information on te dangers created by the wind turbines and thus never got

Procedures for public participation has been denied us in the case Helgarö and in the consultations that are sometimes held in Sweden where no answers on questions about the safety according machinery directive has been answered.

Real participation does not exist.

Decisions are not taken accordance with the appropriate procedures where the safety regulations according to MD have been included.

No provided opportunities for public participation in the preparation of policies relating to the environment in the matter wind turbines exist.

No practical and/or other provisions for us to participate during the preparation of plans and programmes relating to the environment, within a transparent and fair framework exist.

There is no framework so, article 6, paragraphs 3, 4 and 8, can apply.

The Party have never given any signs of knowing of the Aarhus Convention.

Question 4

The communicant alleges a breach of **article 8** of the Convention. With respect to which executive regulation or generally applicable legally binding normative instrument is this breach alleged?

Kommunikanten hävdar åsidosättande av artikel 8 i Europakonventionen. När det gäller vilka verkställande reglering eller allmängiltig rättsligt bindande normativt instrument är detta brott påstådda?

We have never participated at any *appropriate stage*

We have never participated during the preparation of executive regulations and other generally applicable legally binding rules.

No steps have been taken for our participation in any matter regarding wind turbines.

When we learned about Aarhus Convention, we asked the Swedish environment minister Ek to participate in the drafting of amendments to the Environmental Code. We never received answers.

Se note 8 page 5 in our communication 27.2.2013

Questions for both the communicant and the Party concerned

Question 11.

Please each specify precisely how far away the communicant lives from the wind turbines in question.

2000 meter

In addition to the answer in **Question 13** paragraph 9 below we point out the fact that locus standi under which affected citizens complain of interference from planned wind turbines, could very well be measured in similar machines in similar terrain and under different meteorological conditions.

Each proposed location of a noisy machine as wind turbines and where the remaining dangers, such as noise, infrasound and dangerous wings, are unique and must be assessed according to the ruling of the Supreme Court that the interference values always are limit values which may never be violated.

Local conditions, vegetation and the design of the landscape, are unique to each proposed location, which according to the verdict of the court must determine the scope of the machine disturbance field.

Shall then also the Court's requirement that the interference value even under different meteorological conditions never exceeded apply, it is necessary to add a substantial margin to the disturbance area 5-10 km.

Measurements at existing wind farms have shown unlawful interference noise in over 5 km distance.

Here we point out again that the observatory in Onsala was granted standing at the planned wind farm 17 km away, therefore, that the observatory could show that the interference from the proposed turbines would affect the observatory measurements.

Distance of course means no disturbance damages

Here was the locus standi of course linked to the interference from wind turbines and not the distance to the turbines.

For citizens, it is not acceptable that the courts are willing to expose them to serious injury from the machines wind turbines only for the reason that the courts found another simple but totally wrong approach as the basis for their decisions to allow access to justice in matters relating to wind turbines.

Question 12

12. Please each provide a concise account of the communicant's requests for environmental information including:

- a. The date of each request
- b. The exact information requested
- c. The date of any response and the response provided
- d. The reason(s) given for refusing to provide the requested information, if any; and
- e. The length of any delays in providing the requested information.

See even our attachments on page 35 reply 23.9.2013

2008

- a 27.2.2008 county government
- b comprehensive plan, Helgarö
- c no answer

- a 10.4.2008 bishop diocese Strängnäs
- b what are the motive for wind turbines on Helgarö
- c answer 18.4. 2008 save the climat

- a 14.4.20108 T.Jarl the person responsible for church's decision
- b which building permit documents have you submitted
- c no answer

- a 23.4.2008 environmental and Rescue Committee
- b requested report of the measured interference from wind turbines
- c no answer

- a 23.4.2008 the municipality
- b request for all documents showing the basis for decisions for wind turbines
- c no answer

a 29.5.2008 the municipality
b required environmental impact assessment that the municipality has made about Helgarö
c no answer

a 29.5.2008 county government
b Hereby I request answers to the appeal to the County Board of decisions in Strängnäs the Planning and Building Department PBN / 2008: 163-229 which I submitted to the municipality on 24.4 2008
c no answer

a 3.7.2008 and 11.7.2008 county government
b complete decision basis for Helgarö and copy of the consultation documents for Mälaren Localities.
C no answer

a 3.7.2008 county government
b complete basis founding the area Helgarö, Knutsberg and Näs including case number and so on.
C no answer

a 11.7.2008 county government
b We request that the country government provide to us these facts for building permit for wind turbines.
C no answer.

a 21.8.2008 county government
b Hereby, I request a copy of the opinion of the Planning and Building Committee in Strängnäs 2008-02-06 which is annexed to the County Board in Södermanland opinion 2008-02-25, No. 421-10868-2006
c no answer

a 27.8.2008 the municipality
b is the comprehensive plan valid, when was the decision taken to depart from the comprehensive plan, and so on.
c no response

a 17.10.2008 the municipality
b Whose comments and questions are referred,
c no response

a 17.10.2008 kommunen
b decision data Helgarö
C no answer

2009

In autumn 2009 and spring 2010 I worked as chairman of the FSL, association Protect the landscape, and requested information from all municipalities, all county administrative boards, etc. The questions dealt mainly with the safety of wind turbines

JO judgment 11.3.2009 Dnr 3469-2008

Stümer requesting a copy of the environmental impact assessment, etc.

The answer given by the municipality is that there are no EIA, there are no documents sent to the County Administrative Board. This should Stümer have received in response instead of that the documents are not stored at the municipality.

My comment.

Of course not, since an EIA had not been carried out by the municipality.

a 5.4.2009 the municipality

b requests documents in the file Helgarö wind turbines

c no answer

(a letters from Chairman of FSL,

16.10.2009 on disqualification

2.12.2009 on wind turbines

23.12.2009 obstruction of applicable EU law

6.4.2010 bulding af Wt is criminal activity

4.5.2010 question of Machinery Directive etc

4.8.2009 stopp building of WT:s

No answers)

a 25.10.2009 the municipality

b how are applicable safety requirements of the Machinery Directive applied

c no answer from Strängnäs

2010

a 13.12.2010 the municipality and operators

b consultation, Risk analysis, supported by SS-EN ISO 14121-1:2007, Safety of machinery - Principles for risk assessment. Inspection reports for safety checks.

C no answer

a 26.12.2010 government

b is the Machinery Directive applied

c no answer

2011

a 9.1.2011 government

We therefore request that all the Machinery Directive safety rules should also apply to machine wind turbines when it is put into operation in Sweden.

17.3.2011 answer from government – no measures

Inga åtgärder

11.9.2011 kommun the municipality
b about restoration of wind turbines
c no answer

18.10.2011 kommunen the municipality
b about safty when fire is burning the wind turbine
c no answer

25.10.2011 county Administrative Board
b about the legality of permits
c no answer

30.10.2011 länsstyrelsen county Administrative Board
b about the legality of permits
c no answer

30.10.2011 länsstyrelsen county Administrative Board
b about standing
c no answer

30.10.11 kommunen county Administrative Board
b basis for decisions, security
c no answer

a 11.11.2011government
b Present the estimated cost of the planning Hereby, we request a copy of the decision basis for the decision that the machine wind turbines does not need to comply with applicable law Maskindirektiv .
c possible answer Government decision I 6

17.11.2011 government
Therefore, I request herewith to get a copy of the decision data that formed the basis for the decision to reduce CO2 emissions by building wind power until 2020.
Also, I want to have copies of the decision data that formed the basis for the decision to absolve the machine wind turbines from current EU directives (the Machinery Directive)

20.11.2011 Kommunen the municipality
b about safty of wind turbines
c no answer

6.12.2011 länsstyrelsen county Administrative Board and the municipality
b about noise measurement
c no answer

(All our appeals to the County Board of Appeal, the Administrative Court, Ombudsman, etc. have been the aim to clarify that the municipality and the provincial government has not fulfilled their obligations to investigate, examine, or somehow create the factual basis for decisions as the law requires. This is also the basis on which land and environmental court annuls building permit .)

2012 - 2015-05

- a During this time we ask questions to the authorities about
- b on the safety of wind turbines, machinery Directive, Market surveillancel, CE-marking, infrasound, continuing dangers from wind turbines.
- c Government gives incorrect information on the EU to direktivet applied in Sweden. Does not respond about infrasound until 03/24/2015 that it should be examined.

Requested public information from the authorities during 2008-2015.

Arbetsmiljöverket , Swedish Work Environment Authority
svar om bestämmelserna

27.4.2012.

4.2.13

12.12.2011

18.10.11

11.12.11

29.9.2011

7.9.2010

Boverket, National Board of Housing

2.12.2010

9.9.10

(8.4.2010 Answers wind turbines are no machines)

16.4.2010

Energimyndigheten, Swedish Energy Agency

22.9.2008

17.12.2009

19.7.2010

17.12.2009

27.7.2010

Naturvårdsverket, Swedish Environmental Protection Agency

10.10.2013

18.1.2011

25.5.2011 about infrasound

Vägverket, Swedish Road Administration

23.2.2010

21.3.2010

Elsäkerhetsverket, electricity safety Agency

2.7.2010

12.7.2010

28.10.2011 MSB, Myndigheten för samhällsskydd och beredskap, Swedish Civil Contingencies Agency

28.10.2011 about fire in the wind turbine

22.5.2012 about fire in the wind turbine

(Riksenheten mot korruption
12.1.2010
Riksrevisionen)

Transportstyrelsen, Swedish Transport Agency
9.9.2010

Regeringen Government

28.1.2009
clarify the causes of wind turbine decision
no answer

18.4.2009
the benefits of wind turbine decision
no answer

a 26.12.2010 government
b is the Machinery Directive applied
c no answer

8.1.2011 the Machinery Directive
12.5.2011 the Machinery Directive
25.3.2011 the Machinery Directive
(17.3.2011 answer decision I 6)
19.2.2012 the Machinery Directive
9.4.2012
how the Aarhus Convention is applied
7.5.2012 the Machinery Directive
24.3.2012 the Machinery Directive
7.5.2012 the Machinery Directive
9.1.2014 the Machinery Directive

Comment on the answers from authorities during 2008-2015

The Swedish authorities have taken a course in how to answer questions from the public. If the public requesting information under the Freedom of the Press Act and the authority does not or can not answer, they use the method "hello ax".

In response explains the authority detailed of the legality of the issue but leaving no answer to the question that has been asked .

It happens every time we ask for information about when, where, how the market surveillance according to the Machinery Directive has been implemented . We get long references to the law but to date not a single copy of a document proving that

market surveillances have been implemented. No wind turbine is authorized to start without market surveillances have been carried out.

Not even the Parliamentary Ombudsman, either the Swedish or European Ombudsman has managed to get these copies. The only explanation that these documents have not been provided is that they do not exist and have never existed. The Machinery Directive is unequivocal when it comes to the market surveillance. Without these, no wind turbine is allowed to start.

Our complaint to the EU Commission has received the results that Sweden has the right to circumvent the machinery directive, which is contrary to the agreement between Sweden and the EU in 1994.

We also asked the Swedish courts about when and how should the safety regulations according machinery directive be applied in matters concerning machines wind turbines in Sweden

We asked the county administrative boards.

We got answers for example from

Länsstyrelsen i Blekinge län

Länsstyrelsen i Norrbotten

Länsstyrelsen i Västerbotten

Länsstyrelsen i Sörmland

The county administrative boards are referring to government orders I 6 and attach the order to the answers.

Sweden is governed by the county administrative boards that must obey government orders in I 6 in 17.3.2011.

This means obvious that the county administrative boards are not independent and autonomous. They obey orders from the government

This handling of questions about wind turbines is contrary to Article 9 of the Aarhus convention

Paragraph 1 states access to a review procedure before a court of law or another independent and impartial body established by law.

And by a public authority or review by an independent and impartial body other than a court of law.

The condition "condition independent and impartial body other than a court of law" is so important that it is repeated several times.

We emphasize here again that the Swedish County Administrative Board (länsstyrelsen) is in no way an "independent and impartial body" but only officials who are responsible for carrying out government orders.

This leads to the processing of permits for wind turbines can not be settled in the county administrative boards (länsstyrelser).

Sweden needs to change its permitting process.

The Swedish environmental courts are ignoring any approach made to the Machinery Directive in their judgments.

For example

11.11.2013 Svea Court of Appeal

Anwer , no answer

Question 13

13. Please each examine the draft chronology/summary of facts set out overleaf and confirm that it is correct, or alternatively make any corrections that you consider are required:

The Draft Chronology / summary is only taken from Concerned Party's response (09/26/2013) We request that our statement in the notification 02.27.2013 and our responses 23.09.2013 with all attachments and 18/09/2014 are the right chronology. My comments are undelined.

Draft chronology/ summary of facts (to be confirmed by the communicant and Party concerned)

1. On 10 January 2008 the Diocese of Strängnäs notified the local environmental supervisory authority in Strängnäs (the Strängnäs environmental authority) about its construction plans concerning wind turbines near Strängnäs, and applied for a building permit for the turbines along with an accompanying environmental impact statement (EIA).¹

There was no EIA according to regulations. No studies of the nature of Helgarö was made.

2. As the plans concerned two wind turbines with a height of 140 meters each, no permit under the Environmental Code was needed. Instead the applicant chose to make a notification to the regulatory authority and apply for a building permit.²

3. The wind turbines were to be located the properties Näs 1:4 and Knutsberg 1:2 and the distance between the intended locations of the wind turbines and the nearest residential property was at least 680 metres.³

4. On 22 February 2008, the Strängnäs environmental authority decided on measures to be undertaken by the applicant including location and height of the turbines and the noise, shadows and reflections from the turbines/rotor blades. No measurements were performed, the values reported were taken from a template wind turbine industry provided.

5. On 31 March 2009, a notification of the application for the building permit was sent to known affected parties, i.e. individuals who owned land near the intended installations. They were asked to comment on the application within three weeks. Among others Johan Andersson raw neighbor got no information. The method to simply provide information to the raw neighbors is contrary to applicable law

6. On 3 April 2009, the application for the building permit was announced in the local newspaper and concerned parties were given the opportunity to comment on the application within three weeks.⁴ Because the authorities refused to provide information on investigations of the area, and security there was nothing to ask about.

7. On 3 November 2010, the municipal Committee of Strängnäs (the local authority) issued a building permit for two wind turbines with a height of 140 meters each.⁵
Note. 3 years after first notification. Why so long time?

8. On 14 January 2011, the communicant, other individuals living in the areas surrounding the location of the planned wind turbines and two environmental organisations appealed to the County Administrative Board of Södermanland.⁶ The appeal stated, among other things, that wind turbines are dangerous machines which must comply with Directive 2006/42/EC of the European Parliament and the Council of 17 May 2006 on Machinery, and that the building of these two wind turbines meant exposing the communicant and other local residents to the risk of life threatening injuries.⁷

9. In three separate decisions (December 2011, January and March 2012), the County Administrative Board of Södermanland found the appeals by the communicant and about 30 other appellants inadmissible because their properties were considered to be situated too far away (further than 1 kilometre) from the intended location of the closest wind turbine. The County Administrative Board found ten appeals admissible, but not well-founded, and the appeals were refused.⁸
We opposed the County Administrative Board decision on access to standing and pointed out that the limitation based on distance to wind turbines is not supported by applicable law. We maintain the obvious that the distance does not harm humans and all living things, but it's obvious the machine interference noise etc. causing damage, not the distance. We oppose that the Swedish courts want to make it easy for themselves by simply measuring the distance that do not harm and thus obviate the need for actual measurements of the harmful interferences.

10. The communicant and other appellants (both those whose appeals were found inadmissible and those whose appeals were found admissible but were unsuccessful on the merits of the case) appealed to the Court of Appeal (the Land and Environmental Court at Nacka District Court).⁹

11. On 15 May 2013, the District Court rejected the appeal by the communicant (Case P 129-12) because no information had been provided showing that his property was located in a neighbourhood which would be particularly affected by the wind turbines, and therefore he had no right to challenge the permit decision.
Se comment on 9 above

12. The communicant appealed the decision to the Land and Environment Court of Appeal at Svea but he was not given leave to appeal. The decision by the Land and Environment Court of Appeal cannot be appealed.¹¹
The communicant appealed here on the issue of locus standi, nothing else.

13. . On 15 May 2014, the District Court revoked the local authority's decision to issue a building permit for the two wind turbines because no inventory of birds had been carried out (case P635-12 and P1924-12). The decision was appealed. The communicant was not given standing, but an owner of property within Helgaro-Vala 1:1 (Mr. Håkan Lindström) was. The communicant remained involved in the case as Mr Lindström's representative.¹²

The statement that communicant remained involved in the case as Mr Lindström's representative is wrong. The communicant remained involved in the case as Johan Andersson's representative.

14. On 9 March 2015, the Land and Environment Court of Appeal delivered its judgments in case P-5593-14 and P 5504-14. The Court held that a building permit for construction of two windmills on Näs 1:4 and Knutsberg 1:2 in the municipality of Strängnäs could not be obtained because it would conflict with the protection of the Sea Eagle and the Osprey, two protected species which use the area for foraging. In addition, the Court found that the area provided a good environment for future nesting areas for the two species and that the 2-3 kilometre buffer zone recommended by Swedish Environmental Protection Agency between windmills and such areas could not be upheld in this case.¹³