08/03/2013

To
United Nations
Economic Commission
For Europé
Palais des Nations
Room 348
CH-1211 Geneva 10
aarhus.compliance@unece.org

By reason of the UN / ECE on 02/21/2014 after 43rd plenary meeting 17 to 20 December 3013 writes on the subject ACCC/C/2013/81 as above, I beg to submit a clarification of the matter ACCC/C/2013/81.

UN / ECE writes:
Communications from members of the public

19.
Concerning communication ACCC/C/2013/81 (Sweden), the Committee noted that the communicant had commented by its e-mail of 12 October 2013 on the Party concerned's response of 26 September 2013, in which the Party concerned had informed the Committee about the ongoing appeal procedure before the Land and Environmental Court. In his email, the communicant stated that he had been waiting for a ruling in the ongoing legal proceedings since February 2008, even though national law required that building permits should be settled promptly.
In view of the correspondence received, the Committee agreed to ask the parties to clarify which aspects of the communication were within the scope of the proceedings before the national courts and, in the light of the information received, to decide at its next meeting how to proceed with the case. The Committee also agreed to remind the communicant that the Committee could only review compliance with the provisions of the Convention, not compliance with EU legislation.

This case is not in any respect about EU law, but only about how provisions laid down in Aarhus Convention has been applied in environmental matter Helgarö / Strängnäs and in similar cases in Sweden.

The question of compliance with EU legislation is the subject of a notification to the European Commission and shall not affect my communication on Aarhus Convention.
As an orientation of this notification to the EU Commission, I leave here a copy of the latest approach to the Commission. Appendix 1 and 2.

My notification to the UN / ECE ACCC/C/2013/81 contains reported offenses against various Articles in the Convention.
Through extensive documentation I am attesting allegation that no information about environmental case planning permission for wind turbines has been provided to the

affected public before the decision in the case Helgarö / Strängnäs, contrary to Article 4, 6, 7 of the Convention.

Through extensive documentation I am attesting allegation that the public concerned was rejected as NGO which is contrary to Articles 6, 7, and 8 of the Convention
Fact is that the EU has incorporated Aarhus Convention in its laws in the usual way that the EU clarifies the Convention's provisions in different directives. These clarifying directives are not new laws but merely clarifying the Convention. I note this fact on the EU's clarifications carefully in my communication 26/09/2013.

In my Reply to Compliance Committee's Questions 26/04/2013 – Communication ACCC/C/2013/81, 23/09/2013 I am answering the questions that the UN / ECE places about the EU. in particular the question 3.

There I also answer with reference to the Convention:
"The Convention has also effected several EU directives and regulations:
85/337/EEG and 96/61/EG give the public the right to participate in environmental decision-making and access to justice. It thus affects the right to complain.

2003/4/EG Gives right to environmental information.

2003/35/EG Gives right to public participation in the drawing up of certain plans and programs relating to the environment and amending with regard to public participation and access to justice. Is defining public and public concerned.

Even 85/337/EEG on issues of locus standi which was the ground for case Case 263/08 of the EU-court.

But none of the above national applications can replace the provisions in the Convention, but only clarify them. In case of doubt the Convention always applies."

Through extensive documentation I am attesting the claim that concerned parties have been refused access to justice, in violation of Article 9 of the Convention. Complainant believes that a judicial review means that the trial is based on consideration of all on the matter present laws. Appellant believes that a court is not entitled to exempt certain laws that do not fit the Court's views on the merits or that the government has ordered to be excluded.

Swedish State has by order incorporated EU law in the form of EU directives. Therefore, the EU Directive Machinery Directive is also Swedish law applicable in matters related to machinery in Sweden. The Swedish government has decided that the law Machinery Directive may not be included in a judicial review of permits for wind turbines. This decision has been communicated to all law enforcement agencies and also to the courts.
Through documentation I am attesting that judicial authorities including courts complied with this government decision.
Through this action, to exempt a Swedish law Machinery Directive from being applied in matters relating to machinery turbines, courts have disregarded the provisions of Aarhus Convention Article 9.
My reference to that government's action is also contrary to the Swedish constitution,

the Constitution Act, is given in order to show the seriousness and importance of the government decision and the courts use of law.

The entire comprehensive presentation In my reply 23/09/2013 seeks to clarify that the EU not protects its own law and how the Swedish legal system, therefore, can circumvent the laws that are enacted to meet the foundation of the Convention on health and safety.

My comparison between EU-Directive, Maschinery Directive, and the Swedish application in the ASF clearly shows the method by which the Swedish judicial practice is changing and thus circumvents the application of current Swedish law Machinery Directive.

As obvious evidence of these my assertions I mention detailed both that the Swedish state can not prove with documents executed Market Surveillances and the easily provable lack of CE marking on site of wind machines in Sweden. Both of these assertions are easy to prove by requiring copies of these documents and by on-site checks of CE marking on existing machines wind turbines.

I point out that the county administrative boards, as the first instance in judicial review of permits for wind turbines, are not the free and independent judiciary that meets the requirements of Aarhus Convention.
When already the beginning of the Swedish legal process is contrary to the Convention it leads to even the rest is continue doing it. Only in the beginning of the legal process, the investigations and surveys are assessed. The subsequent courts do not conduct any investigations or inquiries. Therefore the conclusions in the introduction of the legal process in environmental issues are never impartial but a consequence of the Swedish legal process to obey government orders.
My notification relates only to Swedish law and relates not to EU use of law.

Several court rulings in recent times reject without due complainants reference and requirements to the provisions of the Aarhus Convention should be applied in the legal process. This shows that the provisions of the Aarhus Convention is not applicable in the Swedish legal process in matters relating to wind turbines.

E.g. Svea Hovrätt, Mark- och miljööverdomstolen , Mål 9650-12, 24.1.2014.

Appendix 1.
Rejection of my notification to the European Commission 01/14/2014
http://www.helgaro-liv.se/FN 2013/2262-2013 – reply Commission.pdf

Appendix 2
My answer 06/02/2014 on the EU-rejection.
http://www.helgaro-liv.se/FN 2013/ 6-2-2014 eng my answer.pdf

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