

Parliamentary Ombudsman
Hans-Gunnar Axberger

Complaint against the Municipality of Strängnäs et al. regarding the processing of appeals etc.

Complaint

In a complaint, which was received by the Parliamentary Ombudsmen (JO) on 26 June 2008, B Stümer complained about the Municipality of Strängnäs and the County Administrative Board of Södermanland. The complaint against the Municipality of Strängnäs related to the processing of decisions and appeals. Mr Stümer alleged that the Municipality had kept decisions and documents secret from him and prevented him from appealing. He was also of the view that decisions issued by the Municipality and County Administrative Board of Södermanland in matters concerning the construction of wind turbines should be annulled since the supporting information for the decisions of these public authorities was deficient. The following main points were made in the complaint.

On 22 February 2008 the Environmental and Rescue Services Committee [*Miljö- och räddningsnämnden*] of the Municipality of Strängnäs issued a decision on safeguards in a matter concerning the construction and operation of two wind turbines (reg. no 19/2008 420). On 23 April 2008 Mr Stümer filed an appeal of the decision with the Municipality. On 7 May 2008 the Municipality rejected his appeal as having been received too late. On 18 May 2008 he sent an appeal of the decision direct to the County Administrative Board. In that letter he requested that his appeal of 23 April 2008 be taken into account. On 21 May 2008 he was notified that the County Administrative Board had passed his letter to the Municipality for examination of whether his appeal had been received in due time. The Municipality had not replied. – On 5 March 2008, PBN/2008:163-229, the *Planning and Building Committee* [*Plan- och byggnämnden, PBN*] of the Municipality of Strängnäs decided to adopt a policy document for windpower. The decision did not contain any appeal instructions. On 25 April 2008 Mr Stümer filed an appeal of the decision with the Municipality (JO file annex 6). The letter was addressed to the Municipality but it stated that the appeal was intended for the County Administrative Board. He had not received any reply with respect to the appeal. – On 23 April 2008 Mr Stümer made a request in a letter to the Municipality to receive all papers concerning the construction of windpower turbines in the Municipality. The Municipality released a binder written by a consultant. – On 28 April 2008 Mr Stümer made a request in a letter (JO file annex 8) to the Municipality for written appeal instructions for “the decision on the construction of wind turbines on Selaö”. There had been no reply to the letter. – On 29 May 2008 he wrote to the Municipality requesting a reply to his request for appeal instructions (JO file annex 12). He also requested copies of two environmental impact statements, a comprehensive plan, and the documents sent by the Municipality to the County Administrative Board “according to reg. no 555-942-2008 concerning an establishment of wind turbines on the properties Näs 1:4 and Knutsberg 1:2”. There had been no reply to the letter. On 29 May 2008 he wrote to the County

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Administrative Board requesting a reply to his appeal of the Municipality's decision adopting a policy document (reg. no PBN/2008:163–229). There had been no reply to the letter. – In a letter to the Municipality dated 11 June 2008 (JO file annex 14) Mr Stümer requested a copy of the detailed development plan for the construction of wind turbines on Näs 1:4 and Knutsberg 1:2 and the detailed development plan for the wind turbines on Ytterselö-Åleby 2:1. There had been no reply to the letter.

Investigation

In summary, the County Administrative Board of Södermanland gave the following information by phone to the rapporteur at the Parliamentary Ombudsmen on 13 and 15 August 2008.

An appeal by Mr Stümer regarding the Municipality's decision of 22 February 2008 concerning windpower turbines on Näs 1:4 was received by the County Administrative Board on 3 June 2008. The matter, reg. no 403-8264-2008, was ongoing. The letters from Mr Stümer of 24 April 2008, appeal of the Municipality's decision PBN/2008:163–229 (JO file annex 6), and of 29 May 2008, requesting the County Administrative Board's reply to the appeal, were received by the County Administrative Board on 2 June 2008. On 15 August 2008 the County Administrative Board had still not had time to reply to the letter from Mr Stümer.

The Parliamentary Ombudsmen called on the Municipal Executive Board of the Municipality of Strängnäs to submit an investigation and an opinion on the processing of Mr Stümer's letters of 24 and 28 April 2008 (JO file annexes 6 and 8), of 29 May 2008 (JO file annex 12) and of 11 June 2008 (JO file annex 14).

The Municipality's opinion in response to the referral by the Parliamentary Ombudsmen was received on 14 November 2008. The opinion had the following main content (excluding annexes).

In conjunction with the receipt by the Municipality of Strängnäs of an application for an advance ruling for three wind turbines on Ytterselö-Åleby 2:1, the Planning and Building Committee (PBN) instructed the Urban and Rural Development Department [*samhällsbyggnadskontoret*] to investigate the question of wind turbines and to contact the Mälardal Council [*Mälardalsrådet*] to gather the views of surrounding municipalities. No views or proposals regarding the direction of the wind power development emerged in the contact that the Urban and Rural Development Department had with the Mälardal Council. However, several municipalities had drawn up their own policy documents for wind turbines, which the Municipality of Strängnäs also had. Through decision PBN § 31, of 5 March 2008 (see annex 1), the Planning and Building Committee adopted a draft policy for the Municipality of Strängnäs (see annex 2).

The letter containing the appeal (JO file annex 6) of the Planning and Building Committee's decision to adopt the policy was received by the Municipality of Strängnäs on 25 April 2008. The documents in the matter show that the appeal was rejected on 16 September 2008 through an examination of whether it had been received in due time (see annexes 3 and 4) as the appeal had not been received in due time.

The decision of the Planning and Building Committee to adopt a general policy for the establishment of windpower in the Municipality of Strängnäs can be appealed through a legality review. The Municipality should therefore have applied the rules of the Local Government Act regarding appeal. The rules on a legality review state that an appeal shall be submitted to the county administrative court and that the county administrative court is the instance that examines the appeal. The Municipality of Strängnäs should therefore have promptly forwarded the letter containing the appeal to the county administrative court. The county administrative court is the public authority that examines whether the appeal has been received in due time.



The Municipal Executive Board considers that the processing of Mr Stümer's appeal is remarkable. The appeal should have been sent on to the county administrative court promptly. The appeal contained in JO file annex 6 has now, 27 October 2008, been passed on to the county administrative court for examination.

The advance ruling regarding three wind turbines was given by the Planning and Building Committee in decision PBN § 32, of 3 May 2008 (5 March 2008, note by the Parliamentary Ombudsmen), see annex 5. The decision was posted on the municipal notice board (see certificate of posting in annex 5) and announced in the newspapers *Eskilstuna kuriren* and *Strängnäs Journalen* on 25 April 2008 and 30 April 2008 respectively (see annex 6). The letter requesting written appeal instructions received on 28 April 2008 (JO file annex 8) has been interpreted as an appeal of the positive decision on three wind turbines. The appeal was rejected on 16 September 2008 through an examination of whether it had been received in due time for the reason that the appeal had not been received in due time (see annex 7).

A number of prerequisites for the substantive examination of the matter, criteria, must be fulfilled before an appeal can be examined. The decision-making authority, i.e. the Municipality of Strängnäs, shall examine whether the appeal was received in due time. The assessment of the other criteria is up to the authority that has to examine the appeal. In this case it is up to the County Administrative Board to examine the appeal and therefore also the questions of the right to appeal, the appealability of the decision, etc.

In this matter the Municipality has considered the letter, JO file annex 8, as a formal appeal. It can certainly appear as if the letter from Mr Stümer is intended to lead up to a formal appeal. However, as a result of the Municipality's actions the complainant has not had the opportunity to state what decision the complainant wants to have instead of the decision in question and his grounds for this. There is nothing to show that any officer was in touch with Mr Stümer regarding his letter, and nor is there any official note in the matter that supports the assessment made. The letter ought therefore to be considered on the basis of what it actually says. The Municipality of Strängnäs should therefore have replied to the letter by providing information about how to appeal the decision in question. In this respect the processing of the matter is also remarkable.

In letters received by the Municipality on 29 May 2008 and 11 June 2008 Mr Stümer made requests to receive copies of a number of documents (JO file annexes 2, 12 and 14). Mr Stümer requested copies of the following documents:

Request according to JO file annex 12

The environmental impact statement (EIS) drawn up by the Municipality as the basis for its official opinion, reg. no PBN/2007:402-239, and the EIS drawn up by the Municipality regarding the establishment of wind turbines on the properties Näs 1:4 and Knutsberg 1:2.

Comprehensive plan for the Municipality of Strängnäs.

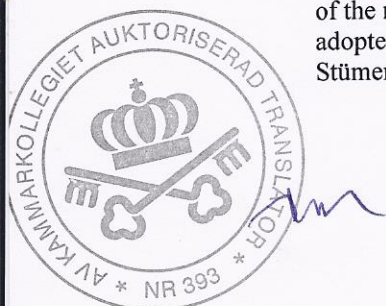
Documents sent by the Municipality to the County Administrative Board according to reg. no 555-942-2008 concerning an establishment of windpower on the properties Näs 1:4 and Knutsberg 1:2.

Request according to JO file annex 14

Detailed development plan for the construction of windpower on Näs 1:4 and Knutsberg 1:2.

Detailed development plan for the wind turbines on Ytterselö-Åleby 2:1.

The investigation of the matter shows that no environmental impact statement was drawn up in the matter of an advance ruling regarding windpower. According to information from the Urban and Rural Development Department, a current comprehensive plan has been released to Mr Stümer. In addition, Mr Stümer requested copies of the documents sent to the County Administrative Board concerning an establishment of windpower on the properties Näs 1:4 and Knutsberg 1:2. At the time of the request the Municipality of Strängnäs had not sent any documents to the County Administrative Board. So this part of the request cannot be complied with. Similarly, no detailed development plans have been drawn up or adopted for the properties Näs 1:4, Knutsberg 1:2 or Ytterselö-Åleby 2:1. As a result, this part of Mr Stümer's request could not be complied with either. The complainant has been given detailed information



about the Municipality's handling of the windpower issue by the Head of Urban and Rural Development (see annex 8).

The Municipal Executive Board wishes to state that if a private person asks to access a document that is not held by the authority, the authority shall, naturally, immediately inform the private person that the document does not exist. This follows from Section 4 of the Administrative Procedure Act. Such information was given about the detailed development plans by the Municipality (see annex 8). However, the Municipal Executive Board considers that it is remarkable that the reply to the enquiry was only sent to the private person after almost two months. If the private person has been informed that a document that he wishes to access does not exist and, despite this, the private person maintains his request to access the document and the request relates to a document that may typically be held by the authority, the authority's processing of the matter should follow the procedure set out in Chapter 15 of the Public Access to Information and Secrecy Act, i.e. a decision refusing the request shall be issued and appeal instructions provided. In addition, the requirement for prompt processing set up in the Freedom of the Press Act must be taken into account.

The Municipal Executive Board wishes to point out that Mr Stümer has received copies of the documents that are held by the authority and that shall be released under the applicable legislation. However, Mr Stümer has not received, either promptly or within a reasonable time, a reply or a decision refusing his requests on points where the Municipality cannot comply with his requests. As a result of the Parliamentary Ombudsmen's referral, the Municipal Executive Board has had its attention drawn to Mr Stümer's request for copies and has therefore made sure that a formally appealable decision (see annex 9) has been issued.

The Municipal Executive Board wishes point out that the Municipality considers that it is of the utmost importance that an authority has put routines in place that ensure that the regulations on the processing of matters by authorities and the release of official documents are applied correctly. On account of what has emerged regarding the formal handling of Mr Stümer's letters and requests in the investigation carried out before responding to the referral by the Parliamentary Ombudsmen, the Municipal Executive Board is going to ensure that the Municipality reviews its routines in these respects and promptly initiates training.

Mr Stümer commented this response. In a letter dated 12 November 2008 he requested the assistance of the Parliamentary Ombudsmen in matters including accessing additional documents from the Municipality and requested that the Parliamentary Ombudsmen affirm that his appeals of the decisions of the Planning and Building Committee were valid. In an opinion to the Parliamentary Ombudsmen dated 12 December 2008 he stated that in a letter filed with the Municipality on 17 November 2008 he had requested access to documentation but that the Municipality had not replied.

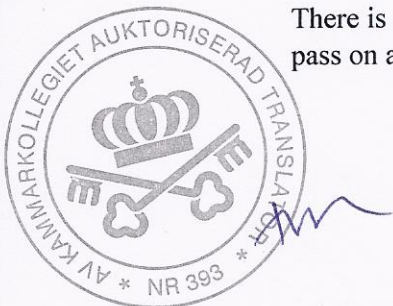
Legal regulation

Under Section 4 of the Administrative Procedure Act (1986:223), the APA, every authority shall provide information, guidance, advice and similar assistance to private persons concerning matters falling within the scope of its functions. Enquiries made by private persons shall be answered as soon as possible.

Under Section 7 of the APA every matter to which a private person is a party shall be handled as simply, rapidly and economically as is possible without jeopardising legal security.

Section 24 of the APA states that the authority that issued the decision being appealed shall examine whether the appeal has been received in due time. If the appeal is late, the authority shall, under the main rule, reject it. If the appeal is not rejected, it shall, under Section 25 of the APA, be passed on along with the other documents in the matter to the authority that is to consider the appeal.

There is no regulation in statute stating the time within which an administrative authority shall pass on an appeal. However, it goes without saying that it shall be done without delay. The



general rule about rapid and prompt processing etc. in Section 7 of the Administrative Procedure Act is also intended provide guidance in this respect (Govt Bill 1985/86:80 P.77). When reconsideration is not undertaken, the matter should normally be passed on within one week from when the appeal was received by the authority (see, for instance, JO 1995/96 p. 314).

Under Chapter 2, Article 12 of the Freedom of the Press Act, the FPA, an official document that may be released – and that is thus not covered by a secrecy provision – shall be made available on request “forthwith or as soon as possible” at the place where it is held and free of charge to any person wishing to examine it. Chapter 2, Article 13 of the FPA provides that a person who wishes to access an official document is also entitled to obtain a transcript or a copy of the document, or the part of it that may be released, for a fixed fee. A request for a transcript or a copy of an official document shall be dealt with promptly. A response on the matter of release should normally be given the same day when the request was made. However, a delay of one or a few days can be accepted if such a delay is necessary to enable the authority to consider whether the document requested is an official document of a public nature.

If a request to access a document cannot be complied with in full, the person making the request for the document shall be notified of this under Chapter 15, Section 6 of the Public Access to Information and Secrecy Act (1980:100). He shall also be notified that he can request that the matter be referred to the authority and that a formal decision of the authority is required for a ruling to be appealable. The authority’s decision refusing access to a document can be appealed under Chapter 15, Section 7 of the Public Access to Information and Secrecy Act.

Assessment

The review conducted by the Parliamentary Ombudsmen is of a legal nature and is chiefly intended as a check that authorities have followed the rules that apply to the procedure concerned. The Parliamentary Ombudsmen cannot vary or set aside the decision of an authority. This review is not intended to replace the examination that takes place by decisions being reconsidered or appealed. In the light of this, the Parliamentary Ombudsmen’s review has not been concerned with the authorities’ decisions in the matters concerning windpower, and not with the Municipality’s decisions to reject appeals either.

The Municipality’s processing of the appeal (JO file annex 6) of the decision to adopt a policy

The investigation shows that Mr Stümer’s appeal letter was received by the Municipality on 25 April 2008 and that the examination of whether it had been received in due time took place on 16 September 2008, when the appeal was rejected. The Municipality has not given any reasons for the long time taken to process the matter. It follows from the rules of the Administrative Procedure Act that the examination of whether the appeal was received in due time shall be made promptly in conjunction with when an appeal was received by the authority that issued the decision being appealed.

The Municipality’s response to the referral from the Parliamentary Ombudsmen states that the Municipality subsequently concluded that the appeal should be examined by the county administrative court and that the Municipality therefore sent the appeal to that court on 27 October 2008. In view of the fact that the Parliamentary Ombudsmen’s review is not intended to anticipate or replace the examination that can take place or could have taken place in accordance with the regular procedure, I will not go into this question any further. However, in an overall assessment, the Municipality deserves to be criticised for the long processing time.



The Municipality's processing of Mr Stümer's request for appeal instructions (JO file annex 8)

In his letter that was received by the Municipality on 28 April 2008, with a reminder on 29 May 2008, Mr Stümer requested appeal instructions regarding decisions on constructing wind turbines on Selaö. The Municipality has explained that the letter was interpreted as an appeal and that this was rejected on 16 September 2008 as having been received too late.

In its opinion to the Parliamentary Ombudsmen the Municipality has stated that the letter ought to have been considered on the basis of what it actually says and replied to by providing information about how to appeal the decision in question. However, irrespective of how the letter was interpreted, the Municipality ought to have dealt with it much earlier than it did. The length of the processing time also deserves to be criticised in this case.

The processing of the request for the release of documents (JO file annexes 12 and 14)

As the Municipality itself has noted, the processing of Mr Stümer's requests to access documents was not in line with the requirements for prompt processing that are applicable under the provisions of the Freedom of the Press Act. This processing therefore deserves to be criticised.

I take it for granted that the Municipality has now processed Mr Stümer's requests in the letter he filed with the Municipality on 17 November 2008 in accordance with the rules that apply to the release of official documents.

The remainder of what has emerged in the matter does not call for any further action.

[Signature]

Hans-Gunnar Axberger

[Signature]

Charlotte Håkansson

Dispatched to

B Stümer

Municipal Executive Board of the Municipality of Strängnäs (reg. no 2008:572-108)

County Administrative Board of Södermanland (reg. no 403-8264-2008)



Translated from Swedish by Ian MacArthur, public translator authorised by the Swedish Legal, Financial and Administrative Services Agency for translation from Swedish to English (Stamp no 393).

Stockholm, 3 June 2015