

From: Aarhus Compliance
To: Lina Oskarsson
Cc: valab
Date: 31/08/2015 15:27
Subject: ACCC/C/2013/81 (Sweden) - Committee's reply to query from Party concerned regarding translation

Sent by: Fiona Marshall

Dear Ms Oskarsson,

I refer to your email of 21 August, and the communicant's four emails of 28 August 2015.

I can confirm that the Committee has reviewed both your email of 21 August and the communicant's emails and attachments of 28 August and has indicated that, in the light of these, the Party concerned may not need to translate the two decisions of the County Administrative Board dated 4 January and 23 March 2012 at this stage, provided that it can help to clarify the following issues.

The Committee, however, is still concerned with the capacity of Mr. Stümer when appealing, and whether that or other factors were decisive for the decision of the Environment and Land Court to reject his appeal.

The Committee notes that the Party concerned in its email of 21 August 2015 confirms that Mr Stümer "was indeed one of the persons who appealed the building permit in his own name". The Committee also notes that in the Party concerned's reply of 21 May 2015, it stated that "the distance was not the only factor taken into account by the County Administrative Board when it determined who was considered a concerned party and therefore given standing in the case".

Nevertheless, for two reasons, the case is not clear for the Committee.

First, it seems that, as stated in your email of 21 August, in neither of the two decisions by the County Board (ie decision of 4 January 2012 in case 403-4718-2010, and decision of 23 March 2012 in cases 403-993-2012 and 403-994-2012) does Mr Stümer appear as a party in his own name. He only appears on the sending list ("Sändlista") for the decision of 4 January 2012 as a representative ("ombud") of Mr Johan Andersson. In the decision of 23 March 2012 his name does not appear at all. If he had indeed appealed the decisions in his own name, should he not then have been mentioned in the decisions, and should he not then have been on the sending lists at the end of the decisions in his own name, regardless of whether his appeal was accepted or rejected? Does this mean that he only acted as a representative for Mr. Johansson or did he also act on his own behalf?

Second, the reasoning of the Land and Environment Court to reject Mr Stümer's appeal is very short. According to the court, Mr and Ms Stümer were not parties to the decision appealed, and therefore the decision could not be deemed to have gone against them. Did the court come to that conclusion on formal grounds, because Mr. Stümer had not appealed the building permit in his own name, or did the court arrive at this conclusion because it simply accepted the reasoning of the County Board without re-considering Mr Stümer's evidence?

In light of the above, the Committee would like the Party concerned to (again) clarify whether Mr. Stümer did appeal in his own name, and whether this was relevant for the decision of the court to reject his appeal. The Committee also asks the Party concerned to provide a full list of all the persons who appealed the two building permits, and clarify whether they acted in their own name or as representatives.

The Committee would like to ask one further question. The Nacka District Court held:

“...that... a full assessment of the impact of the wind turbines on the area should have been submitted in connection with the application for a building permit”

The Land and Environment Court appeared to agree:

“...a full assessment of the impact of the wind turbines on the area should have been submitted in connection with the application for a building permit”

Does this mean that under Swedish law a full environmental impact assessment was necessary, so that the turbines fell within the scope of paragraph 20 of Annex I of the Aarhus Convention because “public participation is provided for under an environmental impact assessment procedure in accordance with national legislation”?

I would be grateful if the Party concerned could provide its response to the above questions by **14 September 2015**, in order that that response may be taken into account by the Committee in the preparations for its 50th meeting (Geneva, 6-9 October 2015).

Kind regards,
Fiona Marshall



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