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Case Summary posted by the Task Force on Access to Justice

Djurgården-Lilla Värtans Miljöskyddsförening v. Stockholms kommun (European Union), C-263/08 DLV

1. Key issue	NGO standing (art. 2.5, art.9.2) - National legislation could not limit standing for non-governmental organizations promoting environmental protection to organizations having at least 2000 members.
2. Country/Region	European Union, Sweden
3. Court/body	European Court of Justice (EU)
4. Date of judgment	2009-10-15
5. Internal reference	C-263/08 (Celex 62008J0263), European Court reports 2009 Page I-09967.
6. Articles of the Aarhus Convention	Art. 2, para. 4; Art. 2, para. 5; art. 6 para 1(a); art. 9 para 2; art. 9 para 4.
7. Key words	Access to justice; public participation; public concerned; NGO standing; numeric criteria; Environmental Impact Assessment; EIA Directive; public participation; water abstraction; national legislation; sufficient interest
8. Case summary	<p>The organization Djurgården-Lilla Värtans Miljöförening (DLV) appealed a judgement by the Environmental Chamber of the District Court of Stockholm, granting development consent in the area Hjorthagen. However, the appeal was held to be inadmissible on the ground that the organization had not fulfilled the condition laid down in the Environmental Act that it must have at least 2,000 members. DLV challenged that decision before the Supreme Court, which referred the question to the ECJ for a preliminary ruling, asking whether the Swedish rule is too restrictive in relation to Directive 85/337 and the Aarhus Convention.</p> <p>First, the ECJ stated that the fact that development consent was given by a court exercising administrative powers does not prevent an association fulfilling the conditions set out in Article 10a of Directive 85/337 from exercising its right of access to a review procedure in order to challenge that decision. The right of access to a review procedure namely does not depend on whether the authority which adopted the decision is an administrative body or a court of law. Participation in an environmental decision-making procedure is separate and has a different purpose from a legal review, since the latter may, where appropriate, be directed at a decision adopted at the end of that procedure. Therefore, participation in the decision-making procedure has no effect on the conditions for access to the review procedure. Accordingly, the members of the public concerned, must be able to have access to a review procedure to challenge the decision by a body attached to a court of law, regardless of the role they might have played in the examination of that request by taking part in the procedure before that body and by expressing their views.</p>

Second, the ECJ confirmed that the Directive leaves it to national law to determine the conditions for access to justice for NGOs. However, the national rules must ensure a wide access to justice. Accordingly, the national rules must not be liable to nullify Community provisions which provide the public concerned the possibility of challenging a project by bringing actions before the competent courts. A national law may require that such an association has as its object the protection of nature and the environment. It is also conceivable that the condition that an environmental protection association must have a minimum number of members may be relevant in order to ensure that it does in fact exist and that it is active. However, the number of members required cannot be fixed at such a level that it runs counter to the objective of facilitating judicial review of projects which fall within the scope of the directive. Moreover, Directive 85/337 does not in any way permit access to review procedures to be limited on the ground that the persons concerned have already been able to express their views in the participatory phase of the decision-making procedure. Furthermore, the directive does also concern projects more limited in size which locally based associations are better placed to deal with. In fact, the Swedish legislation deprives local associations of any judicial remedy, as only two associations have at least 2,000 members. The local associations may contact one of those two associations and ask them to bring an appeal. However, that possibility in itself is not capable of satisfying the requirements of Directive 85/337 as, first, the associations entitled to bring an appeal might not have the same interest in projects of limited size and, second, they would be likely to receive numerous requests of that kind which would have to be dealt with selectively on the basis of criteria which would not be subject to review. Finally, such a system would give rise to a filtering of appeals directly contrary to the spirit of the directive which is intended to implement the Aarhus Convention. Accordingly, the answer is that Article 10a of Directive 85/337 precludes a provision of national law which reserves the right to bring an appeal solely to environmental protection associations which have at least 2,000 members.

Note: After the ECJ judgment, the Swedish Supreme Court set aside the Swedish rule on NGO standing and referred the case back to the Environmental Court of Appeal. As from 1 August 2010, the Environmental Code allows any organization with 100 members or more to appeal decisions on permits and near-related issues.

9. Link addresses	<p>http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=c-263/08&td=ALL</p> <p>http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008CJ0263:EN:NOT</p> <p>http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/EUROPEAN_UNION/ECJ_C263-08_DLV_SV/EU_ECJ_C263-08_DLV.pdf</p>
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