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Case Summary posted by the Task Force on Access to Justice

SWEDEN: The Kynna wolf case

<i>1. Key issue</i>	ENGO standing – The open criteria in national procedural law must be read so as to enable ENGOs to challenge in court decisions on the hunt of wolves, which is a species protected in law
<i>2. Country/Region</i>	Sweden
<i>3. Court/body</i>	Supreme Administrative Court and Stockholm Administrative Court of Appeal
<i>4. Date of judgment /decision</i>	2012-07-15
<i>5. Internal reference</i>	Supreme Administrative Court, decision 2012-06-28 in case No 2687-12 and Stockholm Administrative CoA, judgement 2013-02-07 in case No 4390-12
<i>6. Articles of the Aarhus Convention</i>	Art. 2, para. 5 and art. 9, paras. 2-4
<i>7. Key words</i>	Public concerned, ENGO standing, protected species, European Union law requirement, effective justice
<i>8. Case summary</i>	<p>The Swedish environmental protection agency (SEPA) authorized hunting seasons both in early 2010 and again in early 2011 with a bag limit of 27 and 20 wolves respectively. Several ENGOs appealed these decisions; but the appeals were thrown out because the organisations were found not to have standing under Swedish law. However, in early 2012, the CJEU’s judgement in the <i>Slovak Brown Bear</i> case (C-240/09) had begun to have an influence the jurisprudence of the Swedish administrative courts concerning hunting decisions. In this case, the CJEU ruled that national courts must, to the extent possible, interpret national procedural rules in such way so as to allow ENGOs standing to appeal national implementation of EU environmental laws.</p> <p>In November of 2011, SEPA made a decision under administrative provisions on ‘protective hunting’ to cull an individual wolf, known as the Kynna wolf. The Swedish Society for Nature Conservation (Naturskyddsföreningen) appealed the decision and requested an injunction. The case was rejected by the Stockholm Administrative Court, which found that the organisation lacked standing to proceed. The Stockholm Administrative Court of Appeal (CoA) agreed. Naturskyddsföreningen appealed to the Supreme Administrative Court (SAC). Although the wolf had already been shot, SAC ordered Stockholm Administrative CoA to hear the case. SAC noted that Sweden is a signatory to the Aarhus Convention, and referred to the <i>Slovak Brown Bear</i> case, as well as its own lack of precedent on the right of environmental NGOs to appeal administrative decisions pertaining to hunting of species protected by EU law.</p> <p>In February of 2013, the Stockholm Administrative CoA determined that Naturskyddsföreningen should have had standing in the case. Article 9.3 of the Aarhus Convention grants the public the right to challenge acts and omissions that violate national environmental law. Jurisprudence of the CJEU in</p>

Slovak Brown Bear established that while Article 9.3 does not have direct effect, national procedural law must be interpreted so to give effect to Union law. Thus, Swedish administrative law, which according to section 22 in the Administrative Procedural Act generally requires appellants to be ‘concerned’ and negatively affected by a decision, must be interpreted in such a way it that is possible for environmental organizations to challenge in court administrative decisions that conflict with EU environmental law.

Although SEPA’s hunting decisions were made under hunting law and not environmental legislation, the decision clearly concerned EU environmental law. The court therefore used the same criteria for ENGO standing that is set out in the Environmental Code: in order to have standing to appeal, an NGO must have a primary purpose of nature protection or other environmental interests, be non-profit, have been active in Sweden at least three years, and have at least 100 members or else can show that it has “support from the public”.

Note: As a result of the ENGO standing in wolf cases, SEPAs decisions on license hunt in 2013 and 2014 were brought to court and quashed. After this, the Swedish government barred the possibilities to challenge these decisions in court, which triggered the EU Commission to initiate an infringement case in 2014. Moreover, in January 2015, the Supreme Administrative issued leave to appeal on the question whether such an procedural order is in line with EU law.

9. <i>Link to judgement / decision</i>	http://databas.infosoc.se/rattsfall/24813 http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SWEDEN/SE_Kynna_Wolf/SE_2013_Wolf_Hunt_Judgement.pdf
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