

2015-05-26

Case Summary posted by the Task Force on Access to Justice

SWEDEN: 16:13 MB; MÖD 2012:47 and MÖD 2012:48

1. <i>Key issue</i>	Criteria for ENGO standing – The criteria in law for ENGO standing must be read generously in order to meet with the international obligations on access to justice in environmental matters
2. <i>Country/Region</i>	Sweden
3. <i>Court/body</i>	Land and Environmental Court of Appeal (Mark- och miljööverdomstolen)
4. <i>Date of judgment /decision</i>	2012-11-15
5. <i>Internal reference</i>	MÖD 2012:47 and MÖD 2012:48
6. <i>Articles of the Aarhus Convention</i>	Art. 2, para. 5, and art. 9, paras. 2-4.
7. <i>Key words</i>	Public concerned, ENGO standing, fixed criteria, effective justice

8. *Case summary*

According to Chapter 16 section 13 of the Environmental Code (16:13 MB), certain ENGOs may appeal decisions on “permits, approvals or exemptions” pursuant to the Code. According to old case law, those provisions were read narrowly, restricting the types of decision which could be subject to appeal. In two cases, the Land and Environmental Court of Appeals distinguished itself from this old case law and clarified that the application of fixed standing criteria must comply with the Aarhus Convention and EU law.

In both cases, the Swedish Society for Nature Conservation (SNF) appealed a decision from the County Administrative Board to accept that certain activities were undertaken without a formal decision. The first (MÖD 2012:47) concerned the necessity of having an exemption from the species protection regime, and the second (MÖD 2012:48) a permit according to the legislation on Natura 2000. Both appeals were dismissed by the Environmental Court.

The Environmental Court of Appeals, however, noted that the Swedish Council of Legislation had criticised the formulation of 16:13 MB for being too restrictive, especially concerning the possibility to challenge decisions from the supervisory authorities. Moreover, case law of CJEU emphasises the necessity of giving the public concerned wide access to justice in environmental matters (C-240/09 *Slovak Brown Bear*). Even though both County Boards’ decisions can be regarded as such supervisory decisions that are not covered by 16:13 MB, they are not expressly excluded. The decisions were also closely connected to “exemptions and permits”, as they related to the legislation on species protection and Natura 2000. Furthermore, developments within Union law should be taken into account when deciding the standing issue and the national courts have a responsibility of their own in this regard. Also, the challenged decisions were without any doubt covered by Article 9.3 of the Aarhus Convention. To this backdrop, 16:13 MB should be read in order to fulfil the international obligations and thus be understood as also relating to a decision on whether an exemption and a permit is needed or not. SNF was therefore granted standing in both cases.

Note: These cases have been confirmed by later decisions from the Land and Environmental Court of Appeals, see for example MÖD 2014:30 and MÖD decision 2014-03-18 in case No 11609/13.

9. *Link to judgement/
decision*

<http://www.rattsinfosok.dom.se/lagrummet/index.jsp>

[http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SWED
EN/SE_MOD_2012_47_48/SE_MOD_2012_48.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SWED_EN/SE_MOD_2012_47_48/SE_MOD_2012_48.pdf)

Comments

The dates should be provided in the following format: year-month-day

1. The key issue(s) of the case in one sentence.
- 2.
3. The name of the court/body in English (in the original language in parentheses).
4. Date in the format of year-month-day.
5. Internal reference to be used when searching the case in the national/regional databases.
6. Articles of the Convention that may have relevance in relation to the content of the judgment or decision.
7. Key words to be used when searching on this web site.
8. To facilitate reading, the summary may start with a short description of the procedural framework (the kind of procedure, arguments of the parties, and findings of the previous instances). However, this must be kept short, one paragraph at the most.
As regards the main findings of the court/body, the purpose of the summary is only to give a short orientation of the case. As a main rule, if there are diverging opinions of the court/body, only the opinion of the majority should be referred to.
If the case directly relates to a communication submitted to the Aarhus Convention Compliance Committee, it should be stated clearly in the summary.
The summary as a whole should not exceed a page (A4), preferably no more than 600 words.
9. Link to the national/regional web site where the original judgment/decision can be found. To facilitate access to the judgment/decision in the national language, please provide the secretariat with the text of the judgment/decision either to be included in the file with the case summary or to be sent as a PDF file. You can also submit the translation of the judgment/decision into English, Russian or French.

Examples of the prepared case summaries are available from the following webpage:
<http://www.unece.org/environmental-policy/treaties/public-participation/aarhus-convention/envpptfwg/envppatoj/jurisprudenceplatform.html>