

2015-05-26

Case Summary posted by the Task Force on Access to Justice

SWEDEN: Public Support; MÖD 2015-04-15 in case No 8662-14

1. <i>Key issue</i>	Criteria for ENGO standing – The criteria in law for ENGO standing must be read generously in order to comply 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>	2015-04-15
5. <i>Internal reference</i>	MÖD 2015:17
6. <i>Articles of the Aarhus Convention</i>	Art. 2, para. 5; art. 9, paras. 2-3-4.
7. <i>Key words</i>	Public concerned, ENGO standing, fixed criteria, effective justice, public support

8. *Case summary*

According to Chapter 16 section 13 of the Environmental Code (16:13 MB), an ENGO has standing rights on condition that it has at least 100 members or else can show that it has “support from the public”. In old case law, this criterion has been read narrowly, excluding for example an organisation with 92 members (MÖD decision 2010-09-21 in case No M 1505-10). In this case, a local bird association with only 37 members appealed a municipal decision relating to the development of wind turbines, but was dismissed both by the County Administrative Board and the Environmental Court for lack of standing. The ENGO appealed to the Land and Environmental Court of Appeals.

To begin with, the Land and Environmental Court of Appeals noted that the Swedish Council of Legislation had criticised the formulation of 16:13 MB for being too restrictive and that the Supreme Court has emphasised that the standing criteria in 16:13 MB should be read generously. One must also consider the overall picture – especially in cases where no individuals have standing rights – and take into account that someone must be able to challenge the decision. Moreover, case law of CJEU emphasises the necessity of giving the public concerned wide access to justice in environmental matters (C-263/08 *DLV* and C-240/09 *Slovak Brown Bear*). Even though the number of members in the organisation did not meet the numeric criterion in 16:13 MB, it had been regularly active for a long period of time. The organisation had arranged annual bird watching exhibitions with as many as 500 visitors and it also had taken part in public hearings in cases concerning nature protection. Therefore, the Land and Environmental Court of Appeals found that the ENGO had the support from the public in the sense that was meant in 16:13 MB. As the court also considered – along with previous case law from recent years (MÖD 2012:47, MÖD 2012:48, MÖD 2014:30) – that the decision in question was covered by 16:13 MB, the ENGO was granted standing in the case.

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_2015_17_PublicSupport/SE_MOD_2015_17_PublicSupport_judgement.pdf