

2015-05-26

Case Summary posted by the Task Force on Access to Justice

SWEDEN: Simrishamn; MÖD 2015:8

1. <i>Key issue</i>	Standing for individuals – Individuals must have the possibility to challenge each step in environmental proceedings which are decisive in the decision-making, even on issues that relate merely to public interests.
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>	2015-03-05
5. <i>Internal reference</i>	MÖD 2015:8
6. <i>Articles of the Aarhus Convention</i>	Art. 2, para. 5, and art. 9, paras. 3-4.
7. <i>Key words</i>	Public concerned, individuals' standing, public and private interests, protected norm theory

8. *Case summary*

A municipality planned to locate sewage pipes for sewage on the land of a private person. In order to be able to do so, they needed, first derogation from the species protection requirements, second a permit from the Cadastral Offices. The County Administrative Board granted the species derogation and the property owner appealed to the Environmental court. However, the court dismissed his appeal in line with established case law (MÖD 2001:29, MÖD 2004:55, MÖD 2013:32 och MÖD 2007:6). According to this case law, private parties cannot challenge decisions that merely concern public interests, although they can invoke such interests in cases where they have standing.

The property owner appealed to the Land and Environmental Court of Appeals. The court noted that since the establishment of the old case law on the matter, Sweden and EU have ratified the Aarhus Convention. Article 9, para. 3, of that convention has wide applicability and covers all kinds of decisions concerning the environment. Even though this provision does not have direct effect, the CJEU has emphasized that national standing rules must ensure wide access to justice and cannot invalidate EU law provisions that entitle the public concerned to bring actions before the competent courts. Furthermore, it is an obligation for the national courts to interpret – to the extent possible – existing rules on standing in order to apply them in line with article 9, para. 3, of the Aarhus Convention and the principle of legal protection in EU law (C-240/09).

Against this backdrop, the court stated, it can be questioned if the old case law – which partly is based on the “protected norm theory” – is compatible with modern environmental law and the Aarhus Convention. The derogation decision concerned general environmental interests to which Article 9, para. 3, applies. The conventional requirements are not only for wide standing rights, but also for effective justice. Thus, those who are affected by a decision must be able at some point in the procedure to have their say when the issues raised are decided upon. If a certain decision – to which the public concerned cannot appeal – is decisive for the latter proceedings in the matter, those requirements are not

met.

In this case, the first decision concerned the protection of a species in the area, which is a subject that an individual can raise in the subsequent proceedings where he has standing rights. However, the effectiveness of this is nullified by the fact that the Cadastral Offices used the first decision as a starting point, without substantively questioning it. Such a division of the decision-making is not in line with the Aarhus Convention and may also be regarded as a deprivation of the individual's right to a fair trial according to ECHR. Thus, the property owner was granted standing in the case concerning derogation from the species protection.

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/SW
EDEN/SE_MOD_2015_8_Simrishamn/SE_MOD_2015_8_Simrishamn_judg
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