

2015-05-26

*Case Summary posted by the Task Force on Access to Justice*

**SWEDEN: Taggen Vindpark; NJA 2012 s. 921**

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>	Supreme Court (Högsta domstolen)
4. <i>Date of judgment /decision</i>	2012-12-18
5. <i>Internal reference</i>	NJA 2012 s. 921
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, individuals' standing, ENGO standing, wind farm, permit, criteria for standing

8. *Case summary*

The Company Taggen Vindpark AB applied and received a permit to build 83 wind turbines 170m high, in the sea off the east coast of Sweden. The permit decision was appealed by a number of individuals and two ENGOs. One of the ENGOs was granted standing, whereas all other parties were dismissed. They appealed that decision first to the Environmental Court of Appeals and then to the Supreme Court.

Concerning the individuals, the Supreme Court noted that according to case law, those individual members of the public concerned who live within 450m to 3 km from a planned wind farm can appeal the permit decision (MÖD 2005:33, MÖD 2009:29 and RÅ). The qualifying distance to entitle challenges depends upon the size and construction of the installation and the individual circumstances of the case in question. This case law is in line with what has been previously decided by the supreme courts of Sweden (RÅ 1997 ref 38 and NJA 2005 s. 590) and meets the requirements of the Aarhus Convention. In this case, the complainants lived 11-12 km away from the offshore wind farm and although they claimed to be affected by disturbances from the installation – mainly noise, shadowing and blinking lights – they could not be regarded as affected in a way so as to grant them standing rights. Furthermore, investigations into the case exploring the impact of the windfarm, did not indicate that it would have any negative effect on the value of their properties. As merely an impact upon the aesthetics of the landscape affecting the individuals view of the coastline, was not considered to be a factor that gave rise to standing rights for the individuals, their appeals were dismissed.

Also the decision to dismiss the appeal for one of the ENGOs was confirmed by the Supreme Court, although some clarifying statements were made. According to Chapter 16 sections 13-14 of the Environmental Code, a “non-profit association whose purpose according to its statutes is to promote nature conservation, environmental protection or outdoor recreation interests” may appeal decisions on “permits, approvals or exemptions” pursuant to the Code. Additional criteria for such NGO standing are

that the organisation has been active for at least 3 years in Sweden and has at least 100 members or else can show that it has “support from the public”. The Supreme Court started by citing CJEU in the DLV case (C-263/08), where that court accepted numeric criteria, but only to the extent that they are necessary to decide whether the organisation still exists and is active. The standing criteria furthermore must not be set at level that conflicts with the aim of providing the public concerned a wide access to justice. Also local associations must be able to use legal means to protect their interests according to the environmental legislation. It is therefore necessary, stated the Supreme Court, that one utilizes a generous attitude in these matters, and that fixed criteria in law is applied only as a starting point for decisions on standing to appeal. 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. In this case, however, it was unclear how much support the ENGO had, and it was therefore acceptable to dismiss their appeal (one should note however, that the other ENGO was allowed to appeal).

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\\_NJA\\_2012\\_921\\_WindFarm/SE\\_NJA\\_2012\\_921\\_WindFarm\\_judgement.pdf](http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SWED/EN/SE_NJA_2012_921_WindFarm/SE_NJA_2012_921_WindFarm_judgement.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:  
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