



C-263/08 Djurgården-Lilla Värtans Miljöskyddsförening v Stockholms kommun genom dess marknämnd, judgment of 15 October 2009

The Court clarifies the conditions for public participation in environmental decision-making procedures.

The Municipality of Stockholm had concluded a contract with an electricity company for the construction of a tunnel through the hills in order to house electric cables. The Stockholm Regional Authority considered that this project was likely to have significant effects on the environment particularly with respect to groundwater. However, the local Stockholm court authorised the Municipality of Stockholm to carry out the works. The Miljöskyddsförening, a local association for environmental protection, appealed against this decision, but this appeal was held to be inadmissible on the ground that the Miljöskyddsförening had not fulfilled the condition laid down in the Swedish Environmental Act that it must have at least 2 000 members. The Miljöskyddsförening brought an appeal against that decision of inadmissibility.

The Swedish court before which this case was brought decided to refer questions to the Court of Justice in particular on the validity of this condition in the light of Directive 85/337/EEC, the objective of which is to contribute to the implementation of the obligations arising under the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, with regard to the environmental impact assessment of certain projects.

In its judgment, the Court recalls that Directive 85/337/EEC provides for members of the public who fulfil certain conditions to have access to a review procedure before a court of law or another independent body in order to challenge the legality of measures which fall within its scope. This right is recognised in particular to non-governmental organisations which promote environmental protection and meet certain conditions. The Directive refers to national law to determine these. However, the conditions laid down by national law must, first, ensure "wide access to justice", in accordance with the letter of the Directive, and, second, render effective the provisions of the Directive relating to this right of appeal.

Consequently, the Court considers the limitation of this right of appeal by the Swedish Environment Act exclusively to associations with more than 2 000 members to be too restrictive and therefore not in conformity with Directive 85/337/EEC. In fact, this provision has the effect of depriving all the local associations from the right of appeal (only two environmental protection associations satisfy this condition in Sweden, both of which operate at national level).

The Court also specifies that this right of appeal is independent of whether or not the association concerned has participated in the administrative procedure concerning the decision it intends to challenge.