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Case Summary posted by the Task Force on Access to Justice

Great crested newt (Sweden); RÅ 2005 ref 44

1. Key issue	The public interest and the scope of environmental impact assessment – Individuals, who are affected by a local development plan are able to invoke the public interest to advocate their cause. An environmental impact assessment for such a plan should cover all relevant impacts of the development in order to be able to take them into account in the decision making.
2. Country/Region	Sweden
3. Court/body	The Supreme Administrative Court (Regeringsrätten)
4. Date of judgment	2005-02-08
5. Internal reference	RÅ 2005 ref. 44
6. Articles of the Aarhus Convention	art. 2 para. .5 and art. 9
7. Key words	Public concerned, environmental impact assessment, EIA, scope of review, protection of species, public interest
8. Case summary	<p>A municipality made a decision regarding a local development plan concerning the site for development and construction. A number of citizens appealed the decision to the County Administrative Board, but their appeals were dismissed on the grounds that the appellants were not concerned. The Board's refusal was appealed to the Government (Ministry of the Environment) and the appeal was yet again refused. The appellants then applied to the Supreme Administrative Court for judicial review.</p> <p>In support of their application, the appellants claimed that the municipality's decision on the local plan had not been preceded by a complete environmental impact assessment. The assessment had e.g. not included the occurrence of protected animal species in the relevant area even though a population of the great crested newt (<i>Triturus cristatus</i>) existed there. That particular species is included in the EU Habitats Directive (92/43) as an animal species of community interest whose conservation requires the designation of special areas and strict protection.</p> <p>In its judgment, the Supreme Administrative Court stated that the Planning and Building Act requires that an environmental impact assessment be made if a local development plan allows for a land use that has significant effect on the environment, and that the assessment must make it possible to evaluate the expected impact on the environment. The Court also found that the possible need to consider animal and plant species must be elucidated at an early stage so that it may be taken into account during the process of establishing a plan. Even if it is possible to consider the protection of the species in a subsequent procedure for exemptions according to the specific legislation on the matter, the effectiveness of the environmental decision making presupposes that species protection also should be considered during the planning procedure. Otherwise, there is an imminent risk that the species will enjoy weaker protection when the plan is decided. It lies within the interests of both the developer and the public concerned to get such information at an early stage of the procedure.</p>

Therefore, an EIA for a development plan should cover all relevant environmental impacts of the development. In this case, there was no such information about the great crested newt and the plan was therefore quashed by the Court.

9. Link address	http://www.rattsinfosok.dom.se/lagrummet/index.jsp http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/SWEDEN/SE_RA_2005ref44_Great_Crested_Newt/SE_RÅ_2005ref44_Great_Crested_Newt.pdf
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