

# European Transparency Watch – Aarhus Convention and public participation in the field of Radioactive Waste Management – 13-15 January 2021

## General reflections

- Legal procedural issues have long been considered a national issue
- Public's right to participate in decision-making processes has not been regulated to any great extent by international law.
- ✓ Nordic Environmental Protection Convention from 1974
- ✓ The Rio Declaration in Brazil 3–14 June 1992
- ✓ The conference of environment ministers held in Sofia, Bulgaria in 1995
- ✓ The Aarhus Convention - Convention on Access to Information, Public Participation in Decision - Making and Access to Justice in Environmental Matters

## The Aarhus Convention

The Aarhus Convention is based on three different pillars namely

- the public's right to information on environmental issues,
- the public's right to participate in environmental decision-making processes and
- the public's access to justice in environmental matters.

Regulates the right of environmental organizations to speak in favor of public interests, primarily in Art. 9 (2) and 9 (3).

- to establish certain procedural rights for individuals and interest groups
- access to judicial review of authority's decisions and omissions in supervisory matters and
- ability to act directly against an operator through a civil process.

The goal is to contribute to protecting current and future generations' right to a good environment

## Implementation of the Aarhus Convention in Sweden 1

The Aarhus Convention was implemented in Swedish law in 2005. To a large extent, the rights that the convention gives the public were already guaranteed in Swedish law.

Environmental organizations have the right to appeal

- judgments and decisions on permits and approval of environmentally hazardous activities,
- exemptions for the protection of areas,
- decisions on measures relating to the supervision of the authorities

Today the **requirement concerns**

- **non-profit association** with the main purpose of protecting nature conservation or environmental protection interests
- has conducted operations in Sweden for at **least three years** and
- has at least **100 members** or otherwise shows that **the organization has support** from the public.

## Implementation of the Aarhus Convention in Sweden 2

A certain number of Swedish laws were supplemented such as the Land and Environmental Code, the Roads Act, the Civil Aviation Act and the Minerals Act - But not all relevant laws

An environmental organization was not given the right to appeal a decision by the Swedish Forest Stewardship Council

The decision to deny the environmental organization the right to appeal was pursued all the way up to the Supreme Administrative Court.

The Supreme Administrative Court concluded

- the Aarhus Convention should be applied in this case
- referred to Judgment of the European Court of Justice in Case C-240/09
- when a convention provision can be applied both to situations covered by national law and to situations covered by Union law, there is a definite interest in the provision being interpreted in a uniform manner, independently of the circumstances in which it is to be applied,
- to ensure access to effective remedies for the public in accordance with the requirements of the Aarhus Convention.

## Swedish Experiences based on the planning of a final repository for spent nuclear fuel

- A permit process that started in 2011

In Sweden, a process - or rather two processes - are underway concerning the application for a permit to build a final repository for spent nuclear fuel. The applicant - a company jointly owned by the Swedish nuclear power plants - must have two separate permits to operate the final repository - a permit under the Environmental Code and a permit under the Nuclear Activities Act.

The municipality and the public have so far in the process had good opportunities to present their views regarding the construction of the final repository for spent nuclear fuel.

The comments have been sent

- ✓ - directly to the applicant in connection with the preparation of their environmental impact statement before the application is submitted to the Land and Environment Court,
- ✓ - in written observations to the Environmental Court before the Court's main hearing
- ✓ - by giving an oral opinion in the court during the main hearing where the court prepares an opinion to the government on the issue of the project's admissibility - which according to the environmental Code must be done by the government before the final examination of the permit case,
- ✓ - by submitting comments to the Government in writing in connection with the Government preparing its decision on the question of the project's admissibility.

The municipal council in the municipality where the facility is to be built also has an opportunity under the Environmental Code to veto the project as such before the government makes its decision on the issue of admissibility.