Other relevant rules on appeals, remedies and access to justice in environmental matters

Remedies against administrative passivity

For the purpose of overseeing compliance with the requirements set out in the Environmental Code and legislation issued under the Environmental Code and the Planning and Building Act, as well as the requirements set out in permits, the law contains provisions concerning supervision.

Both affected individuals and NGOs may at any time make a request to the supervisory authority to take actions against an activity. The supervisory authority is often, but not always, the County Administrative Board, but it may also be the local municipality or other another government authority. If the supervision authority then chooses to do nothing, this decision may be appealed to the Land and Environment Court and, with leave to appeal, to the Land and Environment Court of Appeal. The courts can then, if they choose to rule in favour of the appellant, send the case back to the supervisory authority for them to act, or decide e.g. to issue an order on precautionary measures or to prohibit an activity.

Administrative passivity may also be addressed by the Parliamentary Ombudsman (JO) or the Chancellor of Justice (JK), which are both designated to ensure that public authorities and their staff comply with laws and other statutes. They have a disciplinary function and act through opinions and prosecution for administrative misconduct. The Chancellor of Justice may also regulate certain claims for damages directed against the State. The claims for damages that the JK handles are primarily those based on a state authority having made an incorrect decision.

The Chief Parliamentary Ombudsman and the Parliamentary Ombudsmen are required to supervise that those who exercise public authority obey the laws and other statutes and fulfil their obligations in other respects.

The Ombudsmen are required to ensure in particular that the courts and public authorities, in the course of their activities, obey the requirements of the Instrument of Government on objectivity and impartiality, and that the fundamental rights and freedoms of citizens are not encroached upon in public administration. Supervision is exercised by the Ombudsmen in assessing complaints made by the public and by means of inspections and such other inquiries as the Ombudsmen may find necessary.

The Ombudsmen conclude cases with an adjudication which states an opinion as to whether a measure taken by an authority or an official is in breach of the law or some other statute or is otherwise erroneous or inappropriate. The Ombudsmen may also make statements intended to promote uniform and appropriate application of the law. In the role of extraordinary prosecutor, an Ombudsman may initiate legal proceedings against an official who, in disregarding the obligations of their office or commission, has committed a criminal offence. Cases can be pursued to the Supreme Court if there are exceptional grounds for doing so. Individual complaints should be made in writing. The written complaint should indicate the authority to which the complaint applies. A person who has been deprived of their liberty may write to the Ombudsmen without being prevented by any restrictions on sending letters or other documents that may apply to them.

The Ombudsmen cannot intervene in an individual case or apply for or grant injunctive relief, and the institution is therefore not regarded as an effective remedy according to Article 9 of the Aarhus Convention. However, although the JO can only examine a case after it has been decided and their scrutiny is limited to the handling of the case, the opinions have great importance for the understanding of the concept of good governance.

Penalties when public administration fail to provide effective access to justice

Apart from the role of the Ombudsmen, Chapter 20 Section 1 of the Criminal Code (1962:700) states that anyone who intentionally, or through negligence in the exercise of authority, by act or omission, violates what is applicable for the task shall be sentenced to misconduct, a fine or imprisonment for a maximum of two years. If the act, with regard to the perpetrator's powers or the task's connection with the exercise of authority in general, or to other circumstances, is to be regarded as minor, the person shall not be held liable. For instance, municipal officials and politicians in municipal committees and boards are covered by the rules on misconduct in the exercise of their authority. On the other hand, members of state or municipal assemblies, i.e. members of the Riksdag and members of municipal and county council assemblies, are exempt from responsibility for measures they take in this capacity. A public prosecutor can decide to take the accused to District Court.

The Public Employment Act, applicable for all employees of the Parliament and its authorities and for authorities reporting to the Government, stipulates that an employee who intentionally, or through negligence, violates their obligations in their employment, may be given a disciplinary sanction for misconduct. If the error is small, in view of all the circumstances, no penalty may be pronounced. Such disciplinary sanctions are a warning and a salary deduction.

Penalties for the de-facto contempt of the court, e.g. when the judgment of the court is not followed and respected

When it comes to contempt of court by administrations such as municipalities, there are various instruments for controlling municipal activities. However, there are not many different sanctions available apart from those mentioned above. There is, however, a possibility, in certain areas, such as supervision duties under the Environmental Code, for the County Administrative Board to order a municipality to fulfil its obligations regarding supervision (Chapter 26 Section 8).

In summary, it can be stated that there are currently very few legally based opportunities to prevent defiance. The legal situation in Sweden is that the municipalities and their representatives in certain areas can choose to disregard applicable laws and regulations and even court judgments. There are no legal possibilities to demand responsibility or sanction decision-makers other than those mentioned.

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