

2019 EUFJE Annual Conference, Helsinki

Mikael Schultz, 13 September 2019



SVEA HOVRÄTT
SVERIGES DOMSTOLAR



Appointment of Swedish judges

- Appointed by the Government
- Proposed by the Judges Proposals Board
- Independent status

Number of technical judges in Sweden

Type of case	Environment	Planning and building	Real estate
LECA, Stockholm	5	4	3
LEC, Umeå	4	1	1
LEC, Östersund	2	1	1
LEC, Nacka	6	3	3
LEC, Vänersborg	4	3	3
LEC, Växjö	5	3	2
Total	26	16	13

Technical Judge

- Good scientific or technical education
- Long experience
- Familiarity to judicial interpretation and procedural code
- Specialist or generalist ?
- A technical judge participate in the judicial process with the same legitimacy as a law-trained judge

Technical judges

- Supports the drafting staff
- Is a part of the judicial staff
- In the LEC the technical judge have comprehensive role in permit cases
- In the LECA the technical judge has a certain responsibility in the establishment of practice

Why use - Technical judge-Environment?

- Ability to understand and evaluate what experts/specialists in different fields of science produce as material in the cases
- Ability to ask the right questions in main hearings
- Make an assessment of the environment effect in the cases
- Give the scientific reasons for the conditions in the permit for an environmentally hazardous activity
- Formulate the conditions and the permit so that the handling of the issue at hand, is correct according to scientific knowledge



State of the Art; Scientific knowledge

- Standards for measurements; noise, water and air pollution etc
- Guidelines
- Accepted methods and knowledge from a majority of the academy of science
- Methods and measurement evolve
- Keep up with news in scientific science
- New methods or new knowledge has to be accepted by authorities or the majority of the academy of science to be accepted practice

Examples where knowledge is perhaps shifting or evolving?

- How to measure noise from wind power plants
- Inventories of Golden Eagle and other raptor birds
- Underwater noise and influence on porpoises
- Noise effects on shorebirds
- Inventory of Bats ;wind power plants
- Favorable Conservation status (needs to be defined based on best available knowledge; conservation agencies, universities, engo:s)
- Effects of climate change
- The structure and function of fish-ladders passing Water Power Plants



Environmental Impact Assessment

And the quality of the
same

- Aim of EIA
- Method
- Basic information about the EIA
- Experience of the investigators
- Background results
- Results-analysis/discussion-conclusion. Not only pure speculation in the conclusion.

Parties

- The company has economic strength, hired experts with special competence, skilled attorneys, ambition to realise a project, good resources
- The central authorities with administrative officials have some general scientific knowledge, less resources for single cases
- The ENGO's with many devoted specialist of different competences, strong feelings, but less resources
- Private individuals with strong feelings but usually less expert competence and less resources



To accept reasonable uncertainties

- Sometimes natural sciences and jurisprudence together become too detailed
- Can there be uncertainty and still compliance with the rule of law?
- It's a challenge to find the right balance in details and to come to a decision
- To accept a project, there should not be any *reasonable* scientific doubts
- Has the use of technical judges improved the balance? To know enough to make the right decision, which is accepted and in line with the scientific society.

Has the use of
technical judges
improved the
judgments?

- Better understanding of the EIA
- Better transparency at main hearings
- Equalizing of the parties technical documentation
- Wikipedia knowledge and googling isn't enough

MANAGING FACTS AND FEELINGS IN ENVIRONMENTAL GOVERNANCE



Edited by Lorenzo Squintani
Luc Lavrysen

Jan Darpö
Peter-Tobias Stoll

