

I. INTRODUCTION

The general nature of the Swedish system of law follows the civil law tradition and is strongly built on statutory law. The environment is not expressly protected in the constitution, but article 2 of Chapter 1 in the constitution (the Instrument of Government) states that the public institutions have an obligation to promote sustainable development leading to a sound environment for present and future generations. There is also a general piece of legislation that covers most parts of environmental law – the Environmental Code.

The Swedish Environmental Code was adopted in 1998 and entered into force 1 January 1999. Provisions from 15 legal acts were then replaced by the Code. The Environmental Code is generally applicable to all or most aspects of the environment. It is a major piece of legislation and contains the basic general principles of environmental law. The Code contains 33 chapters comprising approx. 500 sections. However, it is only the fundamental environmental rules that are included in the Environmental Code. More detailed provisions are laid down in a large number of ordinances issued by the Government and environmental authorities such as the EPA, not to mention regulations coming from the EU.

II. TRAINING AND INFORMATION

A.-Training

1. General training arrangements

(a) and (b) A majority of Swedish judges get their training through a judges training system. After getting a law degree (Candidate of Law) you may apply to become a law clerk (notarie) at district court level for a period of two years. If you complete that period you may apply for a junior judge position in a court of appeal (1 year). Both these positions mainly include preparation of cases, presentation of cases (including a suggested ruling), drafting of judgements etc. The next step of the training will then be serving as a junior judge at a district court. There the junior judge at this stage will deal independently with most types of cases (excluding the most complicated or big/serious ones). After two years of being a junior judge at a district court you will return to the court of appeal to serve as an acting associate judge of appeal. This position will last for a year and after that your general training is over.

After finishing the judges training system most lawyers continue to positions in places such as the Government offices, the Parliament (Riksdag), the Parliamentary Ombudsmen, public authorities, law firms etc. A number of years later, those sufficiently experienced and interested may consider applying for a position as a judge.

Once appointed as a judge there are a number of courses arranged by a specialized training establishment called the Court Academy (an institution within the court system) both on general topics as well as on specific subjects. There are courses both of initial character and those aimed at continued training.

(c) As mentioned above the continuing training is organized through the Court Academy. In a strict sense the training is not compulsory but it is made clear that a judge should attend a

relevant amount of courses. Some of these are now available as e-courses and thus easily accessible.

Each year a catalogue presenting a large amount of courses/training is published by the Court Academy. Many of the courses are part of a regular program and will be held yearly. The supply of courses, the content of them etc. is determined through co-operation by the courts and the Swedish National Courts Administration. Judges attend the courses as part of their duties (which means they are entitled to leave from work for the training).

Apart from the courses arranged through the Court Academy there are of course all kinds of legal training arranged by other stakeholders – both by public authorities, organizations and private education firms. These courses often involve fees and attending them may be ok if they are regarded as relevant, there is place for them in the court's education budget and if there is time for the judges to attend despite the normal work load.

Training may prove to be an important qualification when a judge applies for a new appointment.

2. Training in environmental law

There are a number of courses on environmental law held each year, both basic and continuation courses. Courses are arranged by the Court Academy as well as by other stakeholders (as described above).

Within the frame of the judges training system there is a particular “environmental law track” which can be applied for by young lawyers starting their training. This means that they will serve as law clerks, junior judges and acting associate judges of appeal in a land and environment court and in the Land and Environment Court of Appeal.

The training offered by the Court Academy is opened to all judges.

Last year (2017) 10 courses on various topics of environmental law were arranged by the Court Academy involving about 200 participants (some of which may have attended more than one course).

In order to assess the training needs of judges and periodically reviewing this, the land and environment courts (and the L E Court of Appeal) co-operate with the Court Academy and with each other.

Within the courts additional training is arranged in order to assure sufficient knowledge of environmental law. E.g. in Nacka Land and Environment Court a training program is decided each year, but depending on training needs caused by new legislation etc. further education

may prove necessary and will be arranged. Training may be led by environmental judges/technical judges within the courts as well as by external educators.

B. Availability of Information on environmental law

(a) The Land and Environment Court of Appeal publishes all its rulings on its web site. The same goes for the Supreme Court. There is a “search” function available at the sites. Both courts also publish its precedents in special series which are available through the Internet (and in paper form, as regards the rulings of the Supreme Court).

(b) Judges are equipped with computers and have access to a large number of databases – all kinds of national, European and international databases that are open free of charge. They also have access to a number of private databases publishing environmental information and/or analyses at a cost carried by the courts. The databases of the courts also include a large number of e-literature.

C. Proposals for training or improving availability of information

There is a relevant amount of training arranged each year but further training for experienced environmental judges is a challenge and could be improved. The need for specialization is however currently undergoing discussion and specialization among judges is a controversial issue.

III. ORGANISATION OF COURTS AND ENFORCEMENT AGENCIES

A. Courts or tribunals responsible for environmental law

(a) The Swedish court system is divided into administrative courts and general courts. The general courts deal with criminal cases and civil cases. Administrative courts of course – as the name suggests – deal with administrative law. There are also special courts such as the Labour Court.

The introduction of the Environmental Code in 1999 meant the setting up of environmental courts. These courts belong to the general court system. There are five regional environmental courts (the land and environment courts) at district court level and one Land and Environment Court of Appeal. The Land and Environment Court of Appeal is the final instance in most cases but some cases can be appealed to the Supreme Court. The land and environment courts deal not only with environmental cases (i.e. permits, licensing, supervisory decisions etc.) but also cases concerning town and country planning as well as real estate.

Decisions concerning hunting and forestry are appealed to the administrative courts. Environmental decisions made by the government may be challenged through judicial review in the Supreme Administrative Court.

Sweden does not have a constitutional court. Any court is however under an obligation not to apply acts and ordinances that are in conflict with the Constitution or superior norms.

Cases concerning environmental crime are dealt with by general courts. A governmental review committee has however recently proposed that environmental crime should be handled by the land and environment courts. The proposition has yet to be considered by the Government.

The land and environment courts have the power to impose orders and injunctions, if necessary in combination with administrative fines. The courts may, in cases concerning environmental damage, order damages to be paid. The land and environment courts also have the power to decide on issues of compensation in kind.

(b) Examples of typical environmental law cases:

(i) Environmental law cases are not handled by civil courts.

(ii) The most common type of environmental crime cases concern environmental offence (normally some kind of discharges that may pollute the environment) and unauthorized environmental activity (e.g. starting an activity without fulfilling the obligation of pre-consideration – that is getting a permit or notification – or infringement of a permit condition).

(iii) Hunting and forestry.

(iv) No constitutional court exists (see above).

(v) Permit applications for environmentally hazardous activities, mines, quarries, water plants, wind mill parks etc. Challenged administrative acts of local and national authorities – e.g. supervisory decisions concerning all types of activities that affect the environment. This includes a large number of measures taken by the supervisory authorities in order to ensure that activities are carried out in compliance with the Environmental Code, EU law etc, e.g. injunctions and prohibitions. A significant number of injunctions are addressed at property owners and operators of minor activities. They may concern things like noise reduction from a heat pump, measuring of radon in a block of flats, air pollution through burning of fire wood, sewage etc. The Land and Environment Courts also handle cases regarding environmental damages and compensation.

(c) The Land and Environment Courts and the Land and Environment Court of Appeal handles around 8 600 cases every year (6 500 resp. 2 100). The number of incoming cases is increasing.

The general courts at district court level have registered between 61 and 142 environmental crime cases per year during 2009-2016. A majority of the courts handled 0-1 case per year.

B. Specialized jurisdictions

(a) The Land and Environment Courts have jurisdiction in cases concerning issues dealt with in the Environmental Code and acts and ordinances relating to the Code, including EU environmental law. The jurisdiction of the courts includes planning and building as well as real estate. The jurisdiction is defined in law and generally exclusive. Conflicts of jurisdiction are rare but would be decided by a superior court or in the end by the Supreme Court. The Land and Environment Courts are independent of the executive.

(b) The land and environment courts consist of both lawyers and technicians. Judges in Sweden are appointed – and cannot be removed from office until retirement at 67 – by the

Government, based on proposals by the Judges Proposals Board. This applies to law-trained judges as well as technical judges. The technical judges are not lawyers but must have technical and scientific education and experience.

An environmental court is competent consisting of one law-trained judge, a technical judge and two specially appointed expert members. The expert members, who do not appear in all types of cases, have technical and scientific education and are nominated by the industry and central public authorities. These members are for instance meant to contribute with experiences of municipal or industrial operations. They are not employees of the court but work on assignment. All of the court members have equal votes with the chair (lawyer) having the casting vote in a 2-2 situation.

When appointing a law-trained judge, knowledge and experience in environmental law is not a formal requirement but would be regarded as a valuable qualification and taken into account.

(c) One characteristic of the legal system in environmental proceedings is that the procedure is reformatory. This means that the appellate body has the authority to replace the appealed decision with a new one. It is thus not a cassatory procedure. Both the procedural and substantial legality of a decision can be tried. All relevant facts will be concerned. The case is decided on the merits.

Within the powers of the land and environment courts lie, subject to various conditions, injunctions and prohibitions (which may be subject to a penalty of a fine), withdrawal of permits, environmental sanction charges, damages and compensation.

(d) Conflicts of jurisdiction are rare but would be decided by a superior court or in the end by the Supreme Court.

C. Criminal violations

(a) According to the Environmental Code a supervisory authority (normally at municipal level) has a legal obligation to report any suspicion of environmental crime to the police or the prosecutors. The responsibility for investigating and prosecuting criminal offences lies with the police and prosecution authority. Co-operation between the supervisory authorities and the police is essential for a successful criminal investigation. The Customs Office has specific obligations regarding environmental crime related to export/import.

(b) There are a number of specially trained police officers that investigate environmental crime. They cooperate with the National Unit for Environment and Working Environment Cases within the Prosecution Authority. A prosecutor is always in charge of preliminary investigation of environmental crime.

(c) – see (f) below

(d) General courts have the power to impose criminal sanctions in cases of environmental crime.

(e) The most common type of “environment criminal” is some kind of company and the penalty will normally be a company fine and/or an additional legal consequence in the form of

a ban on carrying on a business activity. The number of reported environmental crimes has varied between 4 700 and 5 700 during 2009-2015. About 15 % of those are prosecuted.

(f) There is a special branch within the Prosecution Authority that deals with environmental crime. The National Unit for Environment and Working Environment Cases was established in 1 January 2009 as a national operative unit within the Swedish Prosecution Authority. The unit administers cases involving e.g. crimes against the Environmental Code with applicable ordinances and regulations and serious hunting crimes regarding protected predatory animals. The national unit conducts activities in five locations in the country. Each office has a geographical area of responsibility.

D. Administrative violations/cases

That choice is made by the legislator and thus it follows from the environmental legislation which type of enforcement that will be applicable in a given situation.

E. Civil cases

Civil courts are as a rule not involved in environmental law cases. Environmental damages/compensation cases are dealt with by the land and environment courts.

F. Standing

According to provisions in the Environmental Code, and a number of other legal acts relating to environmental issues, NGOs have standing in environmental cases. The NGOs do not need any kind of formal recognition or accreditation. They must however have safeguarding the interests of nature conservation or environmental protection as their main objective, have at least 100 members or by other means prove that they have the public's support, and have conducted activities in Sweden for at least three years.

Through case law (with reference to the Aarhus Convention) NGO standing has extended to include decisions concerning hunting and forestry.

NGOs do not have standing in criminal or civil cases (unless directly concerned).