

Svea Court of Appeal

Mr Claes-Göran Sundberg

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Court of Appeal

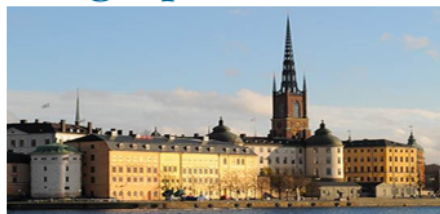


SVEA HOVRÄTT
SVERIGES DOMSTOLAR

My name is Claes-Göran Sundberg and I am a Senior Judge of Appeal as well as the Head over the Land and Environmental Court of Appeal which is a division of Svea Court of Appeal. I have been a judge since 2002. In 2005, I started working at the Environmental Court of Stockholm. In 2015 I started at the Court of Appeal.

I will now give you a brief introduction to the Swedish justice system for the review of environmental cases.

Introduction to the Swedish environmental legal procedure



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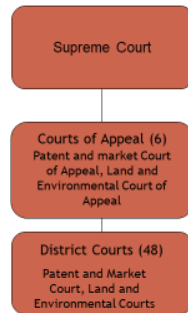
Svea Court of appeal is one of Sweden's six courts of appeal. The court was founded in 1614. It is the eldest court of Appeal in Sweden. Svea court of appeal is located in central Stockholm on an island called Riddarholmen. The court is located in five court buildings, palaces. On the picture you see the Land and Environmental Court of Appeal's courthouse. There are four buildings that are built together and they are called the West Tower. The Land and Environmental Court of Appeal is a division within Svea Court of Appeal. The division employs approximately 70 persons. We are about 20 legally qualified judges and 13 technical judges in the division. I will return to how to become a judge at the Land and Environmental Court. In the afternoon, my colleague Mikael Schultz, a technical judge, will give you a description of how to become technical judge and how it is to work as a technical judge.



The Structure of the Swedish Courts

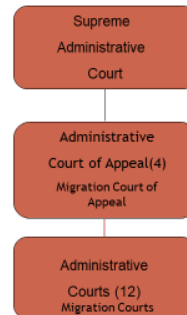
The General Courts

(criminal and civil cases)



The General Administrative Courts

(cases relating to public administration)



Special Courts
- Labour Court



Sweden has three types of courts. The general courts are the district courts, the courts of appeal and the Supreme Court. The general courts deal with criminal cases and civil cases. The administrative courts are administrative courts, administrative courts of appeal and the Supreme Administrative Court. The administrative courts deal with administrative law. There are also special courts that settle disputes in various special areas for instance the Labour Court.

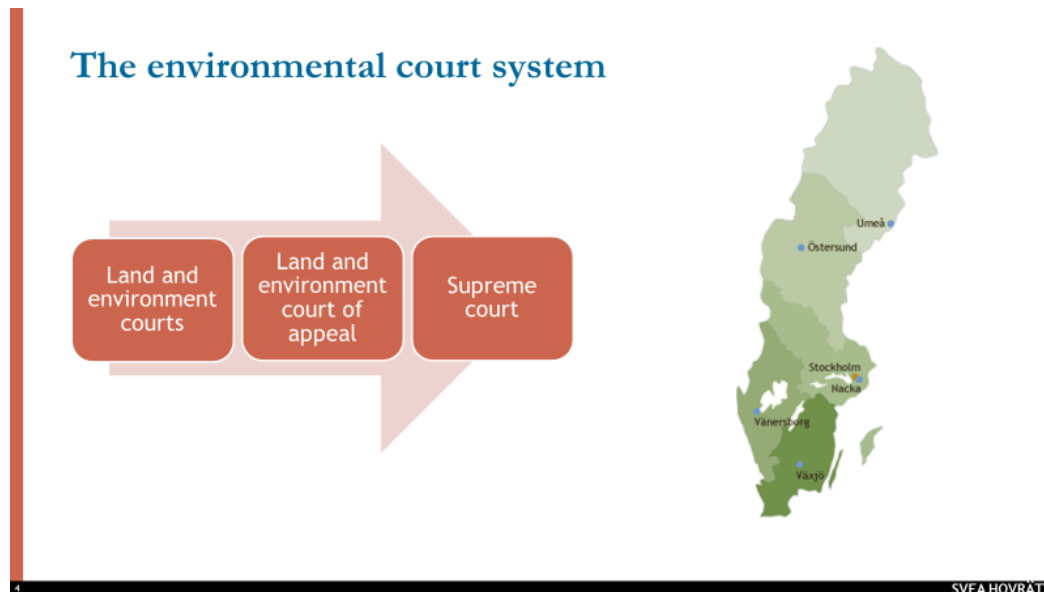
The land and environmental courts are special courts. But unlike the Labour Court they are a part of the general court system and have no own budget or administration.

The reason why the land and environmental courts are a part of the general courts has a historical and political explanation. Issues such as permits for waterworks operations and real estate cases have been dealt with by the general courts for a long time. This is due to the fact that these cases may include such issues as different types of compensation to individuals. The second reason is that since the late 90's, the Government considers that we should minimize the number of specialized courts with their own organization and budget.

Land and environmental courts are different from the general courts. Environmental cases are a mixture between civil and administrative law. That requires adaptation and special solutions regarding the rules of procedure and the composition of the court members.

I would like to point out that the land and environmental courts do not deal with criminal cases. Not even if they are related to the environment. They are dealt with in the general courts. It has been discussed in various ways and it has even been proposed that such cases

should be determined in the land and environmental courts, but it has not yet led to any change.



The five land and environmental courts are parts of five district courts, they are located in Nacka, Vänersborg, Växjö, Umeå and Östersund.

The Land and Environmental Court of Appeal is a part of Svea Court of Appeal located in Stockholm.

The Supreme Court is also located in Stockholm

The land and environmental courts deal not only with environmental cases for example (permits, licensing, supervisory decisions etc.) but also cases concerning town and country planning as well as real estate. They are structured mainly in the same way and they are divisions in each court. The size of the courts varies but also the composition of the cases they are handling. For example, the court in the northern Sweden has several very large and extensive applications for mining, which does not occur in the courts of southern Sweden. Judgments and decisions of land and environmental courts are appealed to the Land and Environmental Court of Appeals. In some cases, judgments and decisions of the Land and Environmental Court of Appeal may be appealed to the Supreme Court. I will return to this.

The land and environmental courts were established on the second of May 2011 and they replaced former property courts and environmental courts. Furthermore, the handling of certain cases related to the Planning and Building Act was transferred from the administrative courts to the land and environmental court. The Government's handling of cases concerning town and country planning was also transferred to the land and environmental courts. The reason for combining these types of case and establishing of the land and environmental courts was that the environmental cases, cases concerning real estate, and cases related to the Planning and Building Act had many similarities. Therefore in order to simplify, coordinate and streamline the handling of these cases, the land and environmental courts were established.

In this context, I would like to point out that the environmental legislation we apply today was a merging of existing water act and environmental protection act. As a consequence of that reform the former water courts, which had existed since 1918, and the Environmental Protection Committee, which had existed since 1969, were both replaced by the environmental courts.

As you probably know, Sweden, like Finland, has a lot of lakes and large rivers. In order to exploit these resources, the water courts were formed. Since these cases were highly technically complex, it was decided that the court should consist of a legally qualified judge, a technical judge and two lay judges. The Environmental Protection Committee had been formed to handle cases and applications related to environmentally hazardous activities. These goals were also considered to be so complicated that a special composition was required, consisting of a legally qualified lawyer, a technical judge and two special appointed members.

As you see, Sweden has used technical judges in environmental issues for a very long time.

Line of appeal



As I pointed out earlier, the land and environmental courts can be described as a mixture between general courts and administrative courts. Part of the cases begin as applications in a land and environmental court. Other cases are appeals against decisions by different authorities. As you can see, there are 290 municipalities and local boards and 21 county administrative boards. I would like to add that the courts also review appeals from various central authorities such as the Swedish Environment Protection Agency and the Swedish Chemicals Agency.

The majority of the cases handled by the land and environmental courts begin at a municipal level. Their decisions are in most cases appealed to the county administrative boards and subsequently to the land and environmental courts. One exception is the appeal of town and country planning. When a municipality has adopted a plan, the decision will be appealed directly to a land and environmental court. This change of the court hierarchy is relatively new and the Government's intention has been to speed up the procedure. This procedure is unique and I guess that the reason for the change is the dramatic increase of the need of new housing.

Land and Environmental Courts

- **Case types**
 - Application
 - Claim for damages and compensation
 - Appeal cases
- **Reformatory procedure**
- **Ex officio principle**
- **Parties**
- **Application fee and litigation cost**
- **Composition of the court**

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I will now give you a description of the land and environmental courts and how they function as well as in what framework they can try a case. I will only talk about how the court handles environmental cases. I will also give you an example how a court will deal with an application.

Case types

The land and environmental courts have two functions; To be a court of first instance and a court of appeal. Therefore the land and environmental courts deal with two types of environmental cases; Cases which start with an application and appeal cases.

The cases which start with an application are divided into three categories. The first category concerns environmentally hazardous activities. These cases concern large and extensive facilities and factories which require environmental permit. Which facilities are to be tried by the court is stated in a regulation established by the Government. Examples of such facilities are major factories such as Volvos factory in Gothenburg, ports, airports and mines.

The second category concerns water activities. Permits for water activities shall always be submitted to an environmental court if they have effect on the water conditions. An example of such activity is the water control concerning the lake Mälaren. A lake in the middle of Sweden.

The third categories the civil cases or claims for compensation. The land and environmental courts only deal with civil cases concerning an action for compensation based on the Environment code.

The second type is appeal cases. These cases could for example concern applications for smaller plants, such as quarries and wind mill farms. Other examples are decisions by local boards and sanction charges. These cases vary a lot in their character and size. I suppose you have the same variety in your courts.

Reformatory procedure – old decision replaced by a new one

One characteristic of the legal system in environmental proceedings is that the procedure is [reformatory](#). This means that the court has the authority to replace the appealed decision with a new one. 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.

Ex officio principle

In most cases, except the civil cases, the court has the possibility and the obligation to investigate the application in order to get the best result according to the law. The court is entitled to appoint an expert.

In the civil cases the court will found the decision on the parties argumentation, this cases are cases amenable to out-of-court settlement.

Parties

When the court deals with an application the court will hear relevant authorities and parties concerned by the application. The court will also announce in the papers in order to reach all concerned parties.

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.

Application Fee and Litigation Cost

Depending on which case the court handles there are different types of application fees.

If application is concerning water activities there is an application fee. The application fee depends on how much work the application covers. The minimum is 150 euro and the maximum is 40 000 euro. If the work the application covers, for example the cost to build a bridge is 2 million euro, the application fee will be 7000 euro. The application fee will cover the court's salary, costs and expenses. Of course, the application fee is not included in the court budget but in the treasury. In addition to the application fee, the applicant is also responsible for the costs of the court's premises and announcements.

There is no application fee if the application concerns environmentally hazardous activities. As in the case above the applicant is responsible for the cost of the court's premises and announcements.

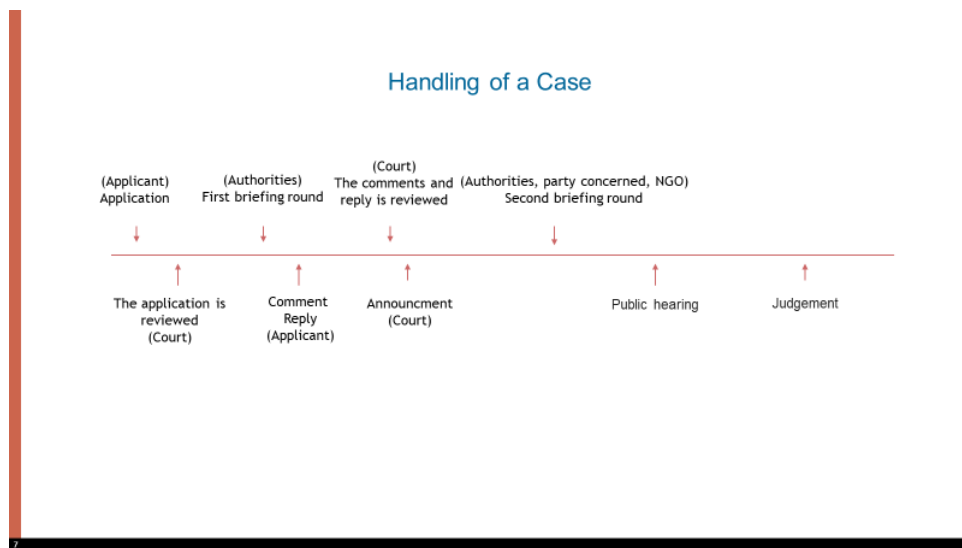
In civil cases the application fee is 280 euro. In those cases the loser pays principle applies.

There is no application fee in appeal cases.

Composition of the Court

In its role of a first instance court, the 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 meant to contribute with for instance experiences of municipal or industrial operations. They are not employees of the court but work on assignment. All the court members have equal votes but the chairman (the law-trained judge) has the casting vote in a 2-2 situation.

In appeal cases the court is competent consisting of a law-trained judge and a technical judge.



The applicant submits the application to the court. The case is assigned to a law-trained judge and to a technical judge. There is a system for random allocation of cases. In this example the application concerns a mine in the middle of Sweden, in a place called Garpenberg. The applicant was Boliden. The company wanted to expand the activity in the mine.

The courts first step is to refer the application to the relevant authorities. The purpose of this *first briefing round* is to determine whether or not the application adequately covers all of relevant aspects.

Based on what the authorities comment sometimes the court will request the applicant to provide additional material.

When the court deems the application to be complete it will publicly announce the application and make it available to the general public.

During a *second briefing round*, authorities and stakeholders are invited to comment on the application with regard to its permissibility and, where applicable, under what conditions it may be permissible.

When the applicant and the other parties have had the opportunity to present their claims and facts and arguments thereof, the court will schedule a public hearing. Since the application concerns an application for activities located in Garpenberg, the hearing was held there in a

public local with a view to giving the public the opportunity to participate. Often the court has the hearing in a community center or a congress hall. In this case the applicant paid the rent for premises.

Public hearing. During the hearing the applicant and the other parties will present their positions as well as facts and arguments in support for their case. The public hearing is open to anyone who wishes to participate, including the media. The public hearing normally concludes the proceedings and the court will then decide on the matter through a judgement. In connection with the hearing the court usually has a view of the object.

If a permit is granted the decision must always stipulate the conditions for the permit.

The court will publicly announce the judgement.

In this case Boliden got their permit. The court process took about a year.

Land and Environmental Court of Appeal

- Leave to appeal is required
- 70 employees: 20 law-trained judges + 13 technical judges
- Court composition: Three law-trained judges + one technical judge
- Hears cases from the entire country
- Leave to appeal is required
- Court of record (precedents)

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If a party is dissatisfied with the outcome in a land- and environmental court there is a possibility to appeal. In most cases there is a requirement of a leave to appeal so there is only a limited number of cases that are more deeply assessed by the Land- and Environmental Court of Appeal. All appeals concerning environmental cases require a leave to appeal.

The court of appeal can grant leave if one of the following premises are fulfilled.

- There may be reasons to change the decision,
- There is a need for the court to better assess the land and environment courts decision,
- There is a need to obtain guidance for future assessment of similar questions, or
- If there is otherwise serious reasons to consider the appeal.

To determine whether leave of appeal shall be given a clerk in my division goes through all the documents in the case and presents the case orally for three judges. Among the three judges, one is a technical judge. The judges then consider whether there are grounds to grant leave to appeal or if the leave to appeal shall be refused.

If the case is granted leave to appeal the court will send the appeal to the other party to give that party the opportunity to respond to what is said in the appeal. The counterparty's comments are then in most cases sent to the appellant for further comments.

During this process the court will also consider whether opinions should be obtained from any authority. As in the lower court the court of appeal investigates the case ex officio. However, the court is often restrictive with obtaining its own investigation, partly because of the way the parties have formulated their appeal or if it is inappropriate for any other reason.

As I said before one of the characteristics of the legal system in environmental proceedings is that the procedure is reformatory. This means that the court of appeal approves an application and sets terms. In the most cases the court does not remand the case to the lower court for final position.

In most cases the case will be settled without a meeting or a main hearing. In these situations, the case is presented orally by a clerk. The clerk describes the facts that the parties have put forward and when she or he is finished with that the judges will have a vote on how to decide in the case. Hopefully the judges can come to a common position on how the judgement shall be formulated.

There is a possibility to settle a case after a meeting or a main hearing. A party can always ask the court to hold a meeting or a main hearing. However, it is always the court that decides whether the hearing is required. A meeting or a hearing has the advantage of giving the parties the opportunities to present their views before the court orally.

In connection with a request for a hearing the party often asks the court to inspect the object that dispute concerns. The court can decide to examine the case in this way and often it is a good complement to what the parties has argued in their documents to the court. Just as in the case of a hearing it is up to the court to decide if the object should be examined by an inspection.

In cases that have been appealed to the Land- and Environment Court of Appeal and granted leave of appeal, the court shall generally consist of four members. At least three of the members shall be legally qualified judges.

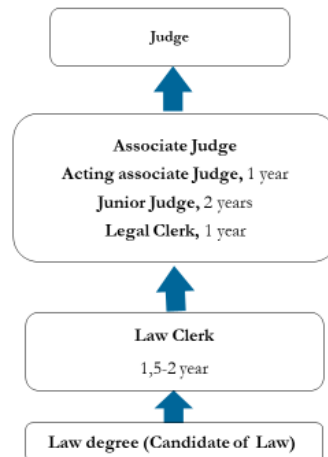
Court of Record

The Land and Environmental Court of Appeal is the final instance in most of the cases. It is only possible to appeal its decision if the case started in a land and environmental court. In cases appealed to the Supreme Court leave to appeal is required for a case to be considered. This is granted basically only in those cases where it is important to establish a judgment that may provide guidance for the Swedish district courts and courts of appeal. My experience is that the Supreme Court never grants leave to appeal if the case concerns a technical question. The effect will be that parties in the future will adjust their activities after judgement. In such cases the Land and Environmental Court of Appeal is so to speak the Court of record. The same is true for the cases from the Land and Environmental Court of Appeal that can't be appealed.

The Land and Environmental Court of Appeal publishes all its rulings on its web site. The same goes for the Supreme Court.



How to become a Judge



How to become a judge in the land and environmental courts

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 a 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.

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. 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.