

# ***Den svenska miljöprövningen –***

***Nationella traditioner, EU-rätt o  
internationella förpliktelser***

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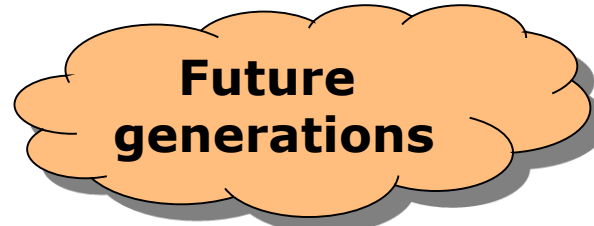
***Presentation för  
Norsk forening for miljørett***

***Oslo den 8 oktober 2018***

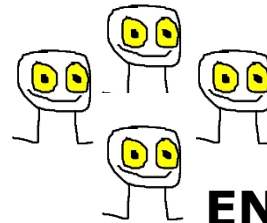
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Uppsala Universitet***



# Environmental “interests”



**Public/Public  
concerned**



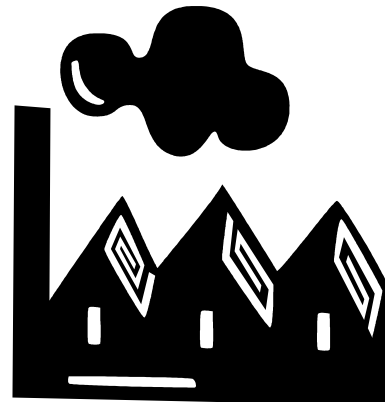
**NGOs**



**Courts**



**Experts**



**Administration**



# UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

UN Doc. ECE/CEP/43 (1998), signed in Aarhus, Denmark, on 25 June 1998. 38 International Legal Materials (1999) 515.

- **As of 2018; 47 Parties** (ratifications) = EU and all its MS + EECCA (not Russia)...
- **PRTR (35 Parties) and GMO amendment (30 Parties)**



# *The Aarhus Convention*

## THREE PILLARS

- **Art. 4-5: Environmental Information...**
- **Art. 6-8: Public Participation...**
- **Art. 9:...Access to Justice...**



# 3. *Access to justice (A2J)*

## **Article 9.2-9.4**

Access to a review procedure before a **court of law or another independent body (Article 6 ECHR)**...

...challenge the **substantive and procedural legality** of any **decision, act or omission**...

...**adequate and effective remedies**, including injunctive relief...

...and be **fair, equitable, timely and not prohibitively expensive**...



# ***Compliance Mechanism***

- ***Independent and impartial experts nominated by the Parties and Public***
- ***The Public Trigger, open sessions***
- ***Recommendations (“decisions”)***
- ***Report to MoP; advice & recommendations, ask for strategy, declaration of non-compliance, cautions, suspension...***



# Aarhus and the EU

## ■ Information

- ✿ *Directive 2003/4/EC*

## ■ Public Participation and Access to Justice

- ✿ *Directive 2003/35/EC → EIA-directive (2011/92), IED (2010/75), also in other directives, such as SEA (2001/42), WFD (2000/60), ELD (2004/35)...*
- ✿ *Article 9.3: Declaration → MS, proposal COM (2003) 624 → CJEU...*

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## ■ Internal affairs

- ✿ *Regulation 1367/2007 → CJEU...*

<http://ec.europa.eu/environment/aarhus/legislation.htm>

# ***Rights and interests...***



## **Article 47 of the EU Charter...**

Everyone whose **rights and freedoms** guaranteed by the law of the Union are violated has the right to an **effective remedy** before a tribunal in compliance with the conditions laid down in this Article.

## **Article 19 Treaty of the EU (TEU)**

Member States shall provide remedies sufficient to **ensure effective legal protection** in the fields covered by Union law.

## **Provisions with “direct effect” ...**





# ***A substantial body of case law***

- **C-263/09 *DLV* (2010): ENGO standing...**
- **C-115/09 *Trianel* (2011); The role of ENGOs**
- **C-240/09 *Slovak Brown Bear I* (2011): Art. 9.3 and EU...**
- **C-416/10 *Križan* (2013): Effective remedies...**
- **C-404/13 *ClientEarth* (2014): Air quality and A2J...**
- **C-664/15 *Protect* (2017): Article 9(3) AC + Article 47 EUCFR & Art 4 WFD...**

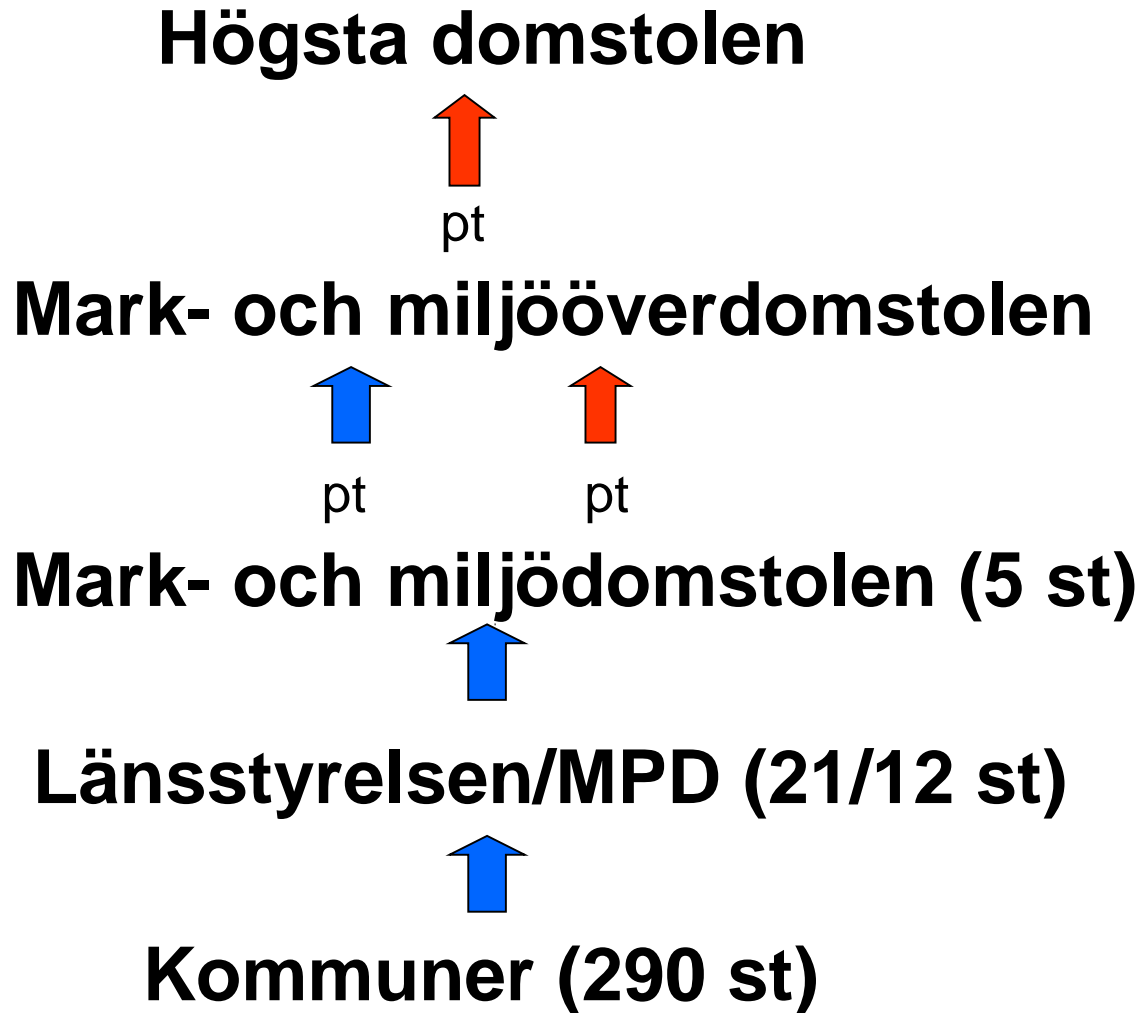


# *Med lagstiftaren på åskådarplats*

- **NJA 2012 s. 921 *Åhuskustens bevarande...***
- **MÖD 2011:46, MÖD 2012:47 o MÖD 2012:48, MÖD 2013:6, MÖD 2015:17, m.fl....**
- **Vargjakten: HFD beslut 2012-06-28; 2687-12  
→ KamR/Sth dom 2013-02-07;4390-12...**
- **HFD 2018 ref. 10 *Mikaelskyrkan...***



# Mark- och miljödomstolar





# ***Mark- och miljödomstolarna***

**TR i Nacka, Umeå, Östersund, Växjö o  
Vänersborg → MÖD (avd. 6 vid Svea)...**

- **PBL (2,313 → 1,058), MB (2,463 → 943), FBL (1,130 → 285), VA-mål (155 → X)...**
- **Jurister o tekniker, intresseledamöter (3+1)..**
- **Prövningen är "full" (officialprincipen)...**
- **...och reformatorisk..!**
- **MÖD är i praktiken praxisskapande**



# ***För- och nackdelar***

- **Sakkunskapen i miljömål...**
- **Den reformatoriska processen...**
- **PBL/MB/FBL, tillstånd/tillsyn – enhetlighet, konsistens....**
- **Inga kostnader...**

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- **Förvaltningsprocess i allmän domstol...**
- **Del av allmän domstol...**
- **Teknikernas roll...**
- **Vissa mål utanför; brott-, FL, RPL...**



# *Nikolais frågor*

- **Hvem kan klage til domstolen?**
- **Hva slags saker kan påklages?**
- **Hva kan domstolen overprøve - juss og politikk**
- **Hvor mye koster det å klage til domstolen?**
- **Hvor mange saker prøves i året?**
- **Hva slags status vil en uttalelse/vedtak/dom fra domstolen ha? Er den rettslig bindende for forvaltningen?**



....och slutligen...

**TACK FÖR UPPMÄRKSAMHETEN..!**



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