

Access to Justice in Environmental Matters

- The Aarhus Convention 1998-2013

实现环境司法

-奥胡斯公约1998-2013

Presentation at Faculty of Law, Uppsala Universitet

乌普萨拉大学法学院

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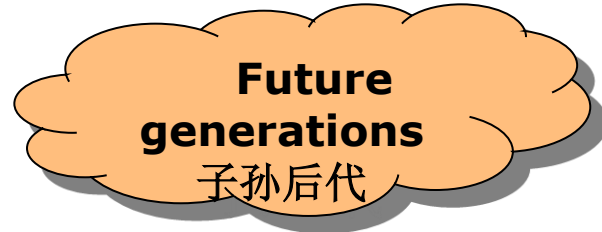
乌普萨拉大学法学院

Environmental "interests"

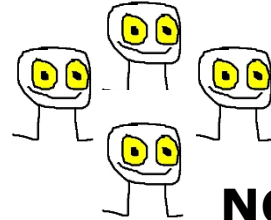
环境利益人群



UPPSALA
UNIVERSITET



Public 公众



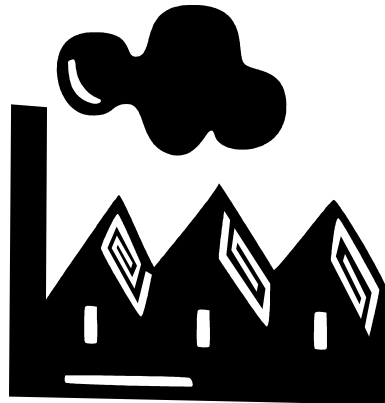
NGOs
非政府组织



Courts
法院



Public concerned 利益相关公众



Supervisory authority 监管部门



Aarhus Convention 奥胡斯公约

- **Three pillars:** Information, Public Participation and Access to Justice
三大核心：信息，公众参与，司法
- **46 Parties** (all of EU Member States, almost all countries in Europe, Caucasus and Central Asia)
46方：所有欧盟成员国，几乎含括欧洲、党团、中亚的所有国家



1. Information 信息

Article 2.3 (definition) 条例2.3 (定义)

Environmental information; any form...state of elements of the environment...factors...state of human health

环境信息；环境要素状况，人体健康状态

Article 4 (passive) 条例 4 (被动)

Public authorities...info available upon request from the public...without stating interest, including copies (reasonable charges)...asap (one/two months)...may be refused if...interpreted in a restrictive way...in writing

政府当局...尽早（1或2个月）提供公众需求信息...不涉及国家利益，包括复件（收取合理费用）...如果以书面形式限定性解释...有可能被拒绝

Article 5 (active) 条例5 (主动)

Collection and dissemination...PRTRs...

收集与宣传...污染物排放与转移登记制度



2. *Public Participation (PP)* 公众参与

Article 6, Annex 1 (list, permit procedure)

条例6，附件1（许可手续）

The public...informed early in a environmental decision-making procedure...adequate, timely and effective manner

公众在环境决策过程中准确及时有效的获得信息

EIA procedure: Info about the activity, decisions, PA, procedure, hearing, opinions, info (EIA), permit/updating

环评程序：活动信息，决策，公众意识、程序、听证、意见、环评信息、许可/更新



3. *Access to justice* (A2J)

实现环境司法

Article 9.1-9.4 条例 9.1-9.4

Access to a review procedure before a court of law or another independent body...

开庭前的审核程序

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

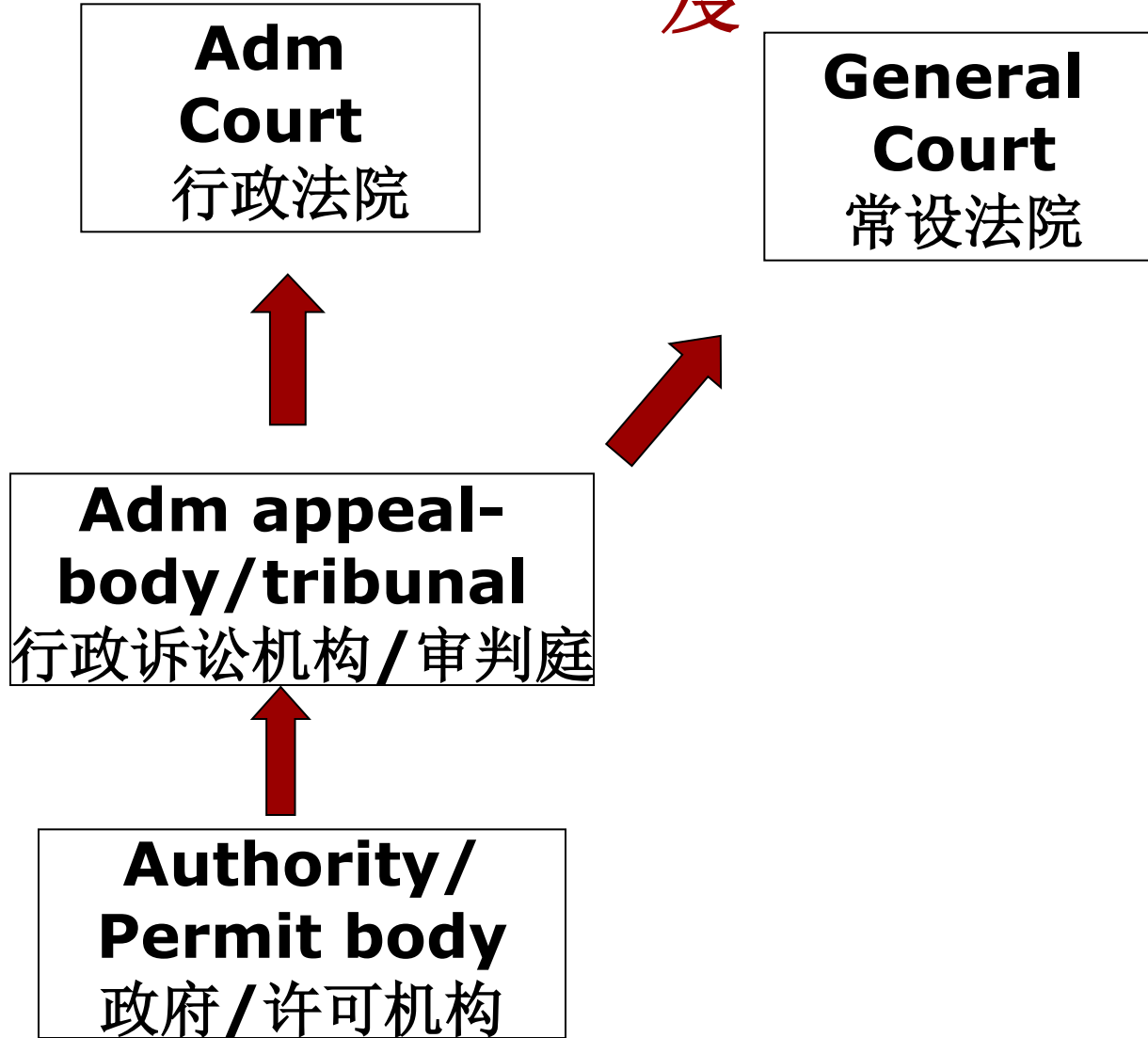
准确有效的补救措施，包括禁止令...

...and be fair, equitable, timely and not prohibitively expensive... 公正、平等、及时、不算昂贵的费用



Different procedural system 不同的诉讼制

度



Understanding the AC 关于AC



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- **Decisions from the AACC: AACC的决策**
C/2004/01; Kazakhstan (哈萨克斯坦), C/2004/03;
Ukraine (乌克兰), C/2005/11; C/2006/18; Denmark
(丹麦), C/2008/33; UK (英国)

<http://www.unece.org/env/pp/>

- **Case law from CJEU: 欧洲联盟法院判例法**
C-237/07 *Janecek*, C-75/08 *Mellor*, C-263/09 *DLV*,
C-115/09, C-240/09, C-260/11 *Edwards*

- **National case law: 国家判例法**

<http://www.unece.org/env/pp/a.to.j.html>

- **Studies: 相关研究**

<http://live.unece.org/env/pp/a.to.j.html>

http://ec.europa.eu/environment/aarhus/access_studies.htm

Standing for individuals

个人角度

- **Great variety: from (property) right based → interest based → Actio popularis...**
多种：基于产权 → 基于利益 → 民众之诉
- **Application by courts differs; the two gentlemen, shore protection...**
法院申请不同；两人，海岸防护





Standing for ENGOs | 环保组织角度

- **Statutes: Geographic, substance...**
章程：地理，物质...
- **Sometimes limited to appeal against certain decisions or legislation...**
有时仅限于针对某些特定决策或立法的上诉
- **Registration: often...**
注册：经常...
- **Minimum duration: often (1-5 yrs)...**
最短时间一般1-5年
- **Non profit or democratic structure: sometimes...**
非盈利性或民主结构：有时...



- **Court fees:** between 100 - and 5.000 €, commonly fixed...
诉讼费：100-5,000欧元 一般是固定的
- **Costs for lawyers:** between 0 and 10.000 €...
律师费：0至10000欧元
- **Costs for experts:** courts' responsibility, tables, without limits...
专家费：法庭职责、表格、没有限制
- **Cost distribution:** all models (LPP → each bears his/her own costs)...费用分摊：所有模式（LPP各方负责自己的花费）
- **Security/bonds...**押金/盟约
- **Legal aid...**法律援助



Effectiveness of A2J

A2J的有效性

- **Duration! ...**
持续时间...
- **Usually no suspensive effect...**
一般无悬而不决的影响
- **Injunction sometimes difficult to obtain**
很难实现禁令
- **Many cases 'won in court, but lost on the ground'**
(‘victory on paper’): ***Lappel Bank (UK)***
许多案件法院判决胜诉，但未真正实施（纸面上的胜利）
蓝派（英国）



....and finally...
...最后...

THANK YOU FOR LISTENING..!

感谢您的聆听！



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[www.jandarpo.se/ In English](http://www.jandarpo.se/)