

ENVIRONMENTAL LAW AND ADMINISTRATIVE COURTS IN FINLAND

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The Finnish legal system is based in the civil law tradition with a written Constitution.¹ The Constitution includes important provisions concerning basic rights. Two of these provisions, the protection of ownership and the responsibility for the environment, are relevant to the field of environmental law. These provisions respectively provide as follows:

The property of everyone is protected. Provisions on the expropriation of property, for public needs and against full compensation, are laid down by an act of Parliament.²

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1. Suomen perustuslaki [Constitution] (Fin.).
2. *Id.* § 15.

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavor to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.³

The Constitution provides for a dualistic court system, with courts of general jurisdiction for civil and criminal cases⁴, and administrative courts for public law matters. These administrative courts include the Regional Administrative Courts (there are eight on the mainland of Finland) and the Supreme Administrative Court (hereinafter SAC).⁵

Inasmuch as environmental law can be characterized generally as public law, environmental cases primarily are litigated in the administrative courts, with civil and criminal law playing a less significant role. Of course, civil and criminal courts of first instance are responsible for the sentencing of environmental crimes and for awarding damages in environmental pollution cases. However, in certain cases, jurisdiction also may lie with an administrative court.⁶

Finnish (as well as Swedish) environmental law has its roots in land and water resources law. As a result, environmental law comprises a broad content of matters compared to many other countries where environmental law is limited primarily to pollution control and nature conservation. The extension of environmental law concepts and instruments to other fields is most evident in cases dealing with land use planning, land surveying and water construction. Land use and planning law follows the procedural, and to some extent also the substantive, rules of "essential" environmental law, but land surveying law adheres to civil court procedures, not to administrative law. Water law today, as the law on water

3. *Id.* § 20.

4. Judicial System in Finland, Finnish Courts, <http://www.oikeus.fi/8854.htm> (last visited July 11, 2010).

5. Judicial System in Finland, Administrative Courts, <http://www.oikeus.fi/17598.htm> (last visited July 11, 2010).

6. For example, the Regional State Administrative Agency in its role as permit authority may issue damages for water pollution (besides *ex officio*), and its decision on all issues may be appealed to Vaasa Administrative Court and further to the SAC, which may also hear appeals concerning damages. ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS IN THE EU 180 (Jonas Ebbesson ed. 2002) (hereinafter ACCESS TO JUSTICE).

management, follows broadly the same procedural rules as environmental protection law.

At present, Finland does not have any courts bearing the name “environmental court.” However, the administrative courts and the SAC have many features that justify the epithet “environmental court.” These features will be discussed below, but it is important to first look briefly at the history of environmental litigation in Finland.

The concept of proper environmental courts has been vital in Finland for decades. Water legislation, which originally intended to safeguard economic interests, has also for a long time protected certain environmental values, linked to the use of waterpower, floating of timber and the use of watercourses to receive industrial wastewater. Beginning with the medieval Nordic laws banning the pollution of bodies of water, this tradition has been further developed in the water legislation of 1902 and 1961.⁷ Since the ban was designed to protect both public interests as well as the private interests of land and water owners and adjacent real estate owners, the regulation could not be classified solely as private law or public law, and led to the creation of the Water Courts pursuant to the 1961 Water Act.⁸

The Water Court’s jurisdiction was concentrated in a wide range of judicial and administrative matters, with its role as a permit authority being the most prominent.⁹ The Water Court was presided over by a chairman, who was a lawyer trained on the bench, and two expert (non-lawyer) members, who were typically an engineer and a natural scientist.¹⁰ The Water Court was modelled on the Swedish court, although there were some domestic forerunners, too.

A decision of the Water Court could be appealed to the Superior Water Court¹¹ (originally linked to Vaasa Court of Appeal, but later established as an independent administrative court), and further to the SAC.¹² Originally, the line of appeal was determined by the “nature” of the case: permit decisions of the Water Court were appealed directly to SAC, while cases involving damages and

7. See the Water Rights Act (1902) (Fin.); The Water Act (1961) (Fin.).

8. The Water Act (1961) (Fin.).

9. ACCESS TO JUSTICE, *supra* note 6, at 179-180.

10. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ENVIRONMENTAL REQUIREMENTS FOR INDUSTRIAL PERMITTING, VOLUME 3, 64 (1999).

11. FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, WATER LAW IN SELECTED EUROPEAN COUNTRIES, VOLUME II, 52 (1984).

12. *Id.*

penalties were appealed to the Superior Water Court and the Supreme Court.¹³ This division clearly demonstrated the overall nature of water legislation as a “miniature legal order.”

The extensive environmental and water law reform of 2000 changed both the statutory framework and the system of authorities and courts.¹⁴ The new framework of the Environmental Protection Act integrated main previous permit systems, including the permit to discharge wastewater.¹⁵ Pursuant to this reform, the Environmental Permit Offices (now known as the Regional State Administrative Agencies)¹⁶ replaced the Water Courts and acquired their previous competence to issue decisions concerning use of water resources and water management.¹⁷ Despite the metamorphosis from a court to an administrative authority, the previous independent, collegial and multi-disciplinary decision-making concept of the Water Court prevails.

At present, the Regional State Administrative Agency acts as the state permit authority in the field of the Environmental Protection Act and the Water Act.¹⁸ Appeals of this newly-established administrative agency as well as of the municipal agencies in corresponding cases are heard by Vaasa Administrative Court,¹⁹ whose origins derive in part from the former Superior Water Court.²⁰ Vaasa Administrative Court is the only competent administrative court in the area of environmental protection and water law in the entire country. In the court, there are both judges trained in the law (justices) and full-time expert members (non-lawyer) with technical and ecological expertise. Decisions of Vaasa Administrative Court can be appealed to the SAC,

13. *Id.*

14. Ministry of the Environment, Environmental Protection Legislation, Environmental Protection Act, <http://www.ymparisto.fi/default.asp?contentid=162217&lan=en#a0> (last visited July 11, 2010) (stating that the revised environmental protection and water legislation came into force in Finland on Mar. 1, 2000).

15. *Id.*

16. Site legislation (since January 2010).

17. *Id.*; see also ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ENVIRONMENTAL PERFORMANCE REVIEWS, FINLAND, VOLUME 30, 171, n.29 (2009).

18. Ministry of the Environment, Former Permit Authorities, <http://www.ymparisto.fi/default.asp?node=5296&lan=en> (last visited July 11, 2010).

19. The Brochures of the Ministry of Justice, Judicial Procedure in the Administrative Court, http://www.om.fi/en/Etusivu/Julkaisut/Esitteet/Oikeuden_kayntihallintooikeudessa (last visited July 11, 2010).

20. ACCESS TO JUSTICE, *supra* note 6, at 180.

without leave to appeal.²¹ In cases involving the Environmental Protection Act or the Water Act, the SAC bench also includes technical and ecological experts (five justices and two expert members).²² However, unlike their colleagues in Vaasa, the SAC experts, mainly renowned scientists, only hold part-time posts.²³ Nonetheless, their role in the decision-making process is crucial.

Environmental cases are multifaceted since they require a comprehensive understanding of technical, economic and environmental facts within the established legal framework. Even if an expert member is not trained in the particular field at issue, these expert members have a sound scientific literacy. Their scientific background gives them the ability to interpret the relevance of different evaluations, assessments, statements and expert opinions included in the typically extensive case files. Accordingly, when the expert members take part in decision-making, they share responsibility equally with the justices to act as independent adjudicators. This provides the court with the necessary expertise to resolve the case with respect to non-legal material relevant to the interpretation of the law and eliminates the need for additional expert testimony.

Before the reform of 2000, legislators had the option to create specialized, proper environmental courts as permit authorities and environmental courts of appeal. Instead, they chose to replace the three Water Courts with independent administrative authorities and to concentrate appeals in pollution control and water law cases in the first instance in one single court, Vaasa Administrative Court.²⁴ This solution maintained the structure of administrative courts of general competence without compromising the necessary expertise and independence of decisions needed in this field of law.

As a consequence, Vaasa Administrative Court is a general regional administrative court but it functions as well as a kind of an environmental court of appeal. It hears cases in various fields of administrative law, such as social law, taxation and municipal law. The court also hears environmental law cases outside the fields of

21. *See, e.g.*, The Environmental Protection Act § 96(5) (2000) (Fin.).

22. ASSOCIATION OF THE COUNCILS OF STATE AND SUPREME ADMINISTRATIVE JURISDICTIONS OF THE EUROPEAN UNION, NATIONAL ADMINISTRATIVE COURTS AND COMMUNITY ENVIRONMENT LAW, FINLAND 7 (2008).

23. *Id.*

24. LUC LAVRYSEN, THE ROLE OF NATIONAL JUDGES IN ENVIRONMENTAL LAW (2006), available at http://www.inece.org/newsletter/12/regional_europe.html.

pollution control and water law. In these cases, there are no expert members.²⁵

The SAC also is an administrative court of general jurisdiction.²⁶ Approximately 20% of appeals (more when measured by workload) involve environmental law.²⁷ The types of cases vary: pollution control, water management, nature protection, land use planning, permits for building activities and demolition, soil excavation permits, waste law, road planning, mining, forestry, hunting, fishing, animal welfare and expropriation permits. These cases are heard in the First Chamber of the Court, which given its area of jurisdiction and expert members in pollution control and water law cases, could be considered an environmental court.²⁸

Generally, the administrative system of appeal in Finland represents a so-called reformatory type of review. This implies that an administrative court has the power not only to annul or repeal the decision of the administrative authority but also to change the decision or amend its provisions on legal grounds. However, constitutional limits to the judiciary normally prevent a court from acting as a permit authority. If a permit has been disallowed by the administrative permit body on grounds not compatible with law, the court shall repeal the decision and remand the permit application back to the permit authority for reconsideration.²⁹ In some cases, however, Vaasa Administrative Court has directly granted a permit on appeal of the permit applicant (e.g., granted a permit for a minor part of a peat production area which had been rejected by the permit authority). This conduct of a court of appeal, which as such seems consistent with the former Water Court practise where expert judges acted as the permit authority, has been met with some criticism from the SAC. Nevertheless, the SAC's practice of amending permit provisions may happen on a daily basis, supported by the presence of

25. Act on the Expert Members of The Supreme Administrative Court (2006) (Fin.) (As to environmental law, the act only specifies for expert members in Water Act and Environmental Protection Act cases).

26. The Supreme Administrative Court Act, § 1(1).

27. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ENVIRONMENTAL PERFORMANCE REVIEWS, FINLAND, VOLUME 30, 192 (2009).

28. THE SUPREME ADMINISTRATIVE COURT OF FINLAND ANNUAL REPORT 2003 12 (Supreme Administrative Court Publications, 2004) available at www.kho.fi/en/uploads/5zmqamjg11gnye.pdf.

29. AHTI RIHTO, THE SUPREME ADMINISTRATIVE COURT OF FINLAND, REVIEW OF ADMINISTRATIVE DECISIONS OF THE GOVERNMENT BY ADMINISTRATIVE COURTS AND TRIBUNALS 10-11 (2010).

the expert members in the pollution control and water law cases. It is, for instance, not uncommon to change a reduction percentage of a pollutant or a specific emission limit value on an appeal of a permit holder, a NGO or supervisory authority.

An exception is appeals based on the Municipalities Act, where in cases involving land use planning, the inherent authority of municipal self-government restrains the court from changing or amending a municipal decision.³⁰ However, it should be emphasized that the substantive legality of the planning decision can be contested in the administrative court.

While having a court system that is structured so that it can ably handle environmental law cases (or appeals), there also must be adequate access to justice in environmental matters. The right to appeal and who can take an appeal are significant factors in evaluating the effectiveness of the environmental law adjudicatory structure. Access to justice in environmental matters has been pushed to the forefront in part by the Aarhus Convention.³¹ Nevertheless, in Finland the development started before the Convention, and its ratification did not cause any major amendments to Finnish environmental law. Already the 1995 amendment of the Constitution, giving every citizen the right to have an influence on the decision-making concerning their own living environment, was significant in bringing about an attitudinal change about environmental participation and justice.³²

Traditionally, various environmental interests have been safeguarded by administrative authorities, who have had a longstanding right to appeal in certain matters, within their administrative competence, affecting the environment. Authorities responsible for, *inter alia*, nature protection, environmental quality, fisheries management, roads and waterways have been able to appeal decisions contrary to their relevant interests.³³ In contrast, NGOs'

30. ACCESS TO JUSTICE, *supra* note 6, at 182.

31. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (AARHUS Convention), June 28, 1998, 2161 U.N.T.S. 447, available at <http://www.unece.org/env/pp/>.

32. Suomen perustuslaki [Constitution] § 20 ("The public authorities shall endeavor to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.").

33. ACCESS TO JUSTICE, *supra* note 6, at 186.

right to appeal was limited until the mid-1990s.³⁴ The administrative judicial procedure law was interpreted narrowly so as to exclude environmental or inhabitants' associations from the groups who were entitled to appeal.

Currently, environmental legislation includes numerous provisions affording NGOs the right to appeal.³⁵ Furthermore, no limitations regarding NGO membership numbers or the length of time an NGO has been active before it is entitled to take an appeal, have been provided in Finnish law.³⁶ The only prerequisite is that the NGO be registered by the competent register office and that its regulations include the mandate to influence environmental matters.³⁷ Additionally, several other environmentally relevant acts have similar provisions, such as the Water Act, the Nature Protection Act, the Land Use and Building Act (in part), the Highways Act, the Railways Act and the draft Mines Act.³⁸ Associations may also have the right to institute proceedings in matters concerning coercive measures at the administrative authority, provided that the purpose of said proceedings is to prevent the destruction of the environment or any deterioration of its ecological value deemed to be of not minor

34. ACCESS TO JUSTICE, *supra* note 6, at 189 ("As the Constitution since 1995 includes an explicit provision that presupposes improved opportunity of the citizens to influence decision-making concerning their living environmental, new environmental legislation widely affords locus standi to certain NGOs.").

35. For example, the Environmental Protection Act states that appeals may be made by: all whose right or interest may be concerned (the parties); registered associations and foundations the task of which is protection of the environment, health or nature or promotion of amenity of an inhabited area, provided that the project impact their geographical area of activities; the municipality where the project of the applicant takes place, and such other municipality the area of which is impacted by the project; the (regional) Centre for Economic Development, Transport and the Environment, the municipal Environmental Authority of the municipality where the project of the applicant takes place, and the municipal Environmental Authority of such other municipality the area of which is impacted by the project; and any other authority in charge of keeping an eye on specific public interests. The Environmental Protection Act, *supra* note 21, § 97.

36. *Cf.* case C-263/08 of the EU Court of Justice, concerning the Swedish Environmental Code. The Code has recently been amended in order to meet the standards set in the EU Courts decision.

37. ACCESS TO JUSTICE, *supra* note 6, at 186.

38. *See, e.g.*, The Nature Conservation Act (1096/1996) § 61(3) (Fin.) ("In matters — the right of appeal also belongs to any registered local or regional association whose purpose is to promote nature conservation or environmental protection. A decision taken by the Council of State concerning the adoption of a nature conservation programme can also be appealed by a corresponding national organization or any other national organization safeguarding the interests of landowners.")

importance (e.g. Nature Conservation Act § 57 (2)). Through these statutes, the legislature has fulfilled the constitutional task set out in § 20 of the Constitution.³⁹ There are some acts, however, that do not include modern provisions of expanded rights to appeal.⁴⁰ Nevertheless, the SAC has taken into consideration the interpretative effect of the Constitution and the obligation to ensure the effectiveness (*effet utile*) of the EU Law, and heard the appeals of environmental organizations with respect to derogations from the protection of wolves and closed seasons for unprotected birds.⁴¹

Another important factor that should be stressed when assessing the effectiveness of the environmental law adjudicatory structure is the system's ability to uphold the rule of law. Use of coercive measures – administrative force – is a significant guarantee of environmental quality. For example, if someone operates a polluting plant without a valid permit or against the permit's provisions, the competent administrative authority may issue injunctions and order that the plant operator restore the environment. These orders normally include a conditional fine, which must be paid unless the violator remedies the damage caused by his violation or omission in the time frame defined by the decision. Victims of pollution, NGOs or public authorities can institute this procedure in the competent administrative authority whose decision, in turn, may be appealed to an administrative court (Vaasa Administrative Court under the Environmental Protection Act or the Water Act) and further to the SAC. Also an authority's refusal to order injunctive measures may be appealed by the initiator of the procedure. Hence, the Finnish environmental system effectively upholds the rule of law also by providing recourse to individual victims in order to adjudicate the private neighborhood relations between them and the plant operator.

39. Suomen perustuslaki [Constitution] § 20.

40. The Hunting Act (1993) (Fin.).

41. KHO:2004:76 (birds) and KHO:2007:74 (wolf).

