

Introduction to Environmental Law

Legal system, sources, relevant legislation, etc.

Water law starting points

Ari Ekroos
Professor
Aalto University



prof. Ekroos

1

OUTLINES – Environmental legal world

- Introduction – business and environmental law
- Law and environment - general
- Environmental legal system
 - International
 - EU
 - National
- Finland: administration and Courts

Sources of Law (Finland)

- Legislation – the strongest source
 - Act - Parliament
 - Decree – Council of state (government) (or ministry)
 - (EU: regulation, directive)
- Proposal of the new legislation (the bill given to the Parliament) – very useful source
 - Legislators objective and will
 - Includes general and special reasoning
 - Special reasoning for every section, may explain why and how to
- Jurisprudence (= case law) of the highest courts (KKO and KHO in Finland, ECJ in EU) – sometimes useful, but often there is not case law available
 - Similar case -> similar result
- Legal literature (very weak source, but sometimes useful)

Environmental policy instruments

- **Command and control** (legislative/administrative)
 - Prohibitions – e.g. ground water/soil
 - Plans – e.g. water area plans, land use plans
 - Permits – e.g. environmental permit, building permit, etc.
 - Supervision, enforcement – e.g. general and permit supervision
- **Economic**
 - Taxes, charges – fuel tax, waste tax
 - Subsidies – e.g. feed in tariff for wind turbines, investment subsidies
 - Emissions trading – e.g. EU EUETS
 - Liability – e.g. damage compensations
- **Informative**
 - Voluntary – e.t. the Swan label and ISO 14001 and EMAS, PEFC/FSC
 - Obligatory – e.g. energy use of fridges

Environmental law - general

- Broad field of law
 - Expanding to new areas (though long history)
 - 1980's couple pieces of national legislation – now: international/EU/national
- Mostly public law (private – public relationship)
 - only some important private law issues (e.g. environmental liability)
- Material legislation
 - Technical requirements
 - Value based provisions which are open to interpretation
- Couple of special procedural rules
 - E.g. participation and access to court and right to appeal
- Vertical and horizontal relationships
- Supranational
 - International agreements
 - EU legislation

prof. Ekroos

5

OUTLINES – Environmental legal world

- Introduction – business and environmental law
- Law and environment - general
- Environmental legal system
 - International
 - EU
 - National
- Finland: administration and Courts
- Projects in built environment

Supranational environmental law

- International environmental law
 - Agreements (multilateral, bilateral)
 - Case law
 - Customary law
- European Union environmental law
 - Based on primary law
 - Agreements between member states (TFEU, Lisbon)
 - Accession treaty (e.g. Finland 1995)
 - Secondary law
 - Directives
 - Regulations
- Differences, e.g.
 - EU: Strong institutes, e.g. ECJ
 - EU: Strong enforcement

prof. Ekroos

7

International environmental law

- Sources
 - International agreements
 - Bilateral treaties (e.g. SopS 5/2000: Sopimus yhteistyöstä vesiensuojelun alalla – Finland/Estonia)
 - Multilateral treaties (e.g. SopS 2/2000: Vuoden 1992 Itämeren alueen merellisen ympäristön suojelua koskeva yleissopimus and Paris agreement 2015, legally binding global climate deal)
 - Customary law
 - Case law (e.g. WTO/GATT “courts” and International Court of Justice (UN))
 - Soft law - declarations, recommendations etc. (e.g. forest management principles, Stockholm declaration)

prof. Ekroos

8

Treaties (examples)

- Air (e.g. Kyoto agreement, Paris, Montreal, etc.)
- Water (e.g. Baltic Sea Convention (HELCOM), North-East Atlantic convention (OSPAR))
- Waste (e.g. Basel agreement)
- Nature conservation (e.g. CITES agreement)
- Cultural heritage (e.g. World Heritage, European architectural heritage, European archaeological heritage, European landscape)
- Procedural
 - Espoo Convention on Environmental assessment in a transboundary context, 1991
 - Århus Convention (The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998)

prof. Ekroos

9

Espoo Convention

- International cooperation in order to prevent, reduce and control the adverse transboundary impact of certain activities on the environment with a view to ensuring ecologically sound and sustainable development
- Obligations of parties to assess the environmental impact of certain activities at an early stage of planning
- Lays down the general obligation of States to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries
- Each party must take the necessary legal, administrative or other measures, establish an environmental impact assessment procedure and prepare the environmental impact assessment documentation

prof. Ekroos

10

Århus Convention

- the right of everyone to receive environmental information that is held by public authorities (access to environmental information)
- public participation in environmental decision-making (the right to participate in environmental decision-making)
 - enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment,
 - comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it
 - the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general (access to justice)

prof. Ekroos

11

Climate Change agreement, 1992

- Asetus ilmastonmuutosta koskevan Yhdistyneiden Kansakuntien puitesopimuksen voimaansaattamisesta (SopS 61/1994), voiman 1.8.1994, Ilmastonmuutosta koskeva Yhdistyneiden Kansakuntien PUITESOPIMUS – FRAMEWORK AGREEMENT, NOT BINDING
 - Ei sitovia päästövähennystavoitteita
- In Finland: Laki ilmastonmuutosta koskevan Yhdistyneiden Kansakuntien puitesopimuksen Kioton pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta (SopS 12/2005) ja Tasavallan presidentin asetus ilmastonmuutosta koskevan Yhdistyneiden Kansakuntien puitesopimuksen Kioton pöytäkirjan voimaansaattamisesta sekä pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta annetun lain voimaantulosta (SopS 13/2005), 16.2.2005
 - ILMASTONMUUTOSTA KOSKEVAN YHDISTYNEIDEN KANSAKUNTIEN PUITESOPIMUKSEN KIOTON PÖYTÄKIRJA – KYOTO PROTOCOL: Velvoitti teollisuusmaita vähentämään kuuden kasvihuonekaasun päästöjä yhteensä 5,2 prosenttia vuoden 1990 tasosta vuosina 2008-2012
- COP15, Kööpenhamina, joulukuu 2009
- COP 16 Cancun
- COP 17 Durban,
- COP 18 Doha,
- COP 19 Varsova
- COP 20 Lima
- PARIS COP21, 2015 December, in force October 2016
- COP 22 Marrakech 2016 (7-18 November)
- COP 23 Bonn, 2017
- COP 24 Katowice, 2018 (2-14 December) - COP 24/CMP 14/CMA 1.3

prof. Ekroos

12

International agreements – coming into force, Finland

- Agreement (or new protocol etc.)
- Signing
- Ratification nationally (or/and EU)
 - Finland:
 - Act – if legislative impacts
 - Decree – if legislation is not required
 - Amendments of existing legislation or new legislation
- Coming into force
 - Agreement includes conditions, e.g.
 - Number of ratifications
 - % of emissions

prof. Ekroos

13

European Union, environmental law

- Legislation
 - Primary - Agreements, e.g.
 - Lisbon treaty
 - Accession treaty (e.g. Finland 1995)
 - Secondary
 - Regulations
 - Directives
- Policy
 - Action programmes
 - At the moment: the 7th Environment Action Programme (EAP), guiding European environment policy until 2020
 - Before: 1st to 6th programme
 - Other policy documents (plans, programmes, etc.)

prof. Ekroos

14

EU – Primary law

- Founding Treaties
 - Treaty on European Union (1992)
 - Treaty establishing the European Economic Community (1957)
 - Treaty establishing the European Atomic Energy Community (1957)
 - Treaty establishing the European Coal and Steel Community (1951)
- Accession Treaties
 - Treaty of Accession of Croatia (2012)
 - Treaty of Accession of the Republic of Bulgaria and Romania (2005)
 - Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (2003)
 - Treaty of Accession of Austria, Finland and Sweden (1994)
 - Treaty of Accession of Spain and Portugal (1985)
 - Treaty of Accession of Greece (1979)
 - Treaty of Accession of Denmark, Ireland and the United Kingdom (1972)

EU – Primary law 2

- Treaties currently in force
 - Treaty on European union (Consolidated version 2016), Lisbon
 - Treaty on the Functioning of the European Union (Consolidated version 2016), Lisbon (TFEU)
 - Treaty establishing the European Atomic Energy Community (Consolidated version 2016)
 - Charter of Fundamental Rights of the European Union (2016)
- Other treaties and protocols
 - Schengen Convention (1985)
 - Treaty establishing the European Atomic Energy Community (Consolidated version 2012)

EU institutions

- European Parliament – legislation with Council and Commission
- European Council – presidents /prime ministers of member states
- Council of the European Union - member state minister of environment
 - Legislation with EP and Commission
- European Commission - administration
 - Legislative initiative (=proposal of regulation or directive)
- Court of Justice of the European Union (CJEU)
 - Interpretation of EU law

- European Central Bank (ECB)
- European Court of Auditors (ECA)
- European External Action Service (EEAS)
- European Economic and Social Committee (EESC)
- Committee of the Regions (CoR)
- European Investment Bank (EIB)
- European Ombudsman
- European Data Protection Supervisor (EDPS)

prof. Ekroos

17

EU Law-making

- 3 main institutions involved in EU legislation:
 - the European Parliament, which represents the EU's citizens and is directly elected by them;
 - the Council of the European Union, which represents the governments of the individual member countries (28 before Brexit)
 - Presidency of the Council is shared by the member states on a rotating basis
 - the European Commission, which represents the interests of the Union as a whole
- the "Ordinary Legislative Procedure" (co-decision)
 - Commission proposes
 - Parliament and Council (majority or unanimous) adopt them
 - Commission and the member countries then implement
 - Commission ensures that the laws are properly applied and implemented

prof. Ekroos

18

CJEU, Court of the European Union

- Ensuring EU law is interpreted and applied the same in every EU country; ensuring countries and EU institutions abide by EU law
- Members:
 - Court of Justice: 1 judge from each EU country, plus 11 Advocates General
 - General Court: 1 judge from each EU country
 - Civil Service Tribunal: 7 judges
- CASES
 - Interpreting the law (preliminary rulings) – national court asks clarification of EU law
 - Enforcing the law (infringement proceedings) – member state fails to complain with EU law
 - Annulling EU legal acts (actions for annulment)
 - Ensuring the EU takes action (actions for failure to act)
 - Sanctioning EU institutions (actions for damages)

prof. Ekroos

19

PRIMARY LAW

Treaty on European union

- Article 3:
 - 3. The Union shall establish an internal market. It shall work for the **sustainable development** of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.
- Article 5
 - 1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and **proportionality**.
 - 4. Under the principle of **proportionality**, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.
 - The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and **proportionality**.
- Article 6
 - 1. The Union recognises the rights, freedoms and principles set out in the **Charter of Fundamental Rights of the European Union** of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.
 - E.g. ownership rights, article 17
 - E.g. environment, article 37

prof. Ekroos

20

20

PRIMARY LAW

Treaty on the Functioning of the European Union (TFEU)

- Article 4
 - 2. Shared competence between the Union and the Member States applies in the following principal areas: ... (e) environment; ... (i) energy; ...
- Article 6
 - The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be: (a) protection and improvement of human health; ...
- Article 11
 - Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

PRIMARY LAW

Treaty on the Functioning of the European Union (TFEU)

TITLE XX

ENVIRONMENT

- Article 191
 1. Union policy on the environment shall contribute to pursuit of the following objectives:
 - preserving, protecting and improving the quality of the environment,
 - protecting human health,
 - prudent and rational utilisation of natural resources,
 - promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.
 2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. **It shall be based on the precautionary principle and on the principle** that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.
 3. In preparing its policy on the environment, the Union shall take account of:
 - available scientific and technical data,
 - environmental conditions in the various regions of the Union,
 - the potential benefits and costs of action or lack of action,
 - the economic and social development of the Union as a whole and the balanced development of its regions.

PRIMARY LAW

Treaty on the Functioning of the European Union (TFEU) ENVIRONMENT

- Article 192
 1. "ordinary legislative procedure" (majority decision making at Council)
 2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:
 - (a) provisions primarily of a fiscal nature;
 - (b) measures affecting:
 - town and country planning,
 - quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,
 - land use, with the exception of waste management;
 - (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph.

prof. Ekroos

23

23

EU – Secondary legislation

- Regulations
 - Regulation is a binding legislative act
 - Applied in its entirety across the EU (inforce as itself), e.g. E.g. REACH (EU chemical regulation)
- Directives
 - Directive is a legislative act that sets out a goal that all EU countries must achieve
 - It is up to the individual countries to devise their own legislation on how to reach these goals
 - Directive contains a deadline by which EU countries must incorporate its provisions into their national legislation and inform the Commission to that effect
 - If national authorities fail to properly implement EU laws, the Commission will first work with the country concerned to try to find a solution.
 - If the Commission may start formal infringement proceedings against the country in question. If the issue is still not settled, the Commission may eventually refer the case to the European Court of Justice.
 - Most of the environmental legislation is given by directives
- Recommendations - not binding
- Opinions
 - allows the institutions to make a statement in a non-binding fashion, in other words without imposing any legal obligation on those to whom it is addressed

prof. Ekroos

24

EU, environment, secondary legislation (about 300 or more legislative acts)

- Horizontal (general) legislation
- Air quality
- Waste management
- Water quality
- Nature protection
- Industrial pollution
- Chemicals and GMOs
- Climate change
- Noise
- Civil protection

prof. Ekroos

25

EU, environment, secondary legislation, examples

- Horizontal (general) legislation, e.g.
 - Directive 2011/92/EU — assessment of the effects of certain public and private projects on the environment
 - Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment
 - Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage
 - Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS)
 - Regulation (EC) No 1367/2006 – application of the Aarhus Convention
 - Directive 2003/4/EC on public access to environmental information
 - Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters
- Air quality, e.g.
 - Directive (EU) 2015/2193 on limiting emissions of certain pollutants into the air from medium combustion plants
 - Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)

prof. Ekroos

26

EU, environment, secondary legislation, examples

- Water quality e.g.
 - Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy
 - Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive).
 - Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks.
 - Council Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment.
 - Directive 98/83/EC — quality of water intended for human consumption
- Nature protection, e.g.
 - Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora
 - Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds
 - Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market.
- Noise, e.g.
 - Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environment
 - Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports

prof. Ekroos

27

EU, environment, secondary legislation, examples

- Industrial pollution, e.g.
 - Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)
 - Covers the following industrial activities: energy, metal production and processing, minerals, chemicals, waste management and other sectors such as pulp and paper production, slaughterhouses and the intensive rearing of poultry and pigs.
 - All installations covered by the directive must prevent and reduce pollution by applying the best available techniques (BAT), efficient energy use, waste prevention and management and measures to prevent accidents and limit their consequences.
 - The installations can only operate if in possession of a permit and have to comply with the conditions set therein
- Waste management, e.g.
 - Directive 2008/98/EC on waste
 - Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries
 - Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE)
 - European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste
- Soil protection, e.g.
 - Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste.
 - Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury

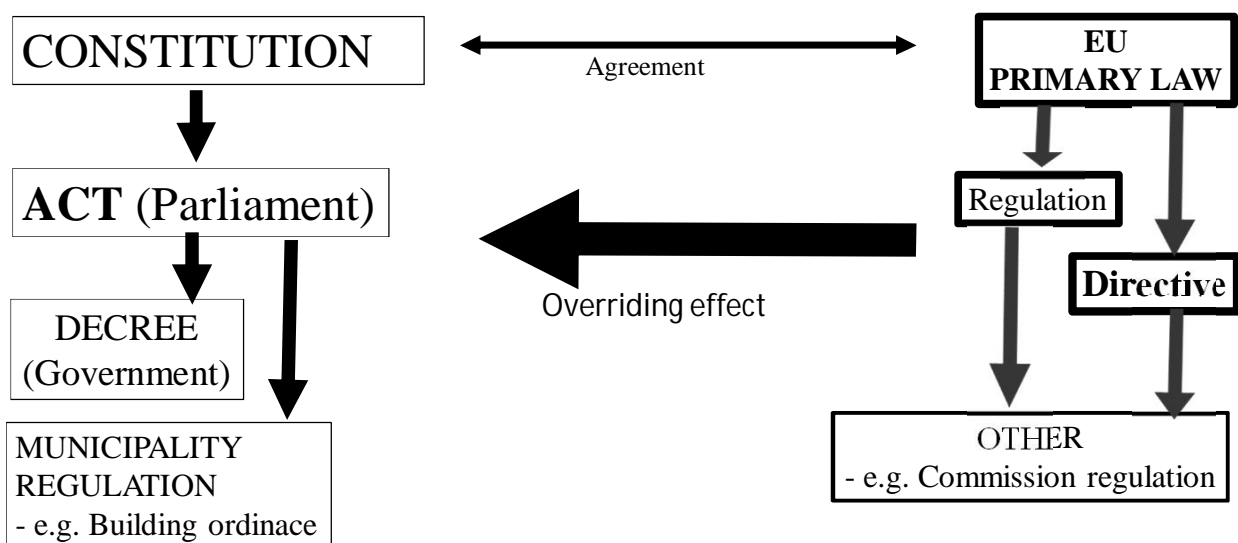
prof. Ekroos

28

EU, environment, climate change

- 2030 climate and energy framework (-80% by 2050)
 - At least 40% cuts in greenhouse gas emissions (from 1990 levels) – ETS -43%, non-ETS -30%
 - At least 27% share for renewable energy – at least 27%
 - At least 27% improvement in energy efficiency
- Legislation, e.g.
 - Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading – -43%
 - Proposal for an Effort Sharing Regulation 2021-2030 – Finland -39% (compared to 2005)
 - Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources
 - Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency
 - Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings
 - Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products
 - DIRECTIVE 2009/125/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (+ Commission Regulations, e.g. standby/off, lights, etc.)
 - Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide
 - Decision No 529/2013/EU — accounting rules on greenhouse gas emissions and removals resulting from land use, land-use change and forestry – renewal ongoing

"LEGAL SYSTEM" – FINLAND/EU



prof. Ekroos

NOT IN "SCALE"

30

Environmental legislation - Finland

- No environmental code in Finland
 - 10-15 important separate acts
 - Separate permit and other procedures (not one-stop shop)
- Structure
 - The Constitution – section 20
 - Environmental protection legislation
 - **Environmental impact evaluation legislation**
 - Nature conservation legislation
 - **Land use planning and building legislation**
 - Water legislation
 - Natural resources legislation
 - Infrastructure building legislation
 - Chemicals legislation (national)
 - Environmental crimes – Criminal Act, chapter 48

Prof. Ekroos

31

The Constitution of Finland (731/1999)

- Section 20 - Responsibility for the environment
 - Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.
 - The public authorities shall endeavour 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.
- Section 21 - Protection under the law
 - Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.
- Section 6 – Equality
- Section 15 - Protection of property
- Section 80 - Issuance of Decrees and delegation of legislative powers

Prof. Ekroos

32

OUTLINES – Environmental legal world

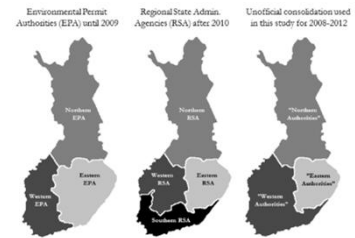
- Introduction – business and environmental law
- Law and environment - general
- Environmental legal system
 - International
 - EU
 - National
- Finland: administration and Courts
- Projects in built environment

Administration

- Local municipality
 - Building board (local building control authority) – permits
 - Planning
 - Local municipality and region
- Centre for Economic Development, Transport and the Environment (elinkeino-, liikenne- ja ympäristökeskus, ELY-keskus)
 - LUBA – some deviation permits
 - NCA – deviation permits (e.g. species)
 - General control of local municipalities
- **FUNDAMENTAL CHANGES IN SHORT TERM FUTURE WITH NEW REGIONAL ADMINISTRATION**

Administration, permits/EPA

- Permit authorities
 - State authority
 - Regional State Administrative Agency (4: north/east/west/south) (aluhehallintovirasto, AVI) 2010-
 - Until 2010 Environmental Permit Authority (ympäristölupavirasto, YLV), 3: north/east/south
 - Before this: water courts
 - Local municipality
- Supervision: (not permit authority)
 - Centre for Economic Development, Transport and the Environment (elinkeino-, liikenne- ja ympäristökeskus, ELY-keskus)
 - Local municipality

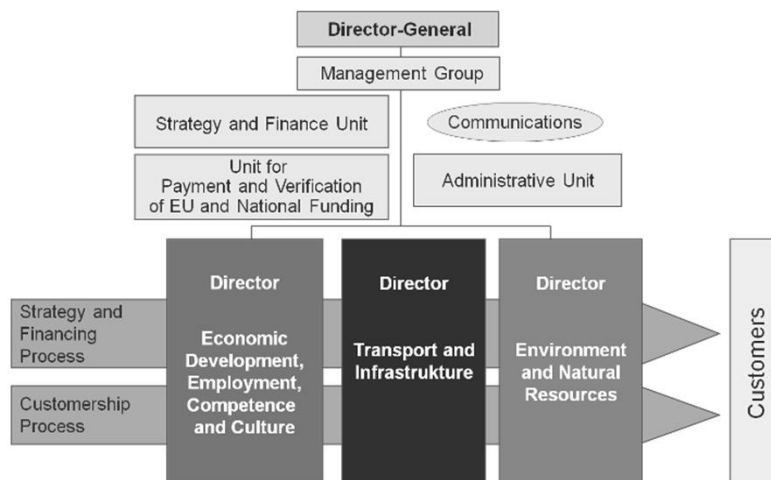


prof. Ekroos

35

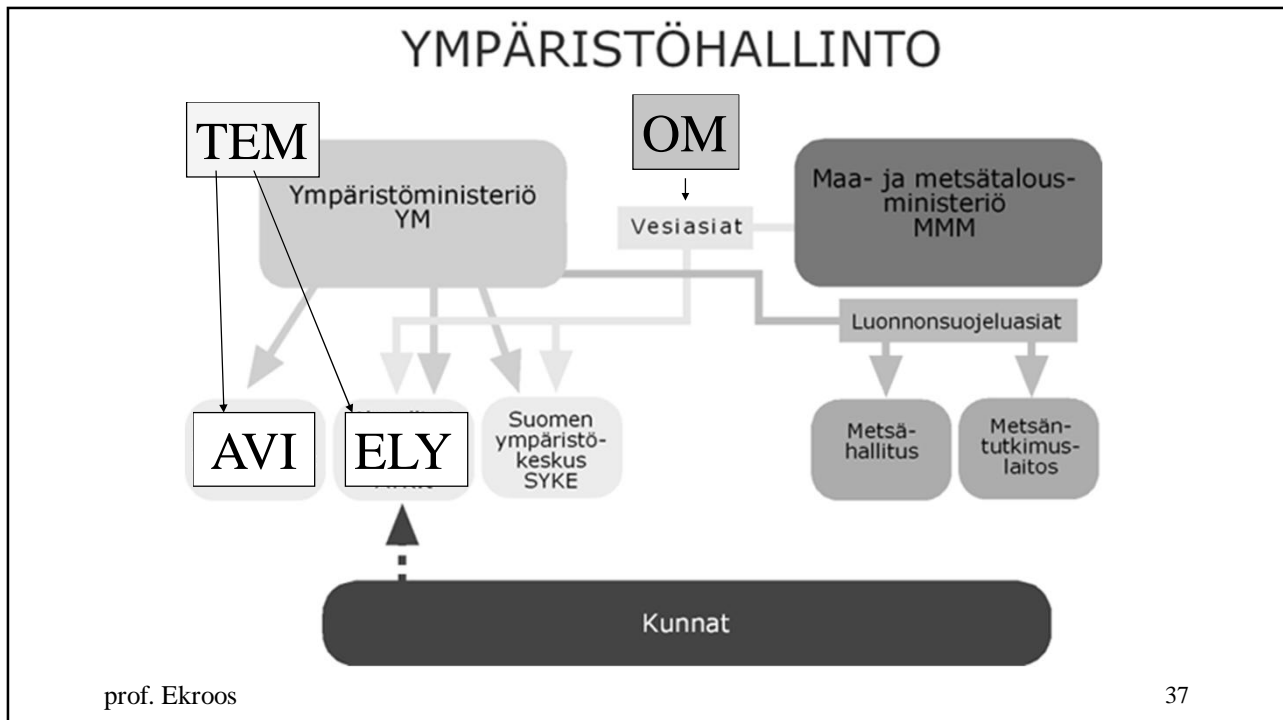
Centre for Economic Development, Transport and the Environment

- Supervision – environmental permits
 - Control – land use planning
- Permits – deviations, LUBA, NCA
- Planning/supervision – water



prof. Ekroos

36

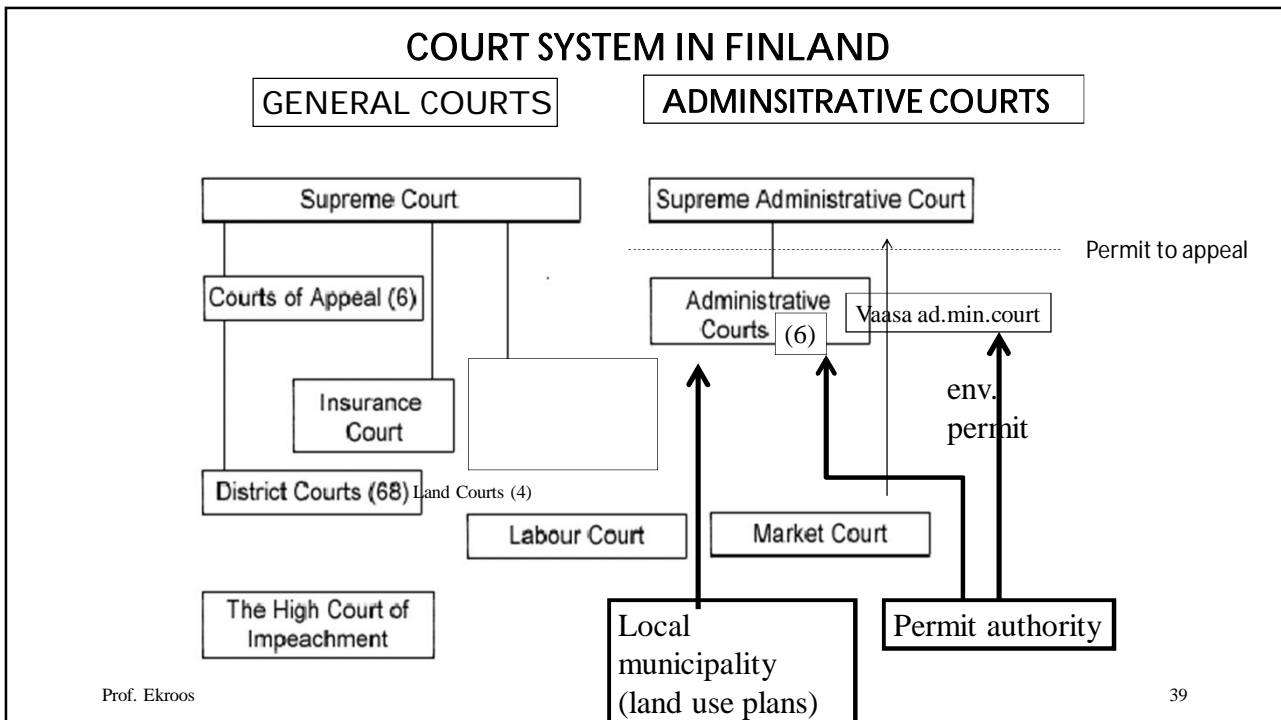


TASKS – Parliament/Administration

- Parliament – legislation: ACT
- Council of State (Gorverment) – legislation: DECREE
- Ministry of Environment
 - Legislation: decree (quite rare, but Building Code is given by decree), preparation of legislation
 - General development, guidance, etc.
- Centre for Economic Development, Transport and the Environment
 - Supervision – environmental permits
 - Control – land use planning
 - Permits – deviations, NCA, Planning/supervision – water
- Regional State Administrative Agency – environmental permit authority (EPA)
- Regional Council – regional plan
- Local municipality
 - Land use planning – local master plan, local detailed plan (+ Building ordinance)
 - Environmental permits
 - Building permits – local building control authority
 - Other permits – according to municipality rules
- Other authorities

Prof. Ekroos

38



Water legislation

Ari Ekroos
Professor
Aalto University

A?
Aalto University
School of Engineering

prof. Ekroos 40

Water legislation (e.g.)

- **Water Act (587/2011)**
- Act on Water Resources Management (1299/2004, Finlex)
 - Government Decree on Water Resources Management (1040/2006, Finlex)
 - Government Decree on Water Resources Management Regions (1303/2004, Finlex)
- Act on Dam Security (494/2009)
- Act on Flood Risk Control (620/2010)
- Act on Environmental Protection in Maritime Transport (1672/2009, Finlex)
- Act on Water Services (119/2001, Finlex)
- The Rapids Conservation Act, given in 1987, prohibits the authorities from granting a permit for a new hydropower plant in certain water systems
 - List of 53 water systems or parts of water systems in which the building of a new hydropower plant is forbidden
 - The Act did not interfere with the existing plants on those water systems at the time when the Act was issued
 - the river Ounasjoki is protected under the Act 703/1983 and the river Kyrönjoki under the Act 1139/1991

Right to waters

- The right to waters is based on two concepts: the water material and the ground of the water area.
- ownership of the water area is based on private ownership - the leading principle is that "he owns the water, who owns the land"
- most of the water areas enjoy shared private ownership in which the water area belongs to several real estates nearby (common waters)
 - in most of the cases these real estates in the village enjoy a shared ownership of the water area.
- the ownership of some water areas is private but not shared
 - water areas belong to a single real estate or form a real estate of their own (so called water real estates).
- the state owns some water areas: the high seas and the centres of large lakes (so called common water areas)

Ownership of watermill (rapids)

- Depending on the individual case, the ownership of a mill may include the ownership of the water area in question or just the right to use the discharge and head in question
- The building permit of the mill may have an indication of the character of the right to the water
 - Building permits to mills have been required since the 17th century
- In the Great Land Reform (late 18th century to early 20th)
 - generally the mills were formed to their own plots
 - either common (shared ownership by the land-owners of the village), or private
 - this did not change the ownership of the rapids and the hydropower since the reform did not apply to water areas
 - unless otherwise stated, the ownership of a water area, including rapids, is shared among the land-owners of the village according to their share of land in the village (between villages 50-50)

Permit, Water Act

- permit is always required regardless of the size of the plant
- several conditions that must be fulfilled before a permit may be granted
 - The first condition is that either the plant may not hurt much public or private interest or the public or private interests will benefit significantly because of the plant compared to the disadvantages to the public or private interests that the plant would cause
 - In the first case the plant is regarded as a minor undertaking.
 - In the second case, a comparison between interests will be conducted; as the value of the hydropower production, the price of average annual amount of electricity produced by the plant at least twenty-folded will be taken into account
 - there are some overriding reasons that prevent from granting the permit, such as danger to public health or security, or substantial harmful changes in the relations of the natural environment or in the water nature
 - Second, the applicant must have a right to use the areas needed for the plant and the project. (WA C2, S4, SuS3)
 - In relation to the permit decision, it is possible to decide coercive measures and compensation issues
 - Third, the applicant must have a right to use the hydropower on the site
 - can be arranged beforehand (ownership or other right to use) or during the permit procedure (right to use common hydropower)
- hydropower plant requires a building permit according to the Section 125 of the Land Use and Building Act (132/1999)
- permit authority is the Regional State Administrative Agency
 - may be appealed to the Vaasa Administrative Court and further to the Supreme Administrative Court

Water Act, permit

• Chapter 3, Section 2 – General permit requirements for water resources management projects

(1) Water resources management projects **are subject to a permit** by the permit authority if they may cause changes in the state, depth, water level or flow, shore, or aquatic environment of a water body or the quality or quantity of groundwater, and **this change**:

- 1) results in a risk of flooding or general shortage of water;
- 2) results in detrimental changes in the natural environment and the way it functions or deterioration in the ecological status of a water body or groundwater body;
- 3) significantly reduces the beauty of nature, causes deterioration in the amenities of the environment or in cultural values or the suitability of the water body for recreational use;
- 4) poses a risk to human health;
- 5) substantially reduces the yield of an important or other groundwater body suitable for use for water supply purposes, or otherwise impairs its usability or causes other damage or harm to the water abstraction or the use of water as drinking water;
- 6) causes damage or harm to fishing or fish stocks;
- 7) causes damage or harm to waterborne traffic or timber floating;
- 8) jeopardises the conditions for a brook channel to remain in a natural state; or
- 9) violates the public interest in another manner similar to the above.

(2) Moreover, a permit by a permit authority **is required** for a water resources management project if the change referred to in subsection 1 results in loss of benefit for the water area of another party, fishing, water supply, land, real estate or other property. However, a permit is not needed if the loss of benefit is caused to private interest only and the interested party has given written consent to the project.

(3) A permit by a permit authority is **also required** for:

- 1) altering a streamlet or ditch or water flow in a streamlet or ditch in a way that results in damage to the land of another party land, if the party concerned has not given consent to this action and it is not a question of ditch drainage referred to in Chapter 5;
- 2) use of a structure, built in a water area, which disrupts the use of a real estate belonging to another party and the party concerned has not given consent to this.

(4) A permit is also required for altering a water resource management project for which a permit has already been granted, if the change violates public or private interests in a manner referred to in subsections 1–3.

prof. Ekroos

45

Water Act, permit

• Chapter 3, Section 3 – Water resources management projects subject to a permit in all cases

(1) **Regardless of the consequences** referred to above in section 2, a permit by a permit authority is always required for the following water resources management projects:

- 1) **closure or narrowing of a main channel or public channel** or timber floating channel and placement of a device or another obstruction that hinders the use of the channel;
- 2) abstraction of water for the needs of a water supply plant or a party supplying water to such a plant or for transfer for use elsewhere and other abstraction of groundwater when the quantity abstracted exceeds 250 m³/day, as well as another measure where at least 250 m³/day of groundwater is extracted from a groundwater body on a non-temporary basis;
- 3) absorption of water into the ground to produce artificial groundwater or to improve the quality of groundwater;
- 4) construction of a bridge or a transport device over a public or main channel and a tunnel or water, sewer, power or other line under such a channel;
- 5) transforming a land area permanently into a water area by raising the water level in a water body;
- 6) construction of a hydropower plant;
- 7) **dredging of a water area when the quantity of dredged material exceeds 500 m³, unless it is a question of maintaining of a public channel**;
- 8) placing of dredged material into Finland's territorial waters for the purpose of dumping it when the quantity of dredged material in question is not insignificant;
- 9) removal of soil material from the bottom of a water area for a purpose other than ordinary household use;
- 10) establishment of a permanent facility for timber floating operations.

(2) A **permit is also required for making changes** to a facility or structure referred to in subsection 1 for which a permit has already been granted or their use if the change violates public or private interests.

prof. Ekroos

46

Water Act, permit

- **Chapter 3, Section 4 – General conditions for granting a permit**

(1) A permit for a water resources management project **will be granted if**:

1) the project does not significantly violate public or private interests; or

2) **the benefit gained from the project to public or private interests is considerable in comparison to the losses incurred for public or private interests.**

(2) However, a permit may not be granted if the water resources management project jeopardises **public health or safety, causes considerable detrimental changes in the natural state of the environment or the aquatic environment and its functions**, or causes considerable deterioration in the local living or economic conditions.

(3) The applicant shall hold a right of use to the areas required for the project. If the applicant does not own the area or control it through a permanent right of use, a permit may be granted on condition that the applicant is granted the right of use to the area in the manner provided in Chapter 2, or that the applicant presents a reliable account of how the right of use to the area will be arranged.

- **Section 5 – Relation to land use planning**

(1) When deciding on a permit matter, the local detailed plan shall be taken into account. In addition, the provisions laid down in the Land Use and Building Act on the legal impacts of regional plans and master plans shall be taken into account.

(2) When deciding on a permit matter, it shall be ensured that the permit does not complicate the preparation of a plan in any significant way.