EUFJE ANNUAL CONFERENCE
15 and 16 September 2006 in Helsinki
IMPACT OF NATURA 2000
ON ENVIRONMENTAL LICENSING

WELCOME ADDRESS
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President of the Supreme Administrative Court of Finland

Esteemed members of this conference
Ladies and gentlemen
Dear colleagues, judges for the environment,

On behalf of the Supreme Administrative Court of Finland I wish all of you warmly welcome in our court, conference and Finland.

The *Hávamál*, a collection of Viking sayings dating back more than a 1,000 years, provides us with many words of wisdom. An example is the following:

> "He is truly wise who's travelled far;
> he knows the winds and the ways of the world."

"Travel broadens the mind" is an expression commonly heard in Finland as well. One wellknown Finnish author has given this saying a new twist: "Travel dims the mind," he says, "unless one knows one's background and identity."

Some people may wonder why I have chosen 'identity' as the starting point for a speech on environmental law. There are a number of reasons for doing so: the setting in which we live, our geographical location, the circumstances of our neighbours, the changing seasons and our view of world events – all of these are fundamental constituents of our identity. For this reason, our way of relating to the environment is not merely a matter of technical observation: our relationship with the environment is one of interaction.

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The human environment is often classified into three layers: the original ecological environment (Nature), the social environment and the cultural environment. During this annual conference on Natura 2000 on environmental licensing, we shall be dealing mainly with the physical environment, with environmental values, with ways in which environmental policies can steer developments and with technological options.

The vigorous development of environmental law in recent years can be seen in major legislative projects such as legal reforms pertaining to environmental permit procedure, to environmental offences, to nature conservation and environmental protection, and to land use and construction.

International legal co-operation is now also being highlighted in the field of environmental law. If we examine the history of the European Union, we find that the original Treaty of Rome contained not a single word about protection of the environment. Since then, we have seen the issuing of more than 200 secondary regulations on environmental protection, on the protection of waters and the air, on wastes, and on chemicals and nature conservation. As a result of the *Natura 2000* programme, the Birds Directive and the Habitats Directive are the best known of these.

Environmental law is one of the most rapidly expanding and international branches of law. In research on globalisation, the emphasis is shifting towards consideration of the environment and the effects that human beings can have upon it. Behind this trend is the simple insight that there can be no global values unless they come from somewhere. Pablo Picasso meant the same thing when he stated that “abstract art does not exist; one always has to start somewhere, with the first spot on the canvas”.

It is a great honour to be the one of the first speakers and to be able to wish success to this conference and to research on environmental law. Environmental issues are of great significance for the administrative courts.

Appeals against the Natura 2000 programme have kept this court extremely busy. In August 1998 the Finnish government proposed 1 325 sites under the Habitats Directive, and 439 under the Birds Directive for the Natura 2000 network. According to the Finnish Nature Conservation Act it was possible to appeal against this decision to us. We received 1 200 appeals concerning 750 sites. There were 5 000 appellants. Each and every appeal was separately and carefully studied. In June 2000 a total of 700 decisions – more than 40 000 pages – were rendered. Approximately 7 percent of the sites were reversed.

An example also demonstrating the thoroughness with which we try to decide cases has now been translated into English and distributed to the conference participants.

In Finland Natura has stirred up a lively discussion as the directives and information forms implementing the programme are complicated and difficult to understand. This issue has caused problems both for the environmental administration and particularly for landowners and their interest groups. The Supreme Administrative Court has recognised these difficulties in its decisions but has nevertheless been forced to decide the cases. Now I would like to take up few problems in the Finnish discussion.

A misconception has to do with differences between the Finnish and other language versions of the Habitats Directive. According to the Finnish wording the list compiled pursuant to the Directive should comprise all Member State areas hosting a habitat listed in Annex I, or a species in Annex II. In other language versions the requirement

to list habitats and species within the national territory only concerns those sites that are included in the national proposal in the first stage. In other words, it has not been necessary to list all habitats and species, the habitats of the species, within a country – the demand for a national list has only concerned the proposed sites. In several other countries this has been self-evident. The inclusion of a site in the list has to, of course, be based on adequate scientific knowledge as laid down in the Habitats Directive. The decisions have then explained the best possible expert opinions used or required.

Similarly the Commission guidelines state that it is not necessary to survey all occurrences within a country, and that it is possible to estimate their number and quality with "best possible expertise" if exact data is unavailable. Other countries have done exactly this when they have implemented the Natura 2000 programme in stages, for example by region or first only on state-owned land. Right from the beginning Finland has tried to encompass the entire country.

Another problem in this country of open administration has to do with access to information on the occurrence of endangered animal and plant species. So far it has only been given to the parties of each site, not for public use. As far as I know this is also true for other Member States. It would be extremely useful to exchange experiences in these matters, too. Balanced environmental law needs the support of an open and confidence-building atmosphere, legitimacy.

What, then, are the fundamental features of environmental law – features which make it such a fascinating field? I shall present only some general aspects.

First and foremost, environmental law is very societal in character. It involves important interests and values. For this reason, decision-making in the field of environmental law cannot be segregated from other legal developments or from society. Today, when statutes are being drawn up, the environmental effects of a proposal must always be presented.

One often hears of the 'permeation principle', which states that environmental impacts must also be considered in spheres which lie outside that of environmental policy as such. The narrow perspective is illustrated in the saying about "the specialist who succeeds in driving faultlessly ahead towards a great mistake". Environmental law is characterised by its interdisciplinary nature and by co-operation between experts from various fields.

In addition to its broad-based nature, environmental law is characterised by flexible norms. The application to practical situations of concepts such as ‘nuisance’, ‘special grounds’, ‘significant contamination’ and ‘unreasonable burden’, terms which are open to differing interpretations, also requires more than just the acquisition of legal knowledge and the weighing of pros and cons. Thus the application of environmental regulations is firmly tied to facts.

Norms must be interpreted against a particular background of values, and account must be taken of the diversity of situations in which decisions are made. For this reason, the ways in which courts act must also be flexible and free of formalistic constraints, so that at any given time the relevant reports and the latest results of research can be used. One occasionally comes across statements concerning the extension of the formal adversarial procedure to environmental matters as well. But this would render the clarification of issues more difficult and would weaken the protection afforded by the law.

When one is considering environmental issues, one must pay attention not only to a broad base but also to the long term. The building of the settings in which we live and the preservation of biological diversity demand decades of effort; a disaster can destroy a great deal in an instant. When environmental regulations are being developed, we thus require both the dimension of time and provision for unpredictable negative environmental consequences. We can also find perspective in regulations governing the use of the central elements of the environment – land, water and air.

Methods of steering the use of the environment can be divided into administrative and judicial norm-based steering, economic steering, and information-based steering that takes place by enhancing knowledge about the environment. The methods employed by environmental law provide much subject matter for anyone reflecting more broadly on legal policy methods within society and on improvements to the way in which legislation is prepared.

Legislation generally encompasses stipulations and prohibitions, as well as sanctions in the case of infringements. For this reason, the law is often preoccupied with the solution of problems, and the constructive significance of the law is forgotten. Environmental law differs from other branches of the law in that it is characteristically goal-orientated. Its points of departure are the protection of the environment, the problem-centred clarification of issues and the application of new research findings.

Alongside general principles –such as equality, being bound to purpose and relativity – other principles have also been developed within the context of environmental law; these concern comparison of interests, sustainable development, preparedness and utilisation of the best applicable technology. Through EU legislation, the principles embodied by a high level of protection, economical exploitation and multiple usage have gained in emphasis. As concerns these aspects, too, environmental law can contribute to general legal thinking.

Ladies and gentlemen,
Since this is an international conference, I should again like to underline the importance of international contacts. There used to be a joke about old-style passports to the effect that “if you look like your passport photo, you’re in need of a trip abroad”. The new passports will contain a biological identifier indicating a person’s origins. This will bind our identity even more closely to international interaction.

For us Finnish environmental researchers and decision-makers, this seminar constitutes a valuable bridge to international discussion of environmental issues. There is new potential in this regard, as Finland is one of the few countries that have general environmental regulation at the Constitutional level and where it has been possible to revise central legislation.

Environmental law would take on an increasingly important place in contemplations over future development of the constitutional state and control of issues on global markets.

Once again, I wish you a good conference. You are warmly welcome.