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THE LEGAL PROTECTION OF THE RIGHTS OF FOREST OWNERS IN FINLAND

The aim of this presentation is to explain the main restrictions to forest management and other forest use in Finland. First, I will clarify the ownership structure of Finnish forests and the basic protection of ownership in the Finnish Constitution. Secondly, I will go discuss certain stipulations of the Forest Act and the Land Use and Building Act which limit the rights of the forest owners to use their own land and compare those with the mechanisms of the judicial protection of ownership.

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ЮРИДИЧЕСКАЯ ЗАЩИТА ПРАВ ЛЕСОВЛАДЕЛЬЦЕВ В ФИНЛЯНДИИ

Целью презентации является объяснение основных ограничений управления лесным хозяйством и иными видами лесопользования в Финляндии. Прежде всего, я остановлюсь на структуре владения лесами Финляндии и на основах защиты собственности финской Конституцией. Далее мы обсудим некоторые положения Закона о лесах, а также Закона о землепользовании и строительстве, которые ограничивают права лесовладельцев на использование своей земли, и сравним эти положения с механизмами судебной защиты собственности.

The constitutional protection of ownership. In Finland about 65 % of forest land is owned by private persons and about 10 % by enterprises, parishes and municipalities. About 25 % is owned by the Finnish state. In total, there are more than 900 000 private forest owners in Finland.

The section 15 of the Constitution of Finland stipulates that “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.” Therefore, the important aspects are the public need and full compensation. No one’s property may be expropriated for private needs, but only for e. g. building a public road or a power line or the needs of nature protection. The property rights are, however, not absolute. It is clear, that the land ownership includes not only rights, but also obligations. Section 15 must be weighed against other provisions of the Constitution.

For example, the section 20 of the Constitution lays down the general responsibility for the environment: “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.” The protection of property in section 15 must be balanced and combined with the responsibility for the environment. There are, of course, also other interests that must be reconciled, but the property rights and environmental protection are most commonly in conflict.

Most of the limitations of the rights of the forest owners are, however, less extensive than expropriation of private property. There are numerous regulations in various acts that limit forest use. Even if the property rights are not absolute there are certain boundaries to possible limitations. A so called ‘appropriateness test’ has been developed by the Constitutional Law Committee of the Finnish Parliament.¹ The principal function of the Committee

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¹ Especially see the Constitutional Law Committee (1993): Perustuslakivaliokunnan mietintö 25/1994 (In Finnish).

is to issue statements on bills sent to it for consideration and on the constitutionality of other matters and their bearing on international human rights instruments. The Committee is the main controller of the constitutionality of parliamentary acts as there is no constitutional court in Finland. The Committee consists of the members of the parliament, but it always organizes hearings of legal experts, such as professors of constitutional law. The ‘appropriateness test’ includes the following. First, the basis of the limitation of a constitutional right must be based on an act. A governmental decree or similar bylaw is not enough. (The section 80 of the Constitution requires this.) Second, the limitation must be defined clearly enough in the act; it should not leave too much discretion to authorities. Third, the limitation must have generally accepted justifications and it must be acceptable according to the European Human Rights Convention. Fourth, the limitation may not harm the core of a constitutional right and the limitations must be proportionate with regards to the aims of an act. This means that the legislator must always choose the instruments that restrict least the constitutional rights. Lastly, there must be legal remedies connected to a limitation of a constitutional right, e. g. a possibility to get monetary compensation and/or to appeal to a court.²

It is also important to remember that as Finland is a member of the European Union (EU), some of the newest limitations for the forest owners originate from the EU legislation and the discretion of Finland is quite limited in these cases.

I also want to say a few words about the law making process in Finland before discussing the Finnish legislation. In all bigger legislative projects the relevant ministry, e.g. the Ministry of Environment, establishes a steering group that includes relevant stakeholders, such as certain other ministries and various interests groups, like industrial interest groups and nature protection agencies. The aim is that the most important interests would be present. The Central Union of Agricultural Producers and Forest Owners (MTK) is the most important interest group representing forest owners and other land owners. MTK is a trade organization and interest group representing farmers, forest owners and rural entrepreneurs. MTK is very active and effective in lobbying for the rights of the land owners.

The Forest Act. The Finnish Forest Act (1093/1996) is the main act regulating forest management. It covers, for instance, the forest declaration (the “permission” system), the allowable cutting methods, the responsibility to ensure regeneration and the need to take forest biodiversity into account by protecting certain key biotopes. The Forest Act regulates only forest management including building forest roads and ditching. The Forest Act does not restrict other activities in forest, e.g. building a house. Therefore, forest management is in a way “secondary” form of land use: there is no need for permission according to the Forest Act, if one, for example, wants to build a house in a forest. Forest land becomes automatically ‘building land’ if one gets a building permission according to the rules of the Land Use and Building Act (132/1999).

There are two big issues concerning the rights of the forest owner and the Forest Act. The older one dates back to the beginning of the 20th century, namely the question of allowed logging methods. Selective logging and continuous cover forestry was the main logging method in Finland still in the early 20th century, but gradually, it became a non-accepted method among the forest professionals and the interpretation of forest legislation

² See also Määttä (1999): *Maanomistusoikeus* (The Land Ownership. In Finnish). Suomalainen Lakimiesyhdistys, A-sarja, No 220, Helsinki.

changed accordingly. This caused tremendous trouble to many small-scale forest owners. Because many forest owners still used the familiar selective logging methods instead of clear cuttings, many forest owners were banned to use their forests for a lengthy period of time. These bans lead to serious economic problems to many farmers who earned their living from forests during winter periods. The general interests of the national economy (i. e. the interests of the then fast growing forest industry) were the main motivation behind this changed interpretation of law about 70 years ago. The situation is changing now, after many decades, as the forthcoming new forest act³ will allow the continuous cover forestry i. e. uneven aged forest management. The change in the forest management paradigm will allow the forest owner to decide himself what kind of logging and forest management methods he wants to use, either for financial or other reasons.⁴ There are now some research results that show that in some cases it is more profitable for the forest owner to use continuous cover forestry instead of clear cut methods.⁵

The other big issue concerning forest ownership is the key biotope protection in the Finnish Forest Act (There are similar regulations in the Nature Conservation Act, but I concentrate here on the Forest Act).⁶ The section 10 of the Forest Act stipulates that certain kinds of habitats — such as the immediate surroundings of springs, brooks, rivulets, and small ponds; ferny hardwood-spruce swamps and fertile patches of herb-rich forest — must be preserved during forest management actions. The protection of the forest owners' rights were carefully pondered when the Forest Act and its key biotope protection was enacted in 1996, since this kind of legislation was new in Finland at that time. According to the current interpretation of the property rights, the parliament is allowed to make minor limitations to ownership, if there is, for example, a generally accepted reason for limitation. Nature protection is nowadays considered as a generally accepted reason to limit property rights. However, according to the interpretations of the Constitutional Committee, the owner is entitled to compensation, if the limitation prevents *normal, reasonable and rational use* of the land plot.

The threshold for compensation varies a little bit from an act to another. According to the Forest Act, the forest owner is entitled to certain remedies, if a reduction in forest yield or other financial loss is *not insignificant* to the landowner. According to the Forest Act, the owner is either allowed to log part of the key habitat or to apply for compensation (state support) if he would otherwise suffer more than insignificant losses. In practice the

³ The law proposal is being prepared in the Finnish Parliament in autumn 2013.

⁴ Pappila (2010): Metsien käytön paradigmat ja legitimiteetti (Legitimacy of forest management paradigms. In Finnish.) Ympäristöpolitiikan ja — oikeuden vuosikirja vol. IV, 2010, University of Eastern Finland, p. 7–98.

⁵ Tahvonen et al. (2009): Bioeconomics of even- vs. uneven-aged forestry: the case of Norway spruce. Metlan työraportteja 137. Pukkala et al. (2009): Growth and yield models for unevenized forest stands in Finland. Forest Ecology and Management, vol. 242, issues 2–3, p. 281–287.

⁶ There are similar limitations to land use — also forest management — in the Nature Conservation Act: for example, protection of habitats of certain species. However, according to Nature Conservation Act the threshold to compensation is slightly different: If the property owner or holder of special rights incurs *significant inconvenience* due to nature conservation, he is entitled to compensation from the state. In practice the threshold has meant losses of about 4000–5000 € or protection of at least 5–8 % of the land. Yet, according to the Nature Conservation Act, the land owner must normally first seek for a permission to deviate from protection rules (e.g. protection of the habitat protection according to the EU Habitats Directive or biotope protection). If the nature protection authorities will not grant derogation, the owner will be compensated by the state.

threshold has meant more than 4 % of the forest owner's land or more than 6000 €. The threshold is now not based on an act, but the forthcoming new forest act will most probably include a clearly defined threshold. In the law proposal it was 4 % of land or losses of 4000 €.

Land use planning. According to Finnish legislation forest land can always be used for commercial purposes and do logging, unless it has been specially forbidden due to 1) nature protection or 2) restrictions according to a land use plan. The only exceptions are the official nature protection areas, and the areas of local detailed plan, where loggings always require permission from the municipality authorities. There are no automatic forest protection zones around houses or villages in Finland.

Land use planning is based on the Land Use and Building Act (132/1999) (LUBA). There are three layers of land use plans in Finland: 1) regional plans, 2) local master plans and 3) local detailed plans. Most usually it is the local master plans that have most impact on forest management.⁷ The local master plan often covers the whole area of a municipality and have impacts on forest management, too. Municipalities develop the master plans themselves according to the rules of the LUBA. Among the most common reasons for restricting forest management in local master plans is the recreational use of forests, but restrictions may also be posed based on the protection of cultural historic values, scenery or nature; or protection zones between a neighborhood and a high way. Nevertheless, the restrictions in a local master plan (or a regional plan) shall not cause *unreasonable harm* to the landowners or other titleholders (In some cases even unreasonable harm is allowed, but then the land owner is entitled either to compensation or expropriation.). In addition to avoiding unreasonable harm to forest owners, the land use plan must also take into the consideration the constitutional *principle of equality*. The guiding principle is that the owners should be treated equally in a land use plan, but the environmental circumstances and the already existing land use (buildings etc.) naturally restrict the complete fulfillment of the equality principle. Considering "unreasonableness" always requires case by case consideration as can be seen from the following examples.

For instance, in case from 2001 (10.4.2001 case 845) the Supreme Administrative Court of Finland considered that a local master plan caused unreasonable harm to a landowner, as 364 ha, which was 80 % of his land, was designated as a nature protection area and the landowner did not get any building rights as a compensation. The municipality had to make another, more reasonable local master plan.

On the opposite, in case KHO:2011:54 the Supreme Administrative Court considered that the land use plan did not cause unreasonable harm to the landowner, even if a large area of the owners land was designated as a nature protection and recreational area. The Court explained that this was due to the fact, that the area in question had special biodiversity values and the land owner got building sites to another part of his land. The Court also reminded that land owner may, according to the 101 § of the LUBA, also require the city to pay him compensation or to buy (expropriate) his land.

In practice municipalities have used the possibility to steer forest management in local master plans in a very different way, because the LUBA stresses the autonomy of municipalities. Some municipalities do not pose any restrictions on forest use in local master plans, whereas some municipalities limit the use of certain forest plots for recreational or

⁷ The most general level plans i.e. regional plans do not normally hinder normal forest management, even if they can in some cases of designated nature protection areas, and detailed plans do not usually cover forest areas, but mainly land for reconstruction, roads and recreational areas.

other reasons.⁸ In general the rules of local land use plans increase the amount of protected or semi-protected forest land by 2–3 %.⁹ The restrictions usually forbid only clear cuts, but not selective logging. After the municipality council has accepted the local master plan, the land owner may appeal to a court against the municipality's decision.

Every man's rights. A Nordic as well as a Russian specialty is the so called everyman's rights. Everyman's rights is a strong institution in Finland and it coexists together with strong protection for private property. The main content of the everyman's rights in Finland is the right to walk (and ski etc.) on private land, and also to pick wild berries and mushrooms freely everywhere. The non-owners are not allowed to enter private yards, gardens or cultivated fields, but otherwise they can walk nearly everywhere. There is, however, a limitation: the non-owner may not cause other than insignificant harm to the land or otherwise to the land owner. Significant harm could mean, for example, erosion of forest land. Making a bonfire is also prohibited without the consent of the land owner.

The every man's rights are mainly regulated by customary law, but the Criminal Code, Act on Private Roads, The Water Act etc. set the limits to the everyman's rights. The Criminal Code, for example, criminalizes trespassing on private yards. The Act on Private Road allows the land (road) owner to forbid the driving (car, motor cycle, horse) on his road, if the driving would cause him significant harm. To protect his privacy, the owner is entitled to build a fence around his yard, but not around all of his lands and forests, unless there is a specific reason, like horse-keeping. The everyman's rights should not be limited without any reason.

Conclusion. In Finland the rights of the forest owners are based on constitutional property rights and rules in other legislation. The property rights are being balanced with other rights and duties, like the duty to protect the environment. Various Finnish acts restrict forest use and there is always some discretion left for authorities; for example, what is 'significant loss' or 'considerable harm'. Nevertheless, the Finnish forest legislation guarantees that a forest owner always has a possibility to apply for derogation or appeal to a court. In addition, if the restriction is too considerable, the forest owner must get a compensation for his losses. The fact that the compensation thresholds are different in different environmental acts is a bit problematic from the land owners' point of view, and the differences could be justified more clearly in the future.

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⁸ Pölonen & Malin (2011): Yleiskaavoitus metsäalueen käytön ohjauksessa (Local master plans and the steering of the use of forest areas, in Finnish). Ympäristöpolitiikan ja — oikeuden vuosikirja, vol. 5, 2011, p. 121–184.

⁹ Finnish Forest Research Institute (METLA)(2013): Yleiskaavat rajoittavat metsätaloutta merkittävästi, Press release 29.8.2013, <http://www.metla.fi/tiedotteet/2013/2013-08-29-kaavoitus.htm>.