



Does Antiquities Act Really Prevent Environmental Protection

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Maaperä / Finnish Heritage Agency

Finnish Heritage Agency

- The Finnish Heritage Agency preserves, collects, studies and displays items and artefacts that represent cultural heritage of national importance. It produces information about cultural environments and artefacts that is made available for everyone, for example through the exhibitions and events organised by the agency's own museums and with the help of information systems, online materials and publications.
- It gives statements and advice on the use and protection of ancient relics as well as buildings and environments of cultural and historical significance. It also develops the museum sector nationally and is responsible for the distribution of discretionary government grants. The Finnish Heritage Agency also oversees the National Museum of Finland, the country's central museum on cultural history.
- The Finnish Heritage Agency is an expert in cultural heritage.

The catch?

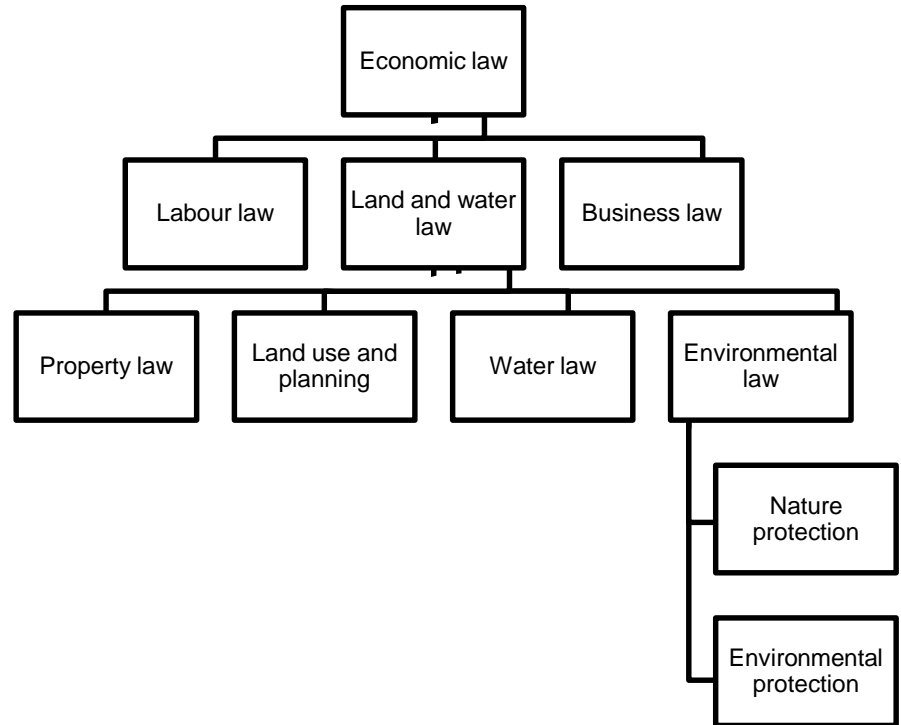
- *“Of course this goddamn Finnish Heritage Agency does not accept it but an end must be put to the agency because it makes stupid protection decisions”*
- → Does Antiquities Act Really Prevent Environmental Protection?

What Constitutes Environment?

- Legally speaking, the environment is made of three components:
 - 1) Ecological environment (natural environment)
 - 2) Original social environment (social environment)
 - 3) Changes humans have made to the natural and social environments (cultural environment)

Short History of Environmental Legislation

- Already the ancient Romans...
 - Restriction of emissions from one property to another
- Politia regulation
 - Usually attributed to upholding order and security
 - Environmentally: Health related regulations (how wells are placed and used etc.)
- In Finland the foundations of environmental legislation are based on economic law, especially land and water law
 - Fundamentally regulated how a landowner may exploit resources
 - Protection aspects could be taken into account
- Modern environmental law emerged after the second world war, 1960 – 1980
 - Strong international effect on Finnish law, M&A and environmental catastrophe driven
- The fundamental characteristic of environmental law is that it is sector based without comprehensive coordinating rules



Land Resources Act	Neighbour Law	Water Act		
Mining Act	Waste Act	EIA	Antiquities Act	
Forestry Act	Chemical Act	Road Law	Building Protection	Renewable Energy
Water Act	Envir. Protection Act	Land Use and Planning	Nature Protection	Emissions Trade
Natural Resources	Emissions	Land Use	Nature and Culture	Special Sectors

The result

- “Environmental legislation uses often the concept of *environment*, but it is not defined. This is not usually necessary, as the applicable act is resolved in other ways”
 - Ympäristöoikeus (Kuusiniemi etc.) Oikeuden perusteokset 2013
- In practice, each sector of environmental law has its own way of looking into the environment.
- Protection of the environment – be it natural environment or cultural environment – is a reaction to a perceived threat of an environmental commodity, a type of environment or species becoming rarer and rarer.
 - Often times this leads to perceived conflicts between the various concepts of environment



Photo: Wikipedia (public domain; United States Consumer Product Safety Commission)

Wrecks and the Antiquities Act (295/1963)



Wrecks and the Antiquities Act (295/1963)

- 20 §: The wrecks of ships and other vessel discovered in the sea or in inland waters, which can be considered to be over one hundred years old, or parts thereof, are officially protected. The provisions concerning ancient monuments shall apply, where relevant, to wrecks and parts thereof. If the wreck has been abandoned, it becomes state property.
- 1 §: Without permission stipulated in this Act, it is forbidden to excavate, cover, alter, damage or remove ancient monuments, or to disturb them in any other way.
- 3 §: The official protection of ancient monuments is supervised by the Finnish Heritage Agency; and 20 §: Also the Finnish Border Guard is a supervisory authority in connection with the protection of wrecks.

The extent of protected wrecks

- There are about 750 underwater antiquities
 - the majority of them are wrecks
- Taking the 100 year limit into account, currently wrecks which have sunk in the year 1917 are considered antiquities
 - As the 100 year age limit is dynamic, an increasing amount of wrecks prone to be regarded as antiquities contain also hazardous substances

Wrecks and the Antiquities Act (295/1963)

- Archeological study:
 - 10 §: The Finnish Heritage Agency may give a permission to study an ancient monument
- Permission to excavate, cover, alter, damage remove, or to disturb wrecks:
 - 11 §: Centre for Economic Development, Transport and the Environment may give a permission to disturb a wreck if it constitutes an undue impediment in relation to its significance
 - May be subject to conditions, usually archeological study or documentation
 - 13 §: In case of certain public undertakings such as land use planning and other public works the Finnish Heritage Agency may give a permission to disturb a wreck after negotiations between the Finnish Heritage Agency and the operator of the public undertaking
 - May be subject to conditions, usually archeological study or documentation

Wrecks and the Exclusive Economic Zone

- The Antiquities Act is applied in Finnish territorial waters, not in the exclusive economic zone
- UN Convention on the Law of the Sea provides (art 303) that states have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose
 - In order to control traffic in such objects, the coastal State may, in applying article 33, presume that their removal from the seabed in the zone referred to in that article without its approval would result in an infringement within its territory or territorial sea of the laws and regulations referred to in that article.
 - This has not been utilized in Finnish law
- Finland has not ratified the 2001 UNESCO Underwater Cultural Heritage Convention, however, its stipulations have been given legal significance in legal practice as Finland did vote for the acceptance of the convention
- In practice wrecks have been taken into account in projects undertaken within the exclusive economic zone
 - E.g. in the Nord Stream undertakings one has investigated underwater cultural heritage and adjusted the pipelines accordingly

Finnish Heritage Agency's Standpoint

- By nature we consider the environmental protection as a good thing
 - However, as the environment is a whole, it is necessary to take into account also cultural heritage when planning undertakings in the protection of natural environment
 - The Antiquities Act may set added criteria before removing hazardous substances is possible
- Communication is key
 - The Finnish Heritage Agency needs to know what actions are contemplated (e.g. is dismantling the wreck partly necessary)
 - Preferably a meeting should be organized
 - As a permit may be needed for performing actions near protected wrecks contact should be made in good time
- Requirements for actions concerning protected wrecks
 - Permits may be subject to conditions
 - Study, documentation, 3d modelling
 - Minimizing damages to the wreck

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NO