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ReNEUAL I –

Administrative Law in the European Union

"Single Case Decision-Making"

Cologne, 2 – 4 December 2018

Answers to questionnaire: Finland

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ACA-Seminar

ReNEUAL I – Administrative Law in the European Union

Single Case Decision-Making

2. - 4. December 2018

Verwaltungsgericht Köln (Administrative Court Cologne)

Questionnaire

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I. Parties to Administrative Proceedings: Categories and Legal Positions

1. a) Are the following categories of parties to administrative proceedings for single case decision-making recognized in your legal order:

By way of introduction it is worth mentioning that according to the (general) Administrative Procedure Act, section 11, a party to an administrative matter is anyone who has a right, interest or obligation affected by the matter.

In the administrative procedure, one of the major legal consequences linked to party status is the right to be heard. In section 34 of the Administrative Procedure Act it reads:

“Before a matter is decided, each party shall be provided with an opportunity to express an opinion on the matter and to submit an explanation of claims and of evidence which may influence the decision.

A matter may be decided without hearing the views of a party if:
1) the claim is ruled inadmissible or immediately rejected as groundless;
2) the matter concerns admission to employment or to voluntary education or training;
3) the matter concerns the granting of a benefit based on an assessment of the applicant’s attributes;
4) the hearing of views may jeopardize the achievement of the purpose of the decision, or the delay to the consideration of the matter as a result of the hearing of views would cause considerable detriment to public health, public safety or the environment; or
5) a claim which does not concern any other parties is approved, or the hearing of views is

manifestly unnecessary for another reason."

However, there are several types of different situations leading to administrative single case decision-making. In some cases, the only relevant relationship is between an individual and an authority (e.g. applicant for a residence permit or citizenship). In some cases, there is also a link between private parties (e.g. public procurement with contracting entities and different tenderers). In certain types of cases, there are large networks of different, concurring private and public interests and persons, companies, NGOs and authorities speaking for these interests, linked to single case decision-making (typically environmental permit cases).

Hence, there are numerous specific provisions where the party status and its functions have been defined more specifically, either more broadly or narrowly. E.g. the Land Use and Building Act, section 133(1), provides that in a building permit matter

"neighbours shall be notified when an application for a building permit is submitted, unless notification is clearly not necessary with regard to the neighbours' interest, due to the smallness or location of the project, or to the contents of the plan. 'Neighbour' refers to owners and other titleholders of adjacent or opposite properties. The fact that the application has been submitted shall at the same time be publicized on the building site by suitable means."

But when drafting of a land use plan is at stake, inhabitants, organisations and authorities are considered as interested parties (section 62 of the Act):

"Planning procedures must be organized and the principles, objectives and goals and possible alternatives of planning publicized so that the landowners in the area and those on whose living, working or other conditions the plan may have a substantial impact, and the authorities and corporations whose sphere of activity the planning involves (*interested party*), have the opportunity to participate in preparing the plan, estimate its impact and state their opinion on it, in writing or orally."

Based on the above, the questions can be replied briefly as follows:

- addressees of onerous administrative acts / applicants of beneficial acts,

Yes, they have typically a right, interest or obligation affected by the matter.

- other individuals (please differentiate, in its case, further, e.g. between individuals claiming subjective rights, concrete legal interests, factual interests, individuals as members of the general public),

E.g. in a building permit matter the party status is confined to neighbours only, but in an environmental permit case a wider circle of inhabitants living in the area which will be affected by the installation applying for the permit may have their say in the permit procedure. And, as mentioned, in a planning procedure interested parties in a wide sense are invited to participate in the planning procedure. The same is, of course, true for Environmental Impact Assessment procedures, which, however, are not decision-making procedures in a strict sense.

Even if the question does not cover administrative judicial procedure, a key role linked to party status is the right to appeal (standing, locus standi). It should be mentioned that e.g. competing businesses are not normally recognized as parties e.g. in cases concerning land use.

- associations or non-governmental organisations (e.g. environmental, consumer,…) (please indicate, in its case, details and/or specific requirements),

NGOs may participate e.g. in planning and EIA procedures, and at present there is a wide selection of environmental legislation, according to which they also have standing, right to appeal against administrative decisions (e.g. according to the Environmental Protection Act, the Water Act, the Nature Protection Act, the Mining Act, the Public Roads Act, and the Hunting Act). The main rule in the Administrative Judicial Procedure Act (section 6) is, however, the contrary: NGOs have no right to lodge an appeal unless specifically provided in (sectoral environmental) legislation. But, as an exception to this, the Supreme Administrative Court has in several cases examined appeals made by an NGO even without an explicit provision (e.g. expropriation permit for a natural gas pipeline and a case concerning restrictions of use of an airport based on the Aviation Act). In these cases, the widening interpretation has been based on the Aarhus Convention and judgments of the Court of Justice of the European Union plus the environmental clause of the Finnish Constitution, section 20.

- other administrative bodies?

In Finnish administrative procedure it is well established that administrative bodies may participate in administrative procedures and also make an appeal against administrative decisions. However, depending on the matter, there are great variations as to which authorities

shall be heard in the proceedings (e.g. in environmental permit matters state authorities safeguarding public interests in the fields of nature protection, pollution control, health care, fisheries, communications, antiquities etc. and municipal authorities responsible for land use planning, the environment and public health may participate in the permit procedure).

b) Are the categories of parties to administrative proceedings defined

- in a general codification (i.e. Code of Administrative Procedure,…),

See above. Partly in the general Administrative Procedure Act, partly in specific pieces of legislation.

- by reference to other codifications (e.g. Code of Court Procedure,…),

Party status is also defined in the (general) Administrative Judicial Procedure Act and in several specific acts for the purpose of providing rules on standing. These provisions affect also interpretation of the concept of a “party” in the administrative procedure.

- by custom(ary law),

Not recognized.

- by jurisprudence,

In concretizing the open-ended, vague provisions concerning party status (and standing) jurisprudence has relevance.

- in another way (please explain)?

(cf. Art. 4 (f) EP-Res.; Art. III-2 (3) and (4), III-25 ReNEUAL)

2. a) Do (sectorial) pieces of legislation establish additional categories of parties to administrative proceedings or do such pieces of legislation modify the general categories? In this case, please give examples!

Please, see above under 1.

In the field of taxation, an independent body within the Tax Administration, Tax Recipients´ Legal Services Unit, has been afforded party status. Unlike administrative procedure in general, tax procedure in Administrative Courts is also formally procedure between two parties. Tax Recipients´ Legal Services Unit is not a decision-making body but a specific unit, the task of which is to act on behalf of the State (Fiscus). The Unit shall be heard in administrative procedure and it has standing in appeals concerning different forms of taxation.

b) If such additional categories are established and/or such modifications are provided for, what is the rationale of such additions and/or modifications?

Please, see above under a).

3. As far as the parties are not parties by law (e.g. addressees or applicants), how can the different categories of (potential) parties actually become parties to administrative proceedings?

- Is a request of the party required?

Several acts provide for public announcements when a matter is pending (especially in the field of environmental law). This enables the potential interested parties to react to the application etc. The Administrative Procedure Act has also a provision of opportunities to exert an influence (Section 41):

“If the decision made on a matter could have a significant effect on the living environment, work or other conditions of persons other than the parties, the authority shall provide such persons with an opportunity to obtain information on the bases and objectives of the consideration of the matter and to express their opinion on the matter.

Information on the pendency of the matter and on exercising opportunities to exert an influence shall be provided in a manner consistent with the significance and extent of the matter.

However, no information needs to be provided on the pendency of the matter if this would jeopardise achievement of the purpose of the decision, cause other significant detriment or be manifestly unnecessary.”

- Is a decision of the administrative authority admitting the party required?

No explicit decision is necessary. If the authority regards the person, NGO etc. a party, the party will be given all the procedural rights it is entitled to. If, on the other hand, a party who should have been heard under section 34 of the Administrative Procedure Act (above in 1.a) or comparable provisions in specific legislation, the decision may be quashed by the administrative court on appeal of the party.

- Is the administration obliged to qualify potential parties ex officio?

See above.

4. a) Are administrative authorities obliged to identify third parties entitled to participate or potentially interested in administrative proceedings?

See above.

b) Is the administrative authority obliged to announce the beginning of administrative proceedings to (potential) third parties to enable their participation?

See above.

c) Are there any consequences, if the (potential) party does not make use of its right to participate in the administrative proceedings? Does your legal order provide for a foreclosure of the exercise of the party's rights (preclusion regulation), particularly with regard to later court proceedings (ability to challenge the final decision, legal standing in this regard)?

There is no rule on preclusion in the Finnish system of administrative procedure. Even if someone e.g. neglects to lodge an opinion against a permit application or draft land use plan, he or she is still entitled to appeal against the final administrative decision. There has been some discussion to introduce that kind of provision e.g. in the Land Use and Building Act concerning land use plans, but to date such proposals have not been forwarded.

However, two points of view are worth mentioning. Firstly, if the law provides for a system of mandatory request for administrative review (normally to a superior administrative or-

gan), it is not possible to go to court without asking for review first. Secondly, when the so-called municipal appeal is used (e.g. in general local administrative matters and in land use plan cases), new grounds for appeal may not be presented after the time for appeal has expired. For instance, if the appellant has not in the Administrative Court claimed that the authority who took the decision, was not territorially or substantively competent, the Supreme Administrative Court cannot examine that claim when it decides the appeal.

5. If individuals / organisations / other public authorities are not admitted as parties to administrative proceedings by the competent authority on their request, what are the legal consequences?

   a) Are they entitled to direct court actions against the administrative decision to not admit them as parties to the administrative proceedings? Are (only) original parties (parties by law) to the administrative proceedings entitled to do so?

As mentioned, there is no formal, separate decision about who are admitted as parties. Those who have the right to appeal against the administrative decision may claim that the administrative court quashes the decision, because they have not been heard and enjoyed party status, even if they should. If they are not regarded as parties, the court will leave their appeal unexamined, but if they should have been heard in the administrative procedure, the court, as a rule, repeals the decision and remands the case back to the authority.

   b) In contrast, do the parties not admitted to the administrative proceedings have to wait for and then challenge the final administrative decision claiming a procedural defect in not admitting them?

Normally yes. However, if they react during the administrative procedure and the authority finds that they should have been heard, it is possible to complement the procedure by providing them the right to be heard if the final decision has not been taken yet.

   c) Can the competent authority remedy any omission to admit a party?

In certain cases, the authority may annul its own decision and decide the matter once again in a lawful procedure. This is possible e.g. if a procedural error has occurred in the decision-making (see in detail section 50 of the Administrative Procedure Act).

6. a) Do all categories of parties to administrative proceedings enjoy the same procedural rights:

- to be heard (orally or in writing),

In principle yes, but it is not uncommon that even some persons, NGOs etc. who are not considered as parties who shall be heard in the administrative procedure, may still be entitled to lodge an appeal against the decision (i.e. the party status may be more widely understood with regard to appeal than to the right to be heard). This implies that they are parties from the viewpoint of locus standi but not from the viewpoint of hearing in the procedure.

- to be advised by the competent authority concerning the relevant procedural rights,

Section 8 of the Administrative Procedure Act regulates authorities´ duties to give advice:

“An authority shall, within its competence, provide its customers, as necessary, with advice on dealing with administrative matters and respond to questions and enquiries concerning the use of its services. Advice shall be provided free of charge.

If a matter does not fall within the competence of an authority, it shall seek to refer the customer to the competent authority.”

- to submit documents,

The right to submit documents is in principle unlimited (section 22 of the Administrative Procedure Act). Of course, there are time limits for submitting comments, but in practice all material submitted to the authority may be taken in consideration.

- to have access to the file, including documents submitted by other parties,

According to the Constitution and the Act on the Openness of Government Activities, all documents made by the authorities or sent to them are in public domain. There are, naturally, many exceptions to this rule to protect private life, business secrets, state security etc. But the parties to a procedure may have access also to files which are to be kept secret from the general public. According to section 11 (1) of the Act on the Openness of Government Activities,

“a petitioner, an appellant and any other person whose right, interest or obligation is concerned in a matter (a party) shall have the right of access, to be granted by the authority which is considering or has considered the matter, to the contents also of a document which is not in the public domain, if the document may influence or may have influenced the consideration of his or her matter.”

However, in certain cases, the right to privacy etc. overweighs even the right of the parties to have access to documents (section 11(2)):

“A party, his or her representative or counsel shall not have the right of access referred to in subsection 1 to: (1) a document, access to which would be contrary to a very important public interest, the interest of a minor or some other very important private interest; (2) a document produced or prepared in the course of a criminal investigation or police inquiry before the completion of the investigation or inquiry, if access would impede the clearing up of the case; (3) a presentation memorandum, a draft decision or a comparable document prepared by an authority for the preparation of a matter, before the consideration of the matter by that authority has been concluded; however, access to a paper written in a matriculation examination and to the identity of the moderator designated by the Matriculation Examinations Board to mark the paper shall not be granted until the Board has finalised the marks given for the papers; (4) a document prepared or procured by an authority acting as a litigant in a trial, if access would be contrary to the interests of the public corporation or the corporation, foundation, institution or person referred to in section 4, subsection 2 in the trial; (5) information in an enforcement case before the levying of execution and the taking of possession of property, if provision of the information would significantly hinder execution, nor to information other than regarding the economic situation of the debtor, unless the information is necessary for court action for the recovery of assets to a bankrupt estate or for the bringing of the action referred to in Chapter 2, section 26 of the Execution Code; (6) information compiled in public procurement relating to a business or professional secret of another tenderer or offerer; however, information on the pricing and on other factors used in comparing the tenders shall always be provided; (6)(a) an application for a decision on providing evidence anonymously or documentation relating to the preparation of such a decision nor documentation relating to a case concerning the revealing of the identity of an anonymous witness nor such secret information contained in trial documentation on these matters, on the basis of which the identity of an anonymous witness or someone who has been requested to be an anonymous witness may be revealed, unless provided otherwise in Chapter 5, section 11(d) of the Criminal Procedure Act (689/1997); (7) the secret address, telephone number and other

comparable contact information of a witness other than one referred to in paragraph 6(a), an injured party or a party or of a person reporting an offence, making a report referred to in section 25 of the Child Welfare Act (417/2007) or making another report requiring action by the authorities, if provision of the information would endanger the safety, interests or rights of the witness, injured party or party or the person making the report; (8) the secret part of the document that is at issue in the question on public access.

If a document forms part of the documentation in a civil or criminal trial, the provisions on access of a party contained in the Publicity of Court Proceedings in General Courts (370/2007) and the Publicity of Proceedings in Administrative Courts (381/2007) apply to the right of a party to access. The provisions of Chapter 4, section 15 of the Criminal Investigation Act (805/2011) apply to the right of a party in a criminal investigation to access to information regarding a document produced or drafted in the criminal investigation."

- to call witnesses or to initiate other gathering of evidence,

As background information it should be of note that according to the Administrative Procedure Act, section 31, an authority shall ensure that a matter is sufficiently and appropriately examined, by acquiring the information and evidence necessary for a decision to be made on the matter. Parties shall provide evidence of the grounds for their claims. They shall also, in other respects, cooperate in the examination of the matter which they have filed.

A request for a statement or for other evidence shall specify the particular points that the evidence is required to cover. A time limit sufficient in view of the nature of the matter shall be set for supplementing the information in a document and for submitting an explanation and presenting evidence. Parties shall be notified that failure to observe the time limit will not prevent a decision on the matter. The time limit may be extended at the request of the party if this is necessary for examining the matter (see sections 32-33).

On request, an authority shall by section 37 of the Act provide a party with an opportunity to submit his or her claims or evidence orally if this is necessary for examining the matter and if a written procedure would cause unreasonable inconvenience to the party. The other parties shall be summoned to be present at the same time if this is necessary for safeguarding the rights or interest of the parties. At the request of a party, an authority may provide an opportunity to submit orally any information necessary for examining the matter, also in situations other than that referred above.

For a special reason in an administrative matter, the views of a witness may be heard under affirmation and the views of a party may be heard orally (section 40). The parties directly affected by the decision to be made on the matter shall be provided with an opportunity to be present when the views of a witness or a party are being heard. The parties have the right to pose questions to the person whose views are being heard and to express their view on the person's statement. Executive assistance for the use of oral forms of evidence is provided by the particular administrative court in which the views of the witness or the party can be heard most conveniently. In a matter of judicial administration considered by a court, the court in question arranges the hearing.

An authority may also conduct a site visit if this is necessary for examining a matter (see section 38). The authority may conduct the visit on its own motion or on request of the parties. The parties shall be provided with an opportunity to be present at the visit and to express an opinion on points that arise. If necessary, an authority whose statutory duty it is to oversee the activity in question or whose expertise is needed for a decision to be made on the matter shall also be summoned to the site visit. A record of the site visit shall be drawn up, covering the main observations made by the authority and the comments made by the party. The record shall be served without delay on the party and the others summoned to the site visit. A site visit shall be public. The authority may restrict public access to the visit if this is necessary because of the nature of the matter or the nature of the activity being examined during the visit. A site visit shall not be conducted in premises that are subject to domestic privacy provisions, unless otherwise separately provided by law.

Provisions on inspection are found in section 39. An authority shall notify a party directly affected by the matter of the starting time of an inspection that is within its competence, unless such notification would jeopardise the achievement of the purpose of the inspection. The party referred to above has the right to be present during the inspection and to express his or her opinions and ask questions about points related to the inspection. During the inspection the party shall, if possible, be informed about the objectives and conduct of the inspection, and the follow-up measures. The inspection shall be conducted without undue detriment to the object of the inspection or its possessor. The inspector shall draw up a written report on the inspection without delay, describing the progress of the inspection and the essential observations made by the inspector. The inspection report shall be served on the parties entitled to be present during the inspection.

- to be provided with a copy of the final decision,

Yes. All who have been heard in the matter shall be delivered a copy of the decision made. In section 54 of the Administrative Procedure Act it reads:

“An authority shall serve its decision without delay on the party concerned and on other known persons who have the right to request an administrative or judicial review of the decision. The authority shall also serve decisions to which a prohibition of review applies.

During the consideration of a matter, the authority shall ensure that service of notifications, summonses and other documents influencing the consideration of the matter is effected.

A document is served in the original or as a copy. If a document to be served is accompanied with documents accumulated during the consideration of the matter and these cannot be given to the addressee, the authority shall provide the addressee with an opportunity to study the accompanying documents at the premises of the authority or of the process server. When the document is being served, the addressee shall be informed where and until when the accompanying documents are available.”

In section 55 methods of service are regulated. Service is effected as either standard or verifiable service or, if it cannot be so effected, as service by publication. Sections 56-58 entail specific provisions on service on private individuals, on corporations, foundations, estates of deceased persons and bankruptcy estates, and on authorities.

As documents, including decisions in single case matters are, as a rule, in public domain anyone may obtain a copy of the decision at a reasonable cost. Sometimes the document shall be anonymized.

- to file a claim in the administrative proceedings?

Yes.

b) Or do different categories of parties to the administrative proceedings have different rights? If so, please provide information about the most important differences!

(cf. Art. 9, 11, 14, 15 EP-Res.; Art. III-15, III-23, III-24 ReNEUAL)

7. Is there a political or academic discussion concerning any kind of reform with regard to the participation rights of third parties to administrative proceedings in your country? Are

there recent legislative proposals concerning the participation rights of third parties to administrative proceedings?

A rather novel feature is the standing of environmental NGOs. Even in late 1990´s NGOs normally did not have the right to appeal against decisions made by authorities in the field of the environment. The point of departure was that administrative authorities whose responsibility was to supervise different public interests linked to the environment had the right to lodge appeals to defend these interests.

Now it seems that the situation is going to turn upside down. In the Finnish environmental legislation standing to environmental NGOs is extensively provided for. The legal practice and doctrine based on the Aarhus Convention and the case law of the Court of Justice of the EU allows them to lodge appeals also in many cases where an explicit provision is missing. On the other hand, the present government has taken reforms which would restrict the opportunities of the authorities to appeal against administrative decisions to administrative courts.

8. What is the most important and most recent case law of your court relating to the status of third parties to administrative proceedings and their procedural rights therein? Please identify up to three cases and provide some information about the content and relevance of the judgements!

There seems to be a rather limited amount of case law concerning the status of third parties in administrative proceedings.

In Finland there is a rich case law on NGOs right to appeal against environmentally relevant decisions, even though they are not parties in a strict sense and even in cases where they have not been provided standing by a provision in law. In a case concerning expropriation permit for a natural gas pipeline which was under an obligation to perform an EIA a local inhabitants´ association had right to appeal (SAC 2011:49). The same was true in a case concerning a decision not to issue restrictions on flight traffic by the Aviation Act (SAC 2018:1). In both cases the Aarhus Convention, case law of the CJEU and the environmental clause of the Finnish Constitution played a major role.

In case *SAC 2018:60*, the Court held that in taxation procedure a provision concerning incorrect report on income could be applied, even if the person liable for the tax was minor and the report had been given by a counsel.

If an attorney or a counsel is unsuitable for his or her task, the authority may by the Administrative Procedure Act, prohibit him or her from representing the client in the matter before that authority. The client shall be notified of the prohibition and provided with an opportunity to use a new attorney or counsel. In *SAC 2018:17*, a municipal civil servant had prohibited a parent to act as a counsel in a matter concerning an accident which had happened to her child during a school day years ago. The Court held that the prohibition was valid in all the numerous matters linked to the same accident and different claims based on it. The prohibition did not violate the freedom of expression.

SAC 2017:170 concerned the right to use a private attorney in an asylum matter (at the cost of the State). The main rule is that in the interview at the Immigration Service, the applicant shall be assisted by a public attorney. The Administrative Court had repealed the decision of the authority and remanded the matter back to it for new discretion but refused to prolong the order given to the private attorney to assist the applicant. The SAC held that in the circumstances of the case, the Administrative Court should not have disallowed the attorney´s application and ordered the same attorney to assist the applicant in the Immigration Service when the matter would be taken there for new consideration.

II. Determination of Facts and Discretionary Powers

1. a) **In administrative proceedings**, do administrative authorities have a general duty to carefully and impartially investigate the facts of the case ex officio in your jurisdiction (principle of investigation)?

Yes. In the general Administrative Procedure Act, there is an explicit provision on examination duty (section 31):

“An authority shall ensure that a matter is sufficiently and appropriately examined, by acquiring the information and evidence necessary for a decision to be made on the matter. Parties shall provide evidence of the grounds for their claims. They shall also, in other respects, cooperate in the examination of the matter which they have filed.”

b) Are, in contrast, the parties to administrative proceedings generally obliged to present facts or evidence of their own accord (principle of party presentation)?

See the previous answer. In addition to this, in matters concerning applications for permits there are numerous specific provisions concretizing what kind of information the application shall provide. Obviously, in these types of cases the applicant bears the main responsibility to provide for the necessary information and evidence. Provisions of the Water Act (Ch. 11, Application procedure) can serve as an example:

In addition to the Administrative Procedure Act, the provisions laid down in chapter 11 of the Water Act shall apply to the consideration of application matters by permit authorities. The permit application shall include: 1) information sufficient for deciding on the matter regarding the purpose of the project and the impacts of the project on public interests, private interests and the environment; 2) a plan for measures necessary to implement the project; 3) an estimate of the benefits derived from and losses of benefit incurred from the project by register units of the land and water area and their owners and by other stakeholders; 4) information on monitoring the impacts of operations.

If the application concerns granting a permit for a project referred to in the Act on Environmental Impact Assessment Procedure, an EIA report shall be appended to the application documents. Insofar as the report includes information on environmental impacts necessary to applying the provisions of the Water Act, such a report shall not be presented again. If necessary, a Natura 2000 assessment (referred to in the Nature Conservation Act) shall be appended to the application.

Further provisions on the contents of the permit application and information to be appended to the application may be given by government decree.

c) Do the rules for determining the facts distinguish between administrative proceedings initiated ex officio or by application?

In Ch. 14 of the Water Act, there are provisions concerning supervision and administrative enforcement. Obviously, unlike in permit applications, in these kinds of cases the operator has no initiative to actively contribute to the decision of the authority. According to section 2 of that chapter, if the Water Act or provisions issued under it are not complied with, the supervisory authority shall, considering the nature of the matter: 1) advise that conduct in violation of provisions shall be terminated; 2) initiate administrative enforcement proceedings re-

ferred; 3) report the matter to the police for pre-trial investigation purposes, unless the illegal conduct can be considered minor in view of the circumstances.

For purposes of supervision the supervisory authority or a public official or local government officer appointed by it has (Ch. 14, sec. 2) the right to: 1) have access to necessary information from the authorities and operators, notwithstanding the secrecy obligation provided in the Act on the Openness of Government Activities; 2) enter the area of another party; 3) conduct inspections and examinations, perform measurements and take samples; 4) access the site where operations are taking place; 5) monitor the impacts of operations.

d) Do the rules for determining the facts distinguish between facts which are favourable to the individual and others which are unfavourable to him?

See above.

e) Do different models of fact finding in administrative proceedings exist in your country with regard to different subject matters (e.g. ex officio administrative orders prohibiting or requiring specified actions of individuals, licensing of private projects on application, administrative sanctions, specific sectors of administrative law,…)?

See above.

Two more examples may be mentioned:

According to the Taxation Procedure Act, everyone is liable to report tax authorities all income they have earned. The Act contains very detailed provisions concerning this basic responsibility. Of course, if the obligation to report has been neglected, the authorities will perform the taxation on the basis of discretion. If the authority considers to make a considerably different assessment than the report given by the one liable to pay tax assumes, he or she must be given an opportunity to be heard before the decision is taken. It goes without saying that e.g. the privilege against self-incrimination shall be respected.

In the Act of the Status and Rights of the Social Welfare Clients the clients have been put under an obligation to report to the competent authority the information the authority needs in organising and implementing social welfare. The client must be informed from which sources and which information may be gathered irrespective of the client´s agreement. The client

shall be given an opportunity to have access to this information and submit comments in the matter.

(cf. Art. 9 EP-Res.; Art. III-10, III-11 ReNEUAL)

2. If your jurisdiction provides for the duty of the competent administrative authority to carefully and impartially investigate the facts of a case:

a) Are the parties to administrative proceedings obliged to cooperate in the investigation (e.g. by providing documents or by answering questions)?

See above.

b) What are the consequences, if a party to administrative proceedings does not comply with its duty to cooperate?

In principle, in permit matters the applicant has the duty to show that the preconditions for granting of the permit are fulfilled. If not, the permit application shall be disallowed or in the permit shall be included aggravating provisions which guarantee that the legal obstacles to grant the permit are not at hand.

c) Are there differences in the duty to cooperate among different categories of parties (applicants, potential addressees of the final decisions, third parties)?

About applicants see the previous answer. Concerning operators, see the answer under 1 c) with examples about the Water Act. Third parties do not normally have any specific duties to cooperate.

(cf. Art. 10 EP-Res.; Art. III-13, III-14 ReNEUAL)

3. a) In the fact finding process, is the administrative authority in your legal order bound by strict procedural rules (e.g. demanding for a certain organisation) or is this process subject to discretion of the administrative authority?

There are no strict procedural rules, but of course the procedure shall be impartial and show no bias.

b) Has the administrative authority broad discretion in evaluating the facts found in the administrative proceedings?

Yes, very broad. However, the administrative courts have the competence for a covering and intensive review not only of law but also of facts. The court may replace the evaluation of the authority with its own, but, needless to say, respecting the procedural rules, such as *audiatur et altera pars*.

c) Does your national legal order provide for rules concerning composite investigations, i.e. the collaboration of different administrative authorities (like establishing a responsible officer of one administrative authority) or the collaboration of different officers within one administrative authority, e.g. a hearing officer who may hold hearings with applicants (like asylum seekers) while another officer takes the final decision based on written reports of such a hearing officer?

There are no strict rules. The authorities have wide powers to organize their internal procedures as long as all the procedural standards (impartiality, hearing, interpretation etc.) are respected.

In the case law of the Supreme Administrative Court there are examples concerning the significance of test results of accredited institutions (e.g. *SAC 2018:58*). In the case, the decision of the authority responsible for safety of electric appliances had been based on test results provided by an accredited institution. There were no legal provisions concerning use of such tests, but it was an established practice to use them as means of determining the facts. The SAC saw no obstacle in using the test results as methods of fact finding, but the problem was that there was no adequate documentation, on the basis of which the parties could have been make sure that the test was reliable. In the oral hearing the person responsible for testing was heard.

4. a) Does your national legal order provide for specific rules of evidence for the fact finding in administrative proceedings?

No.

b) If this is the case, what are the most important principles?

c) If this is not the case, what other (general) rules apply?

The leading procedural principles referred to above.

d) What is the rationale for the model applied in your jurisdiction?

To guarantee a fair procedure but leave discretion to the authority to organize its work in the most expedient way.

e) Are there any rules in your national legal order providing for the inadmissibility of certain evidence? If so, please give some details!

Not generally. We have had e.g. an asylum case where the applicant tried to provide for video material about his homosexual intercourse, but in that case the court held, referring e.g. the case law of the CJEU, that in was not admissible.

(cf. Art. 9 (2) and (3), Art. 11 EP-Res.; Art. III-10 (2), III-15 ReNEUAL)

5. **In court proceedings**, who is responsible for the presentation and investigation of facts and evidence?

a) The court or the parties?

According to section 33 of the Administrative Judicial Procedure Act administrative court is responsible for reviewing the matter. Where necessary, it shall inform the party or the administrative authority that made the decision of the additional evidence that needs to be presented. The court shall on its own initiative obtain evidence in so far as is the impartiality and fairness of the procedure and the nature of the case so require.

Section 33 a reads that everyone is obliged to arrive at court to be heard and allow the performance of an inspection or to present the court with an object or document referred to in section 42, unless otherwise provided by law.

If the person is obliged to or has the right to refuse to testify in court, he or she cannot be obliged to present a document or an object or to allow the performance of an inspection in order to present evidence on a matter covered by a non-disclosure obligation or right to remain silent.

Hearing of the parties is provided for in section 34. Before the resolution of the matter, the parties shall be reserved an opportunity to comment on the demands of other parties and on evidence that may affect the resolution of the matter. The matter may be resolved without hearing a party if the claim is dismissed without considering its merits or immediately rejected or if the hearing is for another reason manifestly unnecessary. Separate provisions shall apply to the restrictions of a party's access to official documents that are not public.

A party shall by section 35 be given a reasonable time limit for his comments. At the same time he shall be notified that the matter can be resolved after the expiry of the time limit even if no comments have been made.

b) Are there differences between the responsibilities of claimants and defendants or between individuals and administrative authorities?

See above. The procedural setting may have an impact (e.g. permit applicant v. neighbour or NGO). The authorities as opposed to private parties, of course, are under a specific responsibility to obey the law and act impartially, but that does not, for sure, mean that their standpoints would be adopted without critique by the courts.

c) Is the administrative court free in the consideration of evidence or are there certain rules of evidence? In the latter case, please give details!

The court is extremely free in the consideration of evidence.

6. a) What is the general standard of control applied by administrative courts in regard to the fact finding of the administrative authority? Are there limitations in the scope of judicial control?

In Finland, the scope of the judicial control is very broad and deep. The court shall have control on law and facts. Even if only legality is under control, Finnish courts have an intensive control also on application of substantive law. The normal administrative appeal (as opposed to the municipal appeal) is not based only on cassation but the courts have reformatory competence, including modifying the decision taken by administrative authorities.

b) Does your national legal order know standards of (limited) control in regard to complex factual evaluations comparable to the concept of technical discretion applied by the ECJ (see annex to this question below)?

No. Obviously, in some very technical issues the role of evidence from experts (both authorities and private experts hired by the parties) is important.

c) If this is the case, what are typical cases in which such a standard of reduced control is applied?

See the previous answer.

d) Are these cases qualified as a specific category of administrative discretion or are they subject to the general principles concerning discretionary powers of administrative authorities?

See the previous answer.

E.g. a decision taken by an expert authority whether an electric appliance is safe or not may not be superseded by the Court´s own judgment about the safety. In this kind of a case, the Court will probably base its ruling mostly on the assessment, whether the authority´s decision is based on an appropriate procedure and valid, logical thinking or not.

On the other hand, as mentioned above, e.g. environmental permits are, in principle, based on strictly legal discretion. That is why administrative Courts with expert judges may on appeals of different parties even modify permit provisions, including emission limit values, permissible hours of operation etc.

7. a) In your national legal order, are the procedural standards to be observed by administrative authorities in their fact finding the more stricter the more the administrative authorities are conceded substantive discretionary powers?

There is no clear rule on this. General provisions apply.

b) What is, as far as applicable, the rationale of reduced (substantive) controls exercised by the administrative courts?

c) Are administrative courts reluctant to interfere with material decision-making of administrative authorities?

Not as a rule. However, in municipal appeals (e.g. in matters concerning land use planning and general local administration) the margin of appreciation of the court is by law narrower than in general administrative appeal cases. The intensity of control may vary also from one type of cases to another. It may be, for instance, that in cases concerning citizenship the intensity of control may be more lenient than in cases concerning social security benefits to which a person is by law entitled to.

d) Do they prefer to focus on procedural aspects?

As a general conclusion, no.

e) Does your national legal order know prepositioned or anticipated expert opinions (e.g. in environmental law) to which a superior validity is conceded?

No. Please note that in cases concerning the Environmental Protection Act and the Water Act, there are expert judges in the panel both in the Vaasa Administrative Court and the Supreme Administrative Court.

f) As far as the concept of technical discretion applied by the ECJ in regard to administrative decisions (or similar) is applied in your national legal order (cf. II.6.b)), can the reduced standard of control be regarded as a consequence of different institutional capacities of courts and administrative authorities?

See above.

8. Are there any constitutional provisions and/or principles governing the questions

a) of the determination of facts of a case by the administration,
b) of the possibilities of the administration to enjoy discretion therein and
c) of the standards of control to be applied by the administrative courts (e.g. a constitutional guarantee of effective judicial remedy, a strict duty of administrative bodies to comply with legal requirements)?

A leading principle applied by all authorities and courts is found in section 2(3) of the Constitution: The exercise of public powers shall be based on an Act. In all public activity, the law shall be strictly observed.

Under section 21, 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. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act.

The provisions are supplemented by the public authorities´ duty to guarantee the observance of basic rights and liberties and human rights, in section 22.

9. Is there a political or academic discussion concerning any kind of reform with regard to the discretionary powers of the administration, especially with regard to the determination of facts, and the corresponding reduced judicial control by administrative courts in your country? Are there recent legislative proposals concerning the discretionary powers of the administration and the corresponding reduced judicial control?

Certain proposals to restrict possibilities to lodge appeals against administrative decisions, in order to accelerate projects considered vital for economy, have been pushed forward by the present Government.

10. What is the most important and most recent case law of your court relating to the discretionary powers of the administration, especially with regard to the determination of facts, and the corresponding reduced judicial control by administrative courts? Please identify up to three cases and provide some information about the content and relevance of the judgements!

In *SAC 2018:85*, the traffic authority had disallowed a taxi driver´s application for a licence, because he had been fined for a minor misdemeanour. In the Act concerning the matter there was an explicit and unambiguous provision which obliged the authority to reject the application in a situation like this. The SAC held that such a stringent restriction on constitutional freedom of engaging in commercial activity, weighed against other rights and freedoms

such as guaranteeing traffic safety was disproportionate in relation to the applicant´s behaviour. Hence, the Court, referring to Article 106 of the Constitution, gave primacy to the Constitution, because the application of the said provision in the Act would have been in evident conflict with the Constitution.

Pharmaceuticals Pricing Board is an administrative expert body subordinated the Ministry of Social Affairs and Health. The task of the Board is to confirm reimbursement and reasonable wholesale prices of medicinal products. In *SAC 2018:72*, the Court emphasized that the Board has a wide discretion when determining (by applying the legal provisions in the Health Insurance Act) the reasonableness of the price proposed by the applicant. However, the decision to disallow the proposed wholesale price shall be reasoned properly so as to enable the assessment on how different criteria have been taken into account in the decision.

According to the Nationality Act, a precondition to grant Finnish nationality is the integrity requirement (he or she has not committed any punishable act nor has a restraining order been issued against him or her). If the applicant has been found guilty of offences, the Immigration Service may order a time frame during which the applicant shall not be naturalized unless there are exceptional reasons (waiting time). *SAC 2018:66* concerned the criteria to order a waiting time. The Court stated that according to law the authority may order a waiting time, but may also fail to order it. However, the principles guiding all administrative activity, found e.g. in section 6 of the Administrative Procedure Act, such as equality and proportionality, must be respected. Especially the principle of equality presupposes that in cases comparable to each other, the length of waiting times shall be ordered on similar basis or dropped off if the offences have been severe or recurrent. The Court emphasized the significance to assess the issue on the basis of the facts and specific features of the matter in question.

III. Case Study

Initial Case:

Applicant A applies for a construction permit for the construction of a commercial building at a location on the edge of the built-up area of municipality M.

The competent administrative authority of the district (S – a state authority, not a municipal one) invites F, a farmer who owns the neighbouring piece of land, to express himself on A's application in a given time limit. S informs F that he will not be heard after the time limit has expired. F does not react.

S also consults M, which supports the project because it hopes for a better economic development.

O, a nature protection organisation, learns about the project from the local newspaper and asks S to be involved in the proceedings. O remarks that there have been sightings of red kites (*milvus milvus*, a species listed in Annex I of the Bird Protection Directive 2009/147/EC) at the designated location of the project. S does not reply to this, but internally consults the environment protection authority E (also a state authority). E explicates in its statement to the application, mostly relying on an expert opinion handed in by A as part of his application, that a population of red kites does existed in the concerned area, but from its scientific point of view of nature protection the project was scientifically justifiable because the known breeding areas were sufficiently distant from the designated location of the project and O had not brought forward anything concrete.

M changes its mind and decides to draw up a development plan for the area concerned which is supposed to provide for a residential area.

S issues the permit to A after a procedure without (other) defects and sends a copy to F and M, each containing an accurate instruction on the right to appeal to the administrative court within one month.

F is against the settlement of commercial companies in his vicinity. He thinks there are already enough commercial companies in the village and moreover he is afraid of facing disadvantages in managing his soil because of increasing traffic.

M, F and P, the president of the local “Association for Preserving the Traditions”, who wants to defend the beauty of the homeland and thinks that A’s project does not fit into the landscape, all bring actions before the competent administrative court against the permit. M also feels itself impaired in its exclusive municipal planning competence.

O learns only five months later, again from the local newspaper, that A received the permit and immediately refers to the competent administrative court. O argues that it should have been involved in the administrative proceedings. O points out that the risk for the red kite also was not justifiable because, very close to the designated location of the project, an eyrie had been found. The designated, up to now not built-up location constituted an important hunting ground for the red kite. If a construction was allowed here, the breeding success of the local population of red kites would be seriously endangered. O submits an expert opinion of an internationally respected ornithologist which supports its allegations.

Questions:

1. How is the court going to decide on the objections of M, F and P?

At the outset it must be noted that in Finland the competence to issue permits for construction is exclusively in the hands of municipal authorities, not any regional state authority (S). Typically, a local Building Board grants building permits for all kinds of projects - another thing, obviously, is that for major projects several other types of permits are necessary. It might further be of interest that the applicant has a legally protected right to have a building permit if all the preconditions defined by the applicable law are fulfilled. Hence, the Board is strictly bound by law and no discretionary powers have been afforded to it. Of course, in practice, many preconditions have been formulated in the Land Use and Building Act openly, giving a margin of appreciation to the authority. Also administrative courts examine building permit cases from an intensive perspective of full review.

In our case, at first it shall be decided if the location of the commercial building is in an area requiring planning. These areas are defined in section 16 of the Land Use and Building Act. An area requiring planning is an area the use of which involves needs that require special measures, such as road, water main or sewer construction or arranging other areas. Provisions concerning areas requiring planning also apply to construction where the environmental impact is so substantial as to require more comprehensive consideration than the normal permit procedure.

If the project would be realized in an area requiring planning, there should either be a valid local detailed plan or a decision concerning special preconditions for granting a building permit before a permit to construct the building can be granted. It also has an effect on standing whether the matter is only about a building permit or a decision concerning special preconditions. As the last mentioned decision in a way replaces a local plan, the preconditions are wider than those of a regular building permit and, hence, the sphere of those having standing is much larger.

As the application regards a commercial building on the edge of a built-up area without a valid local plan, it would most likely necessitate a decision concerning special preconditions for granting a building permit. But this decision, too, shall be taken by a municipal authority, most often the same Board which is responsible for granting building permits.

At any rate, be it a state or a municipal authority, its decision can be appealed to a regional administrative court and further, if a leave to appeal is granted, to the Supreme Administrative Court (SAC). The following would, by section 193 of the Land Use and Building Act, have standing to challenge a decision concerning special preconditions for granting a building permit: 1) owners and titleholders of adjacent and opposite areas; 2) owners and titleholders of properties the construction or other use of which may be materially affected by the decision; 3) those on whose living, working and other circumstances the project may have a significant impact; 4) those on whose rights, duties or interests the decision has an immediate impact; 5) the local authority or the neighbouring local authority whose land use planning the decision affects; 6) such registered associations the purpose of which is to promote environmental or nature conservation or the preservation of cultural values or to otherwise influence the quality of the living environment, in their area of activity; and 7) authorities in matters within their sphere of activity.

Right to appeal against a “simple” building permit belongs (section 192(1)) only to 1) owners and titleholders of adjacent and opposite areas; 2) owners and titleholders of properties the construction or other use of which may be materially affected by the decision; 3) those on whose rights, duties or interests the decision has an immediate impact; and 4) the municipality. Hence, if the construction could be realized by a building permit, e.g. the NGO (O) could not lodge an appeal, nor could a state nature conservation authority (E). Of course, there would be some means to protect the red kites under the Nature Conservation Act. There are also some examples in the case law of the SAC where the appeals of state authorities against building permits have been examined by using a teleological interpretation. Also one important detail, based on established case law, is that if a building permit has been granted

without a necessary decision concerning special preconditions, all those who would have right to appeal that decision can also successfully lodge appeals against the building permit.

The neighbouring farmer (F) would clearly have standing irrespective of whether a simple building permit would be enough or not. As there is no provision concerning preclusion, F would have the right to appeal even if he had not reacted to the invitation to make remarks or comments. However, F cannot successfully base the appeal on the fact that he has not expressed his view; it is enough that he had been invited to do so.

The preconditions to issue a decision concerning special preconditions for granting a building permit read as follows: 1) the construction does not hinder detailed planning, master planning or other organization of land use; 2) is appropriate from the viewpoint of realizing communications and organization of traffic as well as traffic safety and locally available services; and 3) is appropriate with regard to the landscape and does not hinder preservation of the values of the natural or cultural environment, nor provision to meet recreational needs.

Hence, F´s opinion that there are already enough commercial companies in his vicinity would not be relevant. Problems with organization of traffic could be a basis for a successful claim, but only a modest increase of local traffic to a commercial building would hardly be an obstacle to the permit.

It is not unlawful that the municipality (M) changes its mind in the course of the procedure - the initial support to the project would not be an obstacle to appeal against the project later on. It should be noted that even in Finland where the building permit (and the decision concerning special preconditions) is in the hands of a municipal authority (say a Building Board), the municipality (i.e. the Municipal Council) acts in the procedure as it would act in a procedure before a state authority. As noted above, the municipality has also right to appeal against both the building permit and the decision concerning special preconditions. This is a natural consequence of the independent status of local boards in cases where they apply general state legislation, not act as genuinely municipal authorities.

If M would lodge an appeal against the decision to approve of the special preconditions, its standpoints would naturally be scrutinized carefully. The municipality, as a bearer of an overall responsibility for land use planning within its borders and exclusive planning competence can present weighty standpoints against the permit. A commercial centre on the edge of a built-up area, neighbouring a farm could be seen problematic from the point of view of local planning.

The president of the local Association for Preserving the Traditions (P) would have standing in his personal capacity only if he would personally be affected by the project, as defined in section 193 of the Land Use and Building Act. However, if P has according to the status of the association the competence to represent it alone, the appeal would be probably examined as appeal made by the association. It is clear that the association would qualify as an NGO referred to in section 193 point 6 of the Land Use and Building Act, and, hence, have standing. Considerations concerning fitting to landscape of the construction are relevant when a decision concerning special preconditions for granting a building permit is taken.

2. How is the court going to decide on the action brought by O? Is the mere fact that S did not involve O in the administrative proceedings going to help O's action to succeed? Supposing that this is not the case, how is the court going to assess the question of the risk for the red kite?

As described above, the NGO (O) would have had a right to appeal the decision concerning special preconditions for granting a building permit. However, the time limit to appeal to the administrative court against a permit decision is 30 days from the public announcement of the decision. This means that the administrative court cannot examine appeals which come too late (here: about four months too late), because the permit has gained legal force towards that appellant (even if the case still is pending at the administrative court on the basis of other appeals). Neither substantive nor procedural flaws can lead to another conclusion at this stage (only in a very exceptional case that the appeal instructions would have been defective, it is possible that the appeal will be taken to examination).

Normally the administrative court issues its judgment on all the appeals lodged against a decision simultaneously. This implies that O:s appeal will be left unexamined and appeals of M, F, and P (or association) shall be either disallowed or the permit decision quashed or modified. At this stage, O can of course ask for a leave to appeal to the SAC, but most probably they do not have any change to succeed. Another path is to initiate so called extraordinary remedies of appeal, based on Ch. 11 of the Administrative Judicial Procedure Act, namely procedural complaint, restoration of expired time or annulment.

Still, there would probably not be much to do. According to section 173 of the Land Use and Building Act, before a matter concerning a decision concerning special preconditions for granting a building permit is resolved, neighbours and others on whose life, work and other

circumstances the project may have significant impact shall be given the opportunity to make a written objection. The local authority shall notify neighbours and other aforementioned parties of applications at the applicant's expense. When necessary, the opinion of certain state authorities has to be asked if the permit has substantial bearing on their sphere of authority. When deviation has substantial bearing on land use in a neighbouring municipality, its opinion must also be obtained.

According to section 59 of the Administrative Judicial Procedure Act, a decision may be set aside, if the person concerned has not been provided an opportunity to be heard and the decision violates his right or if another procedural error which may have had a relevant effect on the decision has been committed. O is not a neighbour etc. whose hearing would have been mandatory in the permit procedure and, hence, the decision would not be set aside by the administrative court; this decision could be taken in the same document as the decision to the rest of the appeals.

Expired time may be restored by the SAC to a person (including NGOs, for sure) who has a legal excuse or who for another extremely significant reason has been unable to observe a prescribed time limit e.g. for lodging an appeal (section 61 of the Act). Typically the SAC has restored expired time to appeal in cases where an authority has neglected to send a copy of the decision with appropriate instructions on appeal to an interested party in case it would have had a duty under the law to do so.

Annulment by the SAC may, by section 63, take place, 1) if a procedural error which may have had a relevant effect on the decision has been committed; 2) if the decision is based on manifestly erroneous application of the law or on an error which may have had an essential effect on the decision; or 3) if new evidence which could have had a relevant effect on the decision appears and it is not the fault of the applicant that the evidence was not presented in time.

It is hard to see that, under the circumstances described, the presence of the red kite would lead to annulment of the permit decision by section 63 point 3 of the Administrative Judicial Procedure Act. The threshold to annul decisions which have gained legal force is rather high. The rights of the developer must also be safeguarded.

My evaluation is that O:s appeal would not be examined and, unless it had not claimed in the proceedings that the permit authority would send it a copy of the decision and the request was neglected, also the extraordinary appeal would be disallowed.

If the considerations on the red kite were not taken up in any of the (timely) appeals to the administrative court, the court cannot on its own motion repeal the permit decision on grounds which have not been presented in the procedure. But if the appeal procedure is still pending at the administrative court, O might convince one of the appellants in the administrative court to supplement their appeals with points of view linked to the red kite. Even the farmer (F) may in his appeals successfully present claims based on public interests, such as nature protection. So long as the case is not concluded, new arguments to support the claims of the appeal (i.e. the permit shall be repealed) can be presented.

Otherwise, the only way to protect the red kite would be actions based on the Nature Protection Act, which, in theory, could even lead to expropriation of the relevant property.

Modification:

Case like the initial case, but A now applies for a permit under pollution control law for the construction of a small wind farm (project according to Annex II of the Environmental Impact Assessment Directive 2011/92/EU) in the outskirts of M. M initially supports the project as in the initial case, but then decides to plan a commercial area which is supposed to include the designated location of A's project. E additionally explicates, based on the opinion handed in by A, too, that the risk of collisions of the red kite with the blades of the wind generators was negligible because of the distance of the known breeding areas from the designated location, whereas the opinion brought by O sees an unjustifiable risk because the designated location of the project constituted an important hunting ground of the red kite.

How is the court going to decide on the actions now?

According to the Finnish Environmental Protection Act, a wind farm is not, as a rule, under an obligation to apply for an environmental permit. Their environmental impacts are regulated according to the Land Use and Building Act (mostly by specific master plans and building permits). However, if the farm will be located so close to neighbouring properties with homes or cottages that it "may place an unreasonable burden on the surroundings", as referred to in the traditional neighbourhood law (nuisance; Immission). If large wind mills would be located closer than say 500-700 metres of dense population, the threshold might according to very recent case law be exceeded especially because of noise.

But, be it as it may, if an environmental permit is necessary, also here the permit authority for this kind of an activity would be the municipal Environmental Board (again acting as an independent body, applying the law, not being a municipal-political organ). One peculiarity in the Finnish system, based on historical reasons, is that all appeals under the Environmental Protection Act (and the Water Act) are heard by the Vaasa Administrative Court. In that court there are expert judges having scientific or technical training, side by side with judges trained in law. If the case, after a leave to appeal, reaches the SAC, also here in the panel there are (two) expert judges supplementing the normal five-judge-panel.

Right of appeal according to the Environmental Protection Act pertains to parties in a wide sense (persons whose rights or interests may be affected by the matter); NGOs (registered associations or foundations whose purpose is to promote environmental, health or nature protection or the general amenity of the environment and whose area of activity is subjected to the environmental impact in question); relevant local councils (the municipality where the activity takes place and other municipalities subjected to its environmental impact); local environmental boards and regional state environmental authorities (the Centre for Economic Development, Transport and the Environment and the environmental protection committees where the activity takes place or located in the area of impact); other authorities supervising the public interest in the matter.

This means that M would have standing to challenge the permit. The same would be true for the state environmental authority (E), in both cases irrespective of whether the permit would have been issued by a municipal board or the State Environmental Permit Authority. Also the farmer F would be entitled to appeal, as well as the organization O and also the association P. All of them could present claims based on protection of the red kite, too.

About the protection of the red kite in the permit procedure, it can be referred to the preconditions to grant an environmental permit. The activity, severally or together with other activities, must not, taking permit provisions and the location of the activity into account, result in adverse effects on human health; other significant environmental pollution or risk thereof; a pollution of soil or groundwater; deterioration of special natural conditions or risk to water supply or other potential use important to the public interest in the area of impact of the activity; an unreasonable burden according to the neighbourhood law.

Of note is also that an environmental permit shall be granted for activities that meet the requirements of the Environmental Protection Act and those of the decrees issued under it. The permit authority must inspect the opinions issued and complaints made in the matter and

the preconditions for granting the permit. The permit authority shall also take into account of legislative provisions on the protection of the public and private good.

An important link between pollution control and nature protection law is found in the Environmental Protection Act, according to which provisions laid down in and under the Nature Conservation Act must be observed when resolving a permit matter. If the breeding site etc. of the species has been protected under the Nature Conservation Act, environmental permit must not be granted without an exception (derogation) from the protective provisions.

In Finland, as mentioned above, the location of wind farms is typically based on master plans, sometimes even regional plans. There is one important case where the SAC repealed a regional plan for several wind farms, because it could not be ascertained that more detailed plans would have been able to be drafted so as not to damage migrant birds (of prey) who frequently migrated through the area.