

Relationality of the Law: On the Legal Collisions in Finnish Planning and Land Use Practices

Abstract

Nordic welfare state ideologies inform democratic and transparent land use and building practices. A closer examination reveals how variously these ideals are translated into practice. Finnish law strictly defines how building processes should proceed; however, a number of decisions still ignore the law, which can be seen in the complaints sent to the Administrative Courts. This paper examines the legality of Finnish land use processes through cases and interviews with judges. The findings suggest a need for a more critical spatio-legal analysis of planning that realizes the relationality of the law, and the invisible jurisdictions inherent in local decision-making.

Keywords: Planning Law, Citizen Participation, Local Trap, Legality, Finland, Invisible Jurisdiction

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Introduction

This paper examines the current state of Finnish land use, building, and planning in terms of legality. By concentrating on two cases and a more general discussion on Finnish land use laws and practices, the following questions are considered: how the law is applied or mis-applied at different scales; how decisions are justified; and how all of this relates to the ideals of open and democratic decision making as emphasized in the written law. It is also questions as to what kinds of logics, values and jurisdictions are used in legitimizing decisions that should follow the spirit and letter of the law, but, in fact, are in contrast with both.

In Finland, there is a growing tendency towards ‘boomerang planning’, by which I mean making decisions that end up in Administrative Courts (ACs) and return back ‘as boomerangs’. Decisions are made in order to test whether anybody will complain about them, in which case they become legal even if they do not follow the Land Use and Building Act (LUBA). Every year, the ACs and the Supreme Administrative Court (SAC) deal with hundreds of appeals challenging local governments’ decisions concerning land use and construction. Although Nordic welfare state ideologies inform transparent and democratic decision-making processes, a closer examination reveals how insufficiently these ideals are

translated into practices. In this article, I address the problematics of the land use -related decision-making processes in Finland from a spatio-legal perspective. One starting point is the subsidiarity principle that has guided current planning, land use and building practices, and has produced situation that resembles what Mark Purcell calls the ‘local trap’. The article tackles more broadly the questions of scale and relationality of the law, and the structural inequalities that create barriers to accessing the law in planning and construction processes.

Surprisingly few studies have focused on planning practices from critical spatio-legal perspectives. This is the case despite the fact that space/law relations manifest themselves very concretely in construction and planning, and consequently in the everyday environment of people. Considerable focus has been placed on participation in the beginning of the planning processes, and how participation is sometimes a forced responsibility for planners. A number of decisions are made without people having their voice heard, and thus the only way to improve the situation is to remove the decision from the local context by appealing to the ACs.

I argue that the court cases indicate a need for a relational understanding of the law (e.g. Delaney 2010; Braverman et al. 2014, 17) that recognizes the law’s contextuality: that the law is not stable nor does it, in itself, guarantee any state of affairs. These issues are discussed through two cases that exemplify different kinds of contexts in which legally problematic decisions are made. The first case study takes place in the City of Turku, located in Southwestern Finland, where a Building Control Committee granted a permit to a temporary, private building for business purposes in the City Hall Park. The permit was widely condemned, but nobody appealed to the AC about the decision, partly because the construction work began immediately, before the decision had become legal. The second case

took place in Hollola in Southern Finland, in which a Building Board first granted a deviation permit and then a building permit for an industrial hall that would be located in an agricultural area. The decisions were disapproved by both the municipality's building inspector and by the neighbors in the area. Only a few property owners of the neighboring plots had a right to appeal to the AC, which they did it after they realized what had occurred.

The cases illustrate the contextual and relational nature of the law and how the law does not guarantee equal results, but is interpreted differently in different contexts. The cases differ from each other while introducing both rural and urban contexts, and decisions that were and were not dealt with by the AC. I encountered these cases accidentally and began to wonder about their legal obscurities and their relation to the principles of LUBA. In order to understand the relational nature of LUBA more thoroughly, I interviewed the AC's judges who deal with cases concerning land use and construction. Altogether, seven judges specialized in land use and construction cases were interviewed: one from each AC on the mainland of Finland and one from the SAC. Considering the small number of AC-judges working with such cases, the number of interviews deemed sufficient for the analysis. The interviews lasted 30–90 minutes and they were made either at the AC or by phone. They were recorded and transcribed, and later on analyzed with theory-guided content analysis. The analysis of the interviews was also a reflection on the cases of Turku and Hollola.

In addition to the interviews, the material consists of planning documents, media articles, minutes and court documents concerning the two cases. In the Turku case, where official documents were scarce, two interviews were made in order to obtain further information. The cases were followed using observation as well: the Turku case in 2014–2015 by visiting the building frequently and by following its construction and demolition work; and the Hollola-

case in 2014–2017 by following from a distance the outlook and functions of the property as they were presented in the court process, as both a justification for and against the decision.

The first section introduces the Finnish planning and appealing processes, and discusses the conceptual starting points inspired by the discussions on local trap, jurisdictions, and access to the law. The second part introduces the two cases and the proceedings of their decision-making processes. The third section concerns the views of the judges regarding the legal problems in the land use and building practices, and reflections on these views concerning the two cases. The fourth and final section discusses the findings in relation to the problematic of the local scale, accessibility, and jurisdiction.

Legal perspectives to planning

The Finnish planning system and the appealing processes

In Finland, the Land Use and Building Act (LUBA) (2000) and the Administrative Act (2003) regulate administrative processes and the responsibilities of public servants. The LUBA (2000) places emphasis on communicative planning and the local scale in decision-making. This follows the European Union's (2012) principle of subsidiarity, according to which decisions should be taken as close to the citizen as possible. In Finnish planning, this has meant municipal autonomy in planning, and the authorizing of the municipalities to administer the early stage of planning and constructing, while appeals are then processed by the ACs (e.g. Bäcklund et al. 2002, 8–9).

The LUBA strictly defines how planning and building projects should proceed

democratically, what steps the process includes, and how the decisions become final. The building permits are either decided by the building inspector or by the municipality's Building Board. The Boards are formed on the basis of the relative strengths of political parties, and the parties appoint local politicians onto them. When the Board decides about a building permit, as an authority, the building supervisor (e.g. building inspector) serves as the presenting official who has examined the application and justifies why the application should be accepted or not. The Board's decision is, nevertheless, not final. Both the applicant and those concerned have an opportunity to appeal against the decision. After processing, appeals may also be sent to the AC and in some cases to the SAC (LUBA 2000). In general, if the applicant or a neighbor is not satisfied with the decisions, it may take years before the building permit becomes legal or finally overruled.

The ACs deals every year with 1300–1500 complaints concerning decisions related to land use and building. In 2016, the corresponding number in the SAC was 439 (SAC 2016). This number is smaller not only because of the possible unwillingness to complain further, but also because permission to complain to the SAC is granted only if there is a reason to think that there has been a mistake, if the case is considered for legal or governmental practices, or if the case includes issues considered relevant for the society. The decisions made by the SAC serve as precedents in forthcoming similar cases. However, the role of precedents is not as important as in the Anglo-American common law system, but rather that the Finnish legal culture combines elements from both the Anglo-American legal culture that highlights precedents, and the Continental civil law system that emphasizes the codification of law (Hytönen 2016, 230).

The Finnish planning system is characterized by representative democracy and strong

institutional trust (Hytönen 2016, 233; Puustinen et al. 2017). The planning professionals' jurisdiction is based on the institutional trust to the extent that many people do not realize that decisions could be done otherwise, especially if they have already complained to the municipality and their complaints have been found unjustified. The planning professionals' jurisdiction is also based on openness and inclusiveness that are required in the law, but are realized with varying success. The strong role of the municipalities in land use and construction has, however, led to local interpretations that have threatened the feelings of trust and raised questions as to whether officials and decision-makers serve public interests instead of private ones. The challenges are most obvious in small municipalities where private sector pressures are targeted more clearly towards single officials and decision-makers (Puustinen et al. 2017, 71–76).

The vast number of appeals in the ACs does not directly explain the validity of the complaints, yet it may indicate citizens' decreased institutional trust. The proportion of the decisions that have been changed or overruled in the ACs illustrates severe problems in the municipalities' decision-making. Depending on the AC and the year, 16–38 % of the investigated decisions concerning land use and construction have been changed during recent years (Northern Finland's AC 2015; Hämeenlinna AC's Annual Report 2014; Turku AC's Annual Report 2014; Vaasa AC's Annual Report 2014; Interviews, judges).

The local trap in the context of land use

The principle of subsidiarity depends on ideals according to which decisions are best dealt with close to the citizen, and by authorities who know the local context well. In practice, the reality may be different, and can lead to what Mark Purcell (2006) calls the *local trap*: the

tendency to assume that “the local scale is (...) inherently more democratic than other scales.” Purcell argues that it is dangerous to make such assumptions, and that scales should rather be regarded as socially constructed, and as strategies to achieve particular ends. It cannot be predicted how democratic the outcomes of any scale will be, as they are dependent on the agenda of decision-makers and other empowered actors (Purcell 2006, 1921–1922).

I argue that the emphasis on the local scale in LUBA involves many false assumptions. These include equating the local with ‘the people’, the community, democracy, and participatory action. There is also a strong assumption that localized governing and devolution of authority leads to more democratic and just outcomes (Purcell 2006, 1924–1925; see also Purcell & Brown 2005), however, local decision-making or local people’s participation can equally lead to the power of the few (Rannila & Loivaranta 2015, 791; Purcell 2006).

Local regulation can also develop into a non-system that is characterized by a lack of systematic policy, and in which ad hoc decision-making neglects long-term needs (Valverde 2012, 211). A threat to this kind of development in Finland is linked, for instance, with ‘deviation planning’ the aim of which is to override the master or town plans that have been processed democratically and have concentrated on long-term development. The deviation system has been developed for rare cases, but nowadays it is used as an everyday means to make exceptions to the town plans. Despite the differences in the planning systems, deviation planning resembles the “spot zoning” or “deal planning” used in the US and Canada. Both of these methods favor site-specific exceptions to the rules, and may create “legal black holes”, and remove planners’ time and attention from actual planning to special arrangements. These arrangements may gradually accumulate to legal exceptions that property owners can use as precedents when seeking exceptions for their properties (Valverde 2012, 45, 85).

Concentration on the local may as well lead to privileging particular visions, strategies, and some individuals and groups over others (Madanipour 2006, 176). Powerful interests can bypass formal, transparent, and democratic mechanisms and may instead use a shadow planning system that exists adjacent to the official planning system. The planners may then change from independent arbitrators into the agents of power in the informal planning system (Fox-Rogers & Murphy 2014, 262–263; see also Purcell 2006, 1923). This is close to what Maarten A. Hajer (2006, 41) calls institutional ambiguity: informal governance in which actors negotiate outcomes and the rules of negotiation, thus creating ‘living institutions’, and emphasizing the fluid nature of law in planning processes.

The legality of the planning processes is undoubtedly linked with the neoliberal ideals of urban policy with its emphasis on competitiveness and property rights (Purcell 2009, 147, 2006; Fox-Rogers & Murphy 2014; Hytönen 2016). During the decades, the role of master planning has diminished as it has been judged to be an inflexible tool. Nevertheless, long-term planning could provide some certainty in the midst of project-based short-time thinking (Madanipour 2006, 179), which, in many countries, has led to an increased flexibility towards (urban) development and neoliberal values (Madanipour 2006, 183). In Finland, property rights have been rather powerfully adhered to and construction companies have been strongly involved in defining the development of cities (Rannila & Loivaranta 2015, 795). Compared to earlier times, citizens may now be more aware of their rights in questioning the legality of decisions, ideals of planning, and politicians’ ability or will to follow laws. The authority for planning cannot be taken for granted, and ‘less planning’ or the defiance of rules and regulations may be expected to diversify the use of spaces, to advance their spontaneous development, to enhance their publicity, and to increase the role of citizens in shaping spaces

(e.g. Westin 2014; Hou 2010). Diminishing the role of planning is not, however, unproblematic: simultaneous with the increase of the possibilities for ad hoc uses, more opportunity is also conceded for enhancing the economic interests of property owners. If there is not a plan guiding construction, then there are less means to prevent the realization of various private interests.

Cases of Turku and Hollola

Case 1: The Bird's Nest in Turku

“Building work can begin before the decision is final”

This sentence is nowadays frequently added to building permits granted in Finland. This was also the case when the Building Control Committee of the City of Turku decided to grant a permit for the ‘Bird’s Nest’. The permit was applied for by a Finnish entertainer who wanted to build a temporary private building for business purposes in Turku City Hall Park. In the building, he intended to market his records, to film a tv-series, and to have employees selling various products. The building permit application was submitted to the meeting of the Building Control Committee on October 2nd in 2014, without it being on the agenda. The members of the committee heard about the issue for the first time at the meeting, without any opportunity to learn more about the case or to consider it before making a decision. The permit was granted, and included a permit to begin the construction work before the decision was legal. The building work began a few days later, and after two weeks the building was already constructed, with the opening being celebrated on the 6th of November.

The idea itself was not exceptional, but the intended location in one of the city's most central public spaces was. Parks, in Finnish law, are defined as "public areas" (LUBA), and as places "that can be used by the public" (Public Order Act 2 §). The uses of Finnish public spaces are not similarly restricted as they are in many other countries (cf. Rannila & Mitchell 2016). Moreover, the publicity of space is linked with the city's ownership, and the citizens' possibility to use the space as long as they do not "disturb public order", "endanger public security", or harm neighbors (Public Order Act 3–7 §). These norms and the allocation of the area to a public park in the city plan aim to guarantee the public usage of the area, and usually the meaning of the law is rather well inscribed in people's conceptions of a public park (cf. Delaney 2010, 60).

The publicity of the park at Turku City Hall is not merely related to its public ownership, free access, and the free uses of the park (cf. Mehta 2013, 20), but it also has meaning and value through its history and political functions (cf. Staeheli & Mitchell 2007, 798). Such values include: how the City Hall survived the Great Fire of Turku in 1827, how it served as a society house, and how it was turned into the City Hall after being sold to the City of Turku (The Museum Centre of Turku 2010). The area belongs to the Fortuna-Block, which was earlier known as the Central Block or Governmental Block – names indicating the area's significance for the government, communal decision-making, citizenship and democracy. The Fortuna-area has been defined as being very valuable nationally (RKY -93, RKY -2009), particularly in respect of the city's history, cityscape and architecture (Talamo-Kemiläinen and Kurri 2009). One of the park's current planning efforts is to create an attraction where the public could spend their free time and be informed about timely issues and decisions (City of Turku 2014). The park is thus, at least symbolically, important for the formation of urban citizenship.

Like many others, one of Turku's leading politicians stated that the building permit for the 'Bird's Nest' and especially the process that led to it were illegal. If the city wanted a business building in the park, this opportunity should have been put out to tender openly. Moreover, the building permit application was brought to the Building Control Committee's meeting without it being on the agenda. Even many leading politicians heard about the issue for the first time when they read about it in the newspaper and assessed that a few city officials had arranged the deal and consequently exceeded their jurisdiction (Politician, interview, 3/23/2015). The process was thus against the accepted methods of administration, and far from transparent. However, a city official who was involved in the building permit process, stated that the process went "exactly the same way like always", and in manner that "it should proceed" (City official, interview, 3/31/2015).

The city official also noted that as with any other building permit, there was the option to complain about the decision to the AC (City official, interview, 3/31/2015). However, it would have taken at least a year before this illegal decision could be overridden. The permit to begin the construction work before the decision was final assured that no official complaint could have prevented the temporary allocation of the public park to the business actions of an individual. Due to the rapid construction work, the decision about the building remained local, and was not exposed to re-evaluation at different scales of governing processes. As agreed in the beginning, the building was removed after a year – although the city officials stated in the media that additional time could be allocated very quickly. No extra time was, however, applied for.

When the Bird's Nest is considered as a material building *per se*, the whole thing is not a very

serious issue; the structure may even have made some people enjoy the underused park more than usual. However, when deliberating on how the law and its practices were performed and materialized in the building, the situation is more problematic. The process revealed practices that were undoubtedly against the LUBA and the city's own regulations concerning building permits. Moreover, allocating a corner of a public park to the interests of a private person moved the governing of the city's public spaces from the ideals of democracy and transparency towards neo-liberalist ideals of commerce and commercialization. If one of the distinctive features of private spaces is the right to exclude others, there is an inevitable conflict when a private building is constructed in the middle of a public park – even though it would 'only' be a temporary building and even though earlier there had been private elements in the public park. The question is not only about a structure in the middle of the park, but more widely about the law's definitions of land uses, the processes leading to them, and how such gaps between the law and its materializations are possible.

Case 2: The industrial building in Hollola

In 2014, a private property owner with an excavation business applied for a deviation permit for an industrial hall in Hollola in Southern Finland. The deviation decision was needed before a building permit could be granted because a part of the property was defined as an agricultural area with significant value. According to the commentary of the component master plan, the fields should remain unbuilt on and reserved for agriculture. Another part of the property was defined as an area requiring planning in the near future (Municipality of Hollola 1996).

The building inspector who served as the presenting officer was strongly against the deviation

permit. Supported by the LUBA 172 §, he argued that the building was clearly oversized (height 11 meters, width 33 meters), and thus not suitable for the landscape. Moreover, the building would be contrary to the component master plan; would harm planning and land use; would complicate the conservation of the built-up environment; and would lead to construction with significant negative effects. The neighbors raised similar kinds of concerns and were, moreover, worried about the project's negative effects on their livelihood and living, and on the economic value of their properties. Furthermore, they observed that the permit would endanger the future development of the village as it would be difficult later on to deny permits for similar halls because of the principle of equality (Municipality of Hollola 2014).

On these grounds, the building inspector denied the deviation, after which the applicant complained about the decision to the Building Board. The Building Board overruled the previous decision unanimously, and without any justification being offered (Municipality of Hollola 2014). The applicant obtained the deviation permit, no one complained to the AC, and the building inspector was forced to grant a permit for the hall after the deviation permit became legal.

After the building permit was granted, the closest neighbors to the property complained to the AC. They explained that the minutes of the Building Board's meeting were so unclear that none of them had understood that the deviation permit had been granted in spite of the building inspector's resistance. The neighbors had realized the situation only after the deviation decision had already become legal. The neighbors repeated the same concerns about the project as earlier, and agreed with the building inspector's views. They also criticized the municipality's courses of action, including making a decision against the building inspector's

views without justification being provided; writing such unclear minutes that the average citizen could not understand correctly what had been decided; and forgetting to send information about the building permit to the neighbors. In the reply, written by the building inspector to the AC, the municipality admits that the minutes could have been clearer, and that there had been an error in informing the neighbors about the granted building permit (AC of Hämeenlinna 2016).

In their judgment in the spring of 2016, the AC found the building permit illegal. It overruled both the building permit and the deviation permit. In their reasoning, the judges stated that since the property and its surroundings were partly defined as an area requiring planning, a planning requirement resolution would initially have been needed instead of a deviation permit. According to the AC, the building permit was so clearly illegal that the judges did not have to take a stand as regards the other possible illegalities raised by the neighbors (AC of Hämeenlinna 2016).

After the judgment, the applicants for the deviation/building permit complained to the SAC about the AC's overruling of the decision, claiming that they had not been treated equally compared to other individuals or companies who had built halls in the same village. The SAC's judgment in the spring of 2017 agreed with the AC and dismissed the applicants' appeal (SAC 2017). The case was not closed, however. In spring 2017, the applicants began the process again from the beginning by applying to the Municipality of Hollola for a planning requirement resolution in order to build the hall. The building inspector did not grant the resolution, and at the moment the applicants have the possibility to complain about the decision.

Judges' interviews about the challenges in planning

The judges' interviews were transcribed and analyzed through theory-guided content analysis (e.g. Schreier 2013) that focused on the problematic of the subsidiarity principle and the decision-making practices on a local scale. The material was categorized and abstracted during several readings in which I compared the data to the theoretical texts and to the cases of Turku and Hollola. As a result of this comparison, six aspects manifesting the local trap in land use and constructing could be identified: questionable *modus operandi*, negligence of legality, lack of monitoring, access to law, informal governance, and deviation planning.

Firstly, the current *modus operandi* needs critical evaluation. The Finnish building and planning processes are rather complicated and bureaucratic, but the evaluation of decisions at the different governmental and legal scales ensures the democratic handling of building permits. Sometimes the appeals reveal that the worst possible courses of action have been taken by municipalities, with personal interests being strongly involved (Interview, judge 5/3/2017), and the interpretations of the law being 'stretched' (Interview, judge, 5/4/2017a). Building permits may be difficult to deny to large landowners, friends, business associates, or famous athletes and entertainers – as in the Turku case. One judge described the permit practices as “rather fluctuating if a great guy applies for something” (Interview, judge 1, 6/1/2015).

It is striking that in several cases, the decisions of the Building Boards are unanimous although the committees have representatives from several political parties, and although the application is clearly controversial in relation to the law or accepted methods of administration. It is also commonplace for neighbors not to have been heard or for decisions

to lack justification (Interviews, judges 6/1/2015; 4/28/2017; 5/3/2017; 5/4/2017), especially if the committee decides the case differently than suggested by the presenting official, as happened in the case of Hollola. One judge stated that the most blatant examples are cases where a decision has been made unanimously, without justification, and against the suggestion, based on current legal praxis, of the presenting official (Interview, judge, 11/25/2015).

Such *modus operandi* is not only detrimental as regards the neighbors, but equally as regards those who apply for building permits and should as well “be able to trust that the law is well known and that one is told what can be built” (Interview, judge 6/1/2015). If permits are granted without cause, the applicants can find themselves engaged in many years of court processes that would have been prevented if the municipality had denied the permit in the first place. At worst, some municipalities reiterate the same overruled decisions, and the cases may return back to the AC with only small changes in the details (Interviews, judges 4/28/2017; 5/3/2017).

Secondly, a negligence of legality appears, for instance, in the practice of granting a permission to begin construction before the decision is final, as was done in the Turku case. Such a decision is problematic since there is no coherent policy for these cases. When the AC receives a complaint about a permit that includes a permission to start the construction work, their judges try to deny the work being allowed to commence, because it is difficult to have buildings removed if the decision is subsequently found to be illegal. In summer especially, “you have to act quickly before rocks begin to explode” (Interview, judge, 6/1/2015). Construction before legality is a great risk to the constructor as well (Interviews, judges, 4/28/2017; 5/4/2017a; 5/4/2017b), as the building may remain half-finished or transpire to be

illegal. Even though the building would subsequently then be condemned to be demolished, it is highly unlikely that the demolition will take place. A judge explained that the possible demolition is not monitored, and that s/he has “no idea how this works since nobody goes there to demolish the buildings” (Interview, judge, 6/1/2015).

Thirdly, there are worries regarding the lack of monitoring authorities. The current Sipilä Government of Finland (2015–2019) aims to speed up construction by making the permit and appealing processes more fluid. In relation to this, there is a bill aiming to minimize the possibilities of authorities to complain about each other’s decisions (Sipilä Government Program 2015). At the moment, the regional Centers for Economic Development, Transport, and the Environment (ELY) steer land use planning and the organization of construction activities in municipalities (ELY Centers 2015). They have had the right to appeal to the ACs against some decisions concerning land use and planning, and their complaints have been rather successful, thereby indicating the need for such a steering party. The government’s plan to remove the ELY Centers’ right to appeal and thus to lessen monitoring makes most judges fearful (Interviews, judges, 6/1/2015; 5/4/2017a; 5/4/2017b) because “if this right is taken from such a monitoring authority, there is not much that can be done anymore. Municipalities can then just nicely divide things ‘for you, for me’” (Interview, judge, 6/1/2015). In the current situation, the ELY Centers’ appeals are regarded as competent and they are seen to advance the rectification of illegal decisions. Their appeals succeed well, because “they do not complain in vain” (Interviews, judges, 11/25/2015; 4/28/2017).

Fourthly, there is some inequality regarding the access to law. Related to the Sipilä Government’s efforts, in the beginning of 2016, the fees for appealing to the AC were increased from 97 euros to 250 euros, and for appealing to the SAC from 122/244 euros to

500 euros (Law concerning court fees 2015; Governments bill 29/2015). The fees have to be paid only if the complaint does not succeed, and there is no risk of having to pay the opponent's legal costs. The increase in the fees still might have decreased the number of complaints in the current year (Interview, judge, 4/28/2017), which is alarming because unnecessary appeals have been scarce (Interviews, judges, 4/28/2017; 5/4/2017a; 5/4/2017b). Moreover, it is problematic to reduce citizens' rights to participate, and furthermore to target the reductions by economic means (Interviews, judges, 5/3/2017; 5/4/2017a; 5/4/2017b).

The AC is an instance where it is believed wrong decisions can be corrected, but this does not happen unless required by one of the parties or authorities. Although the number of complaints is large, most people are unable or unwilling to complain about decisions. Even though they might suspect that the decisions do not follow the law, complaining to the court may feel like a great decision whose procedures, consequences, and costs are not necessarily known. It may also be unclear what is required to make complaints, or if a person can appeal without knowing the law, basing one's argument only on everyday expertise. This may put in an unequal position those who are marginal or elderly, or do not know how to make a convincing argument. This should not be regarded as an individual problem, but rather as a wider question of barriers to accessing the law (cf. Burrige & Gill 2017).

Except for the recent increase in court fees, the judges considered that the appeal process was citizen-friendly. The appeal system is easy in a sense that it can be activated merely by writing complaint-letters on time. It is still questionable if the average person really can write a convincing justification if s/he is not familiar with discussions on planning, the law or construction. In order to successfully achieve a decision being overridden, it is necessary to have access to the law: not only to know its content, but also to be able to present a

convincing argument about how the decision has failed. The judges' views about the credibility of arguments are not unambiguous. Some judges think that the appellant does not need to be too convincing with the justification – it is enough that s/he complains on time and the court will then determine whether the decision has been legal or not. The citizen should obtain justice regardless of the form of the complaint – whether it has been formulated by a lawyer or handwritten on grid paper (Interviews, judges, 6/1/2017; 5/4/2017a). Some of the judges said that sometimes writing 'I don't like it' may be enough (Interview, judge, 6/1/2015), and that everybody can tell what is wrong and the judges will clarify the facts *ex officio* (Interviews, judges, 6/12/2015; 4/28/2017; 5/3/2017; 5/4/2017b). Some judges, however, emphasized the significance of right arguments and how important the justification is to the complaint. Sometimes they may recognize that the complaint could succeed with another justification, but they cannot overrule the decision since the right argument has not been written in the complaint (Interviews, judges, 6/12/2015; 11/25/2015). Some judges, nevertheless, emphasized that the appeals are open to various interpretations, and that the judges have to ascertain the facts and consider case by case what the appellant might have meant in her/his complaint (Interviews, judges, 4/28/2017; 5/3/2017; 5/4/2017a).

The judges evaluated the situations from the viewpoint of their everyday work, including processing the complaints of those who have been able to appeal, and who have had enough courage and knowledge regarding the possibilities of complaining. Those who do not know about the system or who are afraid to complain, they do not hear about. When neighbors receive the information that they can appeal to the AC, not everybody really understands the difference between the AC and the Magistrate's Court, which people associate with high costs, lawyers, prosecutors, and witnesses. It remains understudied and thus unclear how many of the problematic decisions escape the AC's attention due to neighbors being unaware

of their rights and their economic possibilities to appeal.

Although the judges' explanations of the requirements for complaints slightly differ from each other, this does not affect how complaints are processed or how decisions are overruled. This is affirmed when considering the 418 SAC cases that were related to land use and constructing in 2016. Of these cases, only 3 decisions were overruled and 31 were changed (SAC 2016) which illustrates the coherent practice of the ACs in correcting the problems originating from the level of municipalities. As one judge stated, the decisions are not "just some opinions", but they are "based on law and on the responsibility of an official for the legality of his/her actions". That the decisions are only seldom changed in the SAC is thus, "a sign of the legal protection system's functionality" (Interview, judge, 11/25/2015).

Fifthly, one challenge is the prevalence of informal governance that partly originates from the fact that there are no means to ensure that officials and decision-makers are capable or willing to act according to the law. The Building Boards' members are "directly from the street in a sense that they seldom have any knowledge (of the law)" (Interviews, judge, 6/12/2015). It is also impossible to find competent building supervisors for each of Finland's 311 municipalities (Interviews, judges, 4/28/2017; 5/4/2017). The only sanction that is used is obligating a municipality to pay the court fees if the illegal decisions seem intentional (Interviews, judges, 6/1/2015; 5/4/2017). The fees are, however, small and they do not have much effect on those who have made the actual decision. Instead of sanctions, some judges highlight the importance of legal education to which both the officials and board members should be obliged to partake (Interviews, judges, 6/1/2015; 4/28/2017; 5/4/2017b).

In larger cities there are lawyers that can consult the Board and the presenting officer, which,

however, does not guarantee the quality of the decisions (Interview, judge, 4/28/2017). For instance, in Turku there are three employees with a legal education who “take part in the processes of zoning and supervision of building, and consult the presenting officers in legal questions” (City of Turku, written information). Despite this, the ACs receive many complaints from the decisions made in Turku, which indicates that this legal help is not used on a regular basis or if it is, it does not extend to the decision-makers. Some judges stated that even though there are good building supervisors in some municipalities, there are also those who just make decisions and see if someone will complain (Interview, judges, 6/1/2015; 4/28/2017). Some municipalities also have their own decision-making culture and try to make their own ‘laws’ that do not follow the LUBA (Interview, judge, 5/4/2017a).

Sixthly, the AC’s cases include deviation permits and planning requirement resolutions that in recent years have become more complex (Interview, judge, 5/4/2017b) and in certain municipalities and regions are commonly used to take liberties with the master or town plans (Interviews, judges, 4/28/2017; 5/4/2017a; 5/4/2017b). This occurs despite the fact that the LUBA emphasizes the role of planning as a guiding tool for all land use in zoned areas. One of the judges commented that s/he is “definitely pro planning”, which means being “in favor of democracy”. S/he resists deviation permits because in their use, “only neighbors have the possibility to complain”, and “sometimes really horrible things happen if there has not been planning at all” (Interview, judge, 6/1/2015).

Invisible jurisdictions

The findings suggest a need for a more critical spatio-legal analysis of land use and construction practices focusing on the relationality of the law, and recognizing various aspects

of invisible jurisdictions at the different scales. The subsidiarity principle advances decision-making being made close to citizens, and by those officials and politicians who know the context well. In the governing of Finnish land use and construction, the emphasis on the local has led to difficulties in neutrality and legality. Structural inequalities have appeared, for instance, in the ways in which the realization of the LUBA has seemed to be dependent on luck (cf. Burridge & Gill 2017, 33): on the modus operandi of the local government and building inspector and their competence or level of negligence. Access to the law is also crucial: how aware the neighbors are of the appeal system, how competent they are in arguing their case, or if they have the economic possibilities to appeal.

I thereby argue that the subsidiarity principle has created a local trap: operating at a local scale has not meant equality and democracy as expected, but has rather led to questionable modus operandi, negligence of law, lack of monitoring, unequal access to the law, informal governance, and deviation planning. These decrease institutional trust, which is based on the assumption that the decision-making processes are legal, equal, and transparent. The problems were obvious in both cases. In Turku, the building permit application was taken to the Committee without it being on the agenda. The realization of the equality principle was also questionable in this case, as it is highly exceptional that a private business building can be constructed in a public park. In the Hollola case, the decisions were found illegal by the AC, and the principles of openness and equality were questionable as well: the municipality forgot to inform the neighbors about the permit; there was no justification for making a decision against the presenting officials suggestion; and granting a building permit for an industrial hall in an agriculture area is exceptional.

In the light of these cases, it is clear that the multi-scalar appealing system is crucial in

guaranteeing legal and democratic decisions. In the municipalities, there are *invisible jurisdictions* (inspired by, but different from Valverde's "ghost jurisdictions" 2012, 111), by which I refer to unwritten 'unrules' that tend to favor the 'good guys', neoliberal values, and the production of 'boomerang planning'. For Valverde (2012, 111), ghost jurisdiction means "entities that have been politically abolished but some of whose legal rules continue to be in force". Invisible jurisdiction, instead, has developed by using practices that do not follow the spirit and letter of the law, but are widely used in urban governance. Like ghost jurisdiction, the existence of invisible jurisdiction makes the law inaccessible and obscure (cf. Valverde 2012, 111). Invisible jurisdiction occurs outside of the minutes, and there is a process of invisibilization involved. For instance, when the official of the City of Turku explained the building application process, he emphasized how the process had been normal and how things had always been done in the same way. With these comments, the official attempted to naturalize (cf. Braverman 2014) what had happened, deny contradictory rationalities (cf. Valverde 2009), and convince the public that the situation is something that must be accepted (cf. Young 2003, 7–8). By invisibilizing the process, the official distanced her/himself from the responsibility related to the post, obscured the causes of the decision, and uncoupled the resulting (possible) injustice from anyone's responsibility (cf. Delaney 2015).

Deviation planning, as well, helps to turn the products of invisible jurisdiction into legal exceptions that can be utilized by property owners when seeking exceptions for their properties. Purcell's (2006) 'local trap' is then recognizable, as well as Valverde's (2012, 211) non-system with ad hoc decision-making. Close to these concepts is also Hajer's (2006) notions of institutional ambiguity and informal governance, including the idea that the actors might negotiate both outcomes and rules of negotiation instead of depending on the law and the accepted ways of action. This was well illustrated in a judge's story about a municipality

that tried to create a state within a state with its own laws and ways of acting, thus creating a shadow planning system adjacent to or instead of the official planning system. These kinds of cases are apt to decrease institutional trust, which has traditionally been strong in Nordic countries, and is based on the idea that different actors' jurisdictions are not invisible but as transparent as possible.

Conclusion

The cases of Turku and Hollola exemplify a structural inability to secure the realization of the democratic decision making process. The LUBA itself is thoroughly formulated and rooted in Nordic welfare state ideologies and incorporating standards of democracy, equality, participatory planning, environmental and landscape values, and the transparency of decisions. The practices, however, question these ideals and blur the democratic decision making process. When turning from the nationwide laws to the practices in municipalities, the clarity of the process is lost, and law becomes “a dynamic, shifting, often contradictory, multi-point process” (Delaney 2014, 97) – understood in the worst sense.

The law is contextual in a sense that even though people are in principle equal in the face of the law, local practices may dismiss this equality. Specific ‘local’ knowledge may be used as justification for making decisions that deviate from the law’s ideals concerning the equality of people. Legal orders may then overlap (cf. Benda-Beckmann and Benda-Beckmann 2014, 46) – at least the legal order that originates from welfare state ideologies, may be overlaid by one that inclines to a more neo-liberal, privatizing government of land use. These collisions make the government of land use complex (Delaney 2014, 241), and cause transformations in legal roles and relationships (Barkan 2011). The need for various steps in the legal planning

process is obvious, since in these cases the argument put forward by Valverde (2009, 142) also applies: that the law and low-level regulations (or in this case: law and decisions) are seldom in harmony. Although the subsidiarity principle is a beautiful idea, it has in some cases increased corruption and led to the underestimation of people who try to express their opinions about the development of their neighborhoods. If only widening the scope of the decision-making away from the local scale ensures equal and legal decisions, it should be re-evaluated if municipalities' building boards are competent enough to make decisions concerning land use and construction, or if their decisions and actions should be at least monitored more closely.

In the light of the results, there is a paradox included in the critique of master planning. The desire for less planning often assumes that people *want* to use the city in ways that diversify the urban spaces and advance their publicity and democracy, while other motives are forgotten, such as a wish to privatize spaces and to make a profit from them. Thus, although planning is used as a means to control the uses of spaces, it simultaneously protects these spaces from those attempts that can only be prevented by the municipalities or courts simply because of the planning.

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