HEUNI

The European Institute for Crime Prevention and Control,
affiliated with the United Nations

Criminal Justice Systems in Europe and North America

FINLAND

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Foreword

HEUNI's series of criminal justice profiles of European and North American legal systems reflects the dynamic change that has been taking place throughout the region over the past few years. Reports that have been published only a few years earlier become dated as a result of the extent of reform of the legal system.

This has also been the case with Finland, on which the original profile was published in 1990 (by Matti Joutsen), with the updated publications in 1995 (by Matti Joutsen) and 1997 (by Matti Joutsen and Raimo Lahti).

Developments since then have required a new update. The revision of the text, originally written by Dr. Matti Joutsen, has been done by Professor Raimo Lahti, University of Helsinki, for sections 1-3 and 11-17, and by Researcher Pasi Pölönen, University of Helsinki, for sections 4-10. Section 16, "Crime and criminal Justice in Finland", has been updated by Director Kauko Aromaa of HEUNI.

Helsinki, 7 May 2001

Kauko Aromaa
Director, HEUNI

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THE CRIMINAL JUSTICE SYSTEM OF FINLAND

1. Demographic background[1]

At the end of 1999, Finland had a population of 5,171,302. This amounted to a net increase of 11,656 over the previous year. The projections are that Finland's population growth will slow down even further in the years to come, unless there is a significant increase in the present net immigration (2,778 persons in 1999).

Three-fifths of the population (60.4%) live in urban municipalities, with the Helsinki metropolitan area alone (the cities of Helsinki, Espoo and Vantaa) accounting for almost one-fifth of the total Finnish population.

There are few foreign-born persons in Finland. Significant immigration did not take place until the 1990s. In 1999, the number of foreigners was 87,680. At the end of 1999, only 131,120 persons resident in Finland (2.5 % of the population) were born in other countries, and only 87,680 (1.7% of the population) were not Finnish citizens. Even these figures mark a jump from the 26,000 non-Finnish citizens resident in Finland in 1990.

The countries in which at least 1,000 persons residing in Finland (1999) were born are the former Soviet Union (31,441)[2], Sweden (27,932), Estonia (7,440), Somalia (4,189), the former Yugoslavia (4,016), Germany (3,236), Iraq (3,009), USA (2,975), Vietnam (2,819), the United Kingdom (2,649), Turkey (2,049), China (2,035), Russia (2,020), Iran (1,941), Thailand (1,618), Poland (1,182), Canada (1,179), India (1,057) and France (1,047).

The industrial structure of Finland is predominantly service oriented, with about two-thirds of the economically active population in the trade, transport and communications, financing, community and other services.

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[1] Main source: Statistical Yearbook of Finland 2000.

[2] The national Finnish statistics do not provide data on which constituent republic of the former USSR these persons were born in. As noted, some 7,440 persons are recorded separately in the statistics as having been born in Estonia.

In 1997, 21.4 % of the workforce was employed in industry, and only 6.1 % in agriculture and forestry.

Finland has engaged in free trade with other West European countries since the 1950s, but the Finnish economy was highly regulated and protectionist in many ways until the mid 1980s. The money market was liberalized rapidly during the 1980s and caused an overheated situation in economy. The collapse of the Soviet Union in the early 1990s ceased virtually all of Finland's government-led, bilateral trade with it. These were among the major factors leading to a deep economic recession in the early 1990s. At the worst time, the unemployment rate was about 20%. Export growth enabled Finland to reattain the 1990 peak level of domestic product in 1995, and the gross domestic product has continued to grow since then at an annual rate of 4-6 % between 1996 and 1999 (GDP was FIM 687 billion = 115 billion euros in 1998).

Finland's membership in the European Union (EU) as of 1 January 1995 has accelerated the speed of economic growth. At the end of the 1990s, the unemployment rate was still relatively high (about 10%) and the notable amount of foreign debt and the increased servicing costs gave rise to governmental concern. Nevertheless, Finland fulfilled the criteria for joining the European Monetary Union (EMU) from the beginning (as of 1 January 1999).

2. The basic structure of Finnish criminal law and the criminal justice system

History. The Finnish juridical system is manifestly rooted in western, Continental legal culture. The foundation for the Finnish legal system was laid during the more than 700 years when Finland was part of Sweden. The distinctive Nordic (Scandinavian) features have always been prevalent in the evolution of Finnish law and legal culture. Even the Russian hegemony in 1809-1917, when Finland had an autonomous status as the Grand Duchy under the Russian Czar, allowed Finland to maintain its fundamental laws from the time of Swedish rule.

There is a strong legalistic tradition in Finland. The Finnish legal system has, since the enactment of the Constitutional laws of 1919, followed a model of democratic *Rechtsstaat*. The basic sources of law are the Constitution and the Acts of Parliament. Below these stand the Decrees, which may be issued by the President of the Republic, the Government and a Ministry on the basis of authorisation given to them in the Constitution or in another Act.

Procedural law. The basic statute in procedural law is the Code of Judicial Procedure. This Code was originally part of the General Swedish Code of 1734. It has remained in force through to the present, although only a few significant provisions come from the original Code. One of the most important revisions of the Code was implemented from 1 December 1993 and it concerned civil proceedings in the lower courts. The reform aimed at the modernization of the civil proceedings to comply with the principles of oral, immediate and concentrated procedure. In 1993, the lower court system was also restructured. The reform of criminal proceedings in the lower courts entered into force on 1 October 1997, and the reform of the procedure in the Courts of Appeal was carried out one year later. In all, the recent changes in the judicial system indicate a period of significant legal transition.

Criminal law. The basic statute in Finnish criminal law is the 1889 Criminal (Penal) Code (from 19 December 1889), which is still in force - although heavily amended since its initial adoption. The total reform of Finnish penal law has been under preparation since 1972, and a special Task Force appointed by the Ministry of Justice worked in 1980-1999 for the recodification. Several major partial amendments to the Criminal Code have been implemented since 1990, and the reform is now in its final stage.

The general part of Finnish criminal law is largely regulated in chapters 1 through 9 of the Criminal Code. The special part of the criminal law is contained in chapters 10 through 51 of the Criminal Code and in various special statutes.[3] Among the more important such statutes are the Traffic Act (1981/267) and the Alcohol Act (1994/1143).[4]

[3] A listing of the chapter headings is given in annex 1.

[4] All important statutory instruments are published in Finnish and Swedish in the Statute Book of Finland. Statutory instruments passed during this century are identified in this

General provisions on criminal sanctions are also contained in other statutes, such as the Enforcement of the Criminal Code Act (19 December 1889), the Young Offenders Act (1940/262), the Dangerous Recidivists Act (1953/317), the Conditional Sentences Act (1976/135), and the Community Service Act (1996/1055). All of these statutes have been amended since they were initially adopted.

3. The fundamental principles of Finnish criminal law and procedure

The basis of criminal policy. When the present Criminal Code of Finland was adopted one hundred years ago in 1889, it was a typical product of the classical school of penal law. At the time, the purpose of punishment was primarily seen to be retribution for the offence.

Soon after the adoption of the Criminal Code, however, the principle of individual prevention (rehabilitation) began to influence criminal law thinking and practice. Accordingly, common European and also Finnish criminal policy witnessed a swing towards the belief that punishment should be individually tailored to the offender, for the treatment or incapacitation. However, this philosophy of individual prevention has been largely criticized on the basis of practical experience, research results and considerations of justice. More emphasis should be put on general prevention (mainly in the sense of reinforcement of moral and social norms). At the same time, the principles of justice and humaneness have a limit-setting function for the operation of the criminal justice system.

The recent development indicates a differentiation of criminal policy strategies - whether we have in mind social planning, crime prevention, penal law, or criminal sanctions policy. There is an increased consciousness of values, costs and alternatives in criminal policy. As for the criminal sanctions, the pendulum of criminal policy has swung somewhat in the other direction: for increased attention to individual prevention (e.g., the adoption

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publication by the year, followed by the number of the statute. Thus, for example the Traffic Act (1981/267) is statute no. 267 passed in 1981.

of community service as a criminal sanction). It is important to notice that the arsenal of possible means of criminal policy has become larger compared with the traditional (repression or rehabilitated oriented) penal system.

Fundamental principles of criminal law. The main criteria of a rational criminal justice system can be described by demanding for an effective, just and humane penal system. As for the application of criminal law, the principles related to the requirement of justice are particularly important. The fundamental principles of criminal law - such as legality, equality and humaneness - are strongly based on human and constitutional rights. The Constitution of Finland (1999/731) defines the basic principle of **legality** in criminal cases in the following way: No one shall be found guilty of a criminal offence or be sentenced to a punishment on the basis of a deed, which was not determined punishable by an Act of Parliament at the time of its commission (Section 8; "nullum crimen sine lege, nulla poena sine lege poenali"). **Equality** demands that all cases falling within a specific category are dealt with in the same way without unjustified discrimination (Section 6 of the Constitution). The respect for **humaneness** (or human dignity) requires that no one shall be sentenced to death, tortured or otherwise treated in an a manner violating human dignity (Section 7 of the Constitution).

Fundamental principles of criminal procedure. Such basic elements of a due process or fair trial as the right of access to court, independent and impartial tribunal, the presumption of innocence and guarantees of procedural rights have traditionally been recognized in Finnish procedural law. However, the ratification of the European Convention on Human Rights in 1990 and the reform of fundamental rights guaranteed in the Finnish Constitution (have strengthened the importance of those principles. The same can be said about the major reforms of procedural law which have been carried out during the past 15 years.

Principles concerning criminal sanctions and sentencing. The principles of **culpability** and **proportionality** require that the sentence shall be in just proportion to the damage and danger caused by the offence and to the culpability of the offender manifest in the offence. This principle, which also implies that the court takes into consideration all official and even unofficial penal and non-penal consequences of an offence, establishes the maximum

punishment. The principle of proportionality is not seen to prevent mitigation of punishment where this is deemed reasonable.

In practical terms, there has been a deliberate movement towards a more lenient system of criminal sanctions, and especially towards a reduction in the use of custodial sentences. During the 1990s, of all criminal cases brought before the courts, a clear majority result in fines (60%) or a conditional sentence (20%). About 10 % are sentenced to imprisonment (usually between 3 and 6 months) and about 6-7 % to community service. In less than 2 % of cases the court waives further sanctions. The level of punishments is Finland and in the other Nordic countries more lenient than in most of the other European or non-European countries.

General preconditions of criminal responsibility. No one is liable for conduct committed when he or she was under fifteen years of age or when he or she lacks **criminal responsibility** (insanity defence). Unless otherwise stated explicitly, a criminal law offence is punishable only if committed **intentionally**, not through negligence. The Criminal Code and other enactments criminalize a number of acts of **negligence**. The concept of strict liability in criminal law is not recognized. However, certain types of penal administrative sanctions (such as for limitations of competition or for excess weight on a lorry) are in use and their preconditions may resemble those of strict liability.

The grounds for justification and exculpation (defences) are noted in chapter 3 of the Criminal Code. They include insanity, self-defence, use of force by an authority, necessity, self-help and obedience to superior order. Certain other grounds are based on other provisions or are recognized in the doctrine and practice; examples include certain voluntary retreat from an offence, certain mistakes of law, and consent.

The age of criminal responsibility in Finland is fifteen years.[5] Offences committed by those below this age can not be dealt with by any court; the case is turned over to the municipal social welfare or child welfare board for consideration in accordance with the Child Welfare Act (1983/683). Offenders between fifteen and twenty (inclusive) at the time of the offence are subject to the Young Offenders Act (1940/262). The primary differences in

[5] Chapter 3, section 1 of the Criminal Code.

the sentencing of young offenders and adult offenders lie in the fact that offenders between the ages of fifteen and seventeen (inclusive) benefit from a mitigated scale of punishment, and that they benefit from a greater possibility for the waiving if measures or suspending sentence. Furthermore, an offender who was under eighteen at the time of the offence cannot be sentenced to unconditional imprisonment unless there are important reasons for doing so.[6] In addition, there are some differences in enforcement which are dealt with below.[7]

The provision on criminal responsibility[8] states that an act of an insane person and act by a person mentally deficient due to senility or another similar reason shall be remain unpunishable. If the offender was in a state of diminished responsibility, sentencing is based on a more lenient scale. Self-induced intoxication is not considered to diminish the offender's criminal responsibility.[9] The assessment of the criminal responsibility of the offender is made by the court; when the court deems this necessary, the assessment is made on the basis of the results of a mental examination carried out by the medical authorities. Unless the defendant consents to such a mental examination, it may be carried out only if the offence is punishable by imprisonment for more than one year.[10]

Self-defence is defined by chapter 3, section 6 of the Criminal Code as protecting oneself or another or the property of oneself or of another against an already begun or an imminent unjustified attack, where this act was necessary to repel the attack. According to section 7, self-defence is also justified when a person forces his or her way without authorization into the room,

[6] Section 1 of the Conditional Sentences Act, as amended by Act 1989/992. Soon after the adoption of this amendment, the Supreme Court decided a case involving its application. In the case, the court had sentenced the defendant for attempted manslaughter to two years of imprisonment. He had been under 18 at the time of the offence. In view of the circumstances of the offence and the offender, the Supreme Court took the view that, despite the seriousness of the offence and the length of the sentence imposed, there were no "weighty reasons" for ordering the sentence imposed unconditionally (Supreme Court decision no. 1991:185, 20 December 1991).
[7] See section 11.
[8] Chapter 3, section 3 of the Criminal Code.
[9] Chapter 3, section 4 of the Criminal Code.
[10] Chapter 17, section 45 of the Code of Procedure.

house, estate or vessel of another, or when a person caught in the act resists another who is trying to take back his or her own property.

Chapter 3, section 10 defines necessity as the commission of a punishable act in order to save oneself or another, or the property of oneself or another, from an overpowering danger, and if it would otherwise have been impossible to avoid this danger. The following section, 10a, deals with the obedience to superior order. The section states that a subordinate can be punished for an offence committed in accordance with the order of a superior officer only if the offender had clearly understood that by obeying the order he or she would be violating the law or his official or service duties. If, however, the act has occurred in circumstances in which the subordinate could not have disobeyed the order, he or she may be left unpunished.

Corporate liability. Traditionally, Finnish criminal law has not recognized corporate liability for an offence. However, as part of the total reform of criminal law, as of 1 September 1995 (1995/743) a corporate fine can be imposed on corporate bodies, in whose operations a specified offence (e.g., professional money laundering or certain environmental offence) has been committed.[11] There must be a defined connection between the individual offender and the corporation. It is not necessary to punish the individual offender or even identify him or her. It must, however, be proved that the a person belonging to a statutory organ or other management thereof has been an accomplice to an offence or allowed the commission of the offence, or the care and diligence necessary for the prevention of the offence had not been observed in the operations of the corporation. There have been only a few cases in practice so far.

The territorial scope of criminal law. The territorial scope of Finnish criminal law is broad, although the recent reform (1996/626) has reduced it.[12] Courts can deal not only with offences committed in Finland (territorial principle), but also with offences committed on a Finnish vessel or aircraft, offences by Finnish citizens or by those who shall be equated with Finnish citizens (active personality principle), with offences committed abroad against certain basic interests of Finland (i.e., if the offence is treason, if the act otherwise has seriously violated the state, military or economic rights or

[11] Chapter 9 of the Criminal Code.
[12] Chapter 1 of the Criminal Code.

interests of Finland, or it is directed against a Finnish authority; protective principle) or with offences committed against a Finnish citizen, a Finnish corporate body or against a foreign citizen domiciled in Finland (passive personality principle). Finnish law shall also be applied to certain other offences committed outside of Finland, if the state in which area the offence has been committed has requested that charges be brought for the the offence in a Finnish court or has requested that the offender be extradited on the basis of the offence and this request has not been granted (the principle of vicarious administration of criminal justice).

Furthermore, Finnish courts apply the universality principle of jurisdiction to certain serious international crimes (such as war crimes, genocide, serious drug offences, hijacking, hostage taking and torture). In these cases the punishability of the act is based on an international agreement binding on Finland or on another statute or regulation internationally bindin on Finland. The requirement for double criminality is then not applied. Charges may not be brought for an offence committed outside Finland without the order of the Prosecutor-General.

The temporal scope of criminal law. The temporal scope of Finnish criminal law is defined in chapter 8 of the Criminal Code, on prescription, and in section 3 of the Enforcement of the Criminal Code Act (19 December 1889/39, as amended by Act 1990/770). According to the basic provision in section 3, the law in force at the time of the offence shall apply. If the law has subsequently been amended, the new law applies if this would result in lesser punishment.

4. The police

The basic statute on the police is the Police Administration Act (1992/110), which regulates the organization of the police. The Police Act (1995/493) regulates the functions of the police. Also the European Convention of Human Rights (ECHR) has a binding effect on police.

Organization. The police constitute a national police force that is organized under the supervision of the Ministry of the Interior. There are three levels

of organization: the national administration, the regional administration in each county, and the local administration in the police districts. The National Commissioner of the Police at the Police Department, which is part of the Ministry of the Interior, is the operational head of all police forces in Finland. Each regional administration is headed by a provincial police commissioner. As of 1 December 1996 there are 90 state local districts and in these unified or separate offices for police, prosecution and execution departments. Each police department is headed by a police chief.

Functions. The primary function of the police is to secure and maintain social structures, to maintain public order, to prevent crimes and to investigate crimes for the prosecution. The police must act impartially. All police powers that include infringements upon individual rights must be expressly permitted by law. In addition, all actions taken by the police must be properly grounded and proportional with respect to the importance and degree of urgency of the action in question. Furthermore, all actions must be in accordance with the principle of minimum intervention.[13]

The uniformed police are responsible for public safety duties, patrolling and the control of traffic. The criminal investigation police attend to the investigation of the more serious or the more involved criminal cases. The most difficult cases are dealt with by the National Bureau of Investigation, either on its own or in cooperation with the local police district.

The police acts independently of other officials. This means that only the police are responsible for investigating the crime - the Public Prosecutor, for instance, does not formally lead the investigations (except for cases when a police officer is suspected of a crime).

Right to use force. The police have the right to use necessary force it they meet resistance carrying out their official duties.[14] The force must be justifiable in view of the nature of the case. The justifybility of the force measures depends on the importance and urgency of the task, the dangerousness of the resistance, the resources at hand and on other underlying circumstances of the case as a whole. In accordance with the principles of minimum inter-

[13] Section 2 of the Police Act.
[14] Chapter 3, section 8 of the Criminal Code; section 27 of the Police Act.

vention and fairness, the primary approach to the maintenance of public order and safety is through advice, suggestions and orders.[15]

The Police Act includes detailed provisions on various preventive measures such as searches, confiscations, security checks and stopping of vehicles. Section 3 of the Police Act allows the police to gather information in preventive aims by means of technical surveillance and observation. Technical surveillance may be used to observe an individual or larger groups of people, such as traffic flow. Wire-tapping, telephone metering and bugging, on the other hand, are possible only in criminal investigations according to the Coercive Measures Act (1987/450) Chapter 5a.

Recently, the police was granted the power to use telephone metering also in preventive aims. Telephone metering is now allowed in these cases when it is required to prevent a crime or a serious harm. The decision to use telephone metering is made by a court of law. However, if it would be too slow to apply for a court decision in urgent cases, the police is authorized to use telephone metering by its own initiative. In this case the police decision is subject to an immediate (within 24 hours after the use of the telephone metering) ex post court review.

Also the areal scope of technical surveillance in preventive police work was widened so that it is now possible to use covert listening or technical observation also in prison buildings. The surveillance equipment can also be placed in any room or space, where technical surveillance is otherwise possible (e.i., not inside a room or building used as a permanent home). The court rules in these cases on the use of such a measure.[16]

The exercise of police powers, including the use of force, is subject to close supervision, not only by senior police officials, but also by the Ombudsman of Parliament and the Chancellor of Justice. The Ombudsman of Parliament and the Chancellor of Justice can, for example, either reprimand i.a. a police officer for unlawful conduct or neglect of duties, or even bring criminal charges for illegal actions.

[15] Section 2 of the Police Act.
[16] Government proposal 34/1998, which was passed by the parliament on 29 November 2000.

5. Pre-trial investigation and coercive measures in criminal proceedings

The investigation of an offence is governed by the Pre-Trial Investigation Act (1987/449) and the Coercive Means Act (1987/450), both of which came into force on 1 January 1989. The new statutes were adopted primarily in order to strengthen the legal safeguards of the suspect. The rights and obligations of suspects, victims, witnesses and others in pre-trial investigations are stated more explicitly in the new legislation.

The new Constitution of Finland entered into force on 1 March 2000. The Constitution guarantees a fair trial for *everybody* as laid down in law.[17] Also the victim or the injured party has this right to a fair trial, which means that the Finnish Constitution goes in some respects even further than the ECHR (which only regulates the defendant). Fairness of a trial extends beyond court proceedings and covers the proceedings as a whole, i.e. also the fairness of the pre-trial investigations.

General principles. The general principles of pre-trial investigation are laid out in sections 5 through 12 of the Pre-Trial Investigation Act. The purpose of the investigation is to clarify the offence, the circumstances in which it was committed, the identity of the parties concerned as well as the other factors necessary for deciding on the bringing of charges and for the criminal proceedings. The pre-trial investigation is to be carried out without undue delay so that, whenever possible, all of the evidence can be presented to court at the time that the court begins to hear the charges.

Presumption of innocence. Section 7 of the Pre-Trial Investigation Act states that everyone must be treated as innocent in pre-trial investigations (in accordance with section 6 paragraph 2 of the ECHR). A suspect or an accused has the right to remain silent, and he or she has no obligation to be active in any other way in order to establish his/her guilt, either. The police must investigate all cases objectively, i.e. they must take both incriminating facts as well as facts that are beneficial to the suspect into consideration. The suspect is to be treated in an appropriate and orderly fashion and no inappropriate or inhuman methods of inquiry are allowed. A party has also

[17] Section 21 of the Constitution.

the right to know the results of the investigations as soon as possible without compromising the investigations. The police must also carry out reasonable and grounded hearings and investigations as requested by the suspect.

Right to counsel. Before a suspect is questioned, he or she is to be informed of the offence in question and of his or her right to counsel during the investigation.[18] On the request of the person being questioned, a qualified witness shall be present during the questioning, unless this would delay and thus endanger the success of the investigation.[19] Both the suspect and the victim have the right to be present during the police questioning of other parties, unless there are special investigative reasons for excluding them.[20]

Coercive measures. The most important coercive measures in criminal procedure are **apprehension**, **arrest** and **remand in custody**. Other coercive measures include the interception of telecommunications (wire-tapping), the "metering" of telecommunications, "bugging" and technical visual surveillance, a prohibition against leaving a certain locality, a prohibition against losing an object, confiscation, bodily search and search of the premises.

Any person has the right to **apprehend** an offender caught in the act of an offence punishable by imprisonment. The offender is to be turned over immediately to the police.[21]

A policeman may apprehend a person for whom an arrest or remand warrant has been issued, or if the conditions for an arrest are present and the measure does not bear delay. Such a measure must be reported to an authority with powers of arrest, who shall decide within 24 hours whether the suspect shall be released or arrested.[22]

An authority with powers of arrest may **arrest** a person who is suspected with probable cause of an offence if the maximum sentence for the offence

[18] Section 29 of the Pre-Trial Investigation Act; cf. section 10.
[19] Section 30 of the Pre-Trial Investigation Act.
[20] Section 32 of the Pre-Trial Investigation Act.
[21] Chapter 1, section 1 of the Coercive Means Act. This right also exists in respect of certain petty offences.
[22] Chapter 1, section 2 of the Coercive Means Act.

in question is imprisonment for at least one year and in addition it is probable that the suspect shall (1) seek to escape or evade justice, (2) seek to tamper with the evidence or influence witnesses or other parties or (3) continue his or her criminal activity. Furthermore, if the minimum sentence is imprisonment for two years,[23] if the suspect refuses to identify himself or herself, or if he or she is not domiciled in Finland and it is probable that he or she shall seek to evade justice by leaving Finland, the suspect may be arrested even if the above conditions are not fulfilled.

Even if there is no probable cause, a person may be arrested if the other conditions noted above are fulfilled and the arrest of the suspect for further investigations is deemed very important. However, no one may be arrested if this would be unreasonable in view of the nature of the case or of the age or other personal circumstances of the suspect.[24]

The arrested person may not be held longer than necessary. If a person is suspected on probable grounds of having committed an offence, he or she may be **remanded in custody** under the above conditions.

Only the court may remand a suspect in custody. The request for remand must be presented to the court without delay, and in any case by noon on the third day from the date of apprehension.[25] The court must deal with the matter within four days of the apprehension of the suspect.[26] Postponement of the court hearings is possible for exceptional reason only, and no continuance for more than three days may be granted except on the request of the suspect.[27] Pending a criminal trial, a court must rule ex officio on the question of custody on remand every two weeks. There is no system of remand on bail in Finland.

Wire-tapping and other new technical means. Chapter 5a of the Coercive Means Act, as amended by Act 1995/402, regulates the interception of tele-

[23] Few offences carry a minimum sentence of one year. Examples include treason, certain offences against humanity, sabotage of air traffic, skyjacking, certain forms of arson, murder, manslaughter, aggravated counterfeiting, and aggravated sexual offences against a child.
[24] Chapter 1, section 3 of the Coercive Means Act.
[25] Chapter 1, section 13 of the Coercive Means Act, as amended by Act 1990/361.
[26] Chapter 1, section 14 of the Coercive Means Act, as amended by Act 1990/361.
[27] Chapter 1, section 17 of the Coercive Means Act.

communications, the "metering" of telecommunications and the use of technical devices for listening to private discussions ("bugging"), exercising visual surveillance, or tracing the movements of a vehicle or goods. Wiretapping can be permitted only in the investigation of certain serious offences, such as treason and high treason, homicide, the taking of hostages, aggravated robbery, professional concealment of unlawfully obtained property (including money laundering), skyjacking, aggravated counterfeiting and aggravated drug offences.[28] "Metering" of telecommunications can be permitted in the investigation of an offence for which the maximum punishment is at least four months or of a computer crime or a drug offence. "Bugging" is permitted only for investigation of an offence for which the maximum penalty is at least four years of imprisonment, and for drug offences. Bugging can take place in public places and other places/rooms, except for those used for permanent living. It is further required that the expected evidence is assumed to be of very particular importance for the clarification of an offence mentioned above. Technical visual surveillance can be permitted under the same circumstances if the person in question is suspected of an offence for which the minimum punishment is more than six months.

Since the original acceptance of these new measures, police powers for covert intelligence in the Coercive Measures Act have been widened. Therefore, a technical devise for covert listening and recording and/or visual surveillance can now be placed in a prison cell or elsewhere in a prison building. It is also possible to bug a vehicle or a room/space, that is not used as a permanent domicile.[29]

The decision on wire-tapping and the "metering" of telecommunications is made by the court. The court decision is valid for at most one month. However, a new application by the police is permitted. The decision on "bug-

[28] Current legislation permits only metering of specific telephone connections or lines. Due to the rapid growth of the number of so-called pre-payed mobile phone cards in 1999-2000, it has become more and more problematical for the police to acquire accurate information about all of the telephone lines that the suspects are using fast enough. Therefore, in addition to monitoring certain telephone connections, telephone metering can also be used to monitor a specific telephone-devise, normally a mobile phone. This, however, is possible only in preventive aims and not in criminal investigations.

[29] Chapter 5a, section 4, paragraphs 3-4 of the Coercive Measures Act.

ging", technical visual surveillance and the technical tracing of a vehicle or goods is made by the head of the investigation, and the decision is submitted within 24 hours for the confirmation of a senior police or customs official. However, when a technical devise for listening or watching is supposed to be placed in a room or inside a prison building, the decision for the coercive measure must be made by a court of law. In all cases, the decision is valid for at most one month.

According to a specific provision on proportionality, the coercive measures in criminal proceedings can be used only if this is justifiable in view of the seriousness of the offence in question, the need to clarify the offence, the degree to which the measure violates the rights of the suspect or of other persons, and the other relevant circumstances.[30]

Under cover agent and agent infiltré: Until recently, there were no provisions governing the use of so called under cover agents or fake propositions to buy illegal substances or stolen goods. The parliament reformed the Police Act on 29 November 2000 enabling the use of so called "evidence provocation" (for example, when the police asks a drug user to buy narcotics from a drug dealer in order to reveal his or her identity and to apprehend this person and to confiscate narcotics before they are sold further). Before this law reform such actions by the police have been ruled as unlawful by the Supreme Court.[31] According to the new provisions, the police can use these methods both in criminal investigation and also in crime prevention. Under cover agents can only be used in investigations concerning very serious crimes, which are enumerated exhaustively. Fake-transactions can be used to prevent or to investigate a crime with a maximum penalty of at least two years imprisonment. Fake-transactions can also be used to find and to retrieve stolen or otherwise illegally held property in connection and as a result of a crime mentioned above, or benefits from such crimes. It is always prohibited to use these new, unconventional methods, if it would result in instigating a new crime.

Further measures and the closing of a case. If no offence has been committed or no one can be prosecuted for the offence, the file is closed. Furthermore, the police may waive further measures or simply caution the of-

[30] Chapter 7, section 1a of the Coercive Means Act.
[31] Supreme Court ruling 2000:112.

fender if the offence as a whole is deemed to be manifestly petty, and the offence would be punishable only by a fine.[32] If the case involves an injured party, a further condition for waiving measures or simply cautioning the offender is that the victim does not present any claims. In all other cases, once the investigation has been concluded, the file is turned over to the prosecutor.[33]

In practice, however, the police can impose fines, in the form of summary penal judgments. According to the Summary Penal Judgment Act (1993/692), a simplified penal procedure can be applied to acts which, under the circumstances, would be punishable by at most a fine or imprisonment for six months, or which constitutes a violation solely of a police or municipal ordinance. In such cases the authority investigating the offence (generally the police, but also for example a customs official) imposes a day-fine on the alleged offender in the form of a "penal order". This penal order is then affirmed by a prosecutor. However, the alleged offender can bring the matter to court within a week, in which case the normal criminal procedure shall be followed.

6. Victim-offender reconciliation and prosecution

Victim-offender reconciliation. The purpose of victim-offender reconciliation is to seek alternatives to the conflicts on which crimes and civil suits are often based, and to offer a simple way of solving these conflicts outside of the court system. The emphasis is on the acceptance of personal responsibility for the act and the harm caused, and the offender and victim seek to find a mutually satisfactory resolution.

The first reconciliation programme in Finland was initiated in the city of Vantaa in the Helsinki metropolitan area in 1983. From there, it has gradually expanded to over 175 cities and other municipalities. During 1995, a total of some 3,000 conflicts involving 4,600 suspected offenders were submitted to the various reconciliation programmes. At present, Finland has

[32] Section 2 of the Pre-Trial Investigation Act.
[33] Section 43 of the Pre-Trial Investigation Act.

some 1,200 voluntary mediators, most of whom have received some training, and about 75 % of the Finnish population have a chance to engage in mediation.

Generally, the local programme is managed by the municipal social welfare office, although in some municipalities, the work is carried out by an independent organization. The initiative for submitting cases to reconciliation generally comes from the police or other authorities. However, the consent of all parties is required before going to reconciliation. Most cases that come for reconciliation are thefts, petty thefts, assaults and incidents of damage to property.

The victim-offender reconciliation programmes have received a recognized legal status (trough an amendment of 1996/1059), because a reconciliation may influence the decision of the prosecutor to waive further measures, or the decision of the court to waive the punishment.

Organization of prosecution. The public prosecutors in the lower courts of general jurisdiction are the district prosecutors, i.e. prosecutors who are working in the prosecution departments of the state local districts (totally 90 in the whole country). A separate office for the Prosecutor-General was established on 1 December 1997, abolishing the role of the Chancellor of Justice as the supreme prosecutor in Finland. The Finnish Constitution states that the Prosecutor-General is the head of all prosecutors.[34] The Prosecutor-General has a deputy and a number of state prosecutors for dealing with the most difficult cases in the whole country. The Public Prosecutors Act (199/1997) states that all public prosecutors decide independently about charges. The District Prosecutor Act (195/1996) states that public prosecutors have jurisdiction only within a certain state local district. They have the general competence to prosecute and act in all kinds of criminal charges in local district courts.

Public prosecution and complainant offences. From the point of view of prosecution, offences are divided into those that are subject to public prosecution and those where prosecution is possible only on the request of the victim (so-called "complainant offences").[35] The complainant offences are

[34] Chapter IX, section 104 of the Constitution.
[35] Chapter 1, sections 2 and 16 of the Code of Criminal Procedure.

generally petty offences where there is little public interest in prosecution, and only the victim is in a position to know if his or her interests have been violated (e.g., defamation and trespassing). However, also certain more serious offences may be prosecuted only if the victim requests this (for example, some sexual and violent offences).

The waiving of measures. If the legal conditions for prosecution exist, the prosecutor must prosecute for offences that come to his or her attention. However, the prosecutor may waive prosecution on the grounds of the pettiness of the offence, equity, or procedural economy.[36] The prosecutor also has the option of cautioning the offender.

More specifically, the prosecutor may waive charges on the following grounds:

- *pettiness*: if the expected sanction would be at most a fine and the offence is deemed petty as a whole. If the offender was under 18 years at the time, prosecution can even be waived if the expected sanction is up to imprisonment for six months, and the offence is deemed to have been due to lack of understanding or heedlessness, and not to blatant disregard of the law. It is notable that the scope of this provision is not restricted to offences carrying a certain maximum *in abstracto*; instead, the reference is to the expected punishment *in concreto*.
- *equity*: if trial and punishment are deemed unreasonable or inappropriate in view of the attempts of the offender to prevent or eliminate the consequences of the offence (for example, reconciliation), of his or her personal circumstances, of the other consequences of the offence to the offender, of social welfare and health care measures instituted, or of other factors.
- *procedural economy*: if, due to the provisions on the cumulation of offences, the individual offence would not essentially affect the over-all punishment.

Should the prosecutor decide to waive measures, the victim must be notified of this decision. As noted below, the victim then has the right to prosecute for the offence him- or herself.

[36] Chapter 1, sections 7 and 8 of the Code of Criminal Procedure.

7. The court system and court proceedings

The ground for the organisation of an independent court system is laid down in the Chapter I, section 3 and in the Chapter IX of the Constitution of Finland. The court procedure for criminal trials was based solely on the Code of Judicial Procedure till 1 October 1997, when the Code of Criminal Procedure (1997/689) entered into force. The Code of Judicial Procedure is still relevant for both civil- and criminal trials, but the crux of criminal procedural provisions are now in the new Code. The Code of Criminal Procedure changed the position of the judge as well as that of the public prosecutor quite radically. The new criminal procedure is mainly accusatorial in its nature, which means that the public prosecutor (as a party) bears the burden of proof and he/she has the responsibility to prove the defendant's guilt beyond reasonable doubt. The court remains relatively passive through the whole proceedings, although it is naturally the court's duty to clear possible ambiguities and "fill in gaps" in the trial material.

The criminal procedure is based on the principles of concentration of the proceedings, oral hearings and the principle of immediacy. Postponement of the proceedings is possible only due to a very important reason mentioned in the Code. All evidence must be presented in the trial orally and the opposing party has the right to cross-examine all evidence presented against him/her as guaranteed in the ECHR article 6. The principle of immediacy means that it is no longer possible to substitute witness hearings by reading of police reports (which was the main rule before the reform). The police file can be read out only, if it is no longer possible to hear the witness in court (e.g., because of his/her death or severe illness), or if the witness will not say anything or if the witnesses narrative differs from what he/she has previously told to the police.[37]

Charges for an offence can be brought either by the public prosecutor (as noted above) or the injured party (victim). The right of the injured party to prosecute extends to all categories of offences. This right was restricted in

[37] Chapter 17, section 11 of the Code of Judicial Procedure and Chapter 17, section 32, paragraph 2 of the Code of Judicial Procedure.

the procedural reform so that the injured party no longer has an independent right to prosecute. The injured party can now bring a charge for both a public prosecution offence as well as for a complainant offence first after a public prosecutor has decided not to bring charges.[38]

Structure of the court system. The court system in Finland is arranged in three tiers. The court of first instance for all offences (with the minor exception of, inter alia, offences committed by senior government officials) is the local court. Appeals are heard by the six courts of appeal. The highest level is the Supreme Court, to which appeals can go only if the Supreme Court grants leave of appeal.

The normal composition of the local court is one legally trained judge and three lay judges. If called for by the complexity of the matter or other special reasons, the composition may be supplemented by a second legally trained judge and a fourth lay judge.[39]

Simple criminal cases may also be dealt with in the local court by one legally trained judge sitting alone if the maximum punishment for the offence in question, under the circumstances, is a fine or imprisonment for eighteen months. Should the case be dealt with in this way, the judge can impose at most a fine.[40]

Military offences. Also military offences, which are covered by chapter 45 of the Criminal Code, are dealt with by the ordinary courts. According to the Military Court Act (1983/326), military offences are heard by a legally trained judge and two military judges. A special military lawyer serves as the prosecutor. In other respects, ordinary criminal procedure is followed in military cases.

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[38] However, everybody has the right to prosecute (independently of any decision by the public prosecution) a government official, who has breached his/her rights or caused him/her damage by an action or a neglect of official duties (Chapter X, section 118, paragraph 3 of the Constitution of Finland, see also Chapter 1, section 14, paragraph 1 of the Code of Criminal Procedure).

[39] Chapter 2 (as amended by the Act of 1991/1052), sections 1 and 2 of the Code of Judicial Procedure.

[40] Chapter 2, section 6 of the Code of Judicial Procedure.

Jurisdiction. Criminal proceedings are normally held before the local court with general jurisdiction over the place where the offence was committed. If a series of offences was committed, all of them can be considered by one and the same court.[41]

Initiation of proceedings. A process is initiated when a written application for summons is delivered (by the prosecution or an injured party) to the court.[42] The main trial does not start by the accused being remanded in custody (on the basis of the Coercive Means Act).[43] The application for summons must include detailed information about the defendant, the alleged offence and prosecutor's demands, both penal and civil. It must also be specified in the application for summons, which evidence is going to be put forward in the trial, as well as what is intended to be proven by each piece of evidence. The court then controls whether the application for summons is complete, and may ask the applicant (public prosecutor or injured party) for further information that is required. The court may also notify the public prosecutor of any lack in the investigation, which would result into postponements of the trial, and order the prosecution to attend to further investigations. It is not a task (or even permitted) for the court, however, to gather evidence against the defendant. At this stage, the court must only see to that the required elements for a fair and concentrated proceedings are being met, before issuing a summons.

A summons is served normally by the court, although this task can be entrusted to the prosecution, too. In the case of a complainant offence, the summons may also be given by the victim of the alleged offence. In a summons, the defendant is asked to reply in written (or orally) to the demands presented in the application for summons, i.e. to present grounds for denial and supporting evidence for defence's own claims. As a rule, both the defendant and the injured party are required to attend to the trial in person. A defendant may be sentenced to a maximum 3 months imprisonment or fines in his/her absence, if the defendant's attendance is not needed for a court

[41] Chapter 4 of the Code of Criminal Procedure.
[42] Chapter 5, section 1, paragraph 2 of the Code of Criminal Procedure.
[43] Regarding remand in custody, see section 5, above.

ruling and the defendant has been informed of this possibility in a summons.[44]

Parties to the proceedings. In the criminal proceedings, the public prosecutor, the victim (if the alleged offence has a victim) and the defendant are all parties.[45] The case normally begins with the court noting the presence of the parties. After this, the public prosecutor and the victim are invited to present their claims. The defendant then has the opportunity to respond to the claims, both penal and civil.[46]

All of the parties have the right to introduce evidence, either in the form of physical evidence or by witnesses and expert witnesses. A person called to testify as a witness may not refuse to do so unless he or she is a close relative of one of the parties. If the person summoned as a witness is below the age of fifteen or may be mentally unfit, the court must decide whether or not he or she should be required to serve as a witness. Even if called as a witness, certain persons (civil servants, medical personnel, legal counsel and priests) have the obligation to refuse to testify on certain matters. Anyone may refuse to give evidence that may incriminate the witness him- or herself, or a close relative of the witness. The court may not require that professional or commercial secrets be revealed unless there are particularly important reasons for this.[47]

The presentation of evidence. The prosecutor has the burden of proof in demonstrating the guilt of the defendant beyond reasonable doubt. There is no exclusionary rule doctrine that would require the court to disregard certain types of evidence. Rules entitling and/or obligating a witness to avoid giving a witness narrative or answering to a question must be followed, nevertheless. As mentioned earlier, the use of police files is also prohibited as

[44] Chapter 8, sections 11 and 12 of the Code of Criminal Procedure. With an explicit consent of the defendant, it is also possible to impose a maximum sentence of six months of imprisonment.
[45] If the criminal charges have been brought by the alleged victim according to Chapter 1, section 14, paragraph 1 of the Code of Criminal Procedure, the public prosecutor must be present if the offence is subject to public prosecution. If the crime is a complainant offence, the presence of the public prosecutor is not mandatory.
[46] Chapter 6, section 7 of the Code of Criminal Procedure.
[47] Chapter 17, sections 20 through 25 of the Code of Judicial Procedure.

evidence. The court may also exclude pieces of evidence that have been obtained violating defendant's fundamental or human rights (such as torture or other degrading method).[48] However, as a general rule, the court is simply required to weigh everything that has been revealed in the case in order to "decide what is to be deemed the truth in the matter".[49] In cases of doubt, the defendant is to be acquitted in accordance with the *favor defensionis* principle.

Order of proceedings and examination of witnesses. The chairperson of the court is charged with ensuring that the case is dealt with in a clear and logical manner. Witnesses are no longer examined by the judge, which task is now entrusted to the parties. Examination-in-chief is done by the party that has called the witness. The witness must be given a chance to free a narrative, which, however, does not exclude complementary, necessary questions. After the examination-in-chief, the opposing party may cross-examine the witness - at this stage also leading questions are allowed in order to establish the veracity of the witness and/or the reliability of the witness statement. There is also a possibility of re-examination. The judge is entitled to ask supplementary questions to each person that is heard in court. However, it is essential that the judge remains neutral and does not give raise to suspicions, that he or she tries to establish the guilt of the defendant. Also other person involved in the proceedings are examined *mutatis mutandis* in a similar fashion, i.e. the injured party, expert witnesses and also the defendant. It is possible to arrange examinations in some other order, too, if the court so decides (this, however, takes place quite seldom). Oral statements are recorded but they are not entered into the records.

[48] The new police powers, especially telephone wiring, have raised some issues regarding exclusion of evidence. For example, covert listening is not allowed in telephone communications between the accused/defendant and his/her lawyer or priest. If such evidence were to be put forward in a trial, the court would have to exclude it (however, there is no consensus or clear doctrine about the subject).

[49] Chapter 17, section 2 of the Code of Judicial Procedure.

8. Legal counsel

Right to counsel. Both the defendant and the victim have the right to legal counsel. On the other hand, they do not normally have the obligation to be represented by counsel: they can, if they so choose, decide to present their case themselves. However, the court must appoint a public legal counsel for the defendant in certain cases, namely if the defendant is not capable of defending him- or herself, the defendant is less than 18 years old, the legal counsel of the defendant's choice can not appropriately defend his/her client, or if there are some other weighty reasons. The court must also appoint a legal counsel on his or her application, if the crime in question is punishable by no less than four months of imprisonment or if the defendant is arrested or remanded in custody.[50] Finland has a system of state legal aid that covers all of the country.[51] Public legal aid includes totally or partially free (depending on the wealth and the income of the applicant) juridical counselling before and during the trial. The defendant, for example, may be entitled to free legal counsel during the police investigations and during the trial.

If a party to a case cannot afford the services of a legal counsel, he or she can request cost-free proceedings.[52] This right also extends to foreign citizens. The right relieves the party of the obligation to pay court costs and the expenses of counsel appointed on the basis of this Act. Cost-free proceedings will not be granted if the case is of little significance to the party.[53] The benefit of cost-free proceedings extends to the police investigation of an offence regardless of whether or not the case is brought to court.[54]

If the recipient of the benefit of cost-free proceedings is not able to defend his or her interests and rights in the case in an appropriate manner, the court

[50] Chapter 2, section 1, paragraphs 2 and 3 of the Code of Criminal Procedure.
[51] Public Legal Aid Act 1998/104 entered into force 1 June 1998 (previously municipal legal aid; 1973/88). It is also possible to be granted court appointed legal counsel by virtue of the Cost-Free Proceedings Act 1973/87. These two systems are in practice identical; they are mutually exclusive, so that only one of the two systems may be utilised in any one case.
52 Section 1 of the Cost-Free Proceedings Act 1973/87; Section 1 of the Public Legal Aid Act.
[53] Section 2 of the Cost-Free Proceedings Act; Section 5 of the Public Legal Aid Act.
[54] Section 1 of the Cost-Free Proceedings Act, as amended 1988/1125.

must appoint legal counsel for him or her. Counsel will not be appointed for a defendant in simple criminal cases where the expected punishment is a fine or where otherwise, in view of the expected punishment and the degree to which the matter has been clarified, due process for the defendant does not require this.[55]

If the court appoints counsel, this person must be a member of the Bar Association or another competent person. If the defendant is remanded in custody, or he or she is under eighteen and the offence may lead to imprisonment, the counsel must normally be an advocate, i.e. a member of the Bar Association.[56]

The Bar Association of Finland is subject to special supervision by the Chancellor of Justice. A legally trained person may become a member of the Bar Association only if the applicant is considered to be honest and otherwise competent to serve as an advocate, has full legal capacity, and has obtained a certain amount of practical experience.[57]

9. The position of the victim

The legal position of the victim of crime has traditionally been very strong in Finland, and the new criminal procedure has made this position even stronger in some respects. The position of the injured party has become somewhat weaker in some aspects, too. The injured party can bring a charge first after a public prosecutor has decided not to bring charges. However, the injured party may take over the function of the prosecutor, if the latter decides to withdraw charges during a trial. The public prosecutor is obliged to present the possible civil claims of the victim on behalf of the injured party. So, the victim has always the right, in criminal proceedings, to present civil demands on the basis of the offence[58], but his or her right to present penal demands has been reduced. The injured party may also get legal counsel for pre-trial investigations as well as for court proceedings in cases concerning

[55] Section 10 of the Cost-Free Proceedings Act; Section 8 of the Public Legal Aid Act.
[56] Section 11 of the Cost-Free Proceedings Act; Section 6 of the Public Legal Aid Act.
[57] Sections 6 and 10 of the Advocates Act 1958/496.
[58] Chapter 3 of the Code of Criminal Procedure.

certain violent or sexual crimes, if the injured party wishes to present his or her own demands at trial besides the public prosecutor. The counsel must be a member of the Bar Association or, in special cases, another person with a legal degree. If the victim of a sexual of violent offence has no demands or claims, but it is still necessary to hear him or her in evidence, the court may appoint a special assistant with a suitable training to the task to support the victim in pre-trial investigations and/or the trial.

In most cases, criminal charges are presented by the public prosecutor. This is also the case in respect of the so-called complainant offences, for which charges cannot be brought without the request of the victim. If the complainant requests prosecution for a complainant offence, the public prosecutor is obliged to bring charges unless the evidence in support of prosecution is so slight that the prosecution would not be based on probable cause.[59]

State compensation. In many cases, the offender is not apprehended or, if brought to justice, is not always able to pay compensation to the victim. Although all citizens can receive social security, and the majority of householders are covered by comprehensive insurance policies, these do not necessarily cover the full loss caused by the offence. Finland, as one of the first countries in Europe, adopted a Victim Compensation Act (1973/935), according to which victims of crime have the right to receive compensation from the State.

The Finnish Victim Compensation Act is one of the most comprehensive in the world. It covers all personal injuries arising from any offence. Persons suffering from such personal injury have the right to compensation for medical expenses and other related expenses, disability, loss of maintenance, and any articles of clothing or, e.g., glasses damaged in connection with the injury. The employer of an injured person has the right to compensation for any wages paid to the victim while he or she is disabled.

Property damage caused by an institutionalized person, as well as property damage that imposes exceptional hardship on the victim, are also covered by the Act.

[59] Chapter 1, section 2 of the Code of Criminal Procedure.

The Victim Compensation Act covers loss resulting from a crime committed in Finland regardless of the nationality of the victim or offender, unless there is only a slight connection between the loss and Finland. If the victim is domiciled in Finland, the Act also covers personal injury suffered from a crime committed abroad.

Absence of victim assistance offices. Finland does not, at present, have State or municipal victim assistance offices such as are to be found in some other European countries. (However, many organizations such as the Red Cross, church organizations and women's rights organizations do provide some services for victims.) Although victims have the same right as any other citizens to the general health and mental health care services, and to municipal legal aid and cost-free legal proceedings based on need, the absence of government support for special victim services is a cause of concern.

10. Appeal

Right of appeal. The defendant, the prosecutor and the victim each have an independent right to appeal the decision of the court. The appeal may pertain to all or part of the grounds of the decision or the sentence. Appellate courts review the lower court’s ruling both for factual and legal grounds.

The law on the procedure in the court of appeal was reformed on 1 May 1998. The procedure for appellate courts underwent a total reform due to the adaptation of principles of oral hearing, concentration and immediacy. Now, the court of appeal must order an oral hearing, if the outcome of the case depends on the credibility of oral evidence, that was presented in a lower court. The defendant has a wide-ranging right to oral hearing also in other cases, when he or she so applies. In oral hearings, all evidence must be presented for a second time directly to the appellate court in stead of just making a reference to previous documents. The reform enabled Finland to remove the reservation concerning the right to an oral hearing before, i.a., court of appeal, it made when the European Convention on Human Rights was ratified.

There are six courts of appeal, the decisions of which are subject to appeal to the Supreme Court only if this Court grants leave of appeal.

Remanding the convicted defendant and enforcing the sentence despite appeal. If the convicted defendant is sentenced to (unsuspended) imprisonment, the court may order that he or she be remanded or, if already remanded, continue to be held in remand. This is possible if the sentence is imprisonment for at least two years or, if the sentence is at least one year, it is furthermore probable that the convicted defendant will escape, avoid enforcement, or continue his or her criminal activity. A remand order is possible also for shorter sentences if (a) the convicted defendant is not resident in Finland and it is probable that he or she will leave the country in order to avoid enforcement, or (b) the convicted defendant has been sentenced to imprisonment for several offences committed at short intervals and the remand is necessary in order to prevent the continuation of criminal activity of a similar degree of seriousness.[60]

If the convicted defendant is in remand and decides not to appeal the sentence of imprisonment, enforcement of the sentence may be initiated with his or her consent even if the decision has been appealed in other respects.[61]

Precedents. Precedents are not binding sources of law in the Finnish legal system. However, the Supreme Court does have a significant role *de facto* in guiding the application of law. This role became more important in 1980, when appeals from the courts of appeal to the Supreme Court were restricted. The role of Supreme Court precedents is also made more important by the practice of publishing brief descriptions of the most important decisions of the Supreme Court. These are published not only in the annual report of the Supreme Court, but also commented in some of the leading law reviews. They are also available in an electronic format through the FINLEX data bank and in the internet.

[60] Chapter 1, section 26 of the Coercive Means Act.
[61] Chapter 2, section 1 of the Enforcement of Sentences Act.

11. Sentencing and the system of sanctions

Uniformity of sentencing. Sentencing in Finland is relatively uniform, in accordance with the principle of **predictability**.[62] The uniformity of sentencing has been further enhanced by the adoption of specific **statutory sentencing principles**.[63] These principles state, inter alia, that the courts must consider the uniformity of sentencing. The sentence must be in just proportion to the dangerousness and harmfulness of the offence as well as to the guilt of the offender manifested in the offence. The sentencing principles set out specific aggravating and mitigating factors. The mitigating factors are stated in a more flexible and open form than the aggravating factors, thus allowing the courts greater discretion in reducing the severity of the punishment.

Waiving of punishment. The court may waive punishment if[64]

> 1) the offence, when assessed as a whole, considering its harmfulness and the degree of culpability of the offender indicated by it, is to be deemed of minor significance;
> 2) the offence is to be deemed excusable because of special reasons concerning the act or the offender;
> 3) punishment is to be deemed unreasonable or pointless, considering the victim-offender reconciliation or the action taken be the offender to prevent or eliminate the effects of the offence, or to further its being cleared up, his or her personal circumstances, the other consequences that he or she incurs because of the offence, social welfare and health measures; or
> 4) as a consequence of the provisions on the concurrence of offences, the offence would not essentially affect the total sentence.

A special provision on the waiving of prosecution and punishment for offences related to the use of narcotics is found in chapter 50, section 7 of the Criminal Code. Such measures may be waived if the offender demonstrates

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[62] In practice, this principle holds that it must be possible for a knowledgeable person to state, within reasonable limits, what the probable sentence would be for a specific offence.
[63] Chapter 6 of the Criminal Code, adopted 1976/466.
[64] Chapter 3, section 5 of the Criminal Code, as amended by the Acts of 23 March 1990 (1990/302) and 12 December 1996 (1996/1060).

that he or she has agreed to treatment approved by the Ministry of Social Affairs and Health.

Selection of punishment. The only general forms of punishment in Finland are the **summary penal fee**, **fine**, **community service** and **imprisonment**.

The **summary penal fee** ("petty fine") was adopted in 1983; the revised provisions were given in 1999.[65] If the offender defaults on payment of a summary penal fee, the fine may not be converted into imprisonment. So far, petty fines are used only for minor traffic offences and for littering.

Finland adopted the **day-fine** system in 1921, as the first Nordic country to do so.[66] Accordinly, a fine shall be passed by day-fines (from 1 to 120). The size of the sum depends on the monthly income and assets of the offender. The amount of a day-fine shall be set so that it is reasonable in view to the solvency of the person fined. One sixtieth of the average monthly income of the person fined, less the taxes and fees defined by a Decree and a fixed deduction for basis comsumption. If the offender has difficulty in paying the day-fine, the period of payment may be extended or the offender may be allowed to pay in instalments.[67] If the offender persists in defaulting on payment, the day-fine may be converted into imprisonment at the rate of one day of imprisonment for two day-fines. The converted imprisonment is at least four and at most ninety days. The law also allows for mitigation or waiver of the converted sentence on special grounds.[68]

Community service entered the Finnish legal system through the Act of 14 December 1990 (1990/1105). This Act called for an experimental period of three years (1 January 1991 - 31 December 1993), during which the sanction would be tested in 12 rural districts and six cities. The experiment was subsequently expanded, and the Act of 25 March 1994 (1994/227) ultimately extended it to all Finnish courts, for an experimental period ending 31 De-

[65] Petty Fine Act 1983/66 and Chapter 2a, sections 8-11 of the Criminal Code (as amended 550/1999).
[66] See Chapter 2a, sections 1-7 of the Criminal Code (as amended 1999/550).
[67] Chapter 6, sections 3 and 4 of the Enforcement of Sentences Act (as amended 1977/595).
[68] Chapter 2, section 5 of the Criminal Code.

cember 1996. The Act of 12 December 1996 (1996/1055) established this sanction permanently.

Community service is specified by section 1 of 1996/1055 as “a punishment in place of unconditional imprisonment. It consists of at least 20 and at most 200 hours' regular, unpaid work under supervision”. At most five hours can served by using health care services for abusers of intoxicants. Community service can replace sentences of up to eight months (section 3). Imposition of community service requires the consent of the offender as well as the assumption that he or she would complete successfully the sentence.

The enforcement and supervision of community service is under the responsibility of the Probation and After-Care Administration.[69] It can issue a warning to an offender who is not fulfilling the conditions of the community service, and must inform the public prosecutor if the violation of the conditions is serious. The public prosecutor, in turn, can request that the court converts the sentence to imprisonment.

It has been evaluated that, within a short period of time, community service has proven to be an important alternative to imprisonment. In 1998, the average daily number of offenders serving a community service order was about 1.800, while the corresponding prison rate was 2.800. The major part of this sanction has been imposed for drunken driving.

The general minimum period of **imprisonment** is fourteen days. The general maximum is twelve years or, when combining sentences, fifteen years. Certain most serious crimes, primarily murder, are punishable by life imprisonment.[70] Capital punishment cannot be imposed in Finland. Capital punishment has not been applied in practice in times of peace for over 150 years. In 1972, it was prohibited even in times of war.[71]

In most cases sentences of imprisonment are of fixed length. The court establishes this length within the specific minimum and maximum sentence

[69]See Acts 2001/135 and 138, which come into force on 1 August 2001. The Probation and After-Care Administration under the Department for Punishment Enforcement of the Ministry of Justice replaces the role of the Finnish Association for Probation and After-Care.
[70]Chapter 2, section 2 of the Criminal Code.
[71] Act 1972/343 on the Abolition of Capital Punishment from the System of Sanctions.

set by the penal provision for the offence in question. Sentences of up to two years can be set **conditionally** ("suspended sentence"). A subsidiary fine can be attached to conditional imprisonment. The period of suspension is from one to three years. If the offender commits a new offence during this period for which he or she is sentenced to imprisonment, the court may order that also the suspended sentence is to be enforced in full or in part.[72] In practice, some two thirds of all sentences of imprisonment are suspended.

Special provisions on young offenders.[73] As noted earlier, persons who were under 18 years at the time of the offence can not be sentenced to imprisonment unless there is a weighty reason for this.[74] Before the reform, the daily prison population had included some 20 15-to-17 years olds and somewhat over 200 prisoners below 21 years. On 1 May 1999, the number of prisoners between 15 and 17 years was three, and the number of prisoners between 18 and 20 was 61.

Through the Act of 12 December 1996 (1996/1058) a new sanction called **juvenile punishment** was introduced, and it is applicable for an experimental period of five years (1 February 1997 - 31 December 2001) in seven district courts. This punishment may be imposed to an offender who was under 18 years at the time of the offence under the condition that fine is to be deemed insufficient, when the seriousness of the offence and the other circumstances connected with the offence are taken into account, and unconditional sentencing is not necessacy. Juvenile punishment consists of so-called juvenile service (at least 10 and at most 60 hours) and of supervision. The sanction can be regarded as a modification of community service.

Special sanctions for civil servants. Civil servants are subject to special penal provisions and certain special punishments.[75] The sanctions for civil servants include the general sanctions of a fine or imprisonment, and the special sanctions of a caution and dismissal from office (chapter 2, section 2 of

[72] Conditional Sentence Act 1976/135.
[73] Regarding juvenile prison, see section 12, below.
[74] Section 1 of the Conditional Sentences Act (1976/135), as amended by the Act of 17 November 1989/992.
[75] Chapter 40 of the Criminal Code; amended by the Act of 8 September 1989/792.

the Criminal Code). Suspension from office can not be used as a penal sanction, although it is possible as a disciplinary sanction.

Civil servants are defined on the basis of their position and of the type of functions for which they are responsible; ultimately, whether or not a person "exercises public power" decides his or her status as a civil servant under criminal law. Chapter 2, section 12 expressly defines an "official" to include not only civil servants working for the State, a municipality, one of the two State Churches or some other public institution, but also (1) members of e.g. municipal councils and other elected representatives of the public (not, however, members of Parliament), (2) (with some exceptions) any person who exercises public power on the basis of law and (3) a person who otherwise on said basis exercises public power other than in a corporation. However, according to section 10, the provisions on removal from office do not apply to elected representatives of the public.

Chapter 2, section 7 of the Criminal Code defines the scope of removal from office to be the loss of the office or public function in which the offence was committed or, if the official has transferred to another and comparable public office, the loss of this latter office.

Special sanctions for military personnel. Military personnel are subject to military discipline. Disciplinary punishment imposed in a disciplinary matter is subject to appeal to court.[76] The lesser punishments (confinement to barracks, extra duty and a caution) are not subject to appeal to an ordinary court.

Sentencing for more than one offence. In many cases, an offender is found guilty of more than one offence. In such a case, one joint sentence is to be set, regardless of whether these offences were committed in one or in separate acts. The minimum joint sentence is the highest minimum of all the offences for which sentence is to be passed.[77] The maximum cannot be more than the combined maximums of the different offences, and at most fifteen years (or, in the case of murder, life imprisonment). Furthermore, the most severe maximum may not be exceeded by more than:

[76] Section 34 of the Military Discipline Act, as amended by the Act of 27 April 1990 (1990/374).
[77] Chapter 7 of the Criminal Code, as amended 1991/697.

1) one year, if the most severe maximum sentence is imprisonment for less than one year and six months;
2) two years, if the most severe maximum sentence is imprisonment for at least one year and six months but less than four years; and
3) three years, if the most severe maximum sentence is at least four years.

If fines are to be joined, the maximum is 240 day-fines.

12. The prison system

Those sentenced to imprisonment, imprisoned for the nonpayment of fines or held in remand custody are executed under the responsibility of the Department for Punishment Enforcement of the Ministry of Justice.[78] The prison administration covers closed and open prisons, the Prison Mental Hospital and the Prison Personnel Training Centre.

Types of prisons. There are two types of prisons, **closed prisons** and **open institutions**. The open institutions, which hold about one fourth of the present (1999) prison population, are permanently located open prisons, open units connected with closed prisons, open colonies and one training centre. The regime in open institutions is more relaxed. In addition, the prisoners in open institutions are paid wages that are comparable to those in civilian life; from these wages, they pay taxes and maintenance allowance for their wife or husband and children as well as for their board and lodging.

The closed prisons are primarily either central prisons or provincial prisons. In addition, there is one juvenile prison. The **central prisons** are primarily intended for prisoners serving a sentence while the **provincial prisons** are intended for suspects remanded for trial. In 1999, the average number of prisoners was 2,743 (65 per 100,000 inhabitants over 15 years). There were 132 female prisoners and 151 foreign prisoners at the end of 1999. The av-

[78] The administration of prison, probation and parole services is regulated by a new Act of 2001/135, which comes into force on 1 August 2001. The new bureau is called Department for Punishment Enforcement and is divided into Prison Administration and Probation and After-Care Administration.

erage number of remand prisoners during 1999 was 354 and the number of persons in prison for unpaid fines 102.

The **juvenile prison** is based on the Young Offenders Act (1940/262), which was adopted during the period when individualization of punishment was emphasized, in particular for juveniles. If a juvenile offender (defined as a person below the age of twenty-one years at the time of the offence) is sentenced for one or more offences to imprisonment, a special body called the Prison Board determines whether he or she shall be sent to an ordinary prison or to juvenile prison. Since release on parole is possible at an earlier stage in juvenile prison (after one third of the sentence has been served, as opposed to after one half in other prisons), the preference is for placement in the juvenile prison.

Remand imprisonment (pre-trial custody). As long as the prisoner is in remand prison, his or her liberty may be limited only to the extent required by the purpose of the custody, the security of confinement in prison and the maintenance of order. Consequently, for example, the remand prisoner is not required to work, study or take part in other activities in prison.[79]

Basic principles regarding enforcement. The conditions of prisoners serving a sentence should be arranged so that they correspond as much as possible to living conditions in society in general, and the sentence should be carried out so that the punishment only entails the loss of liberty.[80] Although restrictions may be made to the extent required by the security of custody and the maintenance of order, the sentence should be enforced so that it does not needlessly hinder, but instead promotes, the placement of the prisoner in society. Prisoners serving a sentence are obliged to work, study or take part in other activities organized or accepted by the institution. In 1999, 66 % of the prisoners were taking part in some kind of activities during working hours.

Prison leaves. Owing to the length of the prison term an inmate can apply for leave when half of the term has been served. Leave may on important grounds be granted even earlier. Leaves may be granted in all for maximum six days and nights during a period of four months. In 1999, 11,500 prison

[79] Section 2, paragraph 1 of the Remand Imprisonment Act 1974/615.
[80] Chapter 1, section 3 of the Enforcement of Sentences Act (as amended 1975/431).

leaves were used. In 92% of these, the conditions of the leave were observed.

Dangerous recidivists. According to the Dangerous Recidivists Act, persons guilty of repeated violent offences such as murder, premeditated manslaughter, aggravated assault, or robbery or rape with aggravated violence may be sentenced to "preventive detention" as dangerous recidivists. In this case, once the original sentence is served, the national Prison Board determines whether or not the offender continues to present an evident and serious danger to the life or health of another. If this is the case, the offender will stay in preventive detention. The Prison Board reviews the case at least once every six months. In practice, prisoners detained under this Act serve the full term of their original sentence and are then released on parole. At the end of 1999, 21 prisoners were being held in preventive detention.

13. Parole and after-care of offenders

Release on parole. After the offender has served fourteen days in prison, he or she is eligible for parole. First-time prisoners are generally released on parole after they have served one-half, recidivist prisoners after they have served two-thirds of their sentence. Prisoners serving a life sentence may be paroled only on the basis of a pardon granted by the President of the Republic.[81] As noted above, offenders who have been placed in juvenile prison are usually released on parole after having served one-third of their sentence.

Supervision. Paroled prisoners may be placed under supervision for the remainder of their original sentence (for a minimum of three months and a maximum of three years). In 1999, 23 % of paroled prisoners were placed under supervision. If the paroled prisoner commits a new offence during this period, the court must decide whether or not the prisoner is to be returned to

[81] The average time served in prison by prisoners with a life sentence has been about 10-12 years.

prison to serve the remaining period. Loss of parole is also possible for behavioral infractions. Also in this case the decision is made by the court[82]

14. A Total Reform of Criminal Law and Recodifying the Criminal Code

The 1976 Criminal Law Committee Report. A report of the Criminal Law Committee on the basic principles of the reform work was presented in 1976. This report recommended that the reform work begin from the basics, by assessing what types of behaviour endanger central goals in society, which of these types of behaviour are per se blameworthy, and, finally, which of these types of behaviour should be criminalized. The report notes that criminal policy is closely linked to other approaches to social development. The criminal justice system is not the only, or even the most important, system for controlling behaviour. Better results can be achieved by changing social structures and conditions conducive to crime, developing educational measures, and reducing the opportunity for crime. However, the criminal justice system is particularly important in demonstrating in a concrete manner the authoritative disapproval that society directs at blameworthy and harmful behaviour. In this and in other connections the Committee emphasizes the significance of general prevention as opposed to individual prevention.

According to the proposal, the new Criminal Code should embody provisions on at least all offences subjected to the threat of imprisonment. The general severity of punishments should be lessened and, in particular, the use of imprisonment should be reduced. Present criminalizations in and outside of the Criminal Code should be reassessed; the punishment latitudes should be restricted, simplified and, in many cases, lowered, and some types of behaviour should be decriminalized. Certain newer types of behaviour considered dangerous to society should be criminalized.

The Criminal Law Reform Task Force. In 1980, a criminal law reform project group ("task force") was appointed by the Ministry of Justice. The origi-

[82] Chapter 2, sections 14-17 of the Enforcement of Punishment Act 1889/39, as amended by Act 1990/374.

nal terms of reference for this project group called for the preparation of a total reform of criminal law for presentation to Parliament in one package. Later on, the schedule of reform was amended, and the work has proceeded in several stages. In 1999, the project group was withdrawn. It was regarded that its task had mostly been fulfilled.

Adoption of the first stage. The Government Bill regarding legislation on the first stage led to the Acts of 24 August 1990/769-834, which reformed approximately one third of the special part of the Criminal Code, as well as scattered provisions in 65 separate statutes.

In the first stage of the reform of the criminal law, eleven chapters of the Criminal Code were amended: the chapters on theft, embezzlement and unauthorized use (chap. 28), offences against the public economy (chap. 29), offences in trade (chap. 30), robbery and extortion (chap. 31), receiving stolen property (chap. 32), forgery (chap. 33), damage to property (chap. 35), fraud and other dishonesty (chap. 36), means of payment offences (chap. 37), violation of secrets (chap. 38), offences by a debtor (chap. 39), and regulatory offences and smuggling (chap. 46).

The over-all purpose of the first stage was two-fold. First, it was designed to bring the provisions on property and economic offences in line with developments in society: not only has the new technology and developments in the financial market created new opportunities for offenders (e.g., computer offences), it has increased the level of seriousness of certain already existing types of offences. Second, the reform was designed to bring together the scattered penal provisions on economic activity (for example marketing offences, consumer credit offences, industrial espionage and bookkeeping offences) into separate Criminal Code chapters.

At the same time, the manner in which penal provisions were drafted was standardized, an attempt was made to maintain a consistent distinction between the petty, basic and aggravated forms of offences, and an attempt was also made to standardize the penal scales.

The modernization of the provisions can be seen in a number of ways. Among the new criminalizations are subsidy fraud and computer fraud (ma-

nipulation of a computer in order to change the result of data processing, and taking advantage of an error in data processing). A new chapter (chapter 37) brings together the provisions on "means of payment fraud". The scope of damage to property was expanded to include the destruction of recorded information. The scope of forgery was expanded by criminalizing, e.g., the preparation of a false or forged document or other piece of evidence, even if this is not used.

Significant changes in practice in the penal scales for offences covered by the first stage of the reform include the lowering of the maximum punishment for theft and embezzlement (from two years to 1,5 years) and the raising of the maximum punishment for certain economic crimes.

Adoption of the second stage. Through the Acts of 21 April 1995 (1995/578-747) another third of the special part of the Criminal Code was reformed. This second stage totally reformed twelve chapters of the Criminal Code, and amended several other chapters. In addition, 158 separate statutes are amended. Broadly speaking, the second stage dealt with three main issues. First, it dealt with aspects of economic crime (in the wide sense) not already dealt with in the first stage (for example, labour offences and environmental offences). Second, it dealt with certain so-called "traditional offences", such as violent offences and offences presenting a general danger. Finally, it dealt with a miscellaneous group of petty offences.

One notable feature is that, in respect of environmental offences, the second stage brought with it provisions on the attribution of individual criminal responsibility when an offence is committed within the framework of the activity of a corporate body or of other, corresponding, organized activity. Furthermore, the second stage introduced into Finnish law, as noted earlier, provisions on corporate responsibility.

The second stage of the reform brought into the Criminal Code provisions which were previously scattered in a number of different statutes, for example on the violation of incorporeal rights or on the violation of confidences. At the same time, new penal provisions were adopted, for example on the violation of the secrecy of communications, unauthorized entry into a computer system ("hacking"), and unauthorized assumption of the care and custody of a child.

The provisions on violent offences remained basically the same. However, the reform provided an opportunity for reassessing the penal scales for these offences.

Later stages und the finalization of the reform work. The third major partial reform of the Criminal Code (the Act of 24 July 1998; 1998/563) dealt with the penal provisions on offences against adjudication, a public authority and public order as well as on sexual offences (chapters 15-17 and 20 of the Criminal Code).

The remaining stages of the reform, which are materialising in the becoming few years, are focused on the general preconditions of criminal liability, the revision of the system of criminal sanctions and the remaining very few chapters of the special part. At the final stage a fully recodified Criminal Code will be enacted so that the previous partial reforms are included in it in a coherent and unified way.

15. International cooperation in penal matters

The Nordic countries have traditionally worked in close cooperation with one another, in criminal as well as in other matters. For example, the Nordic countries have taken the rare step of agreeing on the adoption of uniform legislation on mutual cooperation in the enforcement of penal judgments (the corresponding Finnish Act is 1963/326), extradition (1960/270), and the summoning of a defendant to a court in another country (1976/601).

Finland has adopted legislation on international legal assistance in criminal matters (1994/4), extradition to other countries (1970/456) and international cooperation in the enforcement of certain penal sanctions (1987/21). Finland has adopted the Act on the Jurisdiction of the International Tribunal for the Prosectuion of Persons Responsible for Crimes Committed in the Territory of the Former Yugoslavia and on Legal Assistance to the International Tribunal (1994/12). Multilateral and bilateral agreements on international cooperation in criminal matters have been signed with several parties.

Finland has acceded, among others, to the following international agreements:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950, 1998) (including its protocols);
- the European Convention on Extradition (1957) (including its second additional protocol);
- the European Convention on Mutual Assistance in Criminal Matters (1959) (including its additional protocol);
- the European Convention on the Suppression of Terrorism (1977);
- Additional Protocol to the European Convention on Foreign Law (1978);
- the European Convention on the Transfer of Sentenced Persons (1983);
- the European Convention on the Compensation of Victims of Violent Crime (1983);
- the European Convention on Spectator Violence and Misbehaviour at Sports Events (1985);
- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) (including protocols no. 1 and 2);
- the European Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (1990);
- the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- the 1961 Single Convention on Narcotic Drugs;
- the 1971 Convention on Psychotropic Substances; and
- the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
- the 1998 Rome Statute of the International Criminal Court.

After having long had an observer status in the work of the Council of Europe, Finland became a full member in May 1989 and, on 10 May 1990, Finland deposited its instrument of ratification of the Convention on the Protection of Human Rights and Fundamental Freedoms. The influence of this Convention can clearly be seen, among others, in the case-law and legislation on criminal proceedings (see, infra).

On 1 January 1995, Finland became a member of the European Union. European Community law and the general principles governing it have more

or less indirect effects on criminal legislation and its application in the member states - among them in Finland. The same is true in respect to the system of penal administrative sanctions. As for the police and judicial co-operation in criminal matters, the Amsterdam Treaty (1999) has under pillar III adopted the objective of maintaining and developing the EU as an "area" of freedom, security and justice". Finland has been active in ratifying agreements drafted within the EU, for instance the Convention on the Protection of the European Communities' Financial Interests (1995) and the Convention relating to Extradition between the Member States of the EU (1996). The influence of the EU membership on Finnish criminal policy has been moderate and restrictive so far, but a clear tendency is to strengthen the europeanization of criminal law - including, in the long run, the trend towards a more unified European criminal policy.

16. Crime and criminal justice in Finland [83]

The societal changes in Finland during the last decades are reflected in the statistics on recorded crime. Recorded crime in general increased during the 1960s and the 1970s as affluence continued to increase, the large post-war age cohorts reached a crime-intensive age and the urban South experienced a wave of migration from the rural North. The surge in recorded crime was followed by a period of more stable trends, but during the 1980s there have been new increases in some categories of recorded crime.

Homicide. From the late 1970s to the 1990s, the total annual number of recorded homicides and attempted homicides has varied between 100 and 130, after a peak during the mid-1970s (145 in 1975). Over the past years, the homicide rate has been about 3 per 100,000 in population aged fifteen and over.

Assaults. The rate of recorded assaults, after remaining level for several years, increased rapidly in 1979 (by 15 %) and then at a slower level

[83] This section is based on the summary to "Rikollisuustilanne 1993" (Criminality in Finland 1993), prepared by the National Research Institute of Legal Policy.

through the 1980s and the early 1990s. The number of assaults has been roughly paralleled by the increase in alcohol consumption.

Robberies. Recorded robberies have decreased slightly during the early 1980s, then jumped upwards at the end of the 1980s and the early 1990s. Bank or post office robberies are relatively rare, although their number clearly increased at the end of the 1980s.

The operation of the criminal justice system in Finland, 1950-1990: key indicators

	1950	1960	1970	1980	1990
Clearance rate[84]:					
- property offences (%)	65	64	52	51	50
- violent offences %	96	95	90	89	84
Convicted offenders (in thousands)					
- property offences	8	8	13	33	43
- violent offences	3	3	5	11	12
Petty fines (in thousands)	.	.	.	.	70
Day-fines (in thousands)	120	188	193	296[85]	364[86]
Suspended sentences of imprisonment (in thousands)	3	4	5	14	17
Unconditional sentences of imprisonment (in thousands)	6	7	10	10	12
Total prison population on 1 January (in thousands)	8	7	5	5	3
Median length of sentences of imprisonment (in months)[87]					
- all offences	7.6	5.9	5.0	3.7	3.0
- theft offences	9.8	7.7	6.6	4.6	2.9
- assault offences	8.6	6.4	5.7	4.9	4.3

[84] The clearance rate is calculated as the number of offences cleared during a calendar year, divided by the number of offences reported to the police during the same year.
[85] In addition, 5, 800 supplementary day-fines were imposed.
[86] In addition, 5, 988 supplementary day-fines were imposed.
[87] The median of a set of numbers arranged in order of magnitude is the middle value.

Thefts. The increase in recorded thefts that was apparent during the first half of the 1970s levelled off for a decade. Since 1985, the rate has again increased. According to a recent statistical analysis, variations in the level of recorded theft offences from 1950 to 1980 can be explained to a significant extent by the proportion of the population in the criminally active age (males in the 15 to 34 year age bracket) and by the volume of the internal migration in the country. These variations also appear to be closely connected with the economic development of society. Thus, the production of consumer goods and the volume of retail trade (which are indicators of the level of opportunities to commit theft) are variables that systematically correlate with the development of theft. Periods of economic upswings have often been followed by an above-average increase in recorded theft. The decrease in recorded offences during the early 1990s, in turn, is probably at least in part a consequence of the drop in alcohol consumption as a result of the economic recession.

Auto thefts. Recorded auto thefts have remained on a stable level during the early 1970s, followed by a decline from about 1975 to 1984. The number of auto thefts per 1,000 cars and motorcycles declined from 9.6 in 1975 to about 5 during the mid-1980s. Since then, the number of recorded auto thefts has increased.

Embezzlement. The number of recorded embezzlements has varied considerably from year to year. This can largely be explained by the differences in how embezzlement is recorded in the statistics: some reporting authorities count a series of embezzlement as one offence, while others count each separate incident in a series.

Fraud. Recorded frauds have increased rather steeply; during the end of the 1980s, the annual increase has been about one fourth. Part of this increase can be explained in the same way as the variations in the number of recorded embezzlements. However, to a large extent the increase would appear to reflect an actual increase in fraud, following the rapid introduction of credit cards during the 1980s. During the early 1990s, presumably because of the tightened controls in the granting of credit and credit cards, the number of recorded frauds decreased considerably.

Damage to property. During the 1980s, recorded damage to property increased at an annual rate of about 10 %. This increase was presumably due

in part to increased reporting as a result of campaigns against vandalism, and to the rapid growth of insurance coverage requiring that any offences be reported to the police. The growth peaked in 1989, to be followed by a decrease.

Drunken driving. There have also been variations in the number of cases of drunken driving recorded in the statistics. When compared with the number of motor vehicles, the over-all rate of these offences has gradually declined - as has the average blood-alcohol content of those found guilty of drunken driving. This is due in part to the stricter degree of control (blood tests of suspected drunken drivers are taken in much larger numbers than before, thus increasing the number of borderline cases that come to the attention of the authorities), but probably also to an actual decrease in drunken driving.

Other traffic offences. The general trend of other traffic offences has been decreasing. A statistical increase was noted for 1983 and 1984, when the Traffic Act was reformed, the new petty fine was introduced, and the police organized a special traffic safety campaign. If the number of traffic fatalities and injuries in traffic is used as an indicator, traffic safety has clearly improved: the annual number of fatalities has decreased from a high of 1,156 in 1972 to an average, during the 1980s, of about 550. The most recent data is from 1993, when 484 fatalities in traffic were recorded.

Labour safety offences. Crimes against labour protection laws form a minor category in the crime statistics. The labour protection authorities are inclined to use non-penal measures. Annually, some 300 to 400 cases are prosecuted; these are primarily offences against legislation on industrial safety (60-70 %) or against the laws on working hours.

Tax offences and economic offences. The number of tax crimes recorded each year varies considerably, primarily in accordance with the strictness of control. Some 2,000 cases are recorded each year.

The data on economic offences is, understandably, quite tentative, in particular since no agreement has been reached on a definition of this category. However, increasing concern has been expressed in Finland over the growth

of such economic crimes as bankruptcy offences, accounting offences, fraud and tax fraud, and on their impact.

Narcotic offences. The number of sentences imposed by the courts for narcotic offences has varied between some 350 and 1,050 each year. Finland is one of the countries in Europe where also drug use is criminalized; almost one half of the sentences imposed for narcotics during the recent years is for drug use. The principal drug is cannabis (which was involved in about one half of the offences recorded during 1993). The average age of those convicted of drug offences has been steadily rising since the early 1970s.

International perspectives. The two sweeps of the international victimization survey (1988 and 1992) have shown Finland to have a relatively low victimization rate. The only exceptions are in respect of bicycle theft and assault, in respect of which the rate in Finland is somewhat higher than the average for Western European countries.

In respect of reported crime, Finland has the lowest theft rate of all the Nordic countries. This can be attributed to the differences between the Nordic countries in prosperity, urbanization and population density. Finland also has the lowest narcotic offence rate. As for assault, Finland and Sweden have three times higher rates than do Denmark and Norway (about 350 and 100 per 100,000 in population, respectively). This difference is corroborated by the results of victimization surveys. However, it has also been suggested that part of the difference is due to a lower level of tolerance for assault in Finland and Sweden, as well as to the greater accuracy of recording in these two countries.

The clearance rate for offences in Finland is relatively high in an international perspective. Somewhat over one half of all reported property offences and some 90 % of all reported violent offences are cleared. However, the clearance rate has been decreasing significantly during recent years.

The vast majority of those sentenced for an offence (some 93 % in 1991) are sentenced to a fine. Two thirds of these are for a traffic offence. Annually, some 14,000 are sentenced to a conditional (suspended) sentence of imprisonment, and 10,000 to unconditional imprisonment.

One indicator of the general lowering of the level of punishment is the median sentence of imprisonment for basic offences. The median sentence for theft offences (theft and aggravated theft) was 9.8 months in 1950; this has steadily decreased to its present level of 2.9 months. Correspondingly, the median sentence for assault offences (assault and aggravated assault) has decreased from 8.6 months in 1950 to 4.3 months in 1990. During the same period, the median for all sentences of imprisonment has decreased from 7.6 months (1950) to 3.0 months (1990).

The daily average prison population in Finland has decreased from a high of almost 5,600 in 1976 to slightly below 3,200 during 1993. In 1986, there were 86 prisoners per 100,000 in population. By 1993, this had decreased to 67.[88]

Despite the lowering of the median sentence of imprisonment and of the prison population, Finland continues to be the Nordic country with the most numerous and the longest unconditional sentences of imprisonment. This is not considered to be due to any differences in crime, but instead to the high clearance rate, the extensive use of unconditional sentences, and the relatively long terms of imprisonment imposed in Finland as compared to the other Nordic countries.

[88] The corresponding rates in other Nordic countries in 1986 were: Denmark 66, Sweden 51 and Norway 47.

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Annex 1

Chapter headings of the Criminal Code of Finland

Chapter	Heading
1	The Territorial Scope of Application of the Criminal Law of Finland
2	Punishments
2a	Fine, Conversion Sentence and Summary Penal Fee
3	Grounds for Eliminating or Mitigating the Punishability of an Act
4	Attempt
5	Participation
6	Sentencing
7	Joint Punishment
8	The Statute of Limitations
9	Corporate Criminal Liability
10	(Repealed)
11	War Crimes and Crimes Against Humanity
12	Treasonable Offences
13	High Treason
14	Offences Against Political Rights
15	Offences Against the Administration of Justice
16	Offences Against the Public Authorities
17	Offences Against Public Order
18	Offences Against Family Rights
19	(Repealed)
20	Sexual Offences
21	Offences Against Life and Health
22	Abortion
23	Traffic Offences
24	Offences Against Privacy, Peace and Honour
25	Offences Against Personal Liberty
26	(Repealed)
27	(Repealed)
28	Theft, Embezzlement and Unauthorised Use
29	Offences Against Public Finances
30	Business Offences
31	Robbery and Extortion
32	Hiding Unlawfully Obtained Property (including Money Laundering)
33	Forgery Offences
34	Offences Causing General Danger