Finland: The Protection of Fundamental Human Rights in the Criminal Process.

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1. INTRODUCTION

The structure and contents of this report are mainly based on the questionnaire sent out by the general reporters.[2] The aim of the report is to be informative about the situation in Finland with regard to human rights in criminal process. Where the contents are based on Finnish statutes, these are to be found in English on the Internet.

2. APPLICABLE LAW

A. International Treaties and Constitution

Finland is a dualistic country and it has incorporated most of the international human rights treaties. Because of dualism, the conventions have usually been taken into the domestic legislation by the so-called blanket law. Human rights are enforceable directly and citizens need not invoke them; the court has to apply them *ex officio*. Individuals can complain to the European Court of Human Rights, but according to its rules, so-called "effective" national remedies have to be exhausted first. It is also possible to complain to the United Nations´ Human Rights Committee in Geneva as well as to the Committee against Torture.

For political reasons, Finland didn't ratify the European Convention on Human Rights (ECHR) until quite late, in 1990. The Covenant on Civil and Political Rights had already been ratified in 1976, but had no practical meaning, because courts did not refer to it. Practically speaking, both conventions came into "force" at the same time in the 1990´s, when, with the ratification of ECHR, the courts started to use the other convention in their case-law and it became common to refer to both conventions at the same time. In practice however, Article 6 of the ECHR is the most important norm covering human rights in criminal process.

From 1995 on, there has been a similar statute in Section 21 of the Constitution:

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"Everyone has the right to have his or her case dealt with appropriately and without undue delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice. Provisions concerning the publicity of proceedings, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as the other guarantees of a fair trial and good governance shall be laid down by an Act."

In their case-law, courts usually refer to Article 6 ECHR and less to Section 21 in Constitution.

B. Reservations

When, Finland ratified the ECHR it made wide reservations to Article 6 concerning the right to oral hearing. The reservation covered oral hearings at appeal courts, the Supreme Court and especially some special courts. Later there were broad withdrawals concerning appeal courts and special courts. The Finnish appeal procedure is nowadays more oral than ever. However, the Supreme Court will not usually organise oral hearings. Trial at the Supreme Court is usually on the basis of documents only.[3]

Even earlier, Finnish legislation was not a barrier against oral hearings, but court culture and tradition at appeal courts promoted a procedure on paper. Because there was no imperative law, it was hard to change the tradition. Judges at appeal courts preferred written proceedings and attitudes were against "orality". That was why the reservation was needed, but while it was valid, the legislation was changed towards obligatory oral hearings at appeal courts. This new legislation was very strict with a view to changing the traditional written court culture at appeal courts. Oral hearings took more time and resources, meaning a risk of a backlog at appeal courts. The response was to restrict the possibility to appeal. There have been many proposals for introducing a system of leave to appeal and at present there is still one on the table. The earlier proposals, however, did not pass Parliament with the exception of a system of sifting out appeals, which means that the court of appeal first makes a decision as whether an appeal shall be taken into further consideration. As a result

[3] Concerning the International Covenant on Civil and Political Rights Finland made a reservation, which is still in force. It covers Articles 10 (2b and 3), 14(7), 20 (1).

of this legislative effort, was that, with the withdrawal of the reservation, the Finnish appeal procedure became more oral at the expense of the right of appeal.

3. THE PREVENTION OF CRIME AND JUDICIAL ADMINISTRATION

Criminal process is governed mainly by the Criminal Procedure Act (689/1997). Judicial powers are exercised by independent courts of law. The independence of the courts is guaranteed by the Constitution. The President of the Republic appoints the judges. In addition to courts, the administrative sector of the Ministry of Justice comprises the prosecution service. The Ministry of Justice is responsible for the maintenance of the work of the courts and other judicial authorities. In Finland, the police are under the jurisdiction of the Ministry of the Interior. The Ministry of Justice heads and supervises the enforcement of penalties. The Ministry of Justice and the Ministry of the Interior are responsible for the prevention of crime.

According to the Criminal Investigations Act, the standard of suspicion is described as "a reason to suspect". The police or another investigative authority must carry out a criminal investigation where, on the basis of a report made to it or otherwise, there is reason to suspect that an offence has been committed. In addition the police have powers to use coercive measures and other means in order to gather information before the offence has been committed. The relevant provisions are to be found in the Police Act, Chapter 3. Preventive measures can be, for instance, technical monitoring, technical and traditional surveillance, undercover activities, pseudo purchases, telecommunications monitoring and interception. In addition, the police have the right to obtain information from authorities and from a private organization or person.

4. ACTORS IN CRIMINAL PROCESS

A. Judiciary

Professional judges must have a higher university degree in law. They study for that at a law faculty for five years. There are three law faculties in Finland, namely at the universities of Helsinki, Turku and Lapland. After obtaining a higher university degree in law (LL.M.), they can apply for judges' training. The traineeship at the district court takes

one year. The trainees work as associate judges called “notaries”. After that year, they can apply for the title “Trained on the Bench”. As trained lawyers they can look for a job as a judge. In practice, only temporary posts are available to them at the beginning, with perhaps a permanent job later on as an associate judge at the court of appeal. In order to obtain a permanent appointment as a judge at a district court or at the court of appeal, they will usually have to work for almost twenty years as assistant judges or deputies. Finland, thus, is a country with a career judiciary.

In a criminal case, a District Court has a quorum of the chairman and three lay judges present. A panel of three professional judges is also possible in extensive cases, or if there is some other reason to opt for this composition of the court. The latter, a novelty, came into force on the 1 January 2009. A District Court has a quorum with only the chairman present, if the offence under the circumstances as referred to in the charge is not punishable otherwise or by nothing more severe than a fine or imprisonment for a maximum of one year and six months. In this event, a more severe penalty than a fine may not be imposed. Again from 1 January 2009, a professional judge may more often sit alone now that some special offences have been added to the list.

A Court of Appeal has a quorum of three members present. The Supreme Court needs five members present. There are some exceptions concerning special situations where fewer members are quorate. The members are always legally trained judges at the courts of appeal and at the Supreme Court.

Procedure is adversarial. Therefore the professional judge plays a passive role, a guardian of due procedure. The prosecutor plays an active role in truth-finding. In Finland, there is no investigating judge, but there is a judge who grants permission for invasive investigative methods (e.g. telephone tapping).

B. Prosecution

Prosecution is organised by a public prosecution service, which is accountable through the executive to the Ministry of Justice. The prosecution is organized as follows: the Prosecutor-General and the Deputy Prosecutor-General; a State Prosecutor; and a District Prosecutor and a Prosecutor for the Åland Islands.

Prosecutors must have a higher university degree in law (LL.M) like judges. They then usually take a traineeship at the district court. After being "Trained on the Bench" they start working as an assistant prosecutor which is a special mixture of training programme and working period for one and a half years. The assistant prosecutor-programme is, however, not obligatory for recruitment as a prosecutor. The appointing without taking this trainee programme is also possible.

A private person that is the injured party can join the prosecution. Private prosecution by the injured party is also possible in cases where the public prosecutor has decided not to prosecute.

The Prosecutor-General may decide to himself take up for consideration any matter belonging to a subordinate prosecutor and to assign a subordinate prosecutor to a case in which the Prosecutor-General has decided on the charge. In addition, the Prosecutor-General may allot a case to a subordinate prosecutor for the assessment of the charge.

Under the law, the public prosecutor is to bring a charge if there is a *prima facie* case against the suspect. The public prosecutor may, however, decide not to prosecute if a penalty more severe than a fine is not anticipated for the offence and the offence is deemed of little significance in view of its manifest detrimental effects and the offender's degree of culpability; and if a person under 18 years of age has committed the offence, a penalty more severe than a fine or imprisonment for at most six months is not anticipated for it and the offence is deemed to be the result of lack of judgment or incaution rather than disregard for the law. Unless an important public or private interest otherwise requires, the public prosecutor may also decide not to prosecute if trial and punishment are deemed unreasonable or pointless in view of the settlement reached by the offender and the injured party, the other actions of the offender to prevent or remove the effects of the offence, the personal circumstances of the offender, the other consequences of the offence to the offender, the welfare or healthcare measures taken and other circumstances; or if, under the provisions on joint punishment and the consideration of previous punishments in sentencing, the offence would not have an essential effect on the total punishment. The prosecutor may issue an oral reprimand to the offender where this is deemed necessary. There is no possibility for plea bargaining in Finland. The prosecutor cannot otherwise drop the case conditionally.

Prosecutorial decisions are monitored by the prosecutor-general as well as by the Chancellor of Justice and by the Parliamentary Ombudsman.

The police are responsible for pre-trial investigations. After completing the investigation, the material collected is sent to the prosecutor, who evaluates the charges. The pre-trial investigation is in the hands of a prosecutor only if the suspect is a policeman. In other cases, the prosecutor has, however, the right to ask the police to take extra investigative measures in a case. The prosecutor has the burden of proof. In addition, the prosecutor has to be objective. However, defence lawyers have a duty to actively gather and introduce evidence on their part.

C. Defence

Like judges and prosecutors, defence lawyers must obtain a higher university degree in law (LL.M) after which they often take a traineeship (as explained above) at the district court. The trainee period is, however, voluntary.

Under Finnish law, a party who has not been ordered to arrive at court in person may retain the services of an attorney at trial. The right of the prosecutor to be heard may not be exercised by attorney. A party who has arrived at court in person may retain the services of counsel.

An advocate or another person who has a Master's degree in law, is honest and otherwise suitable and competent, may serve as an attorney or counsel, provided that he is not bankrupt and that his legal competence has not been restricted. The legal provisions on the right of an advocate to serve as an attorney or counsel also apply to a person who is entitled to practice advocacy in another state in the European Economic Area or in another state with which the European Union and its member states have concluded an agreement on the mutual recognition of the professional qualifications of trial lawyers. However, a direct ascendant or descendant of the party, a sibling of the party and the spouse of the party may serve as an attorney or counsel even if he or she has not earned the Master's degree.

According to the Criminal Procedure Act, a person suspected of an offence has the right to defend himself in criminal investigations and at trial. At the request of the suspect, a defence counsel is, however, to be appointed for him if he is suspected of or charged with an offence punishable by no less than four months imprisonment for, or an attempt of, or

participation in such an offence; or if he is under arrest or in detention. Defence counsel is appointed to a suspect *ex officio*, if the suspect is incapable of defending himself, has not retained a defence counsel and is under 18 years of age unless it is obvious that he has no need for counsel, counsel retained by the suspect does not meet the required qualifications or is incapable of defending the suspect, or if there is another special reason.

A court may appoint counsel for the injured party in criminal investigations and, if that party has a claim in a case prosecuted by the public prosecutor, at trial, in a case relating to a sexual offences, unless this is for a special reason deemed unnecessary, in situations of certain offences against person, if this is to be deemed necessary in view of the relationship between the injured party and the suspect. A person appointed as defence counsel or counsel for the injured party must be a public legal aid attorney or an advocate. If there is no suitable public legal aid attorney or advocate available or there is another special reason, another person with the degree of LL.M., who by law is competent to act as an attorney, may also be appointed as defence counsel or counsel for the injured party. The person to be appointed as defence counsel or counsel for the injured party is given the opportunity to be heard on the appointment. According to the Criminal Procedure Act, defence counsel and counsel for the injured party shall conscientiously, and in accordance with good advocacy practice uphold the rights and interests of their client and for this purpose promote the resolution of the case. In addition there is a separate Act for Attorneys who are members in a Bar. The membership of the Bar is voluntary but only the members are allowed to use the "title" of advocate.

The court can deny counsel the right to appear in the case if they prove to be dishonest, unperceptive or incompetent, or should they otherwise be found to be unsuitable for the task. Should there be reason to do so, the court may also deny the right to serve as an attorney or counsel in the court for up to three years. If an advocate is concerned, the court must notify the board of directors of the Bar Association of its decision.

5. FACT-FINDING

With regard to establishing the facts of a criminal case, the emphasis lies on court procedure. The prosecution has the main responsibility for gathering evidence. The

prosecution also examines its witnesses during the trial and the judge usually remains passive.

The minutes made by police during pre-trial investigation are not trial material. All the evidence is taken at trial. The professional judge may, however, read the minutes of the pre-trial investigation in order to get an overview of the case before trial. Whether the judge reads them through or not depends on the person. Some judges prefer to take the case without any preliminary information in order to be as impartial as possible. The lay members are not acquainted with the case at all before the trial.

As far as illegally obtained evidence is concerned, there are two different ways to decide on its admissibility. If the situation is obvious (that is that the illegally obtained evidence is obviously against the Constitution or against the Human Rights Conventions), the prosecutor may not refer to this kind of evidence and the judge will see it only if it is concluded into minutes made during the pre-trial investigation. Otherwise, if the illegality is of a minor, or it is unclear whether there is an illegality, the court will make the decision on its admissibility.

6. APPEAL

The Finnish legal system always allows for a retrial by a higher court on appeal with regard to the facts of the case. The court of appeal is therefore not a cassation court. The appeal may have adverse effects for the defendant if the prosecutor appeals. However, if only the defendant appeals, the *reformatio in pejus*-prohibition is in force.

A. Appeal from the District Court to the Court of Appeal

The decisions of the District Court are appealed in the Court of Appeal. The judgments and final orders of a District Court, as well as the other decisions made in the same context are be open to appeal, unless appeal has been specifically prohibited. A procedural decision of the District Court is open to appeal only if specifically so provided. Cross-appeal is possible within two weeks of the expiry of the time limit set upon the appellant to appeal. The cross-appeal will lapse if the ordinary appeal is withdrawn, lapsed or dismissed on procedural grounds, or is not taken into further consideration.

Even if there is no need for a leave for appeal at this stage, there is the system nowadays of sifting out, according to which the court of appeal first decides whether an appeal shall be taken into further consideration. According to the Code of Judicial Procedure, examination of the appeal may not continue if the court unanimously decides that it seems to be evident that there is no ground to hold an oral hearing in the case, neither a decision of the court of first instance nor the procedure therein is deficient; the judicial protection of any party to the case, taking into consideration the nature of the case, does not require consideration of the appeal.

B. Appeal from the Court of Appeal to the Supreme Court

A judgment and decision of the Court of Appeal is open to appeal in the Supreme Court. A person who wishes to appeal a judgment or decision of the Court of Appeal on a case brought before the Court of Appeal by way of appeal or complaint, must request leave for this from the Supreme Court (leave to appeal). In a case in which the Court of Appeal has decided as the court of first instance, appeal shall be made without requesting leave to appeal.

Leave to appeal may be granted only if it is important to bring the case before the Supreme Court for a decision with regard to the application of the law in other, similar cases or because of the uniformity of legal practice; if there is a special reason for this because of a procedural or other error in the case on the basis of which the judgment is to be reversed or annulled; or if there is another important reason for granting leave to appeal. Leave to appeal may be granted to apply only to a part of the decision of the Court of Appeal. In this event, the issue on granting leave to appeal in other respects may be transferred to be heard in connection with the hearing of the appeal.

C. Extraordinary Channels of Appeal

Extraordinary channels of appeal are complaint and reversal of a final judgment. The grounds for the complaint are procedural errors such as the court sat without a quorum, or the case was ruled admissible even though there was a circumstance on the basis of which the court should have ruled the case inadmissible on its own motion; an absent person who had not been summoned is convicted or a person who has not been heard otherwise suffers

inconvenience on the basis of the judgment; the judgment is so confused or defective that it is not apparent what has been decided in the case; or another procedural error has occurred in the case which is found or can be assumed to have essentially influenced the result.

The main reasons for the reversal of a final judgment in a criminal case to the benefit of the defendant are:

if a member or official of the court, the prosecutor or a representative or counsel of a party has, in connection with the case, been guilty of criminal conduct that may be assumed to have influenced the result of the case;

if a document that has been used as evidence was false or its contents did not accord with the truth and the person who gave the document was aware of this, or if a party heard under affirmation, or a witness or expert witness has deliberately given a false statement and it may be assumed that the document or the statement has influenced the result;

if reference is made to a fact or piece of evidence that had not been previously presented, and its presentation would probably have led to the acquittal of the defendant, or to the application of less severe penal provisions to the offence, or there are compelling reasons, with consideration to what is referred to here and to what otherwise is found, to reconsider the question of whether or not the defendant had committed the offence for which he/she has been convicted; or

if the judgment is manifestly based on misapplication of the law.

A final judgment in a criminal case may be reversed even to the detriment of the defendant if:

a member or official of the court, the prosecutor or a representative or counsel of a party has, in connection with the case, been guilty of criminal conduct;

a document that has been used as evidence was false or its contents did not accord with the truth and the person who gave the document was aware of this,

if a party heard under affirmation or a witness or expert witness had deliberately given a false statement and can be assumed to have influenced the acquittal of the defendant or the fact' that he/she has been sentenced accordingly with essentially less severe penal provisions than what should have been applied;

the case relates to an offence which, in accordance to the normal penalty scale, may be punished by more than two years of imprisonment or which may result in dismissal from

office, and reference is made to a fact or a piece of evidence which has not been presented previously and its presentation would probably have led to the conviction of the defendant for the offence or to the application of essentially more severe penal provisions. The judgment shall not be reversed on the grounds referred to in the point unless a probability is established that the party could not have referred to the fact or piece of evidence before the court which passed the judgment, or on appeal, or that he had another justified reason not to do so.

7. HUMAN RIGHTS IN DOMESTIC CRIMINAL PROCESS

A. Police Practice

The Criminal Investigations Act covers the interrogation of suspects by the police. A person who is questioned must be informed on his position. The suspect has the right to remain silent. He has no duty to confess or otherwise help in investigations. The presumption of innocence also applies. However, the suspect must be present at, and therefore has the duty to come to, the questioning. The preliminary investigation is to be carried out without delay. The principles of objectivity, discretion and the least inconvenience must be respected. Minutes are kept. The report recorded in the minutes is read out to the person interrogated immediately after the interrogation and given to him for inspection. The witness may be present during questioning if the suspect so wishes, or for some other reason. Questioning is normally forbidden between 10 pm and 7 am. The suspect has the right to sufficient sleep and food. Questioning is done, if necessary, with the aid of an interpreter; there is no duty to use the language of the suspect. Audio- and videotaping of interrogations are, however, not obligatory.

A suspect who has been caught, arrested or imprisoned has the right to stay in contact with his lawyer. A right to counsel becomes effective at the beginning of pre-trial interrogation. Counsel may also be present during police interrogation. Access can be restricted only if this is necessary in the interests of the investigation. The right to know the details exists as soon as it can be fulfilled without detriment to the investigation.

B. Deprivation of Liberty Based on Suspicion

a. Right of a police officer to apprehend

A police officer may apprehend the suspect of an offence if a warrant for his arrest or detention has been issued. If the prerequisites for arrest are fulfilled, a police officer may apprehend the suspect of an offence even without an arrest warrant, if the arrest could otherwise be endangered. The police officer must notify an official with the power of arrest, of the apprehension without delay. That official then decides within twenty-four hours of the apprehension whether the apprehended person is to be released or arrested. The apprehended person must be notified of the reason for the apprehension at once.

b. Arrest

The suspect of an offence may be arrested if it is probable that he has committed the offence:

if a less severe penalty than imprisonment for two years has not been provided for the offence;

if a less severe penalty than imprisonment for two years has been provided for the offence, but the most severe penalty exceeds imprisonment for one year and, having regard to the circumstances of the suspect or otherwise, it is probable that:

the suspect will abscond or otherwise avoid criminal investigation, trial or enforcement of punishment;

the suspect will hinder the clearing up of the offence by destroying, defacing, altering or concealing evidence or by influencing a witness, a complainant, an expert or an accomplice; or

the suspect will continue his criminal activity;

if the identity of the suspect is not known and the suspect refuses to divulge his name or address, or gives evidently false information; or

if the suspect does not have a permanent residence in Finland and it is probable that he will avoid criminal investigation, trial or enforcement of punishment by leaving the country.

Where there is reason to suspect a person of an offence, the person may be arrested even if it is not probable that he has committed the offence, if the other prerequisites for arrest are fulfilled and the taking of the suspect into custody is of utmost importance in view of anticipated additional evidence. No one may be arrested where it would be unreasonable

having regard to the particulars of the case or the age or other personal circumstances of the suspect.

An official with the power of arrest must decide on arrest. All superior police officials from inspectors to the director-in-chief of the Police Force have a power to arrest. In addition, a public prosecutor, some officials in the National Board of Customs and at the Frontier Guard Service have a power to arrest.

The arrested person must be notified of the reason for his arrest immediately after having been declared under arrest or apprehended pursuant to a warrant for arrest. Supplementary rules on the registration of arrest are regulated by Decree. A notification of the arrest must be given to a relative or other person close to the detainee, as directed by him and without delay. If notification could hamper the clearing up of the offence in a specific manner, it may be postponed until no later than a court opens the hearing of a detention request pertaining to the arrested person. However, no notification may be given against the wishes of the arrested person, unless there is a special reason to do so. The decision to postpone a notification may only be made by an official with the power of arrest.

It is possible to restrict normal visiting rights, using the phone and so on. If necessary, mail may also be censored. The ground for the restrictions is that the aim of the investigation/detention is in danger. It is usually the court that decides, although in urgent situations, other authorities may also take this kind of decision for a short period. However, the suspect has the right to counsel at all times and the right to keep in contact with him without restrictions.

The arrest remains legal for no longer than four days. After that, the suspect must be remanded in custody by the court in a special procedure. The court will review the case every two weeks during custody. There is no appeal, but it is possible to lodge a complaint against an authority.

c. Detention

The suspect of an offence may be detained, in accordance with the provisions of arrest, if it is probable that he has committed the offence. Where there is reason to suspect a person of an offence, the person may be detained even if it is not probable that he has committed the offence, if the other prerequisites for arrest are fulfilled and the detention is of utmost

importance in view of anticipated additional evidence. If the suspect has been detained in accordance with this rule, the issue of detention is be reviewed by the court. Upon the request of the party submitting the detention request, the court may transfer the review of the detention issue to the court that has jurisdiction in the eventual criminal case. The court must immediately notify that other court of its decision. In addition, detention is allowed in some situations where the extradition of an offender will be in question.

Detention is decided by the court having jurisdiction in the eventual criminal case. Before charges are brought, the general lower court of the place where the person was apprehended or where a person under arrest is in custody, and in urgent cases another lower court may also decide on detention, except for cases of treason or high treason. A detention hearing can be arranged with a single district judge present. It may also take place at another time and in another place than what has been provided on hearings in general lower courts.

During the criminal investigation, an official with the power of arrest may request detention. Before a request is made, the prosecutor is notified, and may then take it upon himself to decide whether the detention request is to be made. When the case has been sent to the prosecutor after the conclusion of the criminal investigation, the prosecutor may request detention. The court may not order the detention of the defendant on its own initiative. A person under arrest and his counsel must be notified of the detention request without delay. A detention request must be submitted in writing. A request that a person under arrest be detained may also be submitted orally or by telephone and confirmed in writing without delay. During the trial, the request may be submitted orally.

The Finnish system does not allow for a system of bail. The court will review the case every two weeks and even earlier if needed. A suspect and defendant can initiate proceedings for release, in which case, the court must to take the case into consideration within four days, but not before two weeks after the latest session in the same case. The court decides on release, and such proceedings can usually be brought in every two weeks.

d. Habeas corpus

According to the Criminal Investigations Act, the maximum time the police can hold a person for questioning is 6 hours. If there are reasons for arrest, the suspect must be present for a maximum of 12 hours (and 24 hours). The minimum level of suspicion required to

hold for questioning is "reason to suspect". Arrest is possible for 4 days, after which the court decides the imprisonment.

For both arrest and imprisonment, the minimum level of suspicion required is "*prima facie cause*". Imprisonment is possible even if there is reason to suspect (without *prima facie cause*), if the imprisonment is very important in order to get more information concerning the crime.

C. Fair Trial[4]

a. Right to information

The suspect has the right to information according to Article 5 ECHR. As soon as he is arrested, the suspected has the right to know the grounds for the arrest.

After the pre-trial investigations, the prosecutor must bring a charge by delivering a written application for a summons to the registry of the district court. After examining the application, the court must issue a summons without delay. After that, the summons is served on the defendant.

In the beginning, the information does not need to be very detailed (we follow the praxis of Article ECHR), but the application for summons does provide quite detailed information, and must indicate:

the defendant;

the injured party;

the act for which the charge is being brought, the time and place of commission and the other information necessary to specify the act;

the offence that the prosecutor considers to have been committed;

the demands for a penalty and for forfeiture, and the provisions on which they are based;

the claims of the injured party pursued by the prosecutor

the evidence that the prosecutor intends to present and what he intends to prove with each piece of evidence;

the request, order or consent, if prerequisite for the bringing of a charge; and

the circumstances on which the jurisdiction of the court is based, unless jurisdiction is otherwise evident in the application for a summons.

[4] I do not cover the effects of the Article 6 ECHR on the Finnish legislation because it forms the common basis for all European countries and is therefore well known. Instead, I concentrate mainly on domestic legislation only.

In addition, the application for a summons must indicate the names of the court and the parties, as well as the contact information of their legal representatives, attorneys or counsel, and the court must also be provided in a suitable manner with the contact information of the parties, witnesses and other persons to be heard.

The application for a summons indicates the duration of the deprivation of liberty if the defendant has been deprived of his liberty for longer than 24 hours, and whether there is a reason for holding the main hearing within two weeks of the date when the charge becomes pending.

A charge that has been brought may not be altered. However, the prosecutor may extend a charge against the same defendant to cover another act if the court considers this appropriate in view of the available evidence and other circumstances. Restriction of the charge by the prosecutor, a change in the reference to the applicable provision, or reference to new circumstances in support of the charge, are not considered an alteration of the charge.

b. The role of parties

Reconciliation between the offender and the injured person and other attempts of the offender to prevent or remove the effects of the offence or to further the clearing up of the offence, are grounds for reducing the punishment.

The defendants are entitled to legal aid during pre-trial investigations and trial. They cannot settle the criminal case out of court. They can, however, settle the damages. There are even some special procedures for settling damages in criminal cases. The legal aid covers in principle the assistance needed with regard to authorities of all kinds.

It is possible to withdraw a confession but the court will continue to evaluate the evidential value of the confession even in the case of withdrawal. The evidential value depends, for instance, on the reasons given for the withdrawal. Adverse inferences drawn at trial based on the defendant's choice to remain silent are allowed according to the Code for Judicial Procedure. This is, however, very rare, while the case-law of European Court of Human Rights provides limitations here.

The prosecution cannot refuse access to sensitive information. The defence has the right to seek and introduce evidence on behalf of the defendant as well as a right to call experts on

behalf of the defendant and a right to have expert evidence re-examined by another expert. The defence also has a right to call witnesses and to examine prosecution witnesses. Hearsay testimony is allowed, anonymous testimony not. As far as hearsay is concerned, its evidentiary value is – of course – rather low in practice. Moreover, because of the principle of best evidence, eye-witnesses have always been called if they exist.

c. The protection of witnesses

There are special waiting rooms for threatened or vulnerable witnesses. It is possible to keep their contact details secret. Examining witnesses by phone or videoconferencing is possible in some situations, and they may also be heard without the presence of the accused. It is also possible to restrict the presence of the audience. Autonomous testimony is not allowed but there have been discussion and plans to make it possible in future.

d. The position of judges

Judges are appointed by the President of the Republic on the basis of a draft decision submitted by the Government. The Judicial Appointments Board will, however, make the first nomination of applicants. Before making its appointment proposal, the Judicial Appointments Board shall request an opinion on the applicants from the court that has advertised the position as vacant and, for applicants to a position as District Judge, also from the District Court where the position is vacant. The Board may obtain other opinions and statements, as well as interview the applicants and hear experts. Before the appointment proposal is made, an applicant shall be given the opportunity to express his or her view of the opinions and statements obtained during the preparation of the appointment. Judges are appointed for life and they are reasonably paid. They may be sanctioned if they have committed criminal offence, including an offence in office. A public official, a person elected to a public office or a person who exercises public authority, who is sentenced to imprisonment for life is dismissed from office. He is also dismissed if he is sentenced to imprisonment for a determinate period of at least two years, unless the court deems that the offence does not demonstrate that the sentenced person is unsuitable to serve as a public official or to attend to a public function.

If a public official is sentenced for an intentional offence to imprisonment for a period that is less than two years, he may at the same time be dismissed from office if the offence demonstrates that he is apparently unsuitable to serve as a public official or to attend to the public function.

The municipal councils appoint the lay judges for a term of four years, which means that lay members are usually politically active people and the task is a position of trust even if the lay judges should be impartial and not political when they are acting as a judge. The lay judges should represent the age, sex, language and occupation structure of the municipality as closely as possible. A lay judge must be a Finnish citizen and resident within the judicial district of the district court. A lay judge must not be bankrupt nor under guardianship. A lay judge must be suitable for the position and between 25 and 63 years old when appointed. Personnel of courts or penal institutions or prosecutors, advocates or police officers cannot act as a lay judge.

A judge may not hear a case if he is disqualified. A judge must be disqualified in a case in which:

the judge or a close relation is a party;

the judge or a close relation acts or has acted as the representative, counsel or attorney of a party;

the judge appears or has appeared as a witness or expert;

a close relation of the judge appears as a witness or expert, or where a close relation has been heard in this capacity at an earlier stage of the proceedings and the decision in the matter may depend also on this hearing; or

it can be anticipated that the decision in the matter will be to the specific advantage or disadvantage of the judge, a close relation or a person represented by the judge or a close relation.

he, or a close relation is:

a member of the board of directors, the supervisory board or a comparable organ, or the chief executive officer or a comparable officer, in a corporation, foundation or public-law institution or enterprise; or

in a position where he decides on the exercise of the right of the state, a municipality or another public corporation to be heard in the matter, and the party is a party to the matter or the decision in the matter is likely to be of a special advantage or disadvantage to it.

And again if:
a party to the matter is a party opposing the judge or a close relation in other judicial proceedings or in a matter pending before an authority;
on the basis of a service relationship or otherwise, the judge has such a relationship to a party to the matter that, especially in view of the nature of the matter at hand, there is justifiable reason to doubt the impartiality of the judge in the matter.
he or a close relation has heard the same matter in another court, another authority or as an arbitrator or
he or she is a party to a similar matter and the nature of the matter or the effect of the decision in the matter at hand on the matter of the judge gives rise to a justifiable doubt of the impartiality of the judge in the matter.

A judge shall also be disqualified from re-hearing the matter or a part thereof in the same court if there is justifiable reason to believe that he or she has a prejudice in the matter on the basis of his or her earlier decision in the matter, or for another special reason, and if another circumstance, comparable to the circumstances referred to, gives rise to a justifiable doubt of the impartiality of the judge in the matter.

e. Publicity
In principle, all criminal trials are open to the public and the media. The court decides whether a trial will take place behind closed doors and both parties may request that. If a trial behind closed doors is not possible in order to protect witness, it is permissable to prevent certain persons from being present among the audience in the name of witness protection. It is also allowed if the person who has to be heard is under 15 or if the accused is under 18. It is also possible to deny a person under 15 to be present among the audience if necessary for his protection.

The trial can take place behind closed doors in order to protect an asylum seeker and in all cases, where sensitive information concerning health, social care, invalidity and privacy will be presented. In addition, it is possible to close the doors if a confidential document is presented or information covered by the duty of non-disclosure is disclosed during the hearing, a person is obliged to disclose information or to present an object or a document for examination during the hearing which they may otherwise refuse to disclose or present, or is under the obligation to answer a question which they may otherwise refuse to answer, or if the document to be presented contains communication between the defendant and a person who is related to him, or contains the information which a person may not divulge in court or may refuse to disclose.

D. The Right to Counsel and Legal Aid

Legal aid is given at the expense of the state to a person who needs expert assistance in a legal matter and who, due to lack of means, cannot pay the expenses of having the matter dealt with. Every defendant may use counsel if they want to. However, only the poor defendant will get free legal aid. Even the poor defendant may not get free counsel if the case is simple and clear and he therefore does not need any help. Public defence is available to all defendants, be they poor or rich. However, the case must usually be serious, or it has to be otherwise clear that the defendant needs help in organising his defence. The court decides whether there is a need for public defence. The legal aid office decides the need for legal aid. In addition there is the possibility to appeal to the court.

Legal aid is given, on application, for free or with a reduction, on the basis of the means of the applicant, which are tested by making a calculation of the funds available to him per month. The calculation is based on the monthly income, necessary expenses, wealth and maintenance liability of the applicant, the spouse or domestic partner. Legal aid is given to a person whose available means do not exceed an amount determined by Government Decree, by means of which more detailed provisions and provisions concerning the basis for determining the reduction may be given. There is no reduction in minor legal advice and no legal aid if the applicant has legal expenses insurance that covers the issue at hand.

Legal aid is provided by public legal aid attorneys. However, in matters to be heard by a court of law, a private attorney who has consented to the task may also be appointed as an attorney.

E. The Right to Privacy

The police must attempt to maintain public order and security primarily through advice, requests and orders and may not interfere in anyone's rights more than is necessary for carrying out their duties.

The Finnish legal system allows for pro-active, invasive investigative methods like surveillance, which can infringe a person's right to privacy, including that of third parties. The requirement is "probable cause". The police need the permission of the court. In some situations, a higher ranking police officer can give the permission. The legislation is very detailed. According to the Police Act, the police shall act in an appropriate and objective manner and promote a conciliatory spirit. Police measures shall be taken without causing more damage or inconvenience than is necessary for carrying out the duty at hand. The measures shall be justifiable in relation to the importance and urgency of the duty and the factors affecting overall assessment of the situation.

F. Protection against Double Jeopardy in Cases of Foreign Judgments

A charge may not be brought in Finland if a judgment has already been passed and has become final in the State where the act was committed or in another member state of the European Union and the charge was dismissed, the defendant was found guilty but punishment was waived, the sentence was enforced or its enforcement is still in progress, or under the law of the State where the judgment was passed, the sentence has lapsed. However, the Prosecutor-General may order that the charge be brought in Finland if the judgment passed abroad was not based on a request of a Finnish authority for a judgment or on a request for extradition granted by the Finnish authorities and the offence is deemed to be directed at Finland, is an offence in public office or a military offence, the offence is an international offence, or the offence is deemed to have also been committed in Finland (although the Prosecutor-General may not order a charge to be brought for an offence that

has been partially committed in the territory of the member state of the European Union where the judgment was passed).

G. The right to freedom of expression; the role of the media in criminal process

A lawyer can be prosecuted for what he has said in court in defence of his client if he commits a crime (defamation).[5]

Prosecutors and judges as well as lawyers are allowed to talk to the media about ongoing cases, but they have to be careful because of the presumption of innocence and the possibility that they may cast doubt on their impartiality and need to withdraw from the case or be disqualified.

The media may also freely report on ongoing criminal cases both at the investigative stage and at the trial stage. The only restrictions are ethical. Journalists have their professional rules but they are not legal norms. Of course, if the details are kept secret they cannot write about what they do not know, but they are not prohibited from finding out. Of course they may not commit crimes like defamation.

The media have a right to be present during trial. There can, however, be restrictions if the audience is so large so as to be disruptive to the proceedings. In such a situation it is possible to restrict the numbers of all members of the audience, not just the media.

There are rules on broadcasting, taping, photographing and so on, for which the media need permission. It will be given by the chairman if there is no risk to the safety of the parties, no important reason to protect their privacy or any other reason to prohibit it. Recording is usually allowed only before the hearing begins and when the court gives the judgment. It is, however, allowed during the whole session if it does not disturb the hearing.

8. RECENT LEGAL CHANGES AFFECTING HUMAN RIGHTS

The most important recent changes have been that terrorist offences have been criminalized in a specific way. In addition the police have wider possibilities of telecommunications interception, telecommunications monitoring and technical surveillance. The police need permission, however, when using telecommunications interception, telecommunications

[5] See ECtHR 21 March 2002, Nikula v. Finland.

monitoring and technical surveillance. In most cases it is the court that grants this kind of permission. Police can use agent provocateur and infiltration in some situations, possibilities introduced in Finnish legislation at the beginning of the century.

Even in Finland, more effective co-operation among European Union member states has been the recent trend in the fields of preliminary investigation and crime prevention. Besides co-operation, specialisation is a current trend too and prosecutors in particular, specialise. There is a so called key-prosecutor system in Finland, which means that there are special prosecutors for special fields like environmental cases, who take care of the prosecution of such crimes all over the country.

There have been delays in criminal proceedings, especially in white-collar cases. There have also been violations of Article 6 ECHR and there have been many decisions against Finland from the European Court of Human Rights. The other problem has been that there is no effective remedy against delay, which could cover the requirements of Article 13 ECHR. A new government bill dating from the end of January 2009 proposes monetary compensation if there is undue delay in a case.