

# **International law and the legal basis for elections in Finland. Participation in elections of candidates for deputies who were previously sentenced to imprisonment for committing crimes as a violation of the fundamental constitutional right of voters**

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**Abstract.** The article examines the legal basis of constitutional law and guarantees of electoral rights to direct expression of the will of the people on the basis of universal, equal and direct suffrage by secret ballot of Finnish citizens and permanently residing foreigners included in the voter lists. In the municipal elections in Finland on 13 June 2021, a total of 268 convictions were handed down to elected politicians during the period 2016-2021 for committing crimes under the Finnish Criminal Code. In the previous municipal elections in 2017 in Finland, elected politicians were found guilty in 301 criminal cases between 2012 and 2017. Despite the fact that the comparison shows an improvement in the criminal statistics of the deputies elected in 2021, as well as a decrease in the severity of the crimes committed, it is necessary to amend the legislation prohibiting the participation in elections for persons sentenced to imprisonment for committing serious crimes. The article emphasizes the important role and participation of the Finnish media in the investigation and disclosure of public data on the crimes of parliamentary candidates and elected politicians and leading government officials in state and municipal bodies.

Legal democracy in Finland needs effective legal mechanisms capable of preventing abuse and criminalization of public authorities, the legitimacy of which is based on public confidence. By creating these legal mechanisms, the legislator must establish increased requirements for the reputation of candidates for public office so that voters have no doubts about the moral and moral and ethical qualities of the elected representatives of government and the legality of their actions as carriers of public authority.

**Keywords.** Constitutional rights, international law, legal democracy, criminalization of public power, passive suffrage.

The first restrictions on universal suffrage were introduced in the Parliamentary Charter of the Grand Duchy of Finland in 1906<sup>1</sup>, when several groups of the population were deprived of the right to vote. The ban applied to those in military service who were under guardianship who had not paid state tax in the previous two years, transferred their property to creditors (in force until 1928), convicted of vagrancy in the previous three years (in force until 1972) and those who were found guilty in the sale and purchase of votes during elections during the preceding elections six years (was abolished in 1976).

Analyzing the history of Finnish legislation, it should be noted that the Criminal Code of the Grand Duchy of Finland in 1889 provided for punishment for the loss of civil confidence. Thus,

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<sup>1</sup> Suomen Suuriruhtinaanmaan Valtioapäiväjärjestys. 26/1906. Annettu Pietarhovissa, 20 p:nä heinäkuuta 1906. Kustantaja Yrjö Weilin, Helsinki. 1906.

those sentenced to imprisonment as an additional punishment were sentenced to indefinite or fixed terms (from 1 to 15 years) for the loss of civic confidence. A person who lost civic confidence did not have the right to vote or run in municipal and provincial elections. The convicted person could not be appointed to a state or municipal office or be elected a member of municipal councils. Loss of civic confidence was also recorded in church records and in the register of civil registration and was noted in the certificate of service. The Law on the Abolition of Additional Punishments, which entered into force on 1.7.1969, abolished punishment for the loss of civic confidence<sup>2</sup>.

The first law on elections to the Grand Duchy of Finland did not include a ban on the participation in elections of those previously convicted of crimes committed, only obliged the election commission to carefully check the electoral lists, mark voters who did not have the right to vote and delete them<sup>3</sup>.

In modern Finland, the procedure for the preparation and conduct of municipal elections is determined by the Electoral Law (Vaalilaki, § 11. 10.4.2015/410) in accordance with the general principles established by the Constitution<sup>4</sup> defining constitutional rights and guarantees of electoral rights to the direct expression of the will of the people on the basis of universal, equal and direct suffrage by secret ballot of registered Finnish citizens and permanent residents on the basis of a valid residence permit. In January 2016, the law on municipal elections came into force<sup>5</sup>. In the context of the fight against coronavirus and the measures taken in accordance with the Emergency Situations Law, the Law on the postponement of the 2021 municipal elections was adopted on March 28, 2021<sup>6</sup>.

According to the Constitution, state power in Finland belongs to the people, which is represented by Parliament. According to article 14 of the Constitution, every Finnish citizen who has reached the age of eighteen has the right to vote in national elections and in referendums. The exercise of human and civil rights and freedoms should not violate fundamental rights, everyone is equal before the law (Article 6), the state guarantees equality of human and civil rights and freedoms regardless of gender, age, origin, language, religion, beliefs, opinions or other characteristics.

The constitutional provisions relate to article 25 (b) of the International Covenant on Civil and Political Rights,<sup>7</sup> by virtue of which every citizen must have, without any discrimination and

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<sup>2</sup> Laki eräiden lisärangaistusten poistamisesta 10.1.1969/1. URL: <https://finlex.fi/fi/laki/ajantasa/1969/19690001>.

<sup>3</sup> Suomen Suuriruhtinaanmaan Vaalilaki. Annettu Pietarhovissa, 20 p:nä heinäkuuta 1906. <https://www.finlex.fi/fi/laki/alkup/1906/19060026024>.

<sup>4</sup> Finnish Constitution. Article 14. The right to vote and the right to participate in public life.

<sup>5</sup> Kuntalaki 10.4.2015/410. URL: <https://www.finlex.fi/fi/laki/ajantasa/2015/20150410>.

<sup>6</sup> Laki vuoden 2021 kuntavaalien siirtämisestä 256/2021. URL: <https://www.finlex.fi/fi/laki/alkup/2021/20210256>.

<sup>7</sup> International Covenant on Civil and Political Rights. Adopted on December 16, 1966 by resolution 2200 (XXI) at the 1496th plenary meeting of the UN General Assembly. URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_5531/](http://www.consultant.ru/document/cons_doc_LAW_5531/).

without unreasonable restrictions, the right and the opportunity to vote and be elected in genuine periodic elections held on the basis of universal and equal suffrage by secret ballot and ensuring the free expression of the will of voters, and Article 3 of Additional Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which, proclaiming the right to free elections, provides for the obligation of the state to hold elections at reasonable intervals by secret ballot in conditions that ensure the free expression of the will of the people in the choice of legislative bodies<sup>8</sup>.

Active suffrage to elect and passive to be elected to government bodies and local self-government bodies are an element of the constitutional status of the voter and an element of the public-law institution of free elections in the formation of independent public authorities designed to guarantee human and civil rights and freedoms.

According to the Constitution, the right to stand for election is a fundamental right and public authorities are obliged to ensure the realization of fundamental and human rights. At the same time, the presence of a criminal record is not a basis in Finland to prohibit the exercise or restriction of the passive electoral right of citizens previously sentenced to imprisonment. The consequence of this was the participation in the municipal and parliamentary elections of a significant number of previously convicted candidates for deputies, including for attempted murder, sexual crimes against minors, robbery, extortion, the use and sale of narcotic and psychotropic substances, theft and other economic crimes, which is incompatible with the activities of elected deputies in the management of state affairs in government bodies and in municipal authorities.

In accordance with the provisions of section 4 of the Law on Parties (10/1969) and section 9 (2) of the Law on Associations (503/1989), the names of candidates from party lists are entered on the electoral lists. Party lists of candidates are approved at a meeting no later than 31 days before the start of the elections.

The conducted research shows that the parties do not check the criminal history or information about the preliminary investigation of suspicions of criminal offenses of the candidates for deputies and is based only on the information provided by the candidates. In order to ensure the legal safety of voters, journalists conduct their own investigations based on the materials of the decisions of the courts and the preliminary investigation. But, unfortunately, voters learn reliable information about the criminal past of candidates for deputies after the publication of electoral lists from the media, when it is no longer possible to make changes. The crimes committed by candidates for deputies, especially grave ones, undoubtedly affect the voters' assessment of the

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<sup>8</sup> Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Paris, March 20, 1952, as amended on May 11, 1994) ETS N 009. URL: <http://www.echr.ru/documents/doc/2440801/2440801.htm>.

candidate's reputation for an elective public office and determine the degree of public confidence in the institutions of representative democracy, including confidence in the inviolability of the supremacy and legal democracy in Finland.

The UN Convention against Corruption and Transnational Organized Crime, as well as the Council of Europe Criminal Law Convention on Corruption, emphasizing the threat these phenomena pose to the stability and security of society, democratic institutions and the rule of law, oblige the state to prevent relevant crimes, in particular by introducing in relation to persons with a criminal record, restrictions for a certain period (taking into account the severity of the danger of the crime committed) of the right to hold a public office in government bodies, including those formed on the basis of electivity.

The topic of participation of convicted parliamentary candidates, basic guarantees and protection of electoral rights and the right to participate in a referendum is a subject of controversy among legal scholars in Finland, as well as an investigation by journalists with the publication of detailed materials of criminal cases of MPs on party lists.

Thus, in the municipal elections in Finland on June 13, 2021, in the period 2016-2021, a total of 268 convictions in criminal cases were handed down to elected politicians.

In the previous 2017 municipal elections in Finland, elected politicians were found guilty in 301 criminal cases between 2012 and 2017. 99 politicians were sentenced to prison terms or suspended sentences. The degree of intoxication of 2.5 ppm of alcohol or more was recorded in seven politicians, and the maximum alcohol level of 3.25 ppm was recorded in the Finnish politician in 2017.

According to the information provided to journalists by the Ministry of Justice of Finland to the Parliament of the country, out of 2,468 candidates, 125 have been convicted of various crimes over the past eight years. Between 2012 and 2019, candidates already had 173 criminal convictions for 74 different crimes. The most frequent violations during this period were road safety (26), bodily harm (23), driving by a driver in a state of intoxication (29), fraud (8).

The list of candidate crimes also includes five serious crimes in the field of accounting and four serious crimes related to the illegal circulation and sale of narcotic drugs or psychotropic substances<sup>9</sup>.

For example, the Pirate Party of Finland candidate Kim Holviala, who received 536 votes in the 2019 parliamentary elections, was sentenced to 3.5 years in prison on 11.2.2019 for aiding in a serious crime related to drug trafficking, while awaiting a review of the case. at the court of appeal at large. On 13.1.2020 the Court of Appeal issued a sentence of imprisonment for a term of 4 years.

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<sup>9</sup> Marko-Oskari Lehtonen. Eduskuntaan pyrkii 125 rikoksesta tuomittua ehdokasta - IL selvitti tuomiot: tapon yritykset, vapaudenriisto, huumerikoksia. 3.4.2019.

Parliamentary candidate Sami Salonen was sentenced to 3 years and 6 months in prison for attempted murder and threats of murder or grievous bodily harm. The maximum punishment among female candidates to Parliament was determined by the county court for Minna Engström for a period of 1 year and 4 months conditionally for a serious economic crime, and additionally issued a ban on entrepreneurial activities until the end of 2021<sup>10</sup>.

Between 2016-2021, the number of accusations against candidates for deputies of the True Finns party increased from 530 in 2017 to 675 in 2021. The largest number of all 228 charges against candidates from all parties of beating or other violent actions that caused physical pain, 101 politicians from the True Finns party were brought against, as well as 84 grave charges for driving under the influence of alcohol. fraud 32, violation of accounting 31, in violation of traffic rules 31 related to illegal drug trafficking 13, in large-scale fraud 11, under articles for possession of firearms and ammunition, in 7 thefts, in bad faith of a large-scale debtor 6, abuse of office 6, embezzlement 5, sexual acts against minors 2, robbery on an especially large scale 1 and other charges of crimes provided for by the Finnish Criminal Code.

56 convicted politicians from the "True Finns" party made up 41% of the list of all candidates for deputy. Next on the list are 15 candidates for deputies from the SDP, 14 from the Center Party, 12 from the Coalition Party, 7 from the Left Union and 7 from the "Green Union" party<sup>11</sup>.

For example, when the branch of the Green Union party in Tampere announced the start of a preliminary investigation on suspicion of organizing prostitution of a candidate for deputy, the Chairman of the Green Union party and the Minister of the Interior Maria Ohisalo on May 27, 2021, tweeted that the candidate hid from party information. According to the law, it is no longer possible to remove a candidate from the list at this stage, but the "Green Union" stopped his election campaigning and the candidate does not enjoy the confidence of the party<sup>12</sup>.

An MP from the "True Finns" party of the Vantaa branch committed a drug offense in February 2020 by ordering cannabidiol and cannabidiolic acid capsules of hemp juice from the Netherlands. Jiri Keronen of the "True Finns" party was convicted in 2018 of drug use and was sentenced to a fine.

Tomi Teuvo Ilmari Hämäläinen, 31, from the list of "True Finns", in January 2018, the Turku Court of Appeal upheld a county court sentence of two large theft and unintentional concealment of a crime. According to the court's verdict, in 2015 and 2016 Hämäläinen robbed an

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<sup>10</sup> Jilkine V.A. The phenomenon of corruption, its origin in the Grand Duchy of Finland and the level in modern Finland. Materials of International Conference. August 15, 2019. Beijing, China 2019, pp. 69-77.

<sup>11</sup> Tuomo Pietiläinen. Helsingin Sanomat. HS selvitti: Perus-suomalaisten ehdokkaat saaneet rikos-syytteitä selvästi eniten – Hakukone kertoo, mistä rikoksista syytteitä on nostettu eri puolueiden ehdokkaille. 2.6.2021.URL: <https://www.hs.fi/politiikka/art-2000007981496.html>.

<sup>12</sup> Maria Ohisalo. 27.5.2021. URL: <https://twitter.com/mariaohisalo/status/1397986007258218498>.

apartment and stole a firearm. The court noted that the thefts were carefully planned and sentenced to imprisonment for one year, one month and 15 days.

Johan Kristian Engström, elected as a reserve member of the Pyhäjärvi Municipal Council, was sentenced in 2019 to a one-year suspended sentence for committing large-scale theft and two petty thefts. According to the court's verdict, Engström illegally entered the apartment and stole 62,000 euros in cash. Engström was also convicted of two counts of stealing wine from the Alko store.

From the general electoral list, four candidates for deputies of municipal councils received court convictions for crimes of a sexual nature against minors under the age of sixteen and for violations of the sexual inviolability of minors.

A candidate from the list of the "True Finns" party received a suspended sentence of 1 year and 10 months. The county court found the 62-year-old candidate Raimo Kalevi Helenius guilty of a serious crime of sexual abuse of a minor, insult, embezzlement and forgery in March 2017. Helenius confirmed that he concealed the verdict from the True Finns party.

Two True Finns candidates received suspended prison sentences for sex offenses against minors, and a Coalition Party candidate was fined in 2018 for sexual exploitation of a minor.

In November 2018, MP candidate Markku Tapio Niemi was sentenced to 1 year and 8 months in suspended prison and 70 hours of forced labor for sexual assault and coercion of an adult. The candidate hid the court's verdict from the party, but after the publication of information in the Helsingin Sanomat newspaper, Niemi announced his refusal to run, but after the approval of the lists by the election commission, the candidacy can no longer be withdrawn<sup>13</sup>.

One of the elected reserve deputies was twice convicted by a court decision of drunk driving under aggravated circumstances<sup>14</sup>.

The chairman of the Coalition Party from Vantaa municipality Markus Aarnio and candidate for parliament in 2021 was sentenced in October 2017 by a court to 4 months in prison for driving under the influence of 3.25 ppm alcohol<sup>15</sup>.

An analysis of Finnish electoral regulations allows us to conclude that it is necessary to amend the legislation prohibiting the inclusion of candidates with convictions of the courts on the electoral lists of municipal elections. In conclusion, the important role and participation of the Finnish media in the investigation and disclosure of public data on the crimes of parliamentary

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<sup>13</sup> Tuomo Pietiläinen. Neljä kuntavaali-ehdokasta tuomittu lapsen kohdistuneista seksuaali-rikoksista – tekijät ehdolla perussuomalaisten ja kokoomuksen listoilla. 28.5.2021. URL: <https://www.hs.fi/politiikka/art-2000008008507.html>.

<sup>14</sup> Tuomo Pietiläinen. HS. Kunnan-valtuustoihin valittiin yli 30 ratti-juopumuksesta tuomittua – HS selvitti uusien kuntapäätäjien tuomioita. 18.6.2021. URL: <https://www.hs.fi/politiikka/art-2000008053571.html>.

<sup>15</sup> Tuomo Pietiläinen. Kovimpia tuomioita seksuaali-rikoksista saaneet jäivät valtuustojen ulkopuolelle. HS. 13.6.2021. URL: <https://www.hs.fi/politiikka/art-2000008051176.html>.

candidates and elected politicians and leading government officials in state and municipal bodies should be emphasized.

The court decisions made with publication in the media did not prevent the politician and civil servant Pekka Tiainen from running in the municipal elections in 2021, 2012 and 2008, in the presidential elections in 1992, in the parliamentary elections in 2007 and 2011, and in the 2009 European Parliament. On 18.4.2008 the Helsinki Court of Appeal sentenced Pekka Tiainen, former adviser to the Ministry of Employment and Economy, the Ministry of the Interior and the Ministry of Social Affairs and Health, to pay damages in the amount of 1.2 million euros. By a decision of the Helsinki Court of Appeal in March 2017, Pekka Tiainen was found guilty of financial crimes and sentenced to four months in prison<sup>16</sup>.

Legal democracy in Finland needs effective legal mechanisms capable of preventing abuse and criminalization of public authorities, the legitimacy of which is based on public confidence. By creating these legal mechanisms, the legislator must establish increased requirements for the reputation of candidates for public office so that voters have no doubts about the moral and moral and ethical qualities of the elected representatives of government and the legality of their actions as carriers of public authority.

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<sup>16</sup> Tuomo Pietiläinen. Kovimpia tuomioita seksuaali-rikoksista saaneet jäivät valtuustojen ulkopuolelle. HS.13.6.2021. URL: <https://www.hs.fi/politiikka/art-2000008051176.html>.