

Comparative analysis of punishment for fraud in the Grand Duke of Finland, the Russian Empire, in modern Finland and in European countries

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Abstract. A comparative study of criminal liability for fraud in the Grand Duchy of Finland, the Russian Empire, the Republic of Finland and in European countries, as well as the study of court practice materials using the provisions of the article for fraud, indicates a relatively low maximum sentence for the aggregate crimes in modern Finland. Grave crimes are deliberate acts, for the commission of which the punishment is from four months to four years in prison. Aggravating signs of a grave crime are recognized, including causing damage on an especially large scale and committing a crime using the confidence placed in the perpetrator by virtue of his official position. A person who has committed a crime for the first time or has not been convicted within the last three years in Finland is released on parole after serving half of the sentence imposed by the court. Finnish legislation also does not provide for a period of deprivation of the right of convicted fraudsters to hold certain positions or engage in certain activities. Damages to states from fraud have increased significantly during the coronavirus pandemic and require amendments and additions to the article of the Criminal Code for fraud.

Keywords. Fraud, judicial practice, serious crimes, aggravating signs of a crime.

The penalties for serious crimes provided for by the criminal legislation of European countries are lower than those established by the Finnish Penal Code. Also, the system of imposing a fine in Finland since 1921 is the lowest and cannot exceed 120 daily rates of net income, and in the case of several offenses, no more than 240 in total.

For example, in the largest money-laundering case in Finland's history of 135 million euros, the prosecution demanded a sentence of imprisonment for 5 years and 5 months. On 19 October 2019, the Helsinki County Court issued an acquittal to both

of the accused. Hearings in the Helsinki Court of Appeal are scheduled for 26.8 - 3.9.2021¹.

The maximum punishment for cumulative crimes by partial addition of punishments for serious crimes in Finland is 6 years.

For example, Hannu Kailajärvi, founder of the largest pyramid scheme in Finland's history, WinCapita, with a turnover of about 100 million euros and a promise of 400% yield to 10,000 investors, was sentenced to 4 years in prison in 2011 on charges of gross large-scale fraud and illegal collection. of money. The Court of Appeal changed the county court's decision and sentenced Hannu Kailajärvi to 5 years in prison. The convict was released on parole after 2.5 years.

In Finland, a person who has committed a crime for the first time or has not been convicted within the last three years is released on parole after serving half of the sentence imposed by the court. A person who has committed a crime under the age of 21 is released on parole after serving one third of the sentence. For a conditionally convicted person, the court establishes a probationary period from 1 to 3 years.

The modern school of Finnish criminal law, which originated in the General Code of Finland in 1784², was based on the principle of unlawfulness (*nullum crimen sine leges*) and linked the degree of just punitive influence primarily with the objective properties and method of the offense, the amount of damage and harmful consequences for the protected interests³.

The principle of administering justice only by the court originates in the Russian Empire in the Judicial Reform of 1864, approved by Emperor Alexander II, as the establishment of a "speedy, just, merciful and equal court for all"⁴.

In 1889, the Finnish Seimas approved the Criminal Code of the Grand Duchy

¹ The author of the article took part in the preliminary investigation of the case in 2014 and in the preparation of the consideration of the case in the county and appellate courts in 2019 and 2021.

² General Code of Finland in 1784 in three volumes. Compiled by N.N. Korevo. Chairman of the Imperially established Commission for the systematization of Finnish laws. St. Petersburg. State Printing House. 1912. Fund of the Library of the President of Finland.

³ Seimas charter of the Grand Duchy of Finland, imperially approved on July 20, 1906. St. Petersburg. State Printing House. 1913.

⁴ The judicial statutes on November 20, 1864, with a statement of the reasoning on which they are based, were published by the State Chancellery. Part two. St. Petersburg.

of Finland on 19.12.1889⁵. The Criminal Code came into force by the Decree of Alexander III, signed on April 2/14, 1894⁶.

According to the Criminal Code of 1889, temporary confinement in a prison, temporary confinement in a fortress, as well as in a correctional prison department, presupposed the deprivation of all special rights and advantages, personally and according to state and rank conferred on the convict⁷. In addition to general punishment and penalties for crimes, a person dismissed from service was deprived of the right to be appointed again to any public service, to participate in elections and to be elected to office by appointment of the nobility, cities and villages. If the price of what was taken, embezzled or wasted by an official or an official in the service exceeded three hundred rubles, the Code provided for the deprivation of all rights and benefits and transfer to correctional detention units from 5 to 6 years⁸.

Strengthening the punishment is provided, including if the crime was committed in collusion with several persons and when the guilty person by rank or by special relationship to the deceived instilled special confidence in himself (Art. 1671).

The Penal Code currently in force in Finland⁹ begins with the words "We, Alexander the Third, by God's advancing mercy, the Emperor and Autocrat of All Russia...", formally remains in force as amended in 1991 and amended in 2004. The system of punishments enshrined in the Criminal Code includes punishments for crimes and serious crimes. Grave crimes are deliberate acts, for the commission of which a penalty of four months to four years in prison is prescribed (§ 36). Aggravating signs of a serious crime are recognized, including causing damage on an especially large scale.

The exact limit of damage or the amount of "significant benefits" in a serious crime is not defined by law. For example, according to the determination of the

⁵ Suomen Suuriruhtinaanmaan Rikoslaki. Annettu Helsingissä, 19 p:nä Joulukuuta 1889.

⁶ Suomen Suuriruhtinaanmaan asetus-kokoelma. 1894. n:o 17. Hatsinassa 2/14 p:nä Huhtikuuta 1894.

⁷ Code of Practice for Catch and Correctional Punishments. Published in 1885. Volume Fifteenth, Chapter Two. About punishment. p.30.

⁸ Ibid. Article "On Fraud" (Division Four. Article 1665) to the Fifth Article of the Code of the fifth degree of Article 31.

⁹ Rikoslaki 19.12.1889/39.

Finnish Supreme Court in 2019, an amount of less than 14,500 euros is not a significant benefit and a sign of a serious crime of fraud¹⁰.

The same amount of damage caused in the amount of EUR 14,570.89 (FM 86,633) was declared insignificant by the Supreme Court in 2007¹¹.

In Germany, for example, the Criminal Code (Strafgesetzbuch) for the commission of especially grave crimes provides for a punishment of imprisonment for a term of 6 months to 10 years, if the loss of property is caused on a large scale, the crime was committed as part of a group or for abuse of the powers or position of an official or a European official (§263).

Also, as in Finland, in Germany the amount of property damage caused on a large scale is not defined by law and is highly controversial. In accordance with the law enforcement practice of the Federal Supreme Court and the highest Land Courts of Germany, this amount is from 50000 euros.

Article § 266 (1) of Strafgesetzbuch provides for a penalty of imprisonment for up to 5 years or a monetary fine that cannot exceed 360 full daily rates for breach of trust and abuse of a statutory mandate from a public authority. The daily rate is set at a minimum of one euro and a maximum of thirty thousand euros. A person sentenced to a term of imprisonment for at least one year loses the ability to hold public office and exercise the rights obtained as a result of participation in elections for a term of 5 years.

The general punishment in Germany is formed by increasing the size of the imposed capital punishment (except for life imprisonment) for punishment of various types - by increasing the most serious type of punishment, but in the case of imprisonment for a certain period of 15 years, and in the case of a monetary fine - not over 720 daily rates. When imposing a term of imprisonment for at least one year, the court may deprive the convicted person of the right to hold positions in the civil service, in local self-government bodies, or to engage in certain professional or other activities.

¹⁰ Decision of the Supreme Court R2018 /488 of 24.10.2019. KKO 2019:93.

¹¹ Decision of the Supreme Court R2006/657 of 27.12.2007. KKO 2007:102.

In Germany, a court decides on parole from a sentence of imprisonment imposed for a certain period and imposes a probationary period if two-thirds of the sentence imposed has been served, but not less than two months, and if this seems to be permissible taking into account the interests of public safety.

In the UK, fraud by abuse of office is punishable by up to 10 years in prison¹². The maximum terms of punishment in the form of imprisonment for a specified period may not exceed 25 years.

In France, fraud is punishable by up to 7 years in prison and a fine of 750000 euros if the crime is committed by a person with public authority or charged with a public service mission and in the performance of his duties. If the fraud is committed by a criminal community, the punishment is up to 10 years in prison and a fine of 1000000 euros¹³.

In Belgium, which uses the French model of criminal legislation, with a prison sentence of 10 years or more, convicts are subject to deprivation of academic degrees, titles, state powers and other public positions, as well as to be elected and perform the duties of a legal adviser¹⁴.

In Switzerland, fraud is punishable by up to ten years 'imprisonment or a monetary fine of at least 90 days' rate.

In Spain, fraud is punished by imprisonment from 4 to 8 years if the amount of damage caused exceeds 50000 euros, committed in a group or through the use of personal relationships and official or professional position¹⁵.

According to the analysis carried out in Finland, the maximum terms of imprisonment for cumulative crimes are much lower than those provided for by the legislation of European countries. Thus, in a case of large-scale fraud and abuse of office under aggravated circumstances, the former head of the Helsinki Department of Education received an illegal benefit of 8.445.863,40 euros in the period 2006-

¹² Fraud Act 2006. Fraud by abuse of position (Section 4) The Fraud Act 2006 (the Act) came into force on 15 January 2007 and applies in England, Wales and Northern Ireland.

¹³ Code pénal. Dernière modification: 2021-05-27. Article 313-2.

¹⁴ Code pénal. Chapitre II. – Des Fraudes. URL: <https://codes.droit.org/PDF/Code%20p%c3%a9nal.pdf>.

¹⁵ Código Penal. Capítulo VI. De las defraudaciones. Sección 1.ª De las estafas.

2016¹⁶. On May 12, 2020, the prosecutor demanded that a final sentence of 5 years in prison be imposed on the cumulative crimes by partial addition of sentences.

From the description of the criminal act in the court decision, it follows that Hannu Suoniemi committed acts falling under the elements of a crime provided for in the articles for fraud on an especially large scale¹⁷ and abuse of office under aggravated circumstances with obtaining an illegal benefit on an especially large scale¹⁸. The court found that, through deception and abuse of trust, Suoniemi had ordered computer equipment and electronics items, submitting invoices for payment to the Helsinki Department of Education. The convicted person transferred the goods obtained by criminal means for the purpose of further sale or for personal use.

On March 8, 2021, the defense of the accused Suoniemi held negotiations with the prosecutor and came to an agreement on the full admission of the prosecution and the consent of the Helsinki Education Department to conclude a procedural agreement in the form of a plea deal and the amount of damage caused, with a criminal case being considered by the court in conciliation proceedings of the shortened trial.

The former head of the Education Department of the City of Helsinki announced his consent to be heard in the plea process in accordance with Chapter 5b of the Criminal Procedure Act and Chapter 3 and §10 of the Preliminary Investigation Act (805/2011) when the case was heard in the County Court.

After pleading guilty to the accused in compliance with the principles of legality, judicial protection of human and civil rights and freedoms and other fundamentals of criminal proceedings in Finland, the prosecutor demanded that Hannu Kalevi Suoniemi be punished in the form of 3 years and 3 months in prison.

The court found that the crime was committed for a long time with direct intent aimed at stealing someone else's property or acquiring the right to someone else's property, committed by deception or abuse of trust and official position in order to obtain illegal property benefits. When determining the proportionality of the

¹⁶ Helsinki County Court decision dated 8 March 2021.

¹⁷ Rikoslaki 36 luku 2 § 1.

¹⁸ Rikoslaki 40 luku 8 §.

punishment to the crime committed, depending on the gravity of the offense, the degree of guilt, the size and nature of the damage caused, the court determined the final punishment for Suoniemi in the form of 3 years and 3 months in prison.

According to an earlier court decision on May 16, 2018, Hannu Suoniemi's property was seized for a maximum amount of 1000000 euros and remains in effect until the amount of damage is paid.

As the first perpetrator of a crime, Hannu Suoniemi was released on parole after a year and a half, having served part of his sentence in an open-type correctional institution, taking into account the imprisonment during the preliminary investigation.

Hannu Suoniemi was dismissed from his position and retired for health reasons as disabled. Within the framework of the initiated enforcement proceedings, bailiffs-executors will not be able to recover from the convicted person even the amount of damages agreed and approved by the court. The foreclosure in criminal cases from the debtor is possible only in the amount of net income of 925.80 euros per month¹⁹. From income in excess of this amount, bailiffs-executors can collect only 1/3 of the net income for no more than 10 years.

A convicted person in Finland has the right to be transferred to one of 11 open correctional institutions with payment for work performed and tax-free at the rate of 4.7-5 euros per hour, an additional 1.60 euros per day is paid²⁰.

For example, in the open-type prison Suomenlinnan vankila, the payment is up to 1,300 euros per month with a 7.5 hour working day, and convicts also move freely around the territory of the most famous sight of the island of Helsinki.

It should be especially noted that the presence of a criminal record in Finland is not an obstacle to further legal practice or to appointment to public office. There are many examples of convicted politicians and high-ranking officials in the history of Finland, but still, one of the striking examples is Aarre Simonen. Formerly Minister of the Interior (1948-1950), Minister of Trade and Industry (1954-1956) and Minister

¹⁹ Non-taxable income of a debtor based on the norms for 1.1.2021, who has one family member.

²⁰ Data as of 12.2.2020 from the Finnish Penitentiary Service.

of Finance (1956-1957), Aarre Simonen was appointed Minister of Justice (1966-1970) following a criminal conviction in 1961 by the State Court²¹.

In 1993, the Supreme Court sentenced former Minister of Trade and Industry (1991–1992) and MP Kauko Juhantalo to one year suspended imprisonment for accepting a bribe. This did not prevent Kauko Juhantalo from being elected to Parliament again in 1995. In 2003, Juhantalo was elected chairman of the parliamentary defense committee, and in the 2015 elections he received a parliamentary mandate and was elected chairman of the employment and economic development section of the parliamentary finance committee, and in April 2017 Kauko Juhantalo led the delegation of the Finnish Parliament during a meeting with deputies of the Legislative Assembly of the Leningrad Region²².

In the last elections on June 13, 2021, a total of 268 criminal convictions were handed down to candidates for parliamentary elections in Finland during the period 2016-2021.

In the previous municipal elections in 2017 in Finland, candidates for parliament were found guilty in 301 criminal cases during the period 2012-2017. 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 information provided by the Finnish Ministry of Justice to the Finnish Parliament, 125 out of 2,468 candidates 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, including fraud (8) for sexual acts against minors (2)²³.

A person serving a sentence in Finland has the right to study. Correctional institutions in Finland provide a wide range of opportunities for convicts to receive

²¹ V.A. Zhilkin. Corruption in Finland as a threat to political stability and national economy. *Russian Journal of Legal Research*. 2017 № 2. P.186-191.

²² *Ibid.* P. 189.

²³ V.A. Zhilkin. International law and legal basis for elections in Finland. Participation in elections of candidates for deputies who had a criminal record for committing crimes as a violation of the basic constitutional right of citizens. IV International Scientific and Practical Conference "Greater Eurasia: National and Civilizational Aspects of Development and Cooperation". October 6-7, 2021.

education services, including higher education in the form of distance learning. Graduation diplomas are issued to convicted persons by educational institutions without specifying that they have passed exams while serving their sentence in a correctional institution.

For example, the former co-owner of Interbank (after the sale with his brother in 1993 of the bank's shares for 74 million fin marks, the money was transferred to offshores) was sentenced in 1999 by the county court to 4 years in prison for economic crimes on an especially large scale (134 million rubles). Finnish marks or more than 22.5 million euros). During the appeal against the judgment of the county court in 2001, he completed his doctorate at the University of Helsinki. On 30 March 2001, the Court of Appeal changed the verdict of the county court and sentenced him to imprisonment for a term of 6 years. During three years of serving his sentence in a closed prison in Helsinki, the convict wrote a doctoral dissertation on the European Court of Human Rights, which he successfully defended at the University of Helsinki in June 2004 after his parole and continues to practice law.

The correction of a criminal in Finland is considered the main purpose of punishment. The main means of correction was to attract convicts to work, as well as to provide them with education. The gradual release of convicts to freedom under controlled conditions through open institutions with the serving of the final period of their sentence at large under supervision is one of the fundamental ideas of Finnish legislation. At the same time, the state costs for the maintenance of each prisoner amount to more than 62,000 euros per year, in addition, the state covers the damage caused in case of evasion of payments by the convicted person, and also pays court costs in the absence of income from the convict.

Of particular note, the number of crimes and damage caused by fraud to EU states has grown significantly during the coronavirus pandemic. According to the head of the European Anti-Fraud Bureau (OLAF) Ville Itälä, over a year and a half more than 1,000 companies have been identified as suspected of illegally producing sanitary products, fake masks and test kits. The Office investigated over 200 cases and secured the return of € 293 million in public funds. In the spring of 2021,

organized crime offered Finland and 11 other EU countries a shipment of a non-existent coronavirus worth 14 billion euros²⁴.

A comparative analysis of the norms of criminal legislation, regulations and judicial practice in European countries and in Finland indicates the need to make additions to the classification of crimes in Finland for especially grave crimes and to increase the punishment limit to 10 years in prison.

References:

1. Marika Kataja, Susanna Turunen. Suomelle ja muille EU-maille tarjottu miljardien arvosta olemattomia koronarokotteita – vain ajan kysymys, kun väärennöksiä tulee myyntiin. YLE. 20.3.2021.
2. N.N. Korevo. General Code of Finland in 1784 in three volumes. St. Petersburg. State Printing House. 1912. Fund of the Library of the President of Finland.
3. Zhilkin V.A. Corruption in Finland as a threat to political stability and national economy. Russian Journal of Legal Research. 2017 № 2. P.186-191.
4. Zhilkin V.A. International law and legal basis for elections in Finland. Participation in elections of candidates for deputies who had a criminal record for committing crimes as a violation of the basic constitutional right of citizens. IV International Scientific and Practical Conference "Greater Eurasia: National and Civilizational Aspects of Development and Cooperation". October 6-7, 2021.

²⁴ Marika Kataja, Susanna Turunen. Suomelle ja muille EU-maille tarjottu miljardien arvosta olemattomia koronarokotteita – vain ajan kysymys, kun väärennöksiä tulee myyntiin. URL: <https://yle.fi/uutiset/3-11848017>.