



Introduction to Finnish Legal System University of Helsinki

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Introduction

- Main features of the Finnish legal system
 - Separation of powers (legislative, executive, judicative)
 - Parliamentary system
 - Centralized administration (cf. Bundesländer in Germany)
 - Some distinctive features
 - Preview over the constitutionality of the new legislation (Constitutional Law Committee)
 - Role of the President (in European Union matters)

Administrative system: The Parliament

- The supreme decision-making authority
- 200 Members of Parliament
- Elections every four years
- Enacts legislation, approves the state budget, ratifies international treaties and oversees the Government
 - <http://web.eduskunta.fi/Resource.phx/parliament/index.htm>
- Three key arenas
 - The plenary session: legislation and political discussion
 - The committees: preparatory work
 - Parliamentary groups: shape policy

Administrative system: Parliamentary groups

- The practical level MPs work
- The parliamentary groups elect their own leaders and each group has its own staff.
- The parliamentary groups have a say in the composition of different parliamentary bodies:
 - Legislative work in the committees
 - Participation in the Government and the election of ministers

Administrative system: Parliamentary groups

- Seats in the Parliament 2011-2015:
 - National Coalition Party Parliamentary Group 44
 - The Social Democratic Parliamentary Group 42
 - True Finns Party Parliamentary Group 39
 - Centre Party Parliamentary Group 35
 - Left Alliance Parliamentary Group 12
 - Green Parliamentary Group 10
 - Swedish Parliamentary Group 10
 - Christian Democratic Parliamentary Group 6
 - Left Wings Parliamentary Group 2

Administrative system: Committees of the Parliament

- The work done in the committees are of central importance in the Parliament
- The reports that the committees draft provide the basis on which Parliament takes nearly all decisions.
- A total of 16 committees:
 - 15 permanent special committees and the Grand Committee
- The special committees prepare Government bills, legislative initiatives, Government reports and other matters for handling in plenary session, also issue statements when requested to do so.
- Constitutional Law Committee (Constitution, Human Rights, EU Law)

Administrative system: Committees of the Parliament

- Appointment and composition
 - Selecting committee members is one of the first tasks after a general election
 - Each committee has 17 members and 9 alternate members (exception of the Finance Committee (21+19) and the Grand Committee (25+13))
- Four-year term
- Handling of matters
 - The handling of a matter begins with a preliminary debate in plenary session
 - Parliament refers the matter to the appropriate committee
- Hearing experts
 - experts present their views
- General debate followed by decisions on details
- Key role in legislative work

Administrative system: The Government

- The Government refers to the Cabinet of Finland
 - Prime Minister Jyrki Katainen
 - <http://www.vn.fi/etusivu/en.jsp>
- Consists of the Prime Minister and the necessary number of ministers
- Denotes a decision-making body consisting of the Government plenary session and the ministries
- The Prime Minister is elected by Parliament
- The President appoints the other ministers in accordance with a proposal from the Prime Minister

Administrative system: Functions of the Government

- General governing of the country
- Also decision making-body for governmental and administrative matters consisting of the Government plenary session and the ministries
- The Prime Minister directs the activities of the Government and oversees the preparation and consideration of matters that come within the mandate of the Government.

Administrative system: Ministries

- Government consists of 12 ministries
- Each ministry is responsible for the preparation of matters within its field of competence and for the proper functioning of administration
- The ministries are:
 - The Prime Minister's Office
 - The Ministry for Foreign Affairs
 - The Ministry of Justice
 - The Ministry of the Interior

Administrative system: Ministries II

- The Ministry of Defence
- The Ministry of Finance
- The Ministry of Education and Culture
- The Ministry of Agriculture and Forestry
- The Ministry of Transport and Communications
- The Ministry of Employment and the Economy
- The Ministry of Social Affairs and Health
- The Ministry of the Environment

Administrative system: The President of the Republic

- Under the Constitution of Finland executive power is vested in the President of the Republic and the Government
 - <http://www.tpk.fi/en/>
 - President of the Republic Sauli Niinistö (2012-)
- The President of the Republic conducts Finland's foreign policy in co-operation with the Government and decides upon his relations with other states and his actions in international organisations or negotiations
- The President of the Republic is the Commander-in-Chief of the Defence Forces
- is elected by direct popular vote and must be a native-born citizen of Finland
- The term of office is six years

Judicial system: Finnish courts

- Exercise judicial power, that is, they decide individual cases
- Are independent: bound only by the law in force
- Courts are divided in general courts and special courts
- General courts
 1. Supreme Administrative Court (<http://www.kho.fi/en/>)
 - Administrative Courts (8)
 2. Supreme Court (<http://www.kko.fi>)
 - Appeal Courts (6)
 - District Courts (27)

Judicial system: Finnish courts

- Special courts:
 - The Market Court
 - The Labour Court
 - The Insurance Court
 - The High Court of Impeachment
- Special courts are concentrated on particular themes (i.e. insurances, consumer protection), whereas general courts handle both administrative cases in administrative courts and matters of private civil and criminal cases are first handled in district courts

The sources of Finnish law I

- Continental civil law country
 - Legal code priority source
 - In interpretation legal positivism and principle of legality are the most typical features
 - Rule of law principle (Section 2, paragraph 3 of the Finnish Constitution)
 - Legal certainty
 - Possible deviation from strict legalism is fairness (i.e Olaus Petri's rules for judges in the 16th century) and human rights

Basic Rights

- The new Constitution of Finland entered into force 1 March 2000, when among others the basic rights system was reshaped
 - <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf>
- In Chapter 2 of the Finnish Constitution are the basic rights and liberties regulated
- Many types of rights
 - Freedom rights and legal protection (such as freedom of religion, right to life, personal liberty and integrity)
 - Political rights (such as the right to vote)
 - Equality rights (such as right to one's language and culture)
 - Welfare rights (such as the right to social security)
- Plays essential role in legal argumentation

The sources of Finnish law II

- Sources of law are traditionally divided in two groups according to their birth process (how democratic and authoritative sources are)
- Sources of national law can be divided in three groups according to their binding effect
 - Strongly binding (must -sources)
 - Statutory law, established custom
 - Weakly binding (should -sources)
 - Legislative drafts, decisions of the Supreme Court and Supreme Administrative Court
 - Permitted (may -sources)
 - Jurisprudence, unwritten general legal principles, actual arguments

Sources of Finnish law: Legislation

- Legislation highest source of law
- Supremacy of EU law has been recognized (Primary norms, secondary norms, EU case law)
- Includes all rules of law belonging to the normative hierarchy covered by the constitution (that is written law)
 - Constitution
 - Act "ordinary law"
 - Degree
 - Cabinet decision
 - Decision of ministry
 - Decision of other public authorities

Sources of Finnish law: Legislation

- Norms have been divided between rules and principles
 - Conflicts between principles: can be weighed in the balance
 - Conflicts between rules: only one of the conflicting rules can be applied
 - *Lex superior derogat legi inferiori*: A higher level rule abrogates a lower one
 - *Lex posterior derogat legi priori*: A later rule abrogates an earlier rule of similar status
 - *Lex specialis derogat legi generali*: The special rule abrogates the general one
 - *Lex posterior generalis non derogat legi priori speciali*: A general rule does not abrogate an earlier special rule unless otherwise prescribed

Sources of Finnish law: Established Custom

- Belongs to the strongly binding sources of law
- Validity is based on the passive acquiescence of the legislator
- “- - - [T]he established custom, if it is not unreasonable, shall also be his instruction when making the judgement, when enacted law does not exist.” (Chapter One, Section 11 of the Code of Judicial Procedure)
 - Subsidiarity to written law
 - Must be reasonable

Sources of Finnish law: Legislative drafts

- Belongs to the weakly binding sources of law
- Clarifies the intent of the legislator
- Are different kinds of groundwork concerning the new legislation
 - Government bills, minutes of parliamentary committees, discussions of the plenary sessions of parliament

Sources of Finnish law: Court Decisions

- Are a part of the weakly binding group of the sources of law
- Not only the decisions of the national Supreme courts but also the decisions of the European Court of Justice and the European Court of Human Rights
- Precedents have larger importance (especially precedents of Supreme Court), but are not formally binding
 - However, in practise lower courts normally follow the decisions of the higher courts

Sources of Finnish law: Permitted sources of law

- Includes among others jurisprudential research material, unwritten general legal principles, morality and actual arguments.
- Are not based on legal authority (like other two upper sources of law)
- The basis rests on attempts to clarify the content of existing legislation and to systematize sources of law

Reasoning: Arguments and the application of the law

- Affects in a fundamental way the manner in which justice is administered and the quality of judgements
- Arguments are divided in four types:
 - Linguistic
 - Systemic
 - Teleological
 - Transcategorical

Arguments: Linguistic

- Most natural foundation for a judicial decision: the application of the law must be based on law
- Can be based on accepted semantic or context-based meaning
 - Important that clause to be interpreted should not be given a meaning different from its conventional meaning without adequate grounds
- Legal meaning goes above the everyday meaning
- Multilingualism among European law shows the problems for linguistic interpretation: some concepts cannot be translated only by one word

Arguments: Systemic

- Statute is interpreted within the context of the body of statutory material of which it is a part
- Group of arguments of the systemic type:
 - Contextual-harmonisation arguments
 - Logical-conceptual arguments
 - Analogous arguments
 - Historical arguments
 - Arguments, which appeal to general legal principles
 - Arguments from precedent

Arguments: Teleological

- The clause is interpreted in the light of its objectives (more typical in EU law)
- The context of the interpretation is the whole statute of which the clause is a part
- In a Finnish teleological interpretation can often be taken into account legislative drafts
- Also can be referred for example in administrative courts to certain objectives esteemed by Finnish society (such as welfare state) or in the European Court of Justice to the central objectives of the Treaty of Rome (now TFEU, TEU)

Arguments: Transcategorical and unclassified

- May use the argumentation of any of the above-mentioned interpretative models
- Unclassified argumentation may be called an argument of express intent
 - Subjective interpretation theory
 - Objective interpretation theory
 - Ratio legis

Reasoning: Justification levels

- Quality of judicial decision focuses attention on the inter-relationship of the above normative and argumentative types
- Justification levels (simplified):
 1. Sources of law and related doctrine
 2. Level of conceptual definition
 3. Legal principles
 4. Ideological (moral) choices

Reasoning: Legal certainty in general

- No clear definition of the principle of legal certainty
- General legal principle, which presumes predictability of the law and also acceptability (related to human rights)
 - Formal and substantive legal certainty
- Connection of the discourse on rule of law and legal certainty

Conclusion regarding legal quality

- Before measuring the quality of judicial decision it is essential to note that international law, European law and national law each have their own doctrine of the sources of law
- Quality of judicial decision should not be evaluated only in terms of legal terminology or rules of interpretation or sources of law
- Important is take into consideration also the legal culture.