

**SECTION 6.**

LAW AND INTERNATIONAL LAW

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## LEGAL SYSTEM OF FINLAND

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The law of Finland is related to Scandinavian law and is particularly close to the law of Sweden. There is much similarity in the law of the Nordic countries, not only because of the geo-physical proximity of these countries and their historical and political development, but also because of the deliberate legal harmonisation policies pursued in these countries. The result of this difficulty is that many of the legal norms (individual norms and even legal institutions), especially in the area of private law, are the same in all Scandinavian countries.

The legal system in the Scandinavian countries is closer to a continental one. It is based on a legal framework, a tragically poor legal framework, and the law is not actually unequalled as it is in the continental system<sup>1</sup>. While the system of sources of law still includes the Old Laws, the modern law of any of the Scandinavian countries is mostly separate statutes, but at different times. «As a consequence of the complexity and inconsistency of the law, judicial practice and jurisprudence have played an important role in Scandinavian law» [1, p. 12]. Jurisprudence, however, is not an independent source of law, but only serves to interpret legal norms. At the same time, the role of the higher judicial institutions, the Supreme Courts of Justice, in the development of the law of the Skandinavian countries is quite significant. The Supreme Court has a primacy function in the common law system. The supreme court is the body that makes precedent-setting decisions (judgments) for the purpose of unifying law, and the lower courts follow those decisions. Further, legal thinking in the Scandinavian countries is characterised by a practice-oriented and programmatic approach in which practice is considered to be the overriding criterion, which is a characteristic feature of the common law system.

The development of the law of Finland has been divided into the period when Finland was a province of the Swedish Kingdom, the period of Autonomous Kingdom of the Russian Empire, the period of independence, in which the country's accession to the European Union is considered an important stage. Researchers Aarnio A. & Tolonen H. talk about – «it is noteworthy that each of these

phases has left its mark in the present-day laws of Finland : 1)The Swedish Crown of Sweden (1150-1809); 2)The Autonomous Kingdom of the Russian Empire (1809-1917); 3)The Period of Independence»[2, p. 36].

Four Constitutional Laws formed the basis of the Constitution of Finland prior to the adoption of the new Constitution: the Form of Government Act of 1919, the 1922 Law on the Supreme Court, the 1922 Law on Ministerial Public Administration, and the 1928 Parliamentary Regulation.

The law of Finland, like that of other Scandinavian countries, is derived from written law and customary law. Also important is the role of the Supreme Court and Supreme Administrative Court judgements, mentioned above, which have the function of regulating and guiding judicial practice. The Supreme Court and Supreme Administrative Court decisions are also important.

In Finland, it is considered essential that a person has the right to reasonably expect that a case to which he or she is a party will be resolved in the same manner as similar previous cases. Judicial decisions are not in themselves, however, legally binding, either «vertically» (in relation to inferior courts) or «horizontally» (in relation to proprietary decisions) [3, p. 78].

A provision of a national enactment shall not be applied if it conflicts with a provision of a higher enactment or national law. A legal norm that has lost its meaning, i.e., a law that has ceased to exist, may also not be changed. It has ceased to be effective as a result of prolonged non-application.

Among the written sources of law, the primary source of law is the law (modern law in Finland distinguishes between constitutional, ordinary and exceptional laws). Subordinate legislation may be promulgated if it is provided for by law. They include decrees of the President, decrees of the Government (State Council), acts of the municipal level, instructions and resolutions of the governing bodies, and normative nature. The basic laws of Finland are published in the Law Digests, which are the official periodical (electronic) publication of the most important legal texts of Finland on the Internet (until 2011). The Law Digests have been published in printed form), which is administered by the Public Legal Information Service (Finlex).

In addition, the Legal Information Service (Edilex), with its systematised database of current legislation, serves the needs of lawyers in Finland, The basis of the original Code of Laws, or 1734 Law. Also in wide use in Finland are the Suomen Laki Law Collections, which have been published since 1955 by the Union of Lawyers of Finland (Suomen Lakimiesliitto). Also known is the Lakikirja Collection of Laws, which since 2008 has been published by Edita Publishing Oy, founded in 1986 and owned by the Commercial Legal Information Service.

Customary law, established and widely recognised social norms, and accepted decision-making models are considered enforceable in Finland. An

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example of a customary right is the right of everyone to enjoy nature, which, although not expressly enshrined in law, is the decisive criterion in determining the limits of property rights. «Customary law is essentially made up of general legal principles, the development of which the law of treaties has a special role to play in their generalisation and development. Thus, the sources of law may be the results of legal research, the object of which is, for example, an understanding of the content of legal norms» [4, p. 217]. Of great importance are the drafting documents of legislative drafts, which are often resorted to in order to resolve problems arising in the interpretation of legal norms. The drafting documents should be considered to express the intent of the legislator. Among the legal sources governing trade and business, commercial (trade) customs occupy an important place. As a rule, they enjoy precedence over discriminatory laws.

Scandinavian law, in particular the law of Finland, has been greatly influenced by the Germanic legal doctrine, principally the jurisprudence of concepts (Begriffsjurisprudenz), which had at its core a pandemic law, based in turn on the study of the texts of the Justinian codification (Corpus Iuris Civilis). The basic concepts, rules, theoretical constructions and formulational-dogmatic approach are mainly abstract concepts, rules, theoretical rules and formulational-dogmatic approach. The influence of conceptual jurisprudence, or formational-dogmatic jurisprudence, was particularly strong in Finland in the first half of the 20th century, before the emergence of the Analogical School. However, the country's legal jurisprudence and judicial practice could not reach a high level of «scholarship», as the legal discourse was not legally enshrined in the absence of any desire for codification.

This has subsequently contributed, for example, to the absence of serious conceptual problems related to the division of public and private rights, in the adoption of consumer protection and environmental protection institutes in the French legal system. In this respect, Scandinavian law (including Finnish law) is comparable to common law [5, p. 116].

In Finland, the division between public and private law has generally been maintained. The public right unites the legal norms which regulate the organisational forms and modes of operation and interrelationships of public societies, governments and communes. Such rules apply either to public societies themselves and their interrelationships, or to the relationship of citizens with public societies. The characteristic feature of such relations is subordination (power relations). The basis of public-law relations is their adherence to law and their unity. They exist in the form of public power and are built on unequal power relations. They are characterised by centralisation and a state-basic structure. Nevertheless, public rights are linked to procedural tensions.

An important distinguishing feature of public law from private law is the territorial aspect of the application of legal norms. Public law is based on the notion

that public power is exercised only on the State's own territory, but on the other side, the principles of criminal law include, in addition to territorial, the principles of active identification and protection, as well as the principle of universality. International private law can also serve as an example of the difficulty of reconciling public and private law, It is usually part of domestic civil law, but at the same time it contains public law origins and regulates legal relations with a foreign element.

There is no clear division of law into sectors in Finland. Traditionally, the whole system of law in the country is divided (as in the system of substantive law) into public law, which is based on public state interests, and private law, in which private interests are domiciled. Public law includes state (constitutional), administrative, ministerial, financial, criminal, procedural and international law. Private law consists of civil, labour, social and environmental rights. The 1995 Code of Laws of Finland is based on this division.

Thus, the system of Finnish law has historically developed as a manifestation of so-called Scandinavian law. A characteristic feature of Scandinavian law is the integration of those features of legal regulation, such as stability and predictability, which are characteristic of substantive (Romano-Hermannian) law with its legal framework, and the flexibility and openness, together with the traditional sensitivity, inherent in common (Anglo-American) law with its legal framework. It should be noted, however, that the legal system of Finland is authentic in nature and is supported by the unique Finnish language, but it also continues to retain its Romanesque-legal constitution. This is a common basis for Western (as well as Russian) law.

The legal system in Finland is still characterised by the inconsistency and lack of legislation, and the openness and pluralism of the law, together with the absence of severe sectoral restrictions. The law in Finland has thus retained its distinctive features and continued to develop. The promotion of dignity, which is a priority for private law, and the protection of sub-subjective rights, above all fundamental and human rights, which is characteristic of public law, and the reflection of these requirements and the promotion of their application in procedural law will ensure the further development of the law of Finland towards its conformity with contemporary legal requirements.

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