ALTERNATIVE INVESTIGATION AND SANCTIONING SYSTEMS FOR CORPORATE AND CORPORATE-RELATED CRIME IN FINLAND

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I. Introduction: Economic Crime and Its Control in Finland

A. Penal Code Reforms in the 1980s and 1990s[1]

Economic criminality became a source of concern for the authorities for the first time in the late 1970s. At that time, tax fraud was regarded as the most common economic crime. It was estimated that tax fraud led to a 5–10 per cent reduction in collected taxes. In 1980, the Ministry of Justice established a broadly-based project organization to prepare a proposal for a total reform of the Penal Code of 1889 (39/1889). The goal was to give the highest priority to the reassessment of the provisions on economic crime. Two years later, the Ministry of Justice established a separate working party to examine the factual phenomena of economic crime as well as the material legislation on and control mechanism for economic crime; the work group was also entitled to make proposals for improving the prevention, supervision, and investigation of economic crime.

These preparations led to various government measures to tighten control over economic crime. At the legislative level, the most important action was the revision of provisions on economic crime in gradual parts of the total reform of the Penal Code (PC) in the 1990s (1990, 1995, and 1999).[2] For instance, completely new provisions on subsidy offences and business offences were incorporated into chapters 29 and 30 of the revised Penal Code in 1990 (769/1990). A major legislative reform dealt with the introduction of corporate criminal liability in 1995 (in chapter 9 PC; 743/1995). New clarifying provisions were also enacted on the individual criminal responsibility of directors in a corporate body.

According to the Finnish Penal Code, a corporation may be sentenced to a corporate fine for certain enumerated, mostly economic, offences. The main reasons for introducing this type of corporate liability, as expressed in the legislative drafts, can be summarized as follows:

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1 As to the aims and early stages of the total reform of the Finnish Penal Code (PC), see R Lahti and P O Träskman, 'Conception et principes du droit penal economique et des affaires y compris la protection du consommateur. Finland. National Report' (1983) 54 *Revue Internationale de Droit Pénal* 249.

2 An unofficial English translation of the Penal (Criminal) Code, as it was in force in 2015 (766/2015), is available on the website of the Ministry of Justice: https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20150766.pdf.

the social significance of corporate activity, the cumulation of actions and omissions, the lack of proportionality between offences and punishment, the difficulties in allocating individual criminal responsibility, the transfer of responsibility in hierarchical relationships, the need for imposing an effective sanction in an equitable manner, and the idea that it is fair to direct the reproach at a corporate body when the offence was committed in the operations of the corporation.[3]

B. Action Plans Against Economic Crime and the Grey Economy

In 1996, the Finnish government initiated an Action Plan aimed at a more effective control of economic crime and the grey economy. The Action Plan was later renewed by the government with similar new decisions of principle, and, ultimately, a permanent body for investigating the grey economy was established in the tax administration. These measures consolidated and launched a series of reforms in material legislation, regulatory agencies, law enforcement and prosecution, and strengthened the applied research on economic crime. As to material legislation, for example laws regulating bankruptcies or the registering of companies and debt recovery procedures were revised. In the field of law enforcement and prosecution, new positions for investigators and prosecutors were created, and the organization of economic crime investigation within the police was reformed.

Many empirical studies have been conducted on the nature and interaction of the processes and forces which characterize economic crime control in Finland. One of these studies cautions against the dangers of advocating criminalization as a response to social problems, but at the same time it points out how parts of the practices of criminal justice can be positive and productive in certain aspects, especially when compared with traditional crime control mechanisms. So the results of the study indicate that (a) the theoretical paradigm of rational choice theory and the criminal justice strategy of general prevention (deterrence) are useful with respect to economic crime, and (b) stronger emphasis on economic crime control can be perceived as bringing about greater equality (justness) in criminal policy.[4]

C. Types of Punitive Sanctions with Respect to Economic and Corporate Crime

Traditionally, the applicable punitive sanctions in Finland and elsewhere in Scandinavia are primarily punishments and other criminal sanctions (see chapter II, below). However, punitive administrative sanctions (typically punitive fees) have been introduced in various sectors of business and financial activity, and the implementation of EU legislative instruments has increased the use of administrative criminal law in combating economic and financial offences. In practice, the most important administrative fee with a penal nature

[3] For a more detailed review, see M Tolvanen, 'Trust, Business Ethics and Crime Prevention – Corporate Criminal Liability in Finland' (2009) *Fudan Law Journal* 99.

[4] For the research results of A Alvesalo, see *The Dynamics of Economic Control* (The Police College of Finland 2003), 41–74.

is the punitive tax increase, which is set concurrently with the assessment of taxes in cases of tax deceit. Another early example of the adoption of a noticeable punitive fee involves competition law: since 1992, a new Competition Act has been enacted, replacing the earlier Act on Competition Restrictions, and the competition restriction offence decriminalized and replaced by provisions on a competition restriction fee. A similar type of punitive administrative fee was adopted in 2016 by the legislative acts for the protection against market abuse as prescribed by Regulation (EU) 596/2014.[5] In chapter III below the development and current contents of Finnish administrative criminal law will be examined in detail.

Forfeiture, especially forfeiture of the proceeds of crime, is a criminal sanction commonly imposed in connection with economic and corporate crime. The forfeiture shall be ordered on the perpetrator, a participant, or a person on whose behalf or to whose benefit the offence has been committed, where these have benefited from the offence. A prerequisite for a forfeiture order is that the relevant act is criminalized by law; thus, forfeitures are imposed in criminal proceedings. In Finnish doctrine forfeiture is classified as a security measure instead of a punishment. Therefore, Article 6, paragraphs 2–3 (fair trial) of the European Convention on Human Rights are not considered applicable as such to the forfeiture proceedings.[6]

Chapter 10 PC includes the general provisions on forfeiture. They were revised by Act of 875/2001 as part of the total reform of the Code. By Act of 356/2016 these provisions were reshaped in order to implement Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU. The provisions were retained as general provisions, and so their application is not only restricted to the crimes listed in Article 3 of the Directive 2014/42/EU. Forfeiture will not be discussed separately in this report.

II. Criminal Law and Procedure[7]

A. General Characteristics of Criminal Policy[8]

A total reform of the Finnish Penal Code of 1889 was in its essence finalized after 30 years' drafting process. The four most comprehensive partial reforms were concluded by amendments to the Penal Code in 1990, 1995, 1998, and 2003. The last partial reform (Act of 515/2003) dealt with the general part of the Code. The development over the recent decades has been marked by similar approaches to criminal policy in the Nordic countries, by an

[5] See Securities Markets Act /258/2013), as amended by the Act of 519/2016. See also the amendment of chapter 51 (Security markets offences) of the Penal Code by the Act of 521/2016.

[6] J Rautio, 'Uudet menettämisseuraamuksiin liittyvät menettelysäännökset' in J Riekkinen (ed), *Oikeutta oikeudenkäynnistä täytäntöönpanoon, juhlajulkaisu Tuula Linna* (Alma Talent 2017), 269–279, 271.

[7] See generally M Joutsen, R Lahti and P Pölönen, *Finland. Criminal Justice Systems in Europe and Northamerica* (HEUNI 2001).

[8] See generally R Lahti, 'Towards a Rational and Humane Criminal Policy – Trends in Scandinavian Penal Thinking' (2000) 1 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 141.

efficient Nordic cooperation in penal matters and, to a lesser degree, by harmonized legislation in the fields of criminal law and criminal procedure of these countries.

It is possible to treat the Nordic countries as a sub-regional area in terms of their culture and the law, although the different positions of these countries in relation to the European Union have changed the role of cooperation between them and of their organs (among them, the Nordic Council and Nordic Minister Council). The common legal traditions and crucial similarities in cultural, economic, and social development engender strong mutual confidence between the Nordic countries, and this confidence promotes efficient cooperation. Nordic cooperation in legal matters is based on a variety of sources: multilateral (European) conventions, treaties between the Nordic countries, a partly uniform legislation, and an established practice between the public officials of these countries.

The legal culture and legal thinking in the Nordic countries reveal some specific features. Although these countries belong to the so-called civil (statutory) law tradition, the approaches in legislative reforms and legal doctrines are often less strict in 'system-building' (in constructing theories and concepts) and more pragmatically oriented than is typical of the continental civil law countries. This is also true in relation to the general system for analysing criminal acts *(Straftatlehre)*, although Finland is in this respect closer to German penal thinking than the other Nordic countries. The models offered by common law countries and the theories developed by scholars from these countries are now more seriously considered than in earlier times.

Essential similarities are discernible in the goals, values, and principles governing the Nordic penal codes and the criminal justice systems in these countries, even though they are far from identical. At the same time as the Nordic countries have been social welfare states, their crime control policies and the systems of criminal sanctions are characterized by an emphasis on values such as liberalism, rationalism, and humaneness. The Nordic countries have also been active in promoting efforts to elaborate internationally accepted standards for criminal policy and criminal justice and to implement them. Human rights aspects and humanitarian considerations are of special importance in this context.

The penal thinking adopted in the *travaux préparatoires* to the total reform of criminal law is characterized by the demand for a more rational criminal justice system, i.e. for a more efficient, just, and humane criminal justice. The existence of the criminal justice system is justified on utilitarian grounds. The structure and operation of the penal system, however, cannot be determined solely based on its utility. The criteria of justice and humaneness must also be applied. The penal system must be both rational as to its goals (utility) and rational as to its values (justice, humaneness).[9] This kind of penal thinking has had clear effects on

[9] R Lahti, 'Towards Internationalization and Europeanization of Criminal Policy and Criminal Justice – Challenges to Comparative Research' in E W Pływaczewski (ed), Current Problems of the Penal Law and Criminology; Aktuelle Probleme des Strafrechts und der Kriminologie (Lex, Wolters Kluwer Polska 2012), 365–379, 369. See also generally I Anttila, *Ad ius criminale humanius. Essays in Criminology, Criminal Justice and Criminal Policy* (Finnish Lawyers' Association 2001).

the reasoning about the punitive level of the penal system, the types and contents of the criminal sanctions, and the sentencing. To quote Government Bill 66/1988:

> Criminological research has demonstrated that the general preventive effect of punishment cannot be connected, in a one-sided manner, to the length of the prison sentences. Entry into prison already has a considerable deterrent effect. Similarly, we have abandoned the view that the rehabilitative effect of prison would require a certain minimum period in prison. On the contrary, we know that sentences of imprisonment always hamper the possibilities of readjustment to a normal social life. In addition, the enforcement of prison sentences is expensive for society. (Detailed reasons, chapter 1.2.1.1.)

As to the punitive level of the penal system, the assessment of the harmfulness and blameworthiness of the acts to be criminalized was also intended to lead to a reassessment of the sentencing scales and of the seriousness of the various types of offences. For instance, the typical harm caused by property offences—their 'penal value'— should be regarded as lesser than that of violent crimes, and modern crimes such as economic and business offences, work safety offences, and the impairment of the environment should be regulated in the criminal code and their seriousness should be comparable to that of property offences.

As to the aims of the policy on criminal sanctions, alternatives to imprisonment were developed and the use of prison sentences was also decreased in general. The length of prison sentences imposed in Finland and the other Nordic countries was even traditionally quite short from an international and comparative perspective: the average could be stated in months, not in years. The relative number of offenders sentenced to unconditional imprisonment since the mid-1970s was on the decrease for nearly 25 years, until 1999. During this period, the average size of the prison population decreased from above 100 per 100,000 population to 65, i.e. to the level of the other Nordic countries.[10] From 2000 to 2005, the size increased again, to 90 in 2005—in line with similar developments in the other Nordic countries. The main individual factor explaining this increase in the prison rate in Finland was a shift towards a more repressive reaction against violent crime. In the last decade the number of prisoners seems to have normalized at 60–70 per 100,000 population.[11]

Since the 1990s there has been a shift in legal ideology, with a still greater emphasis on human and basic rights, and this trend is increasingly affecting both Finnish criminal law theory and criminal policy. Since the end of the 1990s, the internationalization and

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[10] See especially P Törnudd, *Fifteen Years of Decreasing Prisoner Rates in Finland* (National Research Institute of Legal Policy 1993); T Lappi-Seppälä, *Regulating the Prison Population* (National Research Institute of Legal Policy 1998).

[11] R Lahti, 'Towards a more efficient, fair and humane criminal justice system: Developments of criminal policy and criminal sanctions during the last 50 years in Finland' (2017) *Law, Criminology & Criminal Justice. Cogent Social Sciences*, 3 (http://dx.doi.org/10.1080/23311886.2017.1303910).

Europeanization of criminal justice has had a noticeable influence on Finnish criminal policy.[12]

B. Policies and Principles of Criminalization

In the beginning of the total reform of criminal law, an ambitious attempt was made to assess in a uniform and systematic way the goals, interests, and values that the Penal Code can promote and protect—while trying to resolve the basic problem of criminal legislation: what behaviour is to be punished and how severely? Although this theoretical model was not effectively realized in the reform work, it illustrates the discrepancy between theory and practice in legislative work. Since the 1990s, the theory on criminalization has been influenced by the fundamental rights approach, according to which the constitutional limits should govern the use of criminal law, too.

According to traditional European thinking, the punishability and the seriousness (penal value) of various acts should be based on the assessment of the protected interest *(Rechtsgut)* and the means for committing the offence. In the Finnish preparatory work, another approach was also used, and it reflects cost-benefit thinking as applied to criminal policy in general and to individual criminalizations in particular. This latter scrutiny should involve several stages for discussing the need for penal provisions in various spheres of social life.

Our first aim is to locate the forms of criminal behaviour that appear to be the most harmful as judged in the light of the specific goals of each sphere of social life. Does a certain behavioural phenomenon harm or endanger the interests of an individual or society and, if so, to what extent? Second, we must evaluate the blameworthiness of these harmful or dangerous acts. For example, we need to discuss the actual freedom of choice on the part of the human agent, the circumstance whether it is reasonable to reproach the agent. Third, we must embark on a systematic weighing of the pros and cons entailed by a criminalization, whether the benefits and costs are discernible in the fields of legal or social development policy. Any means of penal control must adapt its purpose with a view to the other possible methods of regulation (supervision, technological or administrative arrangements, etc.). Furthermore, we need to pay attention to the fact that the extent to which the means of penal law can be resorted to is limited. In addition, a penal regulation is subject to special restrictions due to legal safeguards (e.g. the legality principle requires that the penal provisions shall never leave too much room for interpretation).

The above-described approach should strongly signify the (moral) limitations in the use of criminal law. Traditionally, it has been emphasized that a criminalization has to remain a means of last resort (ultima ratio).[13] Several preconditions for using criminal law as a control

[12] As to the following text in more detail, see R Lahti, in *Current Problems of the Penal Law and Criminology* (n 9), 370–375.

[13] See in more detail R Lahti, 'Towards a principled European criminal policy: some lessons from the Nordic countries' in J B Banach-Gutierrez and C Harding (eds), *EU Criminal Law and Policy. Values, Principles and Methods* (Routledge 2016), 56–69, 60–63.

mechanism must be fulfilled as listed in the Finnish legislative work (similar prerequisites as in the German terms *Strafwürdigkeit, Strafbedürftigkeit*, and *Straftauglichkeit*). As mentioned above, the latest theoretical discussion emphasizes the constitutional limits of using criminal law.

Accordingly, the following issues have triggered deliberations in the Finnish reform work:

(i) how should the criminalization principles governing criminal law be reflected in the shape and form of criminal legislation;

(ii) how should we assess the seriousness of a crime and, accordingly, assign, say, the offences against the person to various chapters of the Criminal Code and to sub-categories in each chapter;

(iii) what part should be given to the criminalization of dangerous behaviour *(Gefährdungs-delikte)*;

(iv) how to ensure that criminal legislation takes into consideration the interests of different social groups (criminalization as an issue of social justice);

(v) how to solve the emerging problems concerning the legal protection of new interests and values in economic and business life, environment, labour protection etc. (dynamic evolution of criminal law);

(vi) how should we implement at the national level criminalizations based on international obligations, i.e. crimes with an international or transnational nature.

The practical results as manifested in the enacted penal provisions imply colliding interests and values in the legislative discretion, in particular the tension between developing criminal law in the spirit of social justice, dynamic social needs, and international solidarity and, at the same time, taking into consideration the constitutional and moral limitations in the use of criminal law. A balance between these divergent aims should be sought. In the course of argumentation constitutional and human rights aspects may collide so that certain aspects support the enlargement of criminalizations whereas others restrict their scope or the methods for using criminal law; tensions between contrary arguments are frequent. When dealing with some of the recent government bills concerning criminal law, the Parliamentary Constitutional Law Committee deliberated generally on the issue that there must be a considerable social need and also, from the basic rights point of view, acceptable reasons for a criminalization to restrict fundamental freedoms in an acceptable way; the arguments for criminalization must also be proportionate to the extent to which fundamental freedoms are restricted.

The original objective of enacting a unified, coherent, and systematic criminal law (consisting of a general and a special part, as well as of the system of criminal sanctions) has been challenged by the increased tendency towards diversification of various areas of criminal law (in particular, the emergence of European economic criminal law and international criminal law). This diversification is reflected in the pluralism of general legal doctrines and in the need to develop a more dynamic conceptual and systematic approach in order to control many parallel legal regulations and the diversity of the regulated phenomena.

C. Fundamental Principles of Criminal Law

According to the preparatory work, there are two basic principles governing Finnish criminal law reform: the legality principle *(nullum crimen sine lege, nulla poena sine lege poenali)* and the principle of culpability *(Schuldprinzip)*. These principles are justified primarily on the basis of their compatibility with the judicial values of legal certainty and predictability. At the same time these principles are defended by referring to the utilitarian argument of general prevention. A necessary prerequisite for the persuasiveness of such a parallel or complementary justification is that general prevention means so-called integration prevention, in other words the effect that criminal law has in maintaining and strengthening moral and social norms. It must be kept in mind that these basic principles are significant not only when reforming criminal law but also in its actual application.

The *legality principle* includes, *inter alia*, the requirement of certainty of criminal law. The aim to limit judicial discretion is predominant in the reform work. While the Swedish Criminal Code of 1965 had been criticized for using overly vague crime definitions, the Finnish law drafters sought to describe the offences as clearly as possible, for example by reducing the use of value-laden or otherwise ambiguous terms in the definition of the crime. On the other hand, the objective of more precise crime definitions collides with another aim of the Finnish reform work, namely the effort to synthetize crime definitions, in other words to cast them in a more abstract form (as in the crime definition on 'Causing of danger' or the definitional elements of 'Debtor's offences'; PC 21:13 and chapter 39). A reasonable balance between these conflicting aims needs to be sought. An accommodation may also be required between the principles of comprehensibility and certainty. Although clarity is a function of both comprehensibility and certainty of language, the maximization of one may be detrimental to the other.

Other means to limit judicial discretion have also been used. Thus, in many cases the existing offences have been split into subcategories (e.g. basic assault, aggravated assault, and petty assault), and the definition of an aggravated offence is based on an exhaustive list of criteria (however, a milder evaluation is always discretionary). In addition, the number and scope of sentencing scales (punishment latitudes) have been generally reduced.

In accordance with the legality principle and the values behind it, the basic concepts and principles governing the general preconditions for criminal liability are defined in the general part of the Penal Code to a greater extent than in the Penal Code's original form. For instance, the preconditions for liability for omissions as well as the concepts of intent, negligence, and mistake are defined in the new Code (chapters 3–4; 515/2003), unlike in the original Penal Code of 1889.[14] The significance of the legality principle was reinforced during the preparatory work by the constitutional reform (chapter 2, section 8, Constitution[15]).

[14] See the following provisions in the revised PC 3:3; 3:6–7; 4:1–3.

[15] An unofficial English translation of the Constitution of Finland (731/1999), as it was in force in 2011 (1112/2011), is available on the website of the Ministry of Justice: https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731_20111112.pdf.

As for the *principle of culpability* (guilt), the definition of fault terms (intent and negligence) in law as such is likely to strengthen the significance of the guilt principle. The idea that the fault element of intent apparently indicates a higher degree of blameworthiness than negligence (basic or aggravated negligence) is reflected in the provision according to which negligence liability depends upon explicit specification (PC 3:5). Accordingly, the main emphasis of the offences regulated in the Penal Code is on intentional behaviour. In Finnish criminal law the doctrine of fair opportunity has been adopted in a strict form; thus, no individual shall be blamed for consequences over which he or she had no control.

It should be noted that the strengthening of the culpability principle did not exclude the adoption of corporate criminal liability in 1995 (chapter 9 PC). This indicates a tendency towards diversification of general doctrines of criminal liability and, at the same time, a tendency towards harmonized principles of the criminal liability of legal persons and the heads of business within the EU.

An important function of the criminal justice system is to express a socio-ethical reproach and, in this way, to influence the sense of justice and morality. This aim of *denunciation*, which has long been emphasized in Finnish and Scandinavian criminal policy, implies that the Penal Code is a notable instrument for communication. Furthermore, the Penal Code distinctively represents symbolic legislation expressing in an authoritative way the values and interests prevalent in society.

Thus, the value(s) of *justice* is particularly significant, and the aspect of social justice is one of its connotations. The legality principle and the principle of culpability can also been seen as sub-criteria of justice, and the same is true of the *proportionality* principle, which governs the assessment of the seriousness of crime and sentencing. However, it is worth pointing out that it is largely possible to apply the main criteria for rationality in the criminal justice system—justice, efficiency, and humaneness—without creating conflict over the development of the penal system.

When the aim of denunciation and the value of justice are seen as essential, the systematic assessment of the seriousness of crime and the solutions regarding the classification of offences and other structures of penal provisions are of vital importance in reforming the criminal law.

In the Finnish reform work, the aims of accessibility and comprehensibility caused all important information—both general principles of criminal law and crime definitions—to be concentrated in the Penal Code. From a comparative perspective it is noteworthy that it is intended to list in the Penal Code, in addition to the traditional crime definitions, all the offences with a punishment latitude that includes imprisonment. On the other hand, the concept of offence is broad, and the Finnish law does not contain a clear and uniform system of administrative penal law for minor infractions (see chapter III below).

D. System of Criminal Sanctions – for Individuals and Corporations[16]

As mentioned above, the mechanism used to achieve the general preventive effect of punishment is not primarily deterrence but the socio-ethical disapproval which affects the sense of justice and morality—general prevention instead of general deterrence, without calling for a severe penal system. The legitimacy of the entire criminal justice system is an important aim and, therefore, principles of justice such as equality and proportionality are central. The emphasis on the non-utilitarian goals of the criminal justice system—fairness and humaneness—must be coupled with a decrease in the repressive features (punitiveness) of the system, for example through the introduction of alternatives to imprisonment. The significance of individual prevention or incapacitation is regarded as very limited.

The first changes in the system of criminal sanctions prepared since the 1970s pertained to the alternatives to custodial sentences. Accordingly, legislation enacted in 1996 incorporated community service as a regular part of the sanction system. Legislation enacted in 2005 incorporated conciliation—both in criminal and civil cases—as a regular part of social welfare and a restorative justice system. Electronic monitoring was introduced as a new type of criminal sanction in 2011; it shall be imposed subject to certain material prerequisites as an alternative to a maximum custodial sentence of six months.

The general punishments in force are as follows: fine, conditional imprisonment, community service, electronic monitoring, and unconditional imprisonment (chapter 6 PC). A special criminal sanction for those who in the course of their business as entrepreneur or manager of an enterprise committed an economic crime or otherwise crucially failed in their legal duties was introduced in 1985, namely the prohibition to engage in business activities. Although it is not a necessary precondition that the suspected person fulfil all definitional elements of an economic crime, this sanction can be characterized as a criminal sanction, because the investigation and prosecution follow the rules of a criminal process.

The legislative changes are not restricted to substantive law. The competence to impose monetary criminal sanctions has increasingly been transferred from the courts to summary proceedings outside the court or to law enforcement authorities.

As mentioned above, a corporation may be sentenced to a corporate fine for certain enumerated, mostly economic offences (chapter 9 PC, as amended in 1995). The corporate fine—which is the only criminal sanction available—ranges from a minimum of EUR 850 to a maximum of EUR 850,000.

The Finnish doctrine behind corporate criminal liability is not clear.[17] The acts or omissions of the individual offender, under certain conditions, are attributed to the legal person not as acts of the legal person but as acts of the individual for the company (PC 9:3). A crucial precondition is that a person who is part of the corporation's statutory organ or other

[16] See in more detail R Lahti, in *Law, Criminology & Criminal Justice* (n 11).
[17] See also M Tolvanen, in *Fudan Law Journal* (n 3), chapter 2.

management or who exercises actual decision-making authority therein was an accomplice in the offence or allowed the commission of the offence, or alternatively that the care and diligence necessary for the prevention of the offence was not observed in the operations of the corporation (PC 9:2). This precondition refers to the blameworthy organizational conduct (fault) of the corporation. In case of the last-mentioned alternative it is possible to impose a corporate fine based on anonymous culpa.

The Penal Code has provisions on determining the sentence. The general principle governing the assessment of punishment to an individual offender reads as follows: the sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence, the motives for the act, and the other culpability of the offender manifest in the offence (PC 6:4). The basis for calculating the corporate fine is worded as follows: the amount of the corporate fine shall be determined in accordance with the nature and extent of the omission or the participation of the management and the financial standing of the corporation (PC 9:6.1).

Corporate criminal liability does not replace individual criminal responsibility, but both are parallel forms of imputability. Normally, both the individual manager and the company are prosecuted if the formal conditions are met. There are clarifying penal law provisions on the allocation of individual liability for an offence committed in the operations of a legal person: the person is liable to whose sphere of responsibility the act or omission belongs when taking into consideration his or her (formal or factual) position, the nature and extent of his or her duties and competence, and also otherwise his or her participation in the origin and continuation of the situation that is contrary to the law (PC 5:8, 47:7, 48:7).[18]

E. Criminal Procedure and Its Safeguards – General Characteristics

In Finnish procedural law, the traditionally recognized basic elements of due process or fair trial are the right to access to court, an independent and impartial tribunal, the presumption of innocence, and guarantees of procedural rights. It is noteworthy that these procedural principles and rules are applicable to all kinds of offences (including corporate and corporate-related crime), except that summary (simplified) penal proceedings and fixed fine penal proceedings for minor offences have some specific features which make the proceedings more expeditious and cost-effective.

A fundamental principle that reflects the presumption of innocence is *favor defensionis* (in favour of the defence). This 'meta' principle implies specifying principles, most importantly the principle of *nemo tenetur se ipsum accusare* or privilege against self-incrimination (an individual may not be compelled to testify against him-/herself and has the right to silence) and the principle of *in dubio pro reo* (in case of doubts about the guilt the accusation shall be dismissed). The burden of proof is on the prosecutor.

[18] R Lahti, 'Individual Liability for Business Involvement in International Crimes' (2017) 88 *Revue Internationale de Droit Pénal* 257.

The Finnish legal system has long represented a model of a democratic Rechtsstaat where democracy and fundamental rights are regarded as complementary principles in a strong sense: there is neither judicial review nor a constitutional court for reviewing the constitutionality of laws; rather, the conformity of a bill to the constitution is reviewed only during the legislative process.[19] Therefore, the ratification of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the reform of constitutional rights in the 1990s were remarkable because they implied the direct applicability of the fundamental rights of individuals in the courts.

In May 1990 Finland ratified the ECHR, accepted the jurisdiction of the European Court of Human Rights (ECtHR), and recognized the right of individual petition. The ECHR and other important human rights treaties have been incorporated through an Act of Parliament *in blanco*. Because of the predominance of the incorporation method, Finland can be said to represent dualism in form but monism in practice when implementing international law into the domestic legal order. This implementation method affects the application of human rights treaties. The Parliamentary Constitutional Law Committee has confirmed the following principles: the hierarchal status of the domestic incorporation act of a treaty determines the formal rank of the treaty provisions in domestic law (i.e. their rank is normally that of an Act of Parliament), incorporated treaty provisions are in force in domestic law according to their contents in international law, and the courts and authorities should resort to 'human-rights-friendly' interpretations of cases having domestic status in order to avoid conflicts between domestic law and human rights law.[20]

New provisions on the fundamental rights in the Finnish Constitution were enacted in 1995, and they were included into the new Constitution of 1999. The new provisions on these basic rights, which are much more detailed than the earlier ones, for instance those concerning not only fundamental freedoms but also social rights, have been essentially inspired by the international human rights treaties. From the point of view of criminal law, there are important new provisions, for example on the legality principle in criminal law (corresponding to Article 7 ECHR) and the provision stating that a punishment entailing deprivation of liberty can only be imposed by a court.

Several of the enacted constitutional provisions reference both basic and human rights, thus giving semi-constitutional status to human rights treaties.[21] The *travaux préparatoires* for this reform emphasize the fact that the constitutional provisions are also directly applicable in the administration of law by judges and authorities, and so their binding effect is not restricted to law-making only. In addition to the 'human-rights-friendly' interpretation of

[19] See, e.g. A Jyränki, 'Taking Democracy Seriously. The problem of the control of the constitutionality of legislation' in M Sakslin (ed), *The Finnish Constitution in Transition* (Helsinki 1991), 6–30.

[20] See in more detail M Scheinin, 'Incorporation and Implementation of Human Rights in Finland' in M Scheinin (ed), *International Human Rights Norms in the Nordic and Baltic Countries* (Martinus Nijhoff Publishers 1996), 257–294.

[21] So Scheinin, in *International Human Rights Norms in the Nordic and Baltic Countries* (n 20), 276.

the law, a similar 'basic-rights-friendly' interpretation is recommended, although the prohibition of courts to examine the constitutionality of Acts of Parliament was maintained.

The requirements of *Rechtsstaatlichkeit* (the constitutionally governed state) include several criteria which should be applied in constitutionally governed states (like Finland): first, anticipatory guarantees such as the general principles limiting the use of (substantive) criminal law and the principles concerning the organization of the judiciary; second, the procedural rules regarding the different phases of criminal proceedings; and, third, the methods of appeal in criminal proceedings and the supervision of the administration of justice. Major reforms of criminal procedural law have been carried out during the last thirty years.

Legislation on the pre-trial investigation and coercive measures in criminal proceedings was reformed in 1989 (and replaced by new Acts of 2011[22]), the lower court system was restructured in 1993, the public prosecution authorities were reorganized in 1996, a comprehensive reform of criminal procedure in the lower courts was carried out in 1997,[23] and the provisions on the Court of Appeal procedure in 1998. The Code of Judicial Procedure, which dates back to the year 1734 under Swedish rule, has been revised innumerable times; in 2015 (732/2015), a crucial reform targeted its chapter 17 on evidence.[24]

There are two special features in the institutions and actors of Finnish procedural law: first, the pre-trial investigations are led by senior police officers and not by prosecutors or judges. The decision as to whether an apprehended suspect is to be arrested must be made within 24 hours by a senior police officer or the prosecutor. A request that a person under arrest be remanded for trial shall be made to a court without delay and not later than noon on the third day following the day of apprehension. The court has also an important role in deciding on the use of covert coercive measures. The prerequisites for these measures are regulated in detail by the legal Act; covert coercive measures include telecommunications interception, the obtaining of data other than through telecommunications interception, traffic data monitoring, obtaining base station data, extended surveillance, covert collection of intelligence, technical surveillance (on-site interception, technical observation, technical monitoring and technical surveillance of a device), obtaining data for the identification of a network address or a terminal end device, covert activity, pseudo-purchase, the use of covert human intelligence sources, and controlled delivery.

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[22] Unofficial English translations of these Acts are available on the website of the Ministry of Justice: Criminal Investigation Act (805/2011), as it was in force in 2015 (736/2015), and Coercive Measures Act (806/2011), as it was amended up to 1146/2013: https:// www.finlex.fi/fi/laki/kaannokset/2011/en20110805_20150736.pdf; and https://www.finlex.fi/fi/laki/kaannokset/2011/en20110806.

[23] See Criminal Procedure Act of 689/1997, whose unofficial translation is available on the website of the Ministry of Justice, with amendments up to 733/2015: https://www.finlex.fi/fi/laki/kaannokset/1997/en19970689_20150733.pdf.

[24] See Code of Judicial Procedure, whose unofficial translation is available on the website of the Ministry of Justice, with amendments up to 732/2015: https://www.finlex.fi/fi/laki/kaannokset/1734/en17340004_20150732.pdf.

Second, the office of the prosecutor general is an independent authority outside the judicial administration of the Ministries of Justice and Interior. When the legislation on criminal proceedings was modernized in the 1990s, the main model was Sweden's accusatorial type of trial. The accusatorial principle requires that the judge be an impartial third party, so that all the activities of bringing the criminal charge forward are handled by a separate official, the prosecutor, and his or her role is significant.

In addition to the accusatorial principle, the other leading principles governing the main hearing in the proceedings are the requirements of orality and immediacy. Therefore, all pleadings shall, as a rule, be oral, and the opposing party has the right to cross-examine all evidence presented against him/her. The acceptability of evidence other than oral evidence in open court is very restricted.

The increased awareness among decision-makers of the importance of human rights and, later, of the constitutional rights affected the contents of the procedural reforms and still affects the application of procedural law. The most important Supreme Court decisions since the beginning of the 1990s, whenever human rights norms were directly applied, address criminal procedural law and particularly the fair trial requirements. The constitutional reform produced some new provisions on basic rights, mostly equivalent to the corresponding articles in international human rights treaties but more extensive in some respects.

F. Most Recent Developments Regarding Criminal Procedure in Case Law and Legislation

In the most recent years, ECtHR case law has influenced especially the fair trial guarantees of evidentiary procedure (such as the privilege against self-incrimination and the exclusion of unlawfully obtained evidence) and the significance and contents of the '*ne bis in idem*' principle. In these respects Finnish procedural law has been reformed and applied in line with the practice of the ECtHR and, when necessary, in line with the judgments of the Court of Justice of the EU (CJEU). For instance, explicit provisions have been included in the revised Code of Judicial Procedure (chapter 17, sections 18 and 25; 732/2015) on the privilege against self-incrimination and on the exclusion of unlawfully obtained evidence.

A separate legal Act (781/2013) on the prohibition of double jeopardy (*i.e.* a prohibition against the cumulative use of criminal punishment and administrative penal fee) was introduced for tax fraud cases. Accordingly, as a rule, no charges may be brought nor court judgments passed if the same person in the same case has already incurred a punitive tax or customs increase (PC 29:11).

The reformed evidence law regulated in chapter 17 of the Code of Judicial Procedure contains—in addition to clarifying general provisions and provisions on the obligation or right to refuse to testify—innovative provisions, such as the above-mentioned provisions on the privilege against self-incrimination and on the exclusion of unlawfully obtained

evidence. There are also new provisions on secret evidence and anonymous witness. If, in very serious criminal cases, the protection of the identity of an anonymous witness is required (to protect against a threat against life or health), he or she can be heard in the main hearing behind a screen or without the presence of the defendant or, without being present in person, by telephone, video contact, or other suitable means of communication. In the hearing, the voice of the witness may also be altered to protect the anonymous witness against recognition by voice. (See chapter 17, sections 51–53, of the Code of Juridical Procedure; and chapter 5, sections 11a–b, of the Criminal Procedure Act.)

A new legislation on consensual proceedings was enacted in 2014 (670/2014) as part of the revision of the Criminal Procedure Act. The new legislation maintains the legality principle in prosecution as a main rule, but the exceptions—grounds for waiving prosecution—have become more extensive. One of the grounds for waiving prosecution is that criminal proceedings and punishment are deemed to be unreasonable or inappropriate in view of a settlement reached by the suspect in the offence and the injured party, the other action of the suspect in the offence to prevent or remove the effects of the offence (chapter 1, section 8).

One innovation concerns the introduction of plea bargaining, which is intended to be applied particularly in complicated cases of economic and corporate crime. Accordingly, the prosecutor may, on his or her own motion or on the initiative of the injured party, take measures for the submission and hearing of a proposal for judgment in confession proceedings. The prosecutor must use his or her discretion in considering the nature of the case and the claims to be presented, the expenses apparently resulting from, and the time required for, a hearing in confession proceedings on one hand and in the normal procedure on the other. Preconditions for confession proceedings are that the suspect in the offence in question admits having committed the suspected offence and consents to confession proceedings as well as that the injured party has no claims in the case or consents to confession proceedings. The prosecutor must commit to requesting punishment on a scale mitigated by one-third. The proposal for judgment will be handled and confirmed by the court (chapter 1, sections 10–11 and chapter 5b Criminal Procedure Act.). It should be noted that the mitigation of punishment applies only to the actor's own guilty plea and not to testimony on the guilt of accomplices.

III. Administrative Criminal Law

A. Introduction

It is still relevant and possible to commence a text about differences between criminal law and administrative penal law in Finland with the same words as professors Pekka Koskinen and Terttu Utriainen did in 1988. They wrote an article entitled 'The legal and practical problems posed by the difference between criminal law and administrative law' and started off by remarking that it is not easy to prepare a clear and informative Finnish national report on the subject in question. It is probably easier to write such an article from the point of view

of a legal system with a clearly defined and uniform system of administrative penal law. This is not the case in Finland.[25]

Finnish law does not contain a clear and uniform system or definition of administrative sanctions or administrative penal law. The field of administrative sanctions is quite heterogeneous, and sector-specific rules are laid down in laws governing the use of public authority.[26] There are, however, several types of such sanctions already in use, but a comprehensive systematic review and rethink of them is still under investigation.

All these sanctions share in common that they are imposed by an administrative decision, in accordance with the provisions of the Administrative Procedure Act (434/2003) on administrative matters, unless otherwise specified elsewhere. However, the regulatory model for administrative sanctions is not entirely strange to Finland. The administrative sanction model got its early forms in the early 1970s when the control of parking violations was transferred outside of the criminal law system (decriminalized). Parking violations may now lead to an administrative fee, a 'parking fee'. Examples for long-established administrative sanctions include the public transport inspection fee also called 'penalty fare' (1979), the excess load fee (1983), and the tax increase, which has even longer historical roots.[27]

Already the Penal Law Committee, which prepared the total reform of the Penal Code in Finland during the late 1970s, expressed the idea that sanctions for petty violations of the law may be replaced by fiscal sanctions, which can be imposed in simplified proceedings.[28]

The Legal Affairs Committee of the Parliament of Finland[29] stated in 2005 that the government should examine the possibilities of introducing a more comprehensive and uniform system of administrative sanctions. The Constitutional Law Committee also paid attention to the same issue.[30] On 21 March 2017, the Ministry of Justice set up a working group to prepare the general regulation of administrative sanctions (Ministry of Justice

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[25] P Koskinen and T Utriainen, 'The Legal and practical problems posed by the difference between criminal law and administrative law' (1988) 59 *Revue Internationale de Droit Pénal* 173, 188.

[26] K Kiiski, *Hallinnollinen sanktiointi* (Turun yliopisto 2011), 55. R Lahti, 'Rikosoikeuden ultima ratio - periaatteesta ja hallintosanktioiden asemasta' in T Hyttinen, A Jokela, J Tapani, and M Vuorenpää (eds), *Rikoksesta rangaistukseen, juhlajulkaisu Pekka Viljanen 1952 – 26/8 – 2012* (Turun yliopisto, oikeustieteellinen tiedekunta 2012), 105. See also R Lahti, 'Towards a principled European criminal policy: some lessons from the Nordic countries' in J B Banach-Gutierrez and C Harding, *EU Criminal Law and Policy* (Routledge 2016), 56–69. See also L Halila and V Lankinen, 'Administrativa sanktionsavgifter i nordisk kontext' (2014) *JFT* 305, 325.

[27] L Halila and V Lankinen, 'Administrativa sanktionsavgifter i nordisk kontext' (2014) *JFT* 305, 319.

[28] Penal Law Committee 1976:72, 88–90.

[29] Legal Affairs Committee 21/2005, 2–3.

[30] Constitutional Law Committee 9/2012, 4. The Finnish Supreme Court (SC) has also stated that the consideration and coordination of different sanction systems in accordance with the case law of the European Court of Human Rights should most naturally take place in the legislature and the government, not in the courts. SC 2010:45, para 43.

7/41/2017).[31] The working group is tasked to assess the necessity for a general regulation on administrative sanctions and to prepare the necessary legislative proposals for implementing the relevant legislation. The term of the working group is 1 June 2017–30 November 2018.

In Finland, administrative sanctions have been increasingly introduced, especially in the attempt to eliminate criminal penalties for minor and/or negligent offences (decriminalizations). It has also been suggested that their introduction, to some extent, may be explained by the flexibility in administrative decision-making. In addition, administrative sanctions are used in EU law, particularly in order to safeguard the financial interests of the Union, and this development is also reflected in national legislation.[32]

Administrative sanctions are closely related to the specific legislative objectives of a particular sector of administration and its regulatory objectives enforced by specialized administrative authorities.[33] The legislative differences in sanctioning are largely due to the sectoral nature of administrative sanctions. Administrative sanctions are closely linked to enforcement and supervision procedures and methods of a specific public authority. The aforementioned sectoral nature of administrative sanctions and the priority of specific regulation (*lex specialis*) emphasizes the fact that administrative sanctions are part of the sectoral sanction scheme.[34]

B. Administrative Sanctions in Finland

In the legal literature, administrative sanctions have been deemed to include both sanctioned administrative penalties and other administrative sanctions and to be criminal in nature or to share certain features with criminal law sanctions. This has been taken to mean that some of the principles that need to be followed in criminal proceedings must also be taken into account when imposing administrative sanctions. At least two different things can be said when discussing administrative sanctions. On the one hand, the question is

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[31] See also P Koskinen and S Repo, *Hallinnolliset maksuseuraamukset vähäistä lainrikkomusten seuraamuksena. Arviomuistio oikeusministeriölle 29.1.2001* and *Oikeudenhoidon uudistamisohjelma vuosille 2013–2025* (Oikeusministeriön mietintöjä ja lausuntoja 16/2013). The evaluation and enhancement of regulation of administrative sanctions has also been included in the development programme of the Ministry of Justice for years 2013–2015.

[32] O Mäenpää, *Yleinen hallinto-oikeus* (Alma Talent 2017), 76.

[33] These authorities, in principle, deal with cases of administrative sanctions independently. However, individual public officers are subject to the orders of their superiors according to the laws, rules of procedure, etc. considering certain public authority. Administrative authorities do not have legislative powers but may have the right to issue regulations and guidelines. Generally, the decision making process and jurisdiction in the public authority considering decisions such as to impose an administrative sanction are regulated by laws, government decrees, and rules of procedure.

[34] *Rangaistusluonteisia hallinnollisia seuraamuksia koskevan sääntelyn kehittäminen* [Developing the regulation of punitive administrative sanctions] (Oikeusministeriön työryhmän muistioluonnos 8.11.2017), 12–13 [Draft Memorandum of the Ministry of Justice working group].

whether the sanctions or penalties for minor offences should be replaced by administrative sanctions. On the other, there may be severe financial penalties, such as penalty payments imposed for restraints on competition in competition legislation.

The most distinct subgroup of administrative sanctions are administrative penalties ('sanction fee', 'penalty payment'). The legislation uses different terminology for them, such as default payment, penalty charge, and penalty fare. The penalty is usually imposed in the administrative procedure by the administrative public authority in the role of a supervising authority. However, some penalties are imposed by the court on proposal by the public administrative authority (supervisory authority). In some cases, Finnish legislation includes the possibility of imposing increases in payments (tax or duty surcharges).

Administrative sanctions (penalties), on the other hand, are not charges for services or other actions of public authorities (service charge) or fees charged by the public authority (supervision fee). Nor has the recovery of an advantage or aid previously granted, the withdrawal or restriction of an administrative authorization, or the restriction or removal of the right to pursue a trade or to have access to a certain professional activity been considered an administrative sanction.

The conditional fine procedure is not considered an administrative sanction either. In the case of the conditional fine procedure, the authority imposes a ban or operating obligations, and the authority may impose a conditional fine to enforce this ban, operating obligation, or prohibition. A penalty payment or fine is not imposed if the person acts according to the terms set by the authority.

In addition to the administrative penalties, the legislation includes some other administrative penalties which can be considered punitive, such as a public warning. Documents relating to the imposition of administrative sanctions are, in principle, public in accordance with and due to the Act on the Openness of Government Activities (621/1999), but the public authorities are not always required to publish sanctions or maintain a separate register of sanctioned persons or entities.

One special feature of administrative sanctions is that most of them can be imposed on legal persons as well (corporate bodies, etc.). However, the legislation is not coherent in this case either. Provisions do not always explicitly indicate whether it is possible to impose sanctions on both legal and natural persons.

The administrative penalties may be divided and classified in two groups: flat-rate or non-fixed penalties. Typically, flat-rate payments are imposed on natural persons due to minor regulatory violations (e.g. public transport penalty fare and parking fee). Non-fixed administrative penalties are imposed on the basis of an assessment by the supervisory authority. Still, the maximum and sometimes the minimum levels of the penalty are provided in relevant legislation.[35]

[35] *Rangaistusluonteisia hallinnollisia seuraamuksia koskevan sääntelyn kehittäminen* (n 34), 13–15. In recent years, administrative sanctions have also been the subject of growing debate in other Nordic countries than Finland.

Further, it is possible, to some degree, to classify administrative penalties as minor transgressions that might have been criminal offences in the past but were later replaced by administrative sanctions. Criminal law sanctions might have been considered too harsh in relation to the blameworthiness of the conduct in question. In such cases, the legislator may also have considered that administrative sanctions are more effective in addressing specific problems than criminal law sanctions and compliance with criminal procedure. Examples include the public transport penalty fare and the parking fee. In addition, there are administrative penalties in amounts up to several million euros, whose introduction emphasizes procedural efficiency aspects. The penalty payment imposed on a company responsible for a restraint on competition can be mentioned as one example. Further, the latter kinds of penalties are often imposed on legal persons, the former to natural persons.[36]

C. Legal Constraints of Criminal Legislation in Finland

Criminalizing a certain act or conduct depends on political values and decisions. Nevertheless, criminalization must meet certain legal requirements. The Constitutional Law Committee has stated that fundamental and human rights have a major role in determining the limits to criminalization. The baseline is that the law cannot disallow actions explicitly justified or allowed by the Constitution. Even so, certain criminal law provisions can genuinely restrict the scope of a person's fundamental rights. Also, criminal law sanctions *de facto* result in a restriction of certain rights. Consequently, the Constitutional Law Committee concluded that a criminalization should be assessed in the same way as the restrictions on fundamental rights in general. Criminal law provisions must therefore fulfil the general conditions for limiting fundamental rights and possibly certain special conditions depending on the fundamental right in question.

The general conditions for limiting fundamental rights set by the Constitutional Law Committee can be summarized as follows:

– Principle of legality *(nullum crimen sine lege scripta et certa, nulla poena sine lege)*: the restrictions must be based on the law laid down by Parliament. The restrictions must be sufficiently precise. A criminal law provision must define the punishable conduct and the penalty with sufficient definiteness.

Recently, a comprehensive legal analysis and comparison of administrative sanctions in the Nordic countries was published: L Halila, V Lankinen and A Nilsson, *Adminstrativa sanktionsavgifter: En nordisk komparativ studie* (Nordisk Ministerråd, 2018).

[36] See also R Lahti, 'Towards a principled European criminal policy: some lessons from the Nordic countries' in J B Banach-Gutierrez and C Harding (eds), *EU Criminal Law and Policy* (Routledge 2016) 56, 63–66. It is also about the question of application of the principle of proportionality. The principle of proportionality has in the field of criminal law not only the dimension of prospective proportionality. It has also the dimension of retrospective proportionality. The legislator needs to analyse whether measures other than those of formal criminal law could address the problems more effectively and to what extent various types of sanctions should be introduced in parallel, *ibid.* 69.

– Eligibility requirement: the restriction must be acceptable and there must be a substantial social necessity for the restriction.
– Requirement of immunity of the core area: it is not possible to limit the core of a fundamental right by an act enacted in ordinary legislative procedure.
– Proportionality requirement: the restrictions must be indispensable to achieve an acceptable objective and in proportion to the weight of the legal interest protected by fundamental rights and the social interest behind the restriction.
– Due process: there must be adequate legal safeguards in limiting fundamental rights, and legal rights must be properly taken into account.
– Demand for compliance with human rights obligations: restrictions must not conflict with Finland's international human rights obligations.[37]

In legal literature, the legal constraints on the use of criminal sanctions have been structured in the form of so-called criminalization principles (principle of protection of legitimate interests, ultima ratio principle (criminal law must be used only as a last resort), social cost evaluation (rational evaluation of the social costs and benefits of criminalization), inviolability of human dignity and legality. The principles of criminalization are very similar to those of limiting fundamental rights described earlier. A criminalization which respects the limitations of fundamental rights should also be considered to meet the requirements of the criminalization principles and vice versa.[38] Although the principles of criminalization do not quite have the same support of and confirmation from the Constitutional Law Committee and the Legal Committee as the constraints on fundamental rights, they do increasingly receive support from recent government proposals, for example.

While the Constitutional Law Committee has, to some degree, equated administrative penalties and criminal law sanctions, it has not made a corresponding assessment of the fulfilment of the conditions for limiting fundamental rights as in the criminalization process. Further, the national legal literature has so far failed to make a comprehensive correlation between criminal sanctions and administrative sanctions from the point of view of the legal conditions and limitations of their adoption. To date, national legal literature has focused primarily on the procedural questions regarding these forms of sanctions (in particular the *ne bis in idem* principle and questions related to the privilege against self-incrimination).

As said, the Constitutional Law Committee in Finland did equate criminal law sanctions and administrative sanctions to some degree. The general criteria and grounds for administrative sanctions must be laid down by an Act of Parliament as required by section 2, subsection 3 of the Constitution, as it implies a significant use of public authority and powers. The law must clearly and explicitly lay down the grounds for the payment

[37] Constitutional Law Committee 25/1994.
[38] See the pioneering work of S Melander, *Kriminalisointiteoria – rangaistavaksi säätämisen oikeudelliset perusteet* [A Theory of criminalization – legal constraints to criminal legislation] (Suomalainen Lakimiesyhdistys 2008).

obligation (administrative penalty), the amount of the penalty, and the due process of the person liable for payment, as well as the grounds for enforcing the law.

Although the principle of legality in criminal cases, as described in article 8 of the Constitution, does not, as such, apply to the regulation of administrative sanctions, the general requirement of precision cannot be ignored in the context of such regulation either. This means that especially the amount of the penalty and the scope of the sanctioned conduct must be subject to a clearly defined scope of application.[39]

D. The Nature of Administrative Sanctions in Relation to Criminal Sanctions

In Finland, legislative compliance with constitutional law is supervised by the Finnish Constitutional Law Committee of the Parliament. But while the Committee has to some degree equated administrative penalties and criminal sanctions, the exact and accurate meaning and the impact of that statement are not always clear.

As discussed above, the national debate on the differences and similarities between administrative and criminal law sanctions has so far focused on defining and analysing procedural legal safeguards. This can be considered a natural consequence of the case law of the ECtHR and of national Supreme Courts, which explicitly emphasize procedural issues. As far as administrative cases are concerned, there is little debate at national level on the 'theories of punishment' or the legal constraints on administrative sanctions in terms of their legal conditions of use or restrictions in relation to criminal law sanctions.

It is generally assumed that 'the administrative sanctions system' is more effective when the criminal justice system operates slowly and the strictly enforced safeguards of criminal procedure restrict its use. However, criminal law and criminal law sanctions are considered to be the strongest manifestation of moral condemnation and blame in society. An increased need to create alternative sanction penalty payment systems, especially for minor offences, has been recognized. Likewise, from the point of view of cost-efficiency, similar pressure is applied to systems of severe administrative sanctions, for example under competition law. However, it should be ensured that the procedural legal safeguards characteristic of the criminal justice system are duly taken into account.

On the other hand, it has also been argued that the criminalization structure of criminal law, in keeping with justice and equality principles, should reflect the relative harmfulness and blameworthiness of the different types of conduct. Particularly as regards economic crimes and violations, it should be considered whether it is better to differentiate the prerequisites for sanctioning conduct within the criminal law system in order to improve prevention and procedural efficiency or to distinguish between criminal and administrative sanctions by coexisting separate control systems.[40]

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[39] See, e.g., Constitutional Law Committee 2/2017 and its referral to relevant case law.

[40] R Lahti in *Rikoksesta rangaistukseen* (n 26), 109, 114.

The administrative sanctions, however, contain features which are inherent in criminal sanctions. These are related to the fact that administrative sanctions have been viewed as both punitive and preventive. In addition, the prerequisites of administrative sanctions and liability, grounds for exempting liability, and the factors affecting the assessment of the amount of sanctions resemble the rules and general doctrines inherent in criminal law and criminal law sanctions. Administrative sanctions are principally not considered to carry a stigmatizing effect as strong as criminal sanctions, despite the fact that administrative sanctions can be monetarily very significant.

In the case of administrative sanctions, the 'blameworthiness' of an act must be established when assessing whether the act falls within the scope of sanctioned conduct, i.e. whether the conduct is prohibited by law at all. In addition, blameworthiness may also be taken into account when determining the size of the sanction; the sanction can often be moderated or, subject to certain conditions, may not be imposed at all. Further, sometimes prescribed mitigating or aggravating circumstances can affect the size of the sanction, in particular where the sanction amount is to be assessed by the relevant public authority. However, the factors involved in regulating the mitigating and aggravating circumstances vary (matters to be taken into account include, for example, the nature of the violation, the extent, duration, frequency, methodical nature of the activity, the blameworthiness of the conduct, the acquired benefit/financial advantage, the financial position of the perpetrator, and the damage caused by the unlawful conduct). Some sanctions can be reduced due to considerations of reasonableness, such as a mistake by the perpetrator, financial status, illness, or other circumstances; others due to the low level of financial gain achieved. The regulation also includes differences in whether the authority has the *right* or the *obligation* to impose an administrative sanction.

Administrative sanctions are often governed by the administrative sector and frequently implemented by estimating the functionality of a certain public authority and sector of the administration. Criminal law sanctions are principally more general in scope. The supervising administrative authority may have considered it easier to examine the conditions for imposing an administrative sanction than always to make a notification to the police to determine the conditions for initiating the preliminary investigation of possible offences. The sanctions may have been set in such a way that the supervisory authority can adjust the degree of administrative sanctions to the blameworthiness of the conduct in question (such as an administrative fine, a public warning, or an administrative penalty), but if it is established that the statutory definition under criminal law might be fulfilled, the supervisory authority should report to the investigating authority (police).[41]

[41] The Financial Supervisory Authority (FSA) may exercise supervisory powers in respect of financial markets. FSA imposes an administrative fine for a failure to comply with or violation of the provisions in section 38 of the Act on the Financial Supervisory Authority (878/2008). However, FSA may decide not to impose an administrative fine, subject to fulfilment of the conditions of section 42 of the Act. The administrative fine payable by a legal person is EUR 5,000–100,000, and by a natural person EUR 500–10,000. The size of an administrative fine is based on a comprehensive assessment, which takes into account the

The Constitutional Law Committee in its practice has emphasized proportionality in regulating administrative sanctions. Issues related to proportionality are, for example, the sanctioning of very minor misconduct and the scaling of sanctions based on the gravity of the conduct.[42] Although the principles of legality and legal certainty in criminal cases do not, as such, apply to administrative sanctions, the principle of *nulla poena sine lege* can generally not be ignored in such a regulation either. This means that sanction provisions must define the punishable conduct and the sanction with sufficient definiteness. The provisions must make it clear that a breach of the statutes may be sanctioned. In addition, the acts and the negligent conduct sanctioned must be described by law in order to identify them.[43]

E. Basic Procedural Aspects

When assessing the procedural legal safeguards for administrative sanctions, the case law of the European Court of Human Rights (ECtHR) is of crucial importance. Particularly the ECtHR's autonomous interpretation of the European Convention on Human Rights (ECHR) and the applicability of legal safeguards under the ECHR need to be taken into account in the context of administrative sanctions.[44] As is known, the proper application of the legal safeguards provided by the ECHR is not limited to the national definition of criminal law sanctions and other sanctions. The ECtHR's evolving case law and the Court's interpretations of the ECHR create certain difficulties for developing national legislation and for assuring that national legislations meet the requirements set by the ECHR. As regards

nature, scope, and duration of the failure or violation. If the act or omission is particularly reprehensible, FSA may impose a penalty payment instead of an administrative fine. An administrative fine may be imposed, provided that the matter, after comprehensive assessment, does not warrant more severe action. According to section 39 of the Act on the Financial Supervisory Authority, FSA issues a public warning to a supervised entity or other financial market participant for violations that are not subject to an administrative fine or a penalty payment. In addition, a public warning is issued if the supervised entity's conduct is in violation of the terms of its authorization or the rules governing its operations. FSA imposes a penalty payment for a failure to comply with or violation of the provisions of section 40 of the Act on the Financial Supervisory Authority, if the penalty payment does not exceed the sum of EUR 1 million. Penalty payments exceeding EUR 1 million are imposed by the Market Court on a proposal by FSA. FSA may decide not to impose a penalty payment or suspend the decision to impose a penalty payment on a legal person if it reports the matter to the police authorities or takes another supervisory measure as provided by law. A penalty payment may be imposed, in addition to or instead of the penalty payment imposed on a legal person, on such member of the management of the legal person whose obligations have been contravened by the act or omission, if such member has significantly contributed to the act or omission.

42 E.g. Constitutional Law Committee 58/2010.

43 E.g. Constitutional Law Committee 60/2010 and Constitutional Law Committee 74/2002.

44 See especially the *Engel* criteria worked out by the ECtHR when interpreting autonomously the concept of a 'criminal charge' under Article 6 of the ECtHR (*Engel and others v The Netherlands* (App no 5100/71) ECtHR 8 June 1976). A similar assessment is now also applied in EU law (Case C-489/10 *Bonda* (ECJ 5 June 2012); Case C-617/10 *Fransson* (ECJ 26 February 2013).

administrative sanction matters, one of the key issues is the scope of application of the ECHR in the context of administrative sanctions.[45]

Administrative sanctions are to some extent, especially from a procedural point of view, equated to criminal sanctions. Thus, when a public authority imposes an administrative sanction, the administrative procedure must also pay special attention to the legal safeguards similar to and inherent in criminal sanctions and criminal procedure. In general, when an administrative sanction is imposed (lex generalis), the Administrative Procedure Act (434/2003)[46] is applied, but, where appropriate, the proceedings correspondingly must take into account criminal law principles such as the privilege against self-incrimination, the presumption of innocence, the *ne bis in idem* principle, and the principle of legality. The main rule is that an administrative sanction is imposed in an administrative procedure by an administrative decision, and an appeal to the administrative decision is appealed to the Administrative Court.[47] The use of administrative sanctions by administrative procedure and of appeals against such decisions has also been considered as constituting a special area of administrative law (administrative criminal proceedings).[48] The concept of administrative criminal proceedings and its content, however, is not fully established and clear.[49] The regulation also contains differences as to whether the sanctioning public authority is the same as the public authority which investigates the case.

F. Privilege Against Self-Incrimination and *ne bis in idem* Principle

The regulation also contains differences in explicit provisions on the privilege against self-incrimination. Further, different legislation reveal some variations on how the *ne bis in idem* principle has been taken into account. For some sanctions, there is a restriction imposing an administrative sanction on a person suspected of the same offence in a preliminary investigation, prosecution, or criminal proceedings pending before a court or a ban imposing a penalty on a person who has been the subject of a final judgment or punishment.[50] According

[45] *Jussila v Finland* (App no 73053/01) ECtHR 23 November 2006 para 43: 'Tax surcharges differ from the hard core of criminal law; consequently, the criminal-head guarantees will not necessarily apply with their full stringency.' See also *A and B v Norway* (App no 24130/11 and 29758/11) ECtHR 15 November 2016 para 133.

[46] An unofficial English translation of this Act, with the amendments up to 891/2015, is available on the website of the Ministry of Justice: https://www.finlex.fi/fi/laki/kaannokset/1996/en19960586_20150891.pdf.

[47] O Mäenpää, *Yleinen hallinto-oikeus* (Alma Talent 2017), 77.

[48] O Mäenpää, *Yleinen hallinto-oikeus* (Alma Talent 2017), 9.

[49] See L Halila, 'Hallinnollisen rikosprosessin piirteitä' in T Ojanen, I Koivisto, O Suviranta and M Sakslin (eds), *Avoin, tehokas ja riippumaton. Olli Mäenpää 60 vuotta juhlakirja* (Edita 2010), 197, 215; K Kiiski and M Koillinen, 'Tieliikennevirhemaksu vähäisten tieliikenteen rikkomusten sanktiona' in A Keinänen, R Kukkonen and M Kilpeläinen (eds), *Oikeustieteiden moniottelija – Matti Tolvanen 60 vuotta* (Edita 2016), 86.

[50] However, there are explicit provisions concerning the privilege against self-incrimination and the *ne bis in idem* principle. E.g. Waste Act (646/2011): § 129 Any information that is based on an obligation to provide information imposed on a natural person by this Act or thereunder and that has been obtained by imposing the threat of a fine on the natural person may not be used to hold the person criminally liable in preliminary investigation, consideration of charges or trial, or in matters related to a penalty payment for neglect; § 133 A

to the Code of Judicial Procedure (4/1734 with amendments, chapter 17 section 25 subsection 2), the court may not, in criminal proceedings, use evidence obtained from a person in proceedings other than a criminal investigation or in criminal proceedings by threat of coercive measures or otherwise against his or her will, if at the time he or she was a suspect in an offence or a defendant, or if a criminal investigation or court proceedings were underway in respect of an offence for which he or she was charged. However, if a person in proceedings other than criminal or comparable proceedings, in connection with fulfilling his or her statutory obligation, has given a false statement or submitted a false or untruthful document or a false or forged object, this may be used as evidence in a criminal case concerning conduct in violation of his or her obligation.[51] According to the government proposal, therefore, the privilege against self-incrimination is respected in criminal procedure, even though certain other laws require the provision of information to the authorities that could otherwise incriminate the person giving the required information.[52]

It is also appropriate to note that, during the consideration of the legislative proposal to renew the Administrative Judicial Procedure Act, the Legal Affairs Committee of the Parliament proposed the withdrawal of a provision concerning the right against self-incrimination.[53] The Committee proposed that provisions regarding the right against self-incrimination should be evaluated together with questions concerning a prohibition against reference to certain evidence. As previously mentioned, a more comprehensive evaluation was not involved in the government proposal.

The regulation on administrative sanctions also includes differences in that there is a restriction on pressing charges or giving a sentence if an administrative sanction has already been imposed on the same person for the same conduct.[54] Much of the case law of ECtHR on the *ne bis in idem* principle involves the relationship between tax increases and criminal sanctions. In reaction to this case law, Finland changed the taxation legislation. In 2013, a law on a tax or duty increase was passed, decided by a separate decision (781/2013). The law contains, among other things, a regulation on the relation of a tax increase to reporting an offence and commencing a preliminary investigation. In its statement the Constitutional Law Committee was of the opinion that the regulatory solution goes beyond what current human rights obligations require.

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penalty payment for negligence cannot be imposed on a party convicted of a violation regarding the same matter, or if the matter is under a pre-trial investigation or a consideration of charges, or before a court of law.

[51] The law applies to proceedings before the general courts, unless otherwise provided by the Criminal Procedure Act (689/1997) or other law. The general courts of law are the District Court as the court of first instance, the Court of Appeal as the appellate court, and the Supreme Court as the highest appellate court.

[52] Government Proposal 46/2014, 88.

[53] Legal Affairs Committee 23/2014; Government Proposal 245/2014, 4.

[54] *Rangaistusluonteisia hallinnollisia seuraamuksia koskevan sääntelyn kehittäminen* (n 35), 32.

G. Appeal and Procedural Regulation

Finnish legislation also includes some administrative sanctions which are imposed by a court. The administrative sanctions imposed by court decision are concentrated in the Market Court, which is a special Administrative Court. In these cases the court imposes the administrative sanctions on proposal by the public administrative authority (supervisory authority). For example, the Market Court imposes a penalty payment for restricting competition under the Competition Act (948/2011) and penalties under the Information Society Code (917/2009) on proposal by the public administrative authority, namely the Finnish Competition and Consumer Authority or the Finnish Communications Regulatory Authority, respectively.

A decision to impose an administrative sanction may always be appealed. The appeal is most commonly lodged with the administrative court of first instance. However, administrative court decisions are usually subject to appeal only if the Supreme Administrative Court grants leave of appeal. When appealing a decision to impose an administrative sanction, the appeal is usually subject to the provisions of the Administrative Judicial Procedure Act (586/1996). Exceptionally, an appeal may be lodged with the District Court (oil discharge fee[55]). In assessing the appropriateness of the legal safeguard arrangements, attention needs to be paid to whether an administrative sanction can be enforced before it has attained legal validity. It has been considered reasonable that particularly severe administrative sanctions can be enforced only after the decision has become legally valid.

The handling of and procedure for administrative matters by an authority is generally in writing and based on documentary material. Upon request, an authority shall reserve the party to a case the opportunity to submit his/her demands or information orally if this is necessary for purposes of clarification of the matter and if the written procedure causes unreasonable inconvenience to the party. The other parties shall be summoned to be present at the same time if this is unavoidable in order to safeguard the rights or interests of the parties. Further, for special reasons, witnesses may be heard under oath and parties may be heard under affirmation of truth in an administrative matter. The parties immediately concerned shall be reserved an opportunity to be present when a witness or a party is being heard. They have the right to question the person being heard and to express their opinion on the testimony.

[55] The party liable for payment is entitled to appeal the decision regarding the oil discharge fee by submitting an appeal to the maritime court operating within the Helsinki District Court. For a violation of the prohibition laid down in Act on Environmental Protection in Maritime Transport (1672/2009) 3:1, 3:3, and 3:10, on the discharge of oil or oily mixtures in Finland's territorial waters or Finland's exclusive economic zone, a monetary penalty (oil discharge fee) shall be imposed, unless the discharge is deemed minor in amount and impact. The competent authority may waive the imposition of an oil discharge fee or reduce the amount of the fee if the party liable for payment shows that the imposition of the fee would be manifestly unfair due to an emergency or accident or due to some other comparable reason.

The administrative judicial procedure (appeal to the Administrative Court against an administrative decision taken by a public administrative authority[56]) is also based on written procedure. Oral proceedings or hearings are an exception and are at the discretion of the court. However, the discretion of the court does not mean that the court is entirely free to decide on holding the oral procedure or hearing. It is a matter for the court to provide for a fair trial. The oral hearing may be limited to cover only a part of the matter, to clarify the opinions of the parties, or to receive oral evidence, or in another comparable manner. However, the Administrative Court shall conduct an oral hearing if a private party so requests. The oral hearing requested by a party need not be conducted if the claim is dismissed without considering its merits or immediately rejected, or if an oral hearing is manifestly unnecessary in view of the nature of the matter or for another reason (e.g. minor cases or in matters that are clearly resolved by written material).[57]

The Court is responsible for reviewing the matter. Where necessary, it shall inform the party or the administrative authority of the additional evidence that needs to be presented. Further, the Court shall on its own initiative obtain evidence in so far as the impartiality and fairness of the procedure and the nature of the case so require.[58]

The Court and the administrative public authority shall include a statement of reasons in the decisions. The statement shall indicate which facts and evidence have affected the decision and on which legal grounds and provisions it is based.[59]

In general, before the matter is decided, a party shall be reserved an opportunity to express an opinion on the matter, to comment on the demands of other parties, and to submit an explanation on the demands and information which may have an effect on decision. A deadline for the supplementation of a document, the submission of an explanation, and the provision of information is set by the administrative public authority or the Court and shall be 'reasonable in view of the nature of the matter'. A party is notified of the purpose of the hearing. When necessary, the notification on the hearing shall indicate the points on which clarification is being sought. The party shall be provided with the documents covered by the hearing in the original or as copies, or otherwise reserved an opportunity to peruse them.[60] However, there are certain restrictions to a party's access to official, non-public documents (but the party has a broader right to documents concerning the pending case than the general public).[61]

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[56] This means that in most cases, the public administrative authority has already imposed administrative sanction before actual court proceedings begin. The Administrative Judicial Procedure Act does not apply to procedures in the administrative public authority.

[57] M Paso and others, *Hallintolainkäyttö* (Alma Talent 2015), 164, 168–175.

[58] § 33 Administrative Judicial Procedure Act.

[59] § 54 Administrative Judicial Procedure Act, and § 44 Administrative Procedure Act.

[60] §§ 34–35Administrative Judicial Procedure Act, and §§ 32–36Administrative Procedure Act.

[61] E.g. the administrative court may refrain from providing information on trial document that is to be kept secret in accordance with section 11, subsection 2, paragraph 1 (a document, access to which would be contrary to a very important public interest, the interest of a minor or some other very important private

According to the Administrative Judicial Procedure Act, a private party who is party to a trial, or another person whose rights, interests, or obligations the matter subject to a trial directly involves, or their legal representative, cannot be heard as a witness in judicial procedure in general administrative courts (§ 39 a). Further, a party's current or former spouse or current cohabiting partner, sibling, relative in directly ascending or descending line, or anyone in a similar, close relationship with the party comparable to a partnership or a family connection, may refuse to give evidence in administrative judicial procedure.

As stated above, administrative sanctions are, in principle, governed by an administrative procedure. However, the administrative procedure differs in many instances from the criminal procedure. The comparison, e.g. of the presumption of innocence and the analysis of its more precise content, between the criminal procedure and the administrative procedure is challenging.

H. Burden of Proof and Accountability in Criminal and Administrative Procedures

Clarification responsibility means responsibility for obtaining adequate and appropriate information, evidence, and clarification for a decision on the matter. The burden of proof becomes applicable at the time the Court considers that there is no substantiated evidence to support a certain fact. The matter will be resolved to the detriment of the party who was obliged to introduce evidence or clarify a fact. The burden of proof is the duty of a party in a trial to produce the evidence and clarification that will prove the claims made. In a legal dispute, one party gets the benefit of the doubt, while the other side bears the burden of proof. On the other hand, the burden of proof relates to whether the evidence presented is so reliable and meets the standards of evidence that it can be seen as a basis for conviction (instead of acquittal).

Generally, the prosecutor bears the burden of proof and is required to prove his or her version of events in a criminal procedure. This means that the proposition being presented by the prosecution must be proven to the extent that there is no 'reasonable doubt'. In criminal matters, the burden of proof means the question of who must prove that the standards of evidence have been met. This is in criminal matters, without question, the responsibility of the prosecutor, and this also constitutes the core of the presumption of innocence. If the standard of evidence ('without reasonable doubt') is not met, the court must dismiss the charges.

Cases in the administrative judicial procedure are mainly processed in a written procedure. The appeal procedure is based on the administrative procedure of the public administrative authority, the factual material that has been accumulated, and the decision prepared and

interest) of the Act on the Openness of Government Activities, if it is necessary to refrain from providing the information in order to protect the interest referred to in the secrecy provision and if refraining from providing the information does not endanger due process.

taken by a competent public servant with appropriate qualifications.[62] The burden of proof, the standard of proof, or the accountability system in administrative law is based on the special sectorial regulation and partly on the administrative practices governing this area. The general regulation is governed by sections 31 and 32 of the Administrative Procedure Act; there is also specific regulation for the administrative sector (e.g. sections 26.4 and 27–30 Act on Taxation Procedure, 1558/1995).

The Administrative Judicial Procedure Act does not contain clear provisions on the burden of proof or the standard of proof. It is not always clear which regulations and provisions apply to the burden of proof and the standard of proof in administrative matters. There are, however, many cases that require solving the issues of burden of proof and standard of proof in practice.[63] The key element in the presumption of innocence is that the prosecutor bears the burden of proof. The presumption of innocence can be considered to be met where, during the administrative procedure, the public administrative authority shows, above all, that the (objective) criteria giving rise to liability have been fulfilled. However, the standard of proof in the administrative procedure is principally lower than in criminal proceedings.[64]

The Constitutional Law Committee has allowed legislation and liability on administrative sanctions that do not expressly require intent or negligence of the perpetrator.[65] However, the Committee has consistently maintained that strict liability and the reverse burden of proof are in violation of the presumption of innocence contained in article 21 of the Constitution.[66] Some of the administrative sanctions are based on presumed guilt, which resembles objective liability. The imposition of sanctions does not usually require clarification of the perpetrator's intent or negligence. As noted before, as regards the presumption of innocence in the Finnish Constitution, the fact that the burden of proof in administrative proceedings might be based on strict liability and a reverse burden of proof has been considered problematic.

However, the Constitutional Law Committee found it essential for the functioning of the administrative sanctions system that procedure and grounds for liability be as simple and

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[62] M Tolvanen, 'Näytön hankkiminen ja arviointi veroprosessissa ja rikosprosessissa – yhtäläisyyksiä ja eroja' in A Mieho (ed), *Vero ja finanssi Juhlakirja Matti Myrsky 60 vuotta* (Edita 2013), 347, 349–350.

[63] M Paso and others, *Hallintolainkäyttö* (Alma Talent 2015), 226, 230; A–S Tarkka, 'Selvitysvelvollisuus ja todistustaakka – vertailevia näkökohtia hallinto- ja siviiliprosesseista' (2015) *Lakimies* 508, 532, *passim*. Tarkka considers that both the standard of proof and the burden of proof for investigation seem to operate flexibly in administrative judicial procedure.

[64] The question has also been raised how the presumption of innocence can be respected in the administrative judicial procedure considering that the imposition of the administrative sanction by the public administrative authority already precedes the procedure in the court. A-S Tarkka, 'Itsekriminointisuoja ja hyödyntämiskiellot – vertailevia näkökohtia hallinto- ja rikosprosesseista' (2016) *Lakimies* 488, 493. Hence, it is also not clear to what extent certain principles related to fair trial are to be applied in proceedings in the public administrative authority.

[65] Constitutional Law Committee 57/2010 and 32/2005.

[66] Constitutional Law Committee 2/2017, 5; 57/2010; 4/2004; 7. See also Constitutional Law Committee 15/2016.

effective as possible within the limits of appropriate legal safeguard requirements.[67] However, the Committee always pays attention to the *ad hoc* elements of regulation and to the fact that the regulation as a whole is drafted subject to the requirements of proportionality and justice.[68]

I. Publicity and Investigations

Proceedings in the public administrative authority are not open to the public as a matter of principle. Section 24 of the Administrative Procedure Act states that an administrative matter is only handled publicly if the law so provides or if it has been so decided based on a specific provision. The right of the public to monitor the handling of administrative matters and to obtain information about the authority's activities is based primarily on the disclosure of documents. In Administrative Courts, the main rule is that court proceedings and trial documents are public (Act on the Publicity of Administrative Court Proceedings 381/2007). The Act applies to proceedings in an administrative judicial case and to trial documents in administrative courts. Every person has the right to be present in oral proceedings unless otherwise provided in this or another Act.[69]

The investigative and intelligence mechanisms of the authorities vary by public administrative authorities and by administrative sanctions. The administrative sanctions regulation includes differences, for example regarding the right to obtain information necessary for investigation and supervision purposes from the other authorities. The methods of controlling and investigating administrative sanctions by public administrative authorities are often access to information, request for hearings, and conducting audits in businesses or other premises. The authority may also have the right to receive executive assistance from the police in supervising compliance with the regulations. In general, there are no restrictions to the information that can trigger investigations by the administrative public authority. In some cases people are actually encouraged to inform the authorities if they suspect misconduct.[70] The authorities are generally obliged to initiate an investigation when there is sufficient suspicion of a violation of the law, unless otherwise explicitly provided by law.[71]

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[67] Constitutional Law Committee 57/2010.

[68] See, e.g. Constitutional Law Committee 39/2017.

[69] O Mäenpää, *Yleinen hallinto-oikeus* (Alma Talent 2017), 377–380.

[70] See, e.g. https://www.vero.fi/en/About-us/contact-us/efil/reporting-suspected-tax-evasion/. By filing an electronic form citizens or other actors can inform the tax authorities about their suspicion of a tax non-compliance of some kind. The form facilitates the anonymous provision of information.

[71] E.g. the Finnish Competition Authority shall prioritize its tasks. It shall not investigate a case if 1) it cannot be deemed likely that there exists an infringement prohibited by sections 5 or 7, or Articles 101 or 102 of the Treaty on the Functioning of the European Union; 2) competition in the relevant market may be considered functional as a whole, irrespective of the suspected infringement; 3) the complaint in the matter is manifestly unjustified.

With the exception of the leniency procedure in competition law,[72] Finland's regulation on administrative sanctions is not generally familiar with concepts such as 'non-prosecution agreement', 'plea bargaining', or similar procedures.

In accordance with the practice of the Constitutional Law Committee, the supervisory authority may also be empowered to conduct investigations in premises covered by the sanctity of the home, even without a procedure for a constitutional enactment, even if such conduct is punishable by an administrative sanction. One example of this may be the competition authority's right to extend an investigation also to the non-business premises of the enterprise. However, the Finnish Competition Authority shall seek an advance permission from the Market Court to conduct an inspection or audit. Still, access to premises covered by the sanctity of the home in administrative matters can be considered quite exceptional; more often the audit right extends to and is confined to other premises.[73]

IV. Evaluation and Conclusions

Finland's existing legislation does not include a general definition of a (punitive) administrative sanction.[74] The field of administrative sanctions is quite heterogeneous, and specific rules are laid down in public authority-specific and sector-specific laws. These sanctions share in common that they are imposed by administrative decision, in accordance with the provisions of the Administrative Procedure Act, unless otherwise provided elsewhere.

Generally speaking, the extent to which the legal safeguards of criminal procedure must be taken into account in matters concerning punitive administrative sanctions is somewhat unclear. However, the identification of this question must be considered significant in light of the objectives and justifications for the introduction of administrative sanctions (especially procedural effectiveness). The ECtHR's case law is of key importance for identifying this question and considering the limits of and preconditions for a system of administrative sanctions.[75]

In Finland, administrative sanctions are based on diverse regulatory instruments that vary in existing legislation. The prerequisites for the imposition and enforcement of sanctions and the legal safeguards for the subject of sanctions may differ in the same type of cases, depending on the special laws concerned. Regulatory arrangements also vary in terms of taking into account the *ne bis in idem* principle and the privilege against self-incrimination. But it is clear that these principles must be taken into account when imposing administrative

[72] Immunity from fines and the reduction of fines in cartel cases.

[73] See Competition Act (948/2011), §§ 35–37, and Constitutional Law Committee 7/2004.

[74] However, see the definition of 2013 on the scope of application of the Act on Compensation for the Excessive Length of Judicial Proceedings (362/2009), § 2a (81/2013).

[75] See the case of *A and B v Norway* (App no 24130/11 and 29758/11) ECtHR 15 November 2016, separate opinion paras 29–32.

sanctions. It is not entirely clear what they mean in this context and how they relate to the dichotomy of legal and natural persons.

The regulation of administrative sanctions has been introduced at different times and in different areas, and its nature is also specific to certain administrative sectors. Regulatory instruments may be the result of some special features of a certain administrative sector. Further, the rights and obligations imposed by EU regulation have had an effect on the formation of national administrative sanction instruments. Consequently, the Finnish set of administrative sanctions does not include a coherent system for which very holistic and comprehensive features of the sanction system could be presented with regard to the legal safeguards for imposing penalties and conditions for liability.

Although the need for a more extensive review of administrative sanctions has been widely identified and recognized, Finland has so far not undertaken such a comprehensive examination. Still, it can be assumed that due to the efforts of the aforementioned Ministry of Justice working group, the need for a general regulation *(lex generalis)* and other measures to promote regulatory consistency will be considered and the legal policy in the field of administrative sanctions enhanced. Nonetheless, given the necessity to take into account the specific characteristics of the various sectors of the administration, the development of a general regulation could be challenging. However, in order to take certain legal safeguards into account, a general regulation might include provisions such as the *ne bis in idem* principle and the privilege against self-incrimination.

In the prevention of economic and corporate crime, the significance and impact of various kinds of preventive tools and reactive control systems on the achievement of the goals and value aims to be set shall be assessed from a comprehensive criminal policy and control policy perspective. The examination of control systems shall not be limited only to criminal justice policy or criminalization principles; instead, the approach to be adopted should be one of extensive control policy and sanction policy assessment wherein the various forms of sanctions, such as punishments under criminal law and economic administrative sanctions of a punitive nature, are subjected to a cost/benefit analysis.

A systematic comparison between administrative sanctions on the one hand and criminalization and criminal law sanctions on the other enhances the potential for differentiating control systems for economic and corporate crime and the prerequisites for the imposition of sanctions. Underlying this need for differentiation is the fact that the effects of goals and values in the various sectors of control policy and criminal policy pull in different directions and with different forces. Questions for deliberation include, for example, whether it is better to differentiate the prerequisites for imposing sanctions and the procedural rules to be observed in the imposing of sanctions within the criminal justice system in order to increase the efficiency of crime prevention (while at the same time somewhat weakening the due process guarantees), or whether such differentiation should be accomplished through the introduction of a parallel system of administrative sanctions.

Systems thinking and the pursuit of coherence are required in the development of a system of punitive sanctions (including criminal law sanctions and administrative sanctions). There is a need for a Nordic and pan-European sanction policy debate not limited to criminalization and criminal law sanctions but instead comprising a comprehensive examination of the prerequisites for and restrictions on the use of all kinds of punitive sanctions.[76]

[76] See also R Lahti in *EU Criminal Law and Policy* (n 26), 66–69.