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3

Day Fines in Finland

Raimo Lahti

3.1 HISTORICAL DEVELOPMENT OF DAY FINES IN FINLAND AND THEIR LEGISLATIVE REASONS[1]

The day fine system was adopted in Finland in 1921. Thus, Finland was the first Nordic country to introduce this punishment into its system of criminal sanctions. The Finnish Penal Code (PC) had been enacted in 1889 in the spirit of the so-called classical school. Before the reform of 1921, (penal) fines had been fixed at a certain amount of marks. The main reason for adopting the new system, according to the official argumentation for the statute, was an attempt to introduce a system where fines would have an equal impact on people with varying means. For this reason, the fine was to be made more dependent than before on the offender's financial status. The system was also intended to render the size of the fine more independent of fluctuations in the value of money. The introduction of the day fine system was strongly supported by the leading scholar in criminal law of his days, Allan Serlachius, who represented ideologically the so-called sociological school.[2]

It is noteworthy that, according to the *travaux préparatoires* of the legislation in question, the idea was also, instead of setting the term of imprisonment following non-payment of a fine (that is, conversion into imprisonment) according to a predetermined scale, to leave the term to the discretion of the court in a new trial on the matter. However, no reform was carried out in this respect, as the day fine reform was regarded as a temporary measure and the legislator intended to limit change to what was absolutely

[1] See in more detail Lahti, 'Criminal Sanctions in Finland: A System in Transition', 121–57, 131, 142, 149, 153.
[2] Serlachius, 'Päiväsakkojärjestelmä', 201–10.

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necessary.[3] Nevertheless, it turned out that the day fine reform was not a temporary measure, although in recent decades the system of pecuniary (financial) sanctions has diversified in many ways.

After 1921, reform of the legislation on fines was suggested several times, but not until the last few decades were any significant changes made. For example, the committee which was formed to consider measures to prevent criminality and formulate appropriate proposals and which submitted its report in 1930, criticised the practice whereby many fines led to conversion into imprisonment. During the 1920s, there was a great increase in the number of people who were imprisoned for the non-payment of fines. The committee's proposal, which was not adopted at the time, was that fines should be payable in instalments and that it should be possible to grant an extension of the period during which the fine was supposed to be paid. The committee also proposed that in some cases the non-payment of fines should not lead to conversion into imprisonment.[4]

In 1963 and 1969, following proposals which had been made on several occasions, the legislation on fines was finally reformed. First, in 1963 it was made possible to pay a fine in instalments and an extension of the period during which the fine had to be paid was allowed. Second, in the 1969 statute conversion into imprisonment was left to the discretion of the court in a new trial on the matter and the maximum fine was lowered from 300 to 120 day fines, the maximum conversion being reduced from 180 to 90 days. The main aim of these reforms was to lessen the number of people imprisoned for not paying fines.[5] This aim was reached in so far as the number of serving prison sentences as a result of conversion decreased to under a tenth of what it had been before the reforms (the number of those serving conversion sentences was 9,075 in 1962 and 539 in 1974).[6]

In 1976, the monetary value of the day fine was increased with the desire to improve the applicability of fines. To this end, the statute provided that the size of the day fine (the daily unit) had to be set according to gross income and more detailed rules for fixing the size of the day fine were given. The goal was

[3] See Government Bill No. 36/1920. In the legal literature there was also criticism against the introduction of the day fine system, inter alia by relying on a comparative survey according to which only Portugal had adopted it into its legislation in 1852. See Ignatius, 'Sakkorangaistuksesta', 1–44, 27. As to the history of Portuguese legislation, *cf.* Faraldo-Cabana, *Money and the Governance of Punishment*, A *Genealogy of the Penal Fine*, p. 90.

[4] See, in more detail, *Komiteanmietintö* [Committee report] No. 1931:2.

[5] Regarding the goals of these reforms, see Government Bill No. 15/1963 and Government Bill No. 174/1967.

[6] This decrease was also greatly influenced by the decriminalisation of drunkenness in 1968, since many of those in conversion imprisonment had originally been fined for this offence.

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that the general-preventive effect of the higher fines should be equivalent to that of the shorter terms of imprisonment and thus constitute an alternative. At the same time, the lesser offences would continue to be met with mild fines. That would be made possible by lessening the number of day fines. With the noticeable increase in the monetary value of the day unit, it was regarded as especially important to make a more just evaluation of the offender's ability to pay fines and to avoid disparity in judicial practice.[7] The success of the 1976 reform is indicated by the fact that during recent decades about 90 per cent of all, in ordinary or summary proceedings, convicted offenders have been sentenced to pay a day fine (see Section 3.3).

In the same year, 1976, the general provisions on the meting out of punishment (fine or imprisonment) were reformed in Chapter 6 of the Penal Code and that reform also reflected the emphasis on the general-preventive effect of the punishment and the idea of the justness of sentences. In accordance with the proportionality principle, the punishment must correspond to the harmfulness and dangerousness of the offence and to the offender's culpability as manifested in the offence. In addition, the consistency in juridical practice is a consideration of major importance.[8]

In late 1976, the report of the Penal Law Committee for a total reform of Finnish criminal law was also finalized.[9] In regard to the fines it was proposed that the system should be differentiated along the following lines. Day fines, based on the ascertained financial position of the offender, would be a sanction having a noticeable effect on his or her standard of living, while, on the other hand, fee-type sanctions, fixed at a specific amount of money, would be applied specifically to mass petty criminality. The methods of enforcing fines should be made more effective and the possibility of conversion into imprisonment would prevail until a sufficiently effective enforcement system had been developed.

The Penal Law Committee recommended a simple and clear system of criminal sanctions arguing that such a system would be more effective as far as general prevention is concerned and, from the point of view of furthering consistency in judicial decisions, is more certain than a system based on a number of different types of sanctions. The use of prison sentences should be reduced, because those sentences do not rehabilitate and they are also very expensive in a cost-benefit assessment. Therefore, long prison terms should, when possible, be transferred into short prison terms and short prison terms

7 Government Bill No. 109/1975 (II).
8 Government Bill No. 125/1975 (II).
9 See generally *Komiteanmietintö* (Committee report) No. 1976:72.

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into other punitive measures such as fines, warnings and supervisory non-institutional sentences.

An important objective of the total reform of Finnish criminal law (1980–2003) was to reduce the number of custodial sentences and, therefore, the increased use of financial sanctions had a preference.[10] Part of this endeavour was the adoption of the summary penal fee by a special Act in 1983. This penal fee, which is fixed at a specific small amount, is applicable only to minor traffic offences and other similar petty (criminalised) misdemeanours (infractions, violations), which are specifically listed by the legislation in question. The penal fee may not be converted into imprisonment. Because it is a question of criminalised misdemeanours, it can fall under fixed fine (instead of penal fee), as mentioned in Table 3.1 (Section 3.3).

The revised provisions on day fine, conversion sentence and summary penal fee were enacted in 1999. These provisions are still the basis for the regulation in the field, although several amendments have been made during the last few years, as reflections of fluctuations in criminal policy thinking.

3.2 CONTENTS OF THE PROVISIONS ON DAY FINES, CONVERSION SENTENCES AND THE ENFORCEMENT OF IMPOSED FINES[11]

The main principle is that a fine shall be passed as day fines, although since 2009 the fixed fines for traffic offences have de facto been more common than the imposed day fines (see in Section 3.3). The minimum number of day fines is 1 and the maximum number is 120. For a special reason, the specific minimum or maximum number may be provided by an Act, within the limits of 1–120.

The amount of a day fine (daily unit) is defined in detail in a separate provision of the Penal Code[12] (PC 2a:2; 808/2007 with later amendments):

(1) The amount of a day fine shall be set so that it is reasonable in view of the solvency of the person fined.

[10] As to this total reform in general, see *supra* note 1, 151; Lahti, 'Towards a More Efficient, Fair and Humane Criminal Justice System: Developments of Criminal Policy and Criminal Sanctions during the Last 50 Years'. From a comparative point of view, see the reviews of Lappi-Seppälä, 'Penal policies in the Nordic Countries 1960–2010', 85–111; *Supra* note 3Faraldo-Cabana, p. 167.

[11] Chapter 2a of the Penal Code, 550/1999 and the Act on the Enforcement of Fines, 672/2002, both with later amendments.

[12] An unofficial translation of the Penal Code is available from the website of the Ministry of Justice (the amendments up to 766/2015 included): www.finlex.fi/fi/laki/kaannokset/1889/en18890039_20150766.pdf.

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(2) One sixtieth of the average monthly income of the person fined, less the taxes and fees defined by a Decree of the State Council and a fixed deduction for basic consumption, is deemed to be a reasonable amount of a day fine. The maintenance liability of the person fined may decrease the day fine.
(3) The primary basis for the calculation of the monthly income is the income of the person fined as indicated in his or her taxation. If the income of the person fined cannot be reliably ascertained from the tax records or it has essentially changed since the most recent taxation, it may also be assessed on the basis of other information.
(4) In court, the day fine is set on the basis of the information available at the time of the court proceedings and in proceedings on the basis of the Fine and Summary Penal Fee Act (754/2010), the day fine is set on the basis of the information available at the time when the fine is set or when the request for a summary penal fee is made. However, the prosecutor shall set the day fine on the basis of the information available at the time the summary penal fee is issued, if it has become evident that the solvency of the person for whom the summary penal fee has been requested has in the meantime essentially changed.
(5) More detailed provisions on the taxation which is the basis for the calculation of the monthly income, calculation of the average monthly income, the rounding-off of the amount of the day fine, the amount of the fixed deduction for basic consumption, the manner in which the maintenance liability is to be taken into account and the minimum amount of a day fine shall be issued by a Decree of the State Council.

As can be noticed from paragraph (2) above, the amount of the daily unit equals roughly half of the offender's daily income after taxes (that is, net income). Until the reform of 1999, the basis for determining the amount of a day fine was the gross income. Although the exact amount results from a rather complicated calculation, the Decree clarifies details and the criminal justice officials in question have available a handbook for the assessment. The Decree regulates, inter alia, how the net income must be calculated, the amount of the fixed deduction for basic consumption (= 255 euros since 2001), the deduction of the maintenance liability per person (= three euros and concerns primarily minor children) as well as the minimum of the daily fine (= six euros since 2001). The criminal justice officials (primarily police) have access to the previous year's taxation files through protected SMS-data from the taxation authorities.

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In 1999, Finland also criminalised giving false information of one's income to the police in order to illegally reduce the amount of fines. However, due to the easy electronic access to the relevant taxation information, very few cases of the offence called 'fine deception' (PC 16:6) appear in practice and have been brought to the court.

It is noteworthy that in 1999–2007 not only wages or income from capital, but also wealth, when its value was 85,000 euros or more, affected the amount of a day fine. The main reason to give up this criterion was the abolition of the tax on property in the general taxation reform in 2006.[13] There was a strong emphasis on the practicability in the access to the relevant documents on the solvency of the person fined.

The total amount of the fine is equal to the number of day fines times the amount of a day fine. No upper limit for the amount of the daily unit has been enacted. Special provisions determine the relationship between the total amount of a fine and the amount of a summary penal fee, as well as setting a joint punishment for offences punishable by a fine and a summary penal fee.

The decision-makers in imposing fines vary according to the type of procedure. In the normal criminal proceedings the court decides and then, in non-serious criminal cases (where the maximum punishment for the accused crime is four years' imprisonment or lower), the day fines are decided by one legally trained judge sitting alone in the court. Summary proceedings for imposing day fines and penal fees are regulated by a special Act from the year 2010 (754/2010), which came into force in late 2016.

There are the following common preconditions for the applicability of the summary proceedings according to the Act of 2010: it must be a simple and clear case and the suspect and the possible victim must agree to the summary proceedings without an oral handling before a court. Summary penal proceedings for imposing day fines are possible when the maximum punishment for the offence in question is a fine or a six month imprisonment or lower. The decision-maker is the prosecutor or, if at most twenty-day fines are imposed for specified minor offences, the police. The decision-maker for summary penal fees (fixed fines) is either the police (primarily) or the prosecutor. From 1 January 2021 a legal amendment (602/2019) will come into force, according to which when within a year six times or more a fine has been imposed in a summary proceedings and the similarity of the offences as a whole shows heedless of the prohibitions and commands of the law, sentencing in the summary proceedings is not possible. The main goal of this amendment is related to the presumed improvement of the general-preventive effect,

[13] Government Bill No. 25/2007.

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because the unpaid day fine imposed by the court in the ordinary proceedings could later lead to a conversion sentence.[14]

There are detailed provisions on the conversion sentence. A person who has been sentenced to a fine and from whom the collection of the fine has failed, shall be sent to imprisonment to replace the unpaid fine.

Duration of the conversion sentence for day fines (PC 2a:5; 983/2005):

(1) A conversion sentence for a fine is imposed so that three unpaid day fines correspond to imprisonment for one day. If the number of day fines to be converted is not divisible by three, the remainder is not converted. If only a part of a day fine has been paid, the day fine is deemed unpaid.
(2) A conversion sentence shall be passed for at least four days and at most sixty days. A conversion sentence may not be passed without a special reason if the unpaid day fines are less than twelve daily units.
(3) If two or more fines are to be converted at the same time, only one conversion sentence shall be passed.
(4) On grounds provided in section 6 and section 7, a court may pass a conversion sentence that is shorter than what has been provided in this section, but nevertheless at least four days.

The legislation on the conversion sentence has been reformed in 2019 (603/2019) so that the amendments will come into force on 1 January 2021. The amendments will make the system more lenient: first, from 2021 the conversion sentence shall be imposed so that four unpaid day fines correspond to imprisonment for one day and the maximum of a conversion sentence will be forty days. Second, a fine shall not be converted into imprisonment, if (1) the fine has been imposed in the procedure provided in the Fine and Summary Penal Fee Act; (2) fewer than twenty day fines are unpaid; or (3) the offence resulting in a fine had been committed below the age of eighteen years (PC 2a:4.2).

In addition (PC 2a:6), a court may discretionarily waive a conversion sentence if it is to be deemed unreasonable or unnecessary, taking into consideration (1) the personal circumstances or state of health of the person fined, (2) the participation of the person fined in social and healthcare measures, (3) a sentence of imprisonment or community service order imposed on the person fined on the basis of another offence. Until the effective date of the legislative amendment of 1 January 2021, there is also the following discretionary waiving ground to be decided by the court: the offence

[14] Government Bill No. 178/2018. It was argued that the amendment would further the credibility of the criminal justice system, in particular in the minor cases of shoplifting.

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for which the fine was imposed, taking into consideration its detrimental nature, is to be deemed petty when assessed as a whole. The deletion of this ground is based on an aim of increased emphasis on general prevention by enlarging the scope of the conversion sentence.

A special public authority, the Legal Register Centre, is responsible for the enforcement of fines, certain compensations paid to the State, forfeitures, several administrative financial penalties and certain other sanctions subject to separate provisions.[15] The first opportunity to pay a fine is to use the fine or bank transfer form, which has been given by the police, an authority or a court. Authorities and courts send the information on the fines and other sanctions to the Legal Register Centre's enforcement system. The Legal Register Centre may grant a term of payment. If the fine is not paid by the date stated in the Legal Register Centre's demand for payment, the case will be sent for enforced collection. This will be done about one month after the demand for payment has been sent. The bailiff will then deal with all matters related to the payment.[16]

The biggest part of fines are paid voluntarily – regarding the fixed fines even circa 80 per cent. As for the day fines which have been imposed in summary proceedings, the portion of voluntarily paid fines is circa 65 per cent; but for the day fines which have been imposed in an ordinary procedure, the corresponding portion is only one third. This low portion is explained by the (one average) lower social position and lower income (solvency) of offenders and the divergent composition of the offences in question: summary proceedings deal primarily with minor traffic offences, while ordinary procedures cover traditional offences such as theft and assault.[17]

In all, the majority of the fines can be collected either by the voluntary payments or by execution. A conversion sentence is needed only in a minority of the cases. In 2010, in about 11,000 cases, a procedure for a conversion sentence was initiated. The amount of the court decisions delivered to the Legal Register Centre for the enforcement of conversion sentences was lower, circa 8,000, because a part of those sentenced pay their fines during the proceedings. The majority of those who serve their conversion sentence are users of intoxicants, have health problems or are otherwise socially vulnerable.[18]

[15] See, in more detail, Act on the Enforcement of Fines; 672/2002 with later amendments.
[16] See, in more detail, Enforcement Code; 705/2007. An unofficial translation of this Act is available from the website of the Ministry of Justice: www.finlex.fi/fi/laki/kaannokset/2007/en20070705_20070987.pdf.
[17] *Supra* note 13, Chapter 2.1.
[18] *Ibid.*

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TABLE 3.1 *The distribution of penalties in 2017*

	N	%
Court decisions 2017	50,045	100
Prison	4,812	10
Community service	1,522	3
Supervision order	192	0
Conditional imprisonment	12,205	24
Juvenile penalty	8	0
Day fines by the court	30,519	61
Waiver of the sentence	341	1
Other decisions (summary proceedings) 2017		
Fine orders by the prosecutor	41,573	
Fine orders by the police	87,772	
Fixed fines by the police (mostly traffic offences)	330,988	

Source: Tilastokeskus (Statistics Finland)

Finland is a country which has a well-developed social security legislation. For instance, different types of social assistance are secured as the last resort for covering the necessary daily living expenses of the person and his or her family in question. However, fines are not listed as such expenses.[19]

3.3 PRACTICAL IMPLEMENTATION OF THE DAY FINE SYSTEM

The distribution of penalties in Finland in 2017 shows – in Table 3.1 – how a large part of the penalties consists of fines and how a small part of the fines is decided by the court instead of the prosecutor or the police.[20] During the last years the competence and role of the police have been enlarged for the expedience reason '*minima non curat praetor*'.

The number and amount of day fines as well as the total amounts of fines in 2008–17 are presented in Tables 3.2 and 3.3. In addition, the distribution of the total amounts of day fines in 2017 is presented in Table 3.4.

[19] Social Assistance Act; 1412/1997. An unofficial translation of this Act is available from the website of the Ministry of Justice: www.finlex.fi/fi/laki/kaannokset/1997/en19971412_20101390.pdf.

[20] In this section, Tables 3.1–3.4 are derived from H. Niemi (ed.), *Seuraamusjärjestelmä* [The System of Criminal Sanctions] 2017 (Report No. 32, University of Helsinki, The Institute for Criminology and Legal Policy, Helsinki 2018), Chapter A.6, Tables 3.1, 18–20.

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TABLE 3.2 *Number and amount of the day fines and the portion of the minimum day fines in 2008–17*

	Number of day fines average amount			Amount of a day fines (daily unit) in euros, average			Minimum day fines*, portion of all %		
	C	S	All	C	S	All	C	S	All
2008	38	14	17	12	15	14	58.7	44.9	46.7
2009	38	14	18	13	15	15	60.2	46.6	48.6
2010	38	14	18	13	15	15	60.9	47.5	49.5
2011	38	14	18	12	16	15	61.2	46.6	48.8
2012	38	14	18	13	16	16	60.3	45.8	48.1
2013	39	14	18	13	17	16	59.9	44.9	47.3
2014	39	14	19	14	17	17	58.4	43.9	46.3
2015	39	14	18	13	18	17	59.7	43.4	45.9
2016	39	14	18	13	18	17	60.1	42.9	45.7
2017	39	13	20	13	19	17	61.5	44.6	46.8

Source: Tilastokeskus (Statistics Finland)
C = imposed by the court (judge) in ordinary proceedings
S = imposed in summary proceedings (prosecutor or – from 2017 – police)
All = imposed by the court or in summary proceedings
* Minimum amount of a day fine is six euros, as in 2001 legally determined.

Some conclusions from Tables 3.2–3.4 can be drawn: the average amount of daily units (Table 3.2) as well as of the total amounts of day fines (Table 3.4) are relatively low and the high amounts of day fines are mostly imposed for traffic offences. These observations are explained primarily by the fact that fines are extensively used as a penalty for low-income offenders of traditional crime (such as theft and assault); high-income fined offenders are mostly among those violating traffic rules.

There is no provision in the Finnish legislation according to which the day fine would be excluded due to the offender's lack of means. A fine is regarded as the mildest penalty (after waiving of the sentence) and – according to the general principle of sentencing – the choice of a more severe penalty is to be determined step by step taking into account the seriousness of the offence, the offender's culpability and his or her possible recidivism.[21] Among scholars, criticism has been expressed against the minimum daily unit of six euros with reference to the general provision of PC 2a:2.1, which prescribes that the amount of a day fine shall be set so that it is reasonable in view of the solvency

[21] See Government Bill No. 44/2002, Chapter. E, para. 1 (p. 185). See also above, Chapter 1.

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TABLE 3.3 *Total amount of day fines in 2008–17*

	Average						
	C		S		All		Penal fees
	TrO	Others	TrO	Others	TrO	Others	TrO
2008	510	359	237	114	268	177	80
2009	516	351	239	115	275	183	80
2010	533	361	241	121	277	185	78
2011	545	356	248	124	284	189	77
2012	572	374	256	127	295	202	78
2013	618	395	273	130	314	211	78
2014	644	393	282	134	328	216	79
2015	640	384	287	134	328	205	101
2016	638	385	296	132	324	212	155
2017	631	379	310	127	317	213	155
	Total amount of (day) fines in euro						
	C		S		All		Fixed Fines (max.)
	TrO	Others	TrO	Others	TrO	Others	TO
2008	115,960	62,730	59,44	8,622	115,960	29,550	115
2009	50,600	29,550	24,170	11,370	50,600	46,760	115
2010	81,540	46,760	32,256	7,400	81,540	16,700	115
2011	18,780	16,700	50,100	66,530	50,100	66,530	115
2012	33,735	9,090	36,320	3,930	36,320	60,350	115
2013	32,664	60,350	95,000	18,600	95,000	151,480	115
2014	82,665	65,050	21,528	7,072	82,665	65,050	115
2015	54,795	42,900	36,450	12,384	54,795	42,900	200
2016	114,768	32,160	40,120	5,256	114,768	32,160	240
2017	77,808	52,140	33,936	10,310	77,808	52,140	240

Source: *Tilastokeskus (Statistics Finland)*
C = imposed by the court (judge) in ordinary proceedings
S = imposed in summary proceedings (prosecutor or – from 2017 – police)
All = imposed by the court or in summary proceedings
TrO = traffic offences

of the person fined.[22] On the other hand, the regulation of a conversion sentence (PC 2:2a:4–6) includes limitations in its use, inter alia, by enabling the waiving of the conversion sentence when the personal circumstances or state of health of the person fined support this.

[22] Matikkala, *Rikosoikeudellinen seuraamusjärjestelmä*, p. 73.

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TABLE 3.4 *The distribution of the total amounts of imposed day fines in 2017*

Euros	Traffic fines %	Others %
1–40	1.2	8.0
41–60	3.8	17.0
61–80	2.3	7.6
81–100	3.7	12.0
101–150	6.9	18.6
151–200	25.7	7.8
201–300	19.5	11.7
301–400	12.3	5.3
401–500	7.6	4.0
501–1,000	12.6	5.2
1,001–2,000	3.7	2.1
2,001–3,000	0.6	0.4
3,001-	0.3	0.2
In total	100	100
Amount (N)	107,128	57,493

Source: Tilastokeskus (Statistics Finland)

Tapio Lappi-Seppälä has analysed the use of fines in Finland and other European countries.[23] The Tables 3.5–3.6 (taken from his article) are based on the European Sourcebook Statistics. Table 3.5 includes all types of offences and Table 3.6 illustrates the use of fines and other sanctions in assault and theft offences; both tables concern the year 2006.

Table 3.5 shows that Finland has the highest overall conviction rate (4,158), but three out of four convictions were for traffic offences.

Tables 3.5 and 3.6 indicate that fines are imposed to a very great extent in Finland and other Nordic countries. As explained in Sections 3.1 and 3.2 above, there has been a systematic trend in criminal policy-thinking to reduce the use of prison sentences and to further the use of its alternatives, among which the fine is a typical penalty. The monetary value has been increased, thus making fines more credible alternatives to short-term prison sentences.

As to the effectiveness of fines, there is a well-known observation that offenders who have been punished with a fine have lower recidivism rates than those whose punishment has been more severe. For example, in Finland about 25 per cent of those receiving fines became reconvicted for some form of

[23] Lappi-Seppälä, 'Fines in Europe', 1637–48.

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TABLE 3.5 *The use of fines in Europe 2006*

	General application of fines				Application by offenses			
	A	B	C	D	E. Theft (all) F.		G. Assault (all) H.	
	All convictions/ pop	Imposed fines/ pop	Fines % of all convictions	Non-traffic convictions / pop	Sanctions / pop	Fines %	Sanctions / pop	Fines %
Finland	4,158	3,659	88	1,413	582	91	207	54
England & Wales	2,455	1,768	72	2,445	184	13	60	7
Belgium	1,805	1,661	92	380	80	53	47	68
Hungary	1,419	412	29	1,120	311	21	67	24
Sweden	1,319	712	54	1,023	267	47	97	19
Scotland	1,318	659	50	1,164	291	30	296	46
Switzerland	1,308	497	38	703	37	1	12	9
Poland	1,214	231	19	804	175	6	103	6
Netherlands	1,025	318	31	722	174	18	107	23
Germany	945	756	80	709	147	71	67	61
France	940	357	38	522	115	12	86	19
Croatia	730	66	9	679	127	4	50	3
Slovakia	700	28	4	650	124	2	38	6
Czech Rep.	675	27	4	675	141	2	26	4
Portugal	623	473	76	306	34	37	51	77

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Austria	489	191	39	489	98	30	64	59
Latvia	435	30	7	435	138	1	19	9
Slovenia	404	28	7	381	97	5	38	4
Romania	234	44	19	196	64	1	62	44
Albania	222	84	38	214	32	4	14	44
Cyprus	204	80	39	204	51	25	9	56

Source: Lappi-Seppälä 2014, based on *European Sourcebook of Crime and Criminal Justice Statistics* 2010 (Aebi et al., 2010), columns E and F based solely on the sourcebook. 'Pop' means per 100,000 in population.
A = Convictions either by the court or prosecutor. All offences and infractions
B = Imposed fines (both courts and prosecutor) / 100,000 population
C = The share of fines (%) of all convictions (A)
D = The number of non-traffic convictions / 100,000 population
E = The number of fines imposed for theft offences / 100,000 population
F = The share of fines (%) of all sanctions imposed for theft
G = The number of fines imposed for assault offences / 100,000 population
H = The share of fines (%) of all sanctions imposed for assault
Country order by column A.

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TABLE 3.6 *The use of fines and other sanctions in assault and theft offences in Europe 2006*

		Theft (all)			Assault (all)		
		Fine/ pop	Other/ pop	All	Fine/ pop	Other/ pop	All
Nordic							
	Finland	530	52	582	112	95	207
	Sweden	125	142	267	18	79	97
Western 1							
	Switzerland	0	37	37	1	11	12
	Germany	104	43	147	41	26	67
	Austria	29	69	98	38	26	64
Western 2							
	Netherlands	31	143	174	25	82	107
	France	14	101	115	16	70	86
	Belgium	42	38	80	32	15	47
UK							
	England &Wales	24	160	184	4*	56*	60*
	Scotland	87	204	291	136	160	296
South							
	Portugal	13	21	34	39	12	51
	Slovenia	5	92	97	2	36	38
East							
	Poland	11	165	175	6	97	103
	Slovakia	2	122	124	2	36	38
	Czech Rep.	3	138	141	1	25	26
	Hungary	65	246	311	16	51	67
	Latvia	1	137	138	2	17	19
ALL (21)	**Mean**	**34**	**119**	**153**	**22**	**50**	**72**

Source: Lappi-Seppälä 2014, based on *European Sourcebook of Crime and Criminal Justice Statistics 2010* (Aebi et al., 2010), columns E and F based solely on the sourcebook. 'Pop' means per 100,000 in population.
* The low number of assaults in England & Wales compared to earlier editions of statistics suggest that the definition has been changed in a manner that prevents reliable comparisons.

penalty during the following five years whereas the figure of those sentenced to prison was 75 per cent. However, these figures as such cannot be used as a basis, because the initial recidivism risk in these two groups is different. Nevertheless, there is fairly little systematic research with control groups about the effects of fines on recidivism.[24]

[24] Lappi-Seppälä, 'Fines in Europe', chapter on Effectiveness, with references.

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3.4 PUBLIC PERCEPTION OF DAY FINES

In the legislative reform of 1999, the day fines based on gross income were replaced by net income. According to the *travaux préparatoires* of the reform, the aim was 'to introduce a more just fining system, whereby the size of the fine is perceived as fair among different income-groups'. There is a general precondition that the legitimacy of a penal system and its general-preventive effect that the system as a whole can be regarded as fair. In Scandinavian criminal policy-thinking it is emphasised that the use of punishment should demonstrate a socio-ethical reproach and, in this way it influences the sense of morals and justice (so-called positive general prevention). From the point of view of legitimacy, the actual realisation in criminal justice of such principles of justice as equality and proportionality as well as the fairness of the proceedings is of central importance.

A separate follow-up research was carried out by Tapio Lappi-Seppälä in order to measure the degree of perceived fairness of the fining system.[25] A total of 2,966 persons were interviewed at four different stages before and after the reform during the years 1999–2001. The results of this research are interesting also since in the late 1990s and early 2000s the Finnish fining system received worldwide attention due to extraordinarily large day fines (over tens of thousands of euros) imposed on offenders with an extraordinarily high income.

Three out of four interviewed persons considered that the system with day fines was in generally fair. Just below 60 per cent considered traffic fines generally to be fair, about one fifth considered them too low and about one sixth too severe. The respondents' critical attitudes towards the day fine system grew along with income-level. However, the degree of their satisfaction with the fining system did not differ according to the fact whether the fines were calculated on the basis of gross or net income – contrary to what the government assumed.

3.5 ACTUAL CHALLENGES OF THE FINING SYSTEM

During the last few years the day fines and the fining system in general have received quite much attention in the Finnish public debate and criminal policy-thinking. In particular, following issues have raised differing opinions and led to disputed legislative solutions or proposals:

[25] Lappi-Seppälä, 'Public Perceptions and the Fairness of the Dayfine System. An Evaluation of the 1999 Dayfine Reform', 386–97.

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(1) What should be the monetary values of a day fine and of the fixed fine? How should the summary proceedings be organized – for example, what should be the roles of the police and the prosecutor and how should the legal safeguards, the appeal and other remedies be regulated?
(2) To what extent should the conversion sentences be used and how should the discretion of the court in its decision-making be regulated?
(3) To what extent should penal administrative fees (administrative fines) be introduced? How much would this trend lead to the decriminalisation of minor offences and how much would there in future exist parallel punitive sanction systems and problems with double jeopardy?

As to the first issue, in 2016 the Finnish government proposed that the monetary amount of day fines, fixed fines and corporate fine (corporate criminal liability was introduced by the Act of 743/1995)[26] would be essentially raised and the public finances were presented as the main argument for the reform. This Government Bill was turned down in the Parliament, because that financial argument was not accepted as a primary important one when taking into account the constitutional limits of criminalisation and punishment.[27]

The current legislation on the conversion sentences has been described above (Section 3.2). As explained there, the latest amendments of the legislation in question have had divergent aims. In the public debate the amendment which limits the discretion of the court in the conversion process to reduce or waive the conversion sentence has been strongly criticised. It has been referred to the probable unfair effect where those who will be targets of the tightened practice belong to the socially disadvantaged groups.

As to the trend of the increased introduction of penal administrative fees instead of relying on the punishability of minor offences, a great legislative challenge is that no general, systematic legislation (like for *Ordnungswidrigkeiten* in German) has been created in Finland, although there are numerous special legal Acts regulating penal administrative sanctions in the various fields of public administration. For example, the new Road Traffic Offences Act (729/2018; into force on 1 June 2020) introduces a new punitive fee for minor violations of that Act. Not even a recent report (2018) of a working party set up by the Ministry of Justice proposes such

[26] See, in more detail, Lahti, 'Finnish Report on Individual Liability for Business Involvement in International Crimes', 257–66, Chapter 3.
[27] See Government Bill No. 1/2016 and the Statement of the Constitutional Committee of the Parliament on it, No. 9/2016.

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a unified legislation, which would make the system of punitive sanctions more consistent and coherent.[28]

One of the recent pecuniary punitive sanctions whose exact position or nature is unclear is victim surcharge. It was introduced by special Act 669/2015. If an offender is sentenced for such an offence for which imprisonment may be imposed, he or she will also be ordered to pay a victim surcharge. The adoption of the victim surcharge was justified with the objective of strengthening public funding for the measures of support to the victims of crime.

A person over eighteen years of age who has committed an offence is liable to pay the victim surcharge. The amount of the surcharge is determined based on the penal provision irrespective of whether the offence has a victim or not. Legal persons, such as companies and corporations, that have been sentenced to a corporate fine are also liable to pay the victim surcharge. The amount of the victim surcharge to be imposed on an individual offender is forty or eighty euros. The victim surcharge is imposed in criminal proceedings and there is no discretion entrusted to the authority or court who imposes this pecuniary sanction.

In all, there is an urgent need for coordinating various punitive sanctions (whether they are criminal in nature or administrative). In an acceptable regulation model, it must be balanced with various pros and cons whether it is necessary to rely on criminalisation and the strong safeguards of the criminal justice process or whether there are more compelling reasons for administrative fines instead of penal fines (criminal punishment).

3.6 CONCLUSION

The day fine system has been in force in Finland for nearly one hundred years. There has been general satisfaction with the fining system, in which the role of day fines has been remarkable. Several factors have contributed to the success of this pecuniary sanction. First, the public perception and official criminal policy ideology have regarded it as furthering fairness of the fining system and, more generally, the fairness of the whole criminal justice system. Second, the official criminal policy has aimed at reducing the use of imprisonment as a criminal sanction but has sparingly developed new alternatives to imprisonment. Third, the efficiency of the day fine system has been furthered by the detailed provisions on the assessment of the person's income[29] (and the easy access to his or her taxation data) and the effective enforcement of fines.

[28] See, in more detail, Lahti and Rainiala, 'Alternative Investigation and Sanctioning Systems for Corporate and Corporate-Related Crime in Finland', 131–63.

[29] *Cf.*, for instance, the situation in the Czech Republic and its critical assessment by Drápal, 'Day fines: A European comparison and Czech malpractice', 461–80, 477.

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Nevertheless, there are several challenges in further developing the fining system (see above Section 3.5). A big issue, also on the level of the European Union, is how to coordinate the different types of penal and administrative fines and make the comprehensive system of pecuniary sanctions more coherent. Finally, I refer to the concluding prospect expressed by Patricia Faraldo-Cabana: to build such a nexus between money and personal liberty in the sense of consumerism that would make pecuniary sanctions for serious offences more palatable.[30]

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[30] *Supra* note 3Faraldo-Cabana, pp. 221–2.

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