

Strasbourg, 11 septembre 2001

Consult/ICC (2001) 13 rev

**THE IMPLICATIONS FOR COUNCIL OF  
EUROPE MEMBER STATES OF THE  
RATIFICATION OF THE  
ROME STATUTE OF THE  
INTERNATIONAL CRIMINAL COURT**

**LES IMPLICATIONS POUR LES ETATS  
MEMBRES DU CONSEIL DE L'EUROPE  
DE LA RATIFICATION DU STATUT DE  
ROME DE LA COUR PENALE  
INTERNATIONALE**

## **BILAN DE L'ETAT D'AVANCEMENT DE LA RATIFICATION ET LA MISE EN OEUVRE PAR LA FINLANDE**

La Finlande a signé le Statut le 7 octobre 1998 à Rome et l'a ratifié le 29 décembre 2000.

Une loi sur la mise en œuvre des dispositions de caractère législatif du Statut de Rome de la Cour Pénale Internationale et sur l'application du Statut (n°1284/2000 du Recueil de lois de la Finlande) ainsi qu'une loi sur la modification du Code pénal (n°1285/2000 du Recueil de lois de la Finlande) ont été adoptées en décembre 2000 (voir ci-joint la traduction anglaise officielle des deux lois, annexes 1 et 2).

### **Coopération entre la CPI et les Etats Parties au Statut de Rome**

La Loi finlandaise sur l'assistance judiciaire internationale en matière pénale (n°4/1994) constitue la base de la coopération entre la Finlande et la CPI (voir traduction anglaise officielle de la loi, annexe 3). Toutefois, la Loi n° 1284/2000 clarifie certaines obligations de la Finlande fondées sur le chapitre 9 du Statut. De même, aux fins d'une mise en œuvre intégrale des dispositions du Statut, la Loi n° 1284/2000 prévoit une assistance judiciaire plus vaste que ne l'aurait permis la législation nationale en vigueur.

Plusieurs questions présentent un intérêt particulier dans ce contexte. Tout d'abord, les dispositions du chapitre 9 du Statut doivent être interprétées comme imposant aux Etats Parties l'obligation absolue de se conformer aux demandes présentées par la Cour et permettant l'application de la législation nationale uniquement en ce qui concerne la procédure. La Constitution finlandaise interdit expressément l'expulsion, l'extradition et le transfert des ressortissants finlandais contre leur propre volonté (article 9). La remise de ressortissants finlandais à la Cour en vertu des dispositions du Statut a donc été jugée contraire à la disposition constitutionnelle susmentionnée étant donné que cette dernière interdit en substance le transfert de ressortissants finlandais vers d'autres pays sans leur consentement. C'est pourquoi la Loi n° 1284/2000, qui prévoit notamment la remise de personnes à la Cour, a été promulguée conformément à une procédure spéciale pour les amendements constitutionnels, mais, il n'a pas été nécessaire d'amender l'article 9 de la Constitution en soi pour que la Finlande puisse ratifier le Statut (voir également «questions constitutionnelles» ci-dessous).

L'article 93, paragraphe 4 du Statut permet à un Etat partie de refuser de se conformer à une demande d'assistance judiciaire si cette demande a pour objet la production de documents ou la divulgation d'éléments de preuve qui touchent à sa sécurité nationale. En vertu de la Loi finlandaise sur l'assistance judiciaire internationale en matière pénale, un danger pour la sécurité nationale est un motif absolu de refus de l'assistance judiciaire. Toutefois, dans la législation d'application du Statut, la Finlande ne s'est pas réservée la possibilité de refuser l'assistance judiciaire pour ce motif. D'autres motifs de refus de l'assistance judiciaire prévus par la législation nationale ne peuvent pas non plus être invoqués (le refus de l'assistance judiciaire ne serait pas justifié par exemple par l'exigence d'une double incrimination).

Selon l'article 5 de la Loi n° 1284/2000, les autorités finlandaises doivent prendre les mesures nécessaires afin de permettre à un témoin, auquel une citation à comparaître délivrée par la CPI a été notifiée en Finlande aux fins d'une audition devant la Cour, de se conformer à cette citation (par exemple en délivrant un titre de voyage ou en fournissant la protection nécessaire). Le témoin a droit à un dédommagement par anticipation conformément aux dispositions relatives au dédommagement par anticipation de la Loi sur le dédommagement par l'Etat des témoins (n° 666/1972) lorsqu'il y a lieu.

En vertu de l'article 103 du Statut, les peines d'emprisonnement sont accomplies dans un Etat désigné par la Cour sur la liste des Etats qui lui ont fait savoir qu'ils étaient disposés à recevoir des condamnés. La Finlande a conclu un accord avec le Tribunal Pénal International pour l'ex-Yougoslavie(TPIY) sur l'exécution des condamnations déjà en 1997. Les décisions internes nécessaires de la part du Parlement et du Président ont maintenant été prises ce qui permet à la Finlande d'accepter également les personnes condamnées à une peine d'emprisonnement par la CPI. La Cour en sera informée en temps voulu.

### **Questions constitutionnelles**

Selon la Constitution finlandaise, le Parlement approuve les traités et autres obligations internationales qui renferment des dispositions qui relèvent du domaine législatif ou qui, à quelque titre, sont de grande importance ou qui, en vertu de la Constitution, nécessitent pour d'autres raisons le consentement du Parlement (par exemple pour des raisons budgétaires). Les dispositions des traités et autres obligations internationales qui présentent un caractère législatif sont mises en application par une loi. Quant à la ratification du Statut, le système juridique finlandais présente une caractéristique spécifique qui est d'un intérêt particulier, à savoir que la loi d'application peut contenir une dérogation à la Constitution. Dans un tel cas, la Constitution n'est pas modifiée mais la loi de dérogation est promulguée selon une procédure spéciale pour les amendements constitutionnels. Cette procédure exige que le Parlement l'approuve par une décision de ne pas laisser le texte en suspens prise à la majorité des deux tiers (ou plus) des suffrages exprimés. Elle permet à la Finlande d'accepter des obligations internationales qui sont à certains égards contraires à la Constitution sans modifier la Constitution en soi. Naturellement, cette procédure est appliquée avec réticence et uniquement après un examen minutieux. La décision relative à la procédure législative à utiliser est prise par la Commission de droit constitutionnel du Parlement. Lorsqu'il soumet un projet de loi au Parlement, le Gouvernement présente son avis sur la question.

La Loi n° 1284/2000 a été promulguée conformément à cette procédure spéciale pour les amendements constitutionnels pour les raisons suivantes:

- une remise éventuelle de ressortissants finlandais aurait été contraire à la Constitution (voir également «coopération entre la CPI et les Etats Parties au Statut de Rome» ci-dessus);
- l'interdiction de relâcher la personne avant l'expiration de la peine prononcée par la Cour a été jugée empiéter sur le droit de grâce du Président pour les condamnations exécutées en Finlande;

- l'article 122 relatif aux amendements aux dispositions de caractère institutionnel du Statut a été jugé incompatible avec les dispositions constitutionnelles relatives à l'approbation et à la mise en œuvre des obligations internationales parce que certains amendements adoptés à la majorité qualifiée deviendraient contraignants pour tous les Etats Parties, c'est-à-dire également pour les Etats n'ayant pas voté en faveur de ces amendements.

La nécessité éventuelle de recourir à la procédure spéciale pour les amendements constitutionnels a également été envisagée en ce qui concerne plusieurs autres questions. Une de ces questions était la relation entre l'article 27, c'est-à-dire la disposition concernant le défaut de pertinence de la qualité officielle et les dispositions actuelles de la Constitution relative à la responsabilité pénale du Président et des Membres du Gouvernement (les Ministres) ainsi qu'aux procédures nationales pour engager des procédures judiciaires contre le Président, un Ministre ou un Membre du Parlement.

A ce sujet, la Commission de droit constitutionnel du Parlement a estimé que l'article 27 n'était pas contraire à la Constitution eu égard à la gravité des crimes relevant de la compétence de la Cour. En conséquence, il n'a pas fallu recourir à la procédure spéciale pour les amendements constitutionnels ni exiger une majorité qualifiée en raison de l'Article 27.

## **Droit pénal positif**

Pour que la Finlande puisse ratifier le Statut, aucun amendement majeur du Code pénal n'a été nécessaire étant donné que les dispositions finlandaises relatives au droit pénal matériel et au champ d'application du droit pénal fournissaient une base suffisante de mise en oeuvre du Statut. Toutefois, quelques précisions ont été ajoutées au Code pénal (Loi n°1285/2000). Ces dispositions concernent la compétence en Finlande pour les atteintes à l'administration de la justice (article 70 du Statut).

Le génocide, les crimes de guerre et les violations des droits de l'homme ont été criminalisés en Finlande en 1974. Aujourd'hui, les dispositions pertinentes figurent au chapitre 11 du Code pénal (voir ci-joint la traduction officieuse du chapitre 11, annexe 4). En substance, les éléments constitutifs du génocide tels que prévus dans le Code pénal finlandais répondent à la définition du génocide donnée par l'article 6 du Statut. De même, le contenu des dispositions actuelles concernant les crimes de guerre et les violations des droits de l'homme en état d'urgence correspondent dans une large mesure à la définition de crimes de guerre donnée par l'article 8 du Statut, tandis que les dispositions du chapitre 11 du Code pénal ne couvrent pas intégralement tous les actes qui sont définis comme des crimes contre l'humanité à l'article 7 du Statut. Il convient toutefois de se rappeler que les différences ne signifient pas que ces crimes resteraient impunis au regard du code pénal finlandais. Les crimes contre l'humanité comportent généralement les éléments constitutifs d'homicide et de lésions corporelles, d'infractions sexuelles et d'atteintes à la liberté personnelle au sens du Code pénal.

Le bellicisme est criminalisé à l'article 2 du chapitre 12 du Code pénal (voir ci-joint la traduction officielle du chapitre 12, annexe 5) tandis que le crime d'agression ne l'est pas. Cela ne signifie pas que la Finlande accepterait de tels actes mais, plutôt, que la législation nationale en tant que telle est jugée mal équipée pour traiter du crime d'agression. Pour cette raison, il importe de veiller à ce qu'une définition du crime d'agression, ainsi qu'une disposition sur les conditions dans lesquelles la Cour peut exercer sa compétence à l'égard de ce crime, soient incluses dans le Statut. Une telle définition devrait être suffisamment précise pour répondre aux exigences du droit pénal.

L'article 7 du chapitre 1 du Code pénal prévoit la compétence universelle des tribunaux finlandais. Le droit finlandais s'applique à une infraction commise hors de Finlande lorsque la punissabilité de l'acte, indépendamment du lieu de perpétration, est fondée sur un accord international liant la Finlande ou sur un autre texte ou règlement s'imposant internationalement à la Finlande (infractions internationales). D'autres dispositions relatives à l'application de l'article 7 sont promulguées par décret (voir ci-joint la traduction anglaise officielle du chapitre 1 ainsi que du décret, annexes 6 et 7). Le décret contient une liste exhaustive des crimes auxquels le droit pénal finlandais peut être appliqué sur la base de la compétence universelle ainsi que des conventions internationales qui en constituent le fondement juridique.

Selon l'article 8 de la Constitution, nul ne peut être considéré comme coupable d'un crime ni condamné pour un acte qui, au moment où il a été commis, n'était pas sanctionné d'une peine par la loi. Toutefois, dans le projet de loi du gouvernement n° 1/1996 concernant le chapitre 1 du Code pénal, il est observé que la piraterie, les crimes de guerre et certains crimes contre l'humanité sont soumis à la compétence universelle en vertu du droit international coutumier, en conséquence la punissabilité de ces crimes n'exige pas d'accords internationaux ou une législation nationale.

Les tribunaux finlandais peuvent donc exercer une compétence universelle sur les crimes de guerre, certains crimes contre l'humanité et le génocide.

En vue de la possibilité d'engager des procès nationaux conformément au principe de complémentarité, la Finlande envisage de compléter la législation nationale par exemple en incluant dans le Code pénal des dispositions expresses sur les crimes relevant de la compétence de la Cour et de contribuer ainsi à sa pleine conformité avec le Statut. Cette conformité explicite et générale a été recommandée par la Commission juridique et des affaires étrangères du Parlement lors de l'examen du Statut. La Commission des relations étrangères a également souligné la nécessité de veiller à ce qu'il y ait toujours une possibilité d'exercer la compétence nationale pour les crimes relevant de la compétence du Statut.



## **ANNEXES (en anglais uniquement)**

### **Appendix I**

**No 1284/2000**

Issued in Helsinki on 28 December 2000

### **Act on the implementation of the provisions of a legislative nature of the Rome Statute of the International Criminal Court and on the application of the Statute<sup>1</sup>**

In accordance with the decision of Parliament, which has been made as provided for in section 95, paragraph 2 of the Finnish Constitution, the following is enacted:

#### *Section 1*

The provisions of the Statute of the International Criminal Court, done at Rome on 17 July 1998, insofar as they are of a legislative nature, shall be in force as applicable law in accordance with the commitments of Finland.

#### *Section 2*

(1) The Ministry of Justice shall have the authority to receive requests for co-operation made by the International Criminal Court, concerning the investigation and prosecution of crimes within the jurisdiction of the Court, including requests for the arrest and surrender of persons and for the enforcement of orders of the Court, and shall execute the requests either itself or with the help of other competent authorities.

(2) Replies to the International Criminal Court shall be delivered through the Ministry of Justice even in cases where the Ministry of Justice has not itself executed the request, unless otherwise provided in the request for co-operation.

(3) Notwithstanding the provisions of paragraphs (1) and (2), the International Criminal Court may also contact competent Finnish authorities directly or through the diplomatic channels, or through the International Criminal Police Organisation or any other appropriate regional organisation.

#### *Section 3*

(1) Upon a request made by the International Criminal Court, a person found in the territory of Finland must be arrested and surrendered to the Court in accordance with the request.

(2) The procedure applied to the surrender of persons shall otherwise be governed by the provisions of the Extradition Act (456/1970), where applicable.

---

<sup>1</sup> Unofficial translation provided by the Ministry for Foreign Affairs, 5 July 2001

*Section 4*

(1) The competent Finnish authorities shall be under an obligation to give judicial assistance to the International Criminal Court, as requested by the Court, for the investigation and prosecution of crimes within the jurisdiction of the Court.

(2) Judicial assistance shall be given in accordance with the provisions of the Act on International Legal Assistance in Criminal Matters (4/1994), where applicable, unless otherwise provided in the request. In the provision of judicial assistance, coercive measures may be resorted to as provided for in the Coercive Measures Act (450/1987).

*Section 5*

(1) A witness, on whom a summons to appear issued by the International Criminal Court has been served in Finland, for the purpose of hearing before the Court, shall be under an obligation to comply with the summons.

(2) The Finnish authorities must take the necessary measures in order to facilitate the possibility of the witness to comply with the summons.

*Section 6*

(1) A witness, who has been summoned in Finland to be heard before the International Criminal Court, shall have a right to compensation in advance in accordance with the provisions on advance compensation in the State Compensation for Witnesses Act (666/1972), where applicable.

(2) A request for advance compensation shall be made to the district court which served the summons on the witness. A decision on the award of compensation in advance shall be made by the Ministry of Justice on the basis of a request of the district court.

(3) A compensation paid in advance may only be recovered from a witness who fails to appear before the Court or otherwise fails to fulfil his duties before the Court. A decision on the recovery of compensation shall be made by the district court referred to in paragraph (2) on the basis of a request of the Ministry of Justice.

*Section 7*

(1) A sentence of imprisonment imposed by the International Criminal Court shall be enforced in Finland, as requested by the Court, in accordance with the provisions of the Act on International Co-operation in the Enforcement of Certain Penal Sanctions (21/1987). However, the provisions in section 3 of the Act, concerning the conditions for enforcement, shall not be applied.

(2) The sentences shall be enforced by giving the necessary enforcement orders as provided for in section 7 of the Act referred to in paragraph (1).



*Section 8*

(1) The enforcement of forfeiture of proceeds, property and assets derived from the crime, ordered by the International Criminal Court, shall take place in Finland in accordance with the provisions of the Act on International Co-operation in the Enforcement of Certain Penal Sanctions (21/1987) where applicable. However, the provisions in section 3 of the Act, concerning the conditions for enforcement, shall not be applied.

(2) Upon an order given by the Ministry of Justice, the proceeds, property and assets derived from the crime shall be transferred as requested by the Court.

*Section 9*

The enforcement of fines and reparations to victims ordered by the International Criminal Court shall take place in Finland as requested by the Court.

*Section 10*

Further provisions on the implementation of this Act may be given by a Decree issued by the President of the Republic.

*Section 11*

The provisions on the entry into force of this Act shall be given in a Decree issued by the President of the Republic.



## **Appendix II**

### **No 1285/2000**

Issued in Helsinki on 28 December 2000

### **Act on the amendment of the Penal Code<sup>2</sup>**

In accordance with the decision of Parliament,

Chapter 1, section 11, paragraph 2 (563/1998) and Chapter 40, section 9, paragraph 3 (815/1998) of the Penal Code (39/1889) enacted on 19 December 1889 shall be amended, and

a new section 12 a shall be added to Chapter 15, a new section 19 a shall be added to Chapter 16 and a new paragraph 4 shall be added to section 20 of Chapter 16 (815/1998), as follows:

#### **Chapter 1 – Scope of application of the criminal law of Finland (626/1996)**

##### *Section 11 – Requirement of dual punishability*

- (1) - - - - -
- (2) Even if the offence is not punishable under the law of the place of commission, Finnish law shall apply to it if it has been committed by a Finnish citizen or a person referred to in section 6(3)(1) [*a person who at the time of the offence was, or at the beginning of the trial is, permanently resident in Finland*], and the penalty for it has been laid down in sections 1-9 of chapter 15 by virtue of section 12 a of the said chapter,
  - (1) sections 1-3, 13 or 14 of chapter 16 by virtue of section 19 a of the said chapter,
  - (2) section 18 or 19 of chapter 17,
  - (3) sections 6—8 of chapter 20,
  - (4) section 9 of chapter 20, where the act is directed at a person younger than eighteen years of age (563/1998), or
  - (5) sections 1-4 of chapter 40, where the offender is an official of the International Criminal Court

---

<sup>2</sup> Unofficial translation provided by the Ministry for Foreign Affairs, 5 July 2001

## **Chapter 15 – Offences against the administration of justice (563/1998)**

### *Section 12 a – Offences against the administration of justice by the International Criminal Court*

For the purposes of application of the provisions on false statement, false denunciation, falsification of evidence, and threatening a person to be heard in the administration of justice, “a court of law” shall also mean the International Criminal Court and “criminal investigations” shall also mean an investigation referred to in the Statute of the International Criminal Court.

## **Chapter 16 – Offences against the public authorities (563/1998)**

### *Section 19 a – Offences against the International Criminal Court*

“A public official” referred to in sections 1-3 [*violent resistance to a public official, resistance to a public official and obstruction of a public official*], and sections 13 and 14 [*bribery and aggravated bribery*] of this chapter shall also mean an official of the International Criminal Court.

### *Section 20 – Definitions*

- (1) -----
- (2) -----
- (3) -----
- (4) *An official of the International Criminal Court* means a person who is in the service of the International Criminal Court as a Judge, Prosecutor, Registrar or official of the Office of the Prosecutor or the Registry.

## **Chapter 40 – Offences in public office and offences by an employee of a public corporation (792/1989)**

### *Section 9 – Provision on application*

- (1) -----
- (2) -----
- (3) The provisions in sections 1 – 4 of this chapter [*acceptance of a bribe, aggravated acceptance of a bribe, bribery violation, forfeiture*] apply also where the offender is a person in the service of the European Communities, as referred to in chapter 16, section 20, an official of another Member State of the European Union, or an official of the International Criminal Court.

---

The provisions on the entry into force of this Act shall be given in a Decree issued by the President of the Republic.

### **Appendix III**

## **International Legal Assistance in Criminal Matters Act<sup>3</sup>** (5 January 1994/4)

### **Chapter 1** **General provisions**

#### **Section 1** *Scope of application*

The provisions in this Act shall apply to international assistance in a criminal matter where the proceedings fall, at the time of the request for assistance, within the jurisdiction of a requesting Finnish authority or an authority of the requesting foreign State.

International assistance in criminal matters, as referred to in this Act, shall include:

- 1) service of decisions, summonses, notices and other judicial documents relating to a criminal matter, including summonses to appear before an authority of the requesting State;
- 2) hearing of witnesses, experts and parties, obtaining of expert opinions, inspections, procuring and transmitting documents and objects to be produced as evidence, as well as the taking of any other evidence relating to a criminal matter;
- 3) search, seizure and the use of other coercive measures in order to obtain evidence or to secure the enforcement of a confiscation order;
- 4) institution of criminal proceedings;
- 5) communication of extracts from and information relating to judicial records required in a criminal matter; and
- 6) any other necessary assistance in a criminal matter, provision of information on law as well as any other forms of mutual co-operation.

#### **Section 2** *Limitations of the scope of application*

This Act shall not apply to:

- 1) extradition;
- 2) international co-operation in the enforcement of criminal judgements, transfer of sentenced persons and transfer of the supervision persons sentenced to conditional punishment as well as those released on parole, and the enforcement of a sentence of a fine or the enforcement of a confiscation order; nor
- 3) temporary transfer of a person in custody to appear as a witness or for purposes of confrontation.

---

<sup>3</sup> Unofficial translation provided by the Ministry for Foreign Affairs, 5 July 2001

### **Section 3**

*Central authority*

The Ministry of Justice shall act as Central Authority and discharge the duties falling within the scope of application of this Act.

As Central Authority the Ministry of Justice shall:

- 1) receive the requests for assistance transmitted by an authority of a foreign State;
- 2) carry out, either directly or through the competent Finnish authorities, the execution of the requests for assistance transmitted by authorities of a foreign State;
- 3) transmit the requests for assistance by the competent Finnish authorities to authorities of a foreign State; as well as
- 4) carry out translations of documents and to discharge other duties of the Central Authority.

### **Section 4**

*Requests for assistance to Finnish authorities*

The request for assistance by an authority of a foreign State shall be transmitted to the Ministry of Justice or made directly to the authority competent to execute the request.

Where the request has been sent to the Ministry of Justice, the Ministry shall transmit it promptly to the authority competent to execute the request, unless the execution of the request falls within the competence of Ministry of Justice.

### **Section 5**

*Requests for assistance to authorities of a foreign State*

A request for assistance may be made by the Ministry of Justice, a court, a prosecution authority and a pre-trial investigation authority.

The request shall be transmitted to the foreign State in compliance with the procedure provided by the foreign State and taking into account the provisions of the treaties in force between Finland and the foreign State. The request may be transmitted through the Ministry of Justice, where the requesting authority may not transmit it directly to the competent authority of the foreign State or where the transmitting of the request through the Ministry of Justice is otherwise deemed to be appropriate. Where necessary, the Ministry of Justice may transmit the request to the foreign State through the Ministry for Foreign Affairs.

### **Section 6**

*Issue of supplementary rules on channels of communication*

Supplementary rules on the procedure for making and receiving a request for assistance and on channels of communication shall be issued by Decree.

Chapter 2  
**Provision of assistance**

**Section 7**  
*Form and content of requests*

A request for assistance transmitted by an authority of a foreign State to a Finnish authority may be made in writing, as a recording or orally; it may also be transmitted in an electronic message. Where the service of summons, notice, decision or other document is requested, the request shall be accompanied or supplemented by the document to be served. Where the authenticity of the request or any accompanying document is doubtful the Ministry of Justice or the competent authority may request for the necessary confirmation in writing. The request and the accompanying documents are exempt from legalisation or any similar formality.

The request shall, to the extent necessary for the proper execution of the request, indicate:

- 1) the authority making the request and the court or other authority where the criminal matter on which the request is based is subject to proceedings or investigations;
- 2) the object of and reason for the request;
- 3) the necessary information available on the persons concerned;
- 4) a description of the offence on which the request is based and the applicable provisions of criminal law;
- 5) a brief summary of the criminal act and the related facts, except where the service of a document is requested;
- 6) a description of the evidence sought and the information on documents and evidence; as well as
- 7) allowances and expenses to which a witness or expert requested to appear before an authority of the requesting State is entitled.

The request may be executed although the requirements provided for in paragraph 1 or 2 are not fully met, where the defects do not prevent the execution of the request.

**Section 8**  
*Language and translations*

The request and the accompanying documents shall be in Finnish or in Swedish, or be accompanied by a translation into either of these languages. It may be enacted by Decree that the request and the accompanying documents may be in a foreign language.

A competent authority may execute a request for assistance even where the request and the related documents are in a foreign language provided by Decree or in another foreign language, provided that the execution of the request is not otherwise precluded according to this Act. However, the competent authority may refuse to execute the request, where the request and the documents are not in Finnish or in Swedish, nor accompanied by translations into these languages, if the authority deems that it does not have a sufficient understanding of the language used in the documents. The Ministry of Justice shall be responsible for carrying out translations from foreign languages into Finnish and Swedish as will be enacted by Decree.

A document to be served need not be accompanied by a translation where the service may be executed without a translation under section 17, paragraph 2.

## **Section 9**

### *Execution of requests*

The execution of the request shall be carried out in accordance with Finnish law, unless otherwise provided below. The request shall be executed promptly and the time limits set or implied in the request shall as far as possible be observed.

Where the request or the accompanying documents are defective to the extent that the request cannot be executed, the requesting authority of the foreign State shall be promptly requested to supplement the request or to provide additional information.

Where the request cannot be executed or the execution of the request is delayed, the authority of the requesting foreign State shall be promptly notified thereof and be informed of the reasons of the non-compliance or the delay.

## **Section 10**

### *Presence*

The competent authority of the requesting State, the parties as well as any other interested persons shall have the right to be present in accordance with Finnish law when witnesses, experts or parties are heard or another requested measure is carried out. An authority of the requesting State may, subject to the consent of the court or the pre-trial investigation authority, participate in court proceedings and the pre-trial investigation as well as put questions to the persons being examined.

On the request of an authority of the requesting State, the authority of the requesting State shall be notified of the time and place of the execution of requested measure well in advance, so that the authority, the parties and other interested persons may be present.

## **Section 11**

### *Compliance with a particular procedure specified in the request*

The request for assistance may be executed following a particular form or procedure specified in the request where such a form or procedure would not be incompatible with Finnish law.

Where the request cannot be executed in compliance with the procedure specified in the request, the authority of the requesting foreign State shall be promptly notified of the obstacles and inquired whether the request should nevertheless be executed.



## **Section 12**

### *Mandatory grounds for refusal*

Assistance shall be refused, where the execution of the request would prejudice the sovereignty, the security or other essential interests of Finland.

Assistance shall be refused, where the execution of the request would be contrary to the principles of human rights and fundamental freedoms or otherwise contrary to Finnish public policy (*ordre public*).

## **Section 13**

### *Discretionary grounds for refusal*

Assistance may be refused, where:

- 1) the request relates to an offence that is of a political character or an offence under military law only;
- 2) the request relates to an offence, committed by a person who according to Finnish law could no longer be prosecuted by reason of lapse of time, pardon or by any other reason;
- 3) the request relates to an offence which in Finland or in a third State is subject to pre-trial investigations or under consideration of a prosecution authority or where court proceedings have been initiated;
- 4) the request relates to an offence for which the pre-trial investigations, prosecution or punishment, or any other punitive sanctions have been waived in Finland or in a third State;
- 5) the request relates to an offence in respect of which the offender has been sentenced or acquitted in Finland or in a third State; or
- 6) the execution of the request would, having regard to the nature of the offence, impose an unreasonable burden on the resources available.

The execution of the request may be postponed, if the execution of the request would cause inconvenience or delay in a criminal investigation, pre-trial investigations or court proceedings in Finland.

## **Section 14**

### *Decisions to refuse assistance and appeal*

The decision to refuse assistance by virtue of section 12, paragraph 1 shall be made by the Ministry of Justice. In other cases the decision not to comply with the request for assistance shall be made by the authority competent to execute the request. Where the request for assistance has been transmitted to the Ministry of Justice as the Central Authority, the Ministry may, instead of transmitting the request to the competent authority, decide that assistance shall be refused where it is evident that the request cannot be complied with.

Where the court of first instance has decided not to comply with the request for assistance, the Ministry of Justice may submit the matter to the Court of Appeal. Where the Court of Appeal decides that the assistance requested shall be refused, the Ministry of Justice may directly submit the matter to the Supreme Court. In other cases a decision to the refuse assistance shall not be subject to appeal.

### **Section 15**

#### *Restrictions on coercive measures*

Where coercive measures are requested or where the request otherwise involves the use of coercive measures under the Coercive Measures Act (1987/450), such measures shall not be used, where not permitted under Finnish law had the offence to which the request relates been committed in Finland in similar circumstances.

A suspect or a defendant in criminal proceedings pending in the requesting State who is requested to be examined in Finland in pre-trial investigations or in court may not be arrested, detained or subjected to a travel ban for the acts or omissions constituting the offence specified in the request.

Where the request relates to the service of a summons to appear before an authority of a foreign State, a Finnish authority may not order the person summoned to obey the summons nor use any measures of compulsion in cases of failure to appear. The duty of witnesses and other persons to obey a summons issued by a court of another Nordic State is governed by the Act on the Duty to Appear Before the Court of Another Nordic Country in Certain Cases (1975/349).

### **Section 16**

#### *Refusal of assistance due to the absence of reciprocity*

The Ministry of Justice may decide that assistance be refused, where the requesting State would not afford corresponding assistance pursuant to a request for assistance made by a Finnish authority.

## Chapter 3

### **Specific provisions on the provision of assistance**

### **Section 17**

#### *Service*

The service of a document shall be effected in accordance with Finnish law for the service of a corresponding document, or in compliance with a particular method specified in the request, unless such a method would be incompatible with Finnish law. Proof of service shall be given by means of a certificate stating the date, place and method of service, the person on whom the document has been served and the person to whom the document has been delivered.

A document shall be served in accordance with paragraph 1, if the document to be served is in Finnish or in Swedish or accompanied by a translation to either of these languages. In other cases the service may be carried out by delivery of the document to the addressee who accepts it voluntarily. However, the service may be carried out in accordance with paragraph 1, where it is evident that the addressee has a sufficient understanding of the language of the document or the accompanying translation.

Supplementary rules on the service of documents shall be issued by Decree.

### **Section 18**

#### *Refusal to serve a summons*

The service of a summons requiring the appearance of a person may be refused, where the summons and the accompanying documents have not been transmitted to the requested Finnish authority by a reasonable time before the date set for appearance. The service may nevertheless be effected, if the person on whom the document is to be served accepts it voluntarily.

### **Section 19**

#### *Request to initiate criminal proceedings*

Criminal proceedings may be initiated in Finland in accordance with the rules of Finnish law on the exercise of jurisdiction in criminal cases pursuant to a request made under this Act by an authority of a foreign State.

### **Section 20**

#### *Taking of evidence and obtaining statements of persons in a court of law*

Where the request for assistance made by an authority of a foreign State relates to the hearing of witnesses or experts, the production of documents and records, the arrangement of inspections or the production of any other materials to be used as evidence, or the hearing of the parties, and the execution of the request falls within the functions of the judiciary, the evidence shall be taken in the court of first instance where:

- 1) criminal proceedings are pending in a court of the requesting foreign State; or
- 2) it has been requested that the evidence be taken in a court.

The evidence shall be taken in the court of first instance of the district where the person to be examined is domiciled or habitually resident, or where the evidence can otherwise be taken in an appropriate way. A public prosecutor shall be present at the hearing, where deemed necessary by the court. The taking of evidence shall, where applicable, be governed by the Finnish law on proceedings in criminal matters.

## **Section 21**

### *Taking of evidence and hearing of parties in pre-trial investigations*

In cases other than those referred to in section 20 evidence shall be taken and the parties and other persons examined by the competent pre-trial investigation authority. The provisions on the pre-trial investigation of an offence shall otherwise apply to the procedure, where applicable.

## **Section 22**

### *Refusal to give evidence*

A witness or expert who appears before a court or a person who appears before a pre-trial investigation authority pursuant to a request made by an authority of a foreign State, shall be entitled to refuse to give evidence or make a statement, in so far as the person has a privilege or duty to refuse to give evidence or make a statement under Finnish law or the law of the requesting State. The law of the foreign State shall be taken into account, if the privilege or duty to refuse to give evidence has been indicated in the request for assistance made by the foreign State or if such information is supplied by the requesting authority upon the request of a Finnish court or pre-trial investigation authority, or if the privilege or duty otherwise is known to the court or to the pre-trial investigation authority.

## **Section 23**

### *Use of coercive measures to obtain evidence or to secure the enforcement of a confiscation order*

Search and seizure, telecommunications interception, telecommunications monitoring and technical surveillance to obtain evidence as well as identification of persons may be carried out pursuant to a request for assistance made by an authority of a foreign State, if this has been requested or deemed necessary in the execution of the request (changed by Act No 406/1995).

Coercive measures may be used upon the request of an authority of a foreign State for the purpose of securing the enforcement in Finland of a confiscation order made or to be made in the requesting foreign State where the order is, or would be, enforceable in Finland.

The use of coercive measures shall be governed by section 15, paragraph 1 of this Act and by the Coercive Measures Act.

## **Section 24**

### *Communication of information from judicial records*

On the request of an authority of a foreign State information from judicial records may be communicated in criminal matters to the requesting authority in accordance with this Act, under the same conditions as to Finnish authorities. The information from judicial records shall be provided by the Ministry of Justice.

**Section 25**  
*Costs and expenses*

No payment of the costs or expenses incurred in the execution of the request may be required from the requesting foreign State, unless otherwise provided by Decree.

Chapter 4  
**Specific provisions on the request for assistance made to a foreign State**

**Section 26**  
*Declaration of reciprocity*

When making a request for assistance to an authority of a foreign State the Ministry of Justice may, where necessary, declare that Finnish authorities will in a corresponding case provide assistance to the requested foreign State.

**Section 27**  
*Secrecy, confidentiality and restrictions on the use of information*

Where a Finnish authority makes a request for assistance to an authority of a foreign State, the provisions of Finnish law shall apply to the secrecy of documents and other records, confidentiality as well as to access to information by the parties and public authorities.

In addition to paragraph 1, the provisions in a treaty in force between Finland and the foreign State and the conditions set by the foreign State shall apply on secrecy, confidentiality, restrictions on the use of information and the return or destruction of the material provided by the requested State.

**Section 28**  
*Refusal to give evidence*

A witness or expert who appears before a court or a person who appears before a pre-trial investigation authority pursuant to a request made by a Finnish authority, shall be entitled to refuse to give evidence or make a statement, in so far as the person has a privilege or duty to refuse to give evidence or make a statement under Finnish law or the law of the requested foreign State. The law of the foreign State shall be taken into account, if the privilege or duty has been indicated in the reply made by the authority of the foreign State to the request by the Finnish authority, or if such information is supplied by the requested upon the request of a Finnish court or pre-trial investigation authority, or if the privilege or duty is otherwise known by the court or the pre-trial investigation authority.

The immunity of witnesses, experts, parties, or persons to be examined in pre-trial investigations, who appear pursuant to a request for assistance under this Act by a Finnish authority shall be governed by the Immunities of Persons Participating in Proceedings or Pre-trial Investigations Act (1994/11).

#### Chapter 5

### **Supplementary rules and instructions and the entry into force of the Act**

#### **Section 29**

##### *Supplementary rules and instructions*

Supplementary rules on the implementation and application of this Act shall be issued by Decree. In addition, the Ministry of Justice may, where necessary, issue instructions on international assistance in criminal matters.

#### **Section 30**

##### *Entry into force*

This Act shall enter into force on the 15th day of January 1994.

Nothing in this Act shall prevent Finnish authorities from affording international assistance in criminal matters pursuant to other treaties or other arrangements to which Finland is or becomes a Party, nor under any other provisions of Finnish law relating to the subject-matter of this Act.

The provisions in this Act shall not affect the transmission of requests between Finnish authorities and the authorities of a foreign State through the International Criminal Police Organisation (*Interpol*) or through diplomatic channels.

**Appendix 4****The Penal Code of Finland<sup>4</sup>**  
(39/1889)

- - -

**Chapter 11 — War crimes and offences against humanity (578/1995)****Section 1 — *War crime* (578/1995)**

- (1) A person who in an act of war
- (1) uses a prohibited means of warfare or weapon;
  - (2) abuses an international symbol designated for the protection of the wounded or the sick; or
  - (3) otherwise violates the provisions of an international agreement on warfare binding on Finland or the generally acknowledged and established rules and customs of war under public international law

shall be sentenced for a *war crime* to imprisonment for at least four months and at most six years.

- (2) An attempt is punishable.

**Section 2 — *Aggravated war crime* (578/1995)**

- (1) If in the war crime
- (1) several people are put in mortal danger;
  - (2) very serious and extensive economic damage is caused; or
  - (3) the offence is committed in an especially brutal or cruel manner
- and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for an *aggravated war crime* to imprisonment for at least two and at most twelve years.
- (2) An attempt is punishable.

**Section 3 — *Petty war crime* (578/1995)**

If the war crime, considering its consequences and the other relevant circumstances, is petty when assessed as a whole, the offender shall be sentenced for a *petty war crime* to a fine or to imprisonment for at most six months.

**Section 4 — *Violation of human rights in a state of emergency* (578/1995)**

- (1) A person who violates or fails to comply with the rules on the protection of the wounded, the sick or the distressed, the treatment of prisoners of war and the protection of the civilian population, which according to the international agreements binding on Finland or the established rules of public international law are to be followed during war, armed conflict or occupation, shall be sentenced for *violation of human rights in a state of emergency* to imprisonment for at least four months and at most six years.

---

<sup>4</sup> Unofficial translation.

(2) An attempt is punishable.

(3) If the act referred to in this section, considering the nature of the violation, the minor significance of the consequences and the other relevant circumstances, is not serious when assessed as a whole, the offender shall not be sentenced for a violation of human rights in a state of emergency or an attempt thereof, but instead for the other offences manifest in the act.

#### Section 5 — *Aggravated violation of human rights in a state of emergency* (578/1995)

(1) If in the violation of human rights in a state of emergency

(1) several people are put in mortal danger; or

(2) the offence is committed in an especially brutal or cruel manner

and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for *aggravated violation of human rights in a state of emergency* to imprisonment for at least two and at most twelve years.

(2) An attempt is punishable.

#### Section 6 — *Genocide* (578/1995)

(1) A person who for the purpose of entirely or partially destroying a race, a national, ethnic or religious group or another comparable group

(1) kills members of the group;

(2) inflicts grievous bodily or mental damage or illness to members of the group;

(3) takes forcible measures to prevent procreation among the group;

(4) forcibly moves children from one group to another; or

(5) in another comparable manner essentially impairs the survival of the group

shall be sentenced for *genocide* to imprisonment for at least four years or for life.

(2) An attempt is punishable.

#### Section 7 — *Preparation of genocide* (578/1995)

A person who for the purpose referred to in section 6

(1) conspires with another to commit genocide; or

(2) makes a plan for genocide

shall be sentenced for *preparation of genocide* to imprisonment for at least four months and at most four years.

#### Section 7a — *Breach of the prohibition of chemical weapons* (351/1997)

A person, who in breach of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

(1) uses chemical weapons in a manner not referred to in sections 1—3 of this chapter,

(2) develops, produces, otherwise procures, stockpiles, possesses or transports chemical weapons, or

(3) participates in military preparations for the use of chemical weapons,

shall be sentenced for *breach of the prohibition of chemical weapons* to imprisonment for at least four months and at most six years.



### Section 8 — *Ethnic agitation* (578/1995)

A person who spreads statements or other information among the public where a certain race, a national, ethnic or religious group or a comparable group is threatened, defamed or insulted shall be sentenced for *ethnic agitation* to a fine or to imprisonment for at most two years.

### Section 9 — *Discrimination* (578/1995)

A person who in his/her trade or profession, service of the general public, exercise of official authority or other public function or in the arrangement of a public amusement or meeting, without a justified reason

- (1) refuses someone service in accordance with the generally applicable conditions;
- (2) refuses someone entry to the amusement or meeting or ejects him/her; or
- (3) places someone in an unequal or an essentially inferior position

owing to his/her race, national or ethnic origin, colour, language, sex, age, family ties, sexual preference, state of health, religion, political orientation, political or industrial activity or another comparable circumstance shall be sentenced, unless the act is punishable as industrial discrimination, for *discrimination* to a fine or to imprisonment for at most six months.

- - -



## Appendix 5

### **The Penal Code of Finland<sup>5</sup>** (39/1889)

- - -

#### Chapter 12 — **Treasonable offences (578/1995)**

##### Section 1 — *Compromising the sovereignty of Finland (578/1995)*

A person who by violence or the threat of violence or the military or economic pressure or support by a foreign state, for the purpose of

- (1) rendering Finland or a part of Finland subject to the authority of a foreign state;
  - (2) separating a part of Finland from the rest of the territory; or
  - (3) otherwise restricting the sovereignty of Finland in a comparably serious manner,
- commits an act which causes the danger of said purpose being attained shall be sentenced for *compromising the sovereignty of Finland* to imprisonment for at least one and at most ten years.

##### Section 2 — *Warmongering (578/1995)*

If a person in Finland or a Finnish citizen outside of Finland, during an ongoing or imminent military crisis or international political crisis, for the purpose of causing Finland to be at war or the target of a military operation

- (1) publicly exhorts a foreign state to carry out an offensive against Finland or Finland to carry out an offensive against a foreign state;
- (2) publicly disseminates statements or other propaganda intended to turn the public opinion in favour of the carrying out of offensives;
- (3) systematically disseminates manifestly unfounded or misleading information on the Finnish defence or the military or security policy of Finland; or
- (4) unlawfully commits a violent act against a foreign state or the representative, territory or property of a foreign state

so that the act evidently increases the danger of Finland being at war or the target of a military operation, that person shall be sentenced for *warmongering* to imprisonment for at least one and at most ten years.

##### Section 3 — *Treason (578/1995)*

- (1) A Finnish citizen who, during an ongoing or imminent war, armed conflict or occupation involving Finland,

- (1) joins the armed forces of the enemy;
- (2) participates in military operations or other military activities against Finland;
- (3) serves the enemy in a military or civilian capacity immediately furthering the military operations against Finland; or

---

<sup>5</sup> Unofficial translation

- (4) collaborates with the enemy or in another comparable manner favours the enemy to the detriment of Finland  
shall be sentenced for *treason* to imprisonment for at least one and at most ten years.
- (2) Also a foreigner who commits an act referred to in paragraph (1)(4) while in Finland or in the service of Finland shall be sentenced for treason.
- (3) An attempt is punishable.
- (4) An act which is committed during occupation and which is evidently necessary for the safeguarding of the survival of the population shall not be considered favouring the enemy, as referred to in paragraph (1)(4).

#### Section 4 — *Aggravated treason* (578/1995)

- (1) If in the treason
- (1) there is danger of rendering Finland or a part of Finland subject to the authority of a foreign state; or
  - (2) especially serious damage is otherwise caused to Finland
- and the treason is aggravated also when assessed as a whole, the offender shall be sentenced for *aggravated treason* to imprisonment for at least four years or for life.
- (2) An attempt is punishable.

#### Section 5 — *Espionage* (578/1995)

- (1) A person who for the purpose of favouring a foreign state or damaging Finland procures information on a matter concerning the Finnish defence or other preparation for emergencies, Finland's foreign relations, State finances, foreign trade or power supplies or another comparable matter involving Finnish national security, and the disclosure of the information to a foreign state can cause damage to the Finnish defence, national security, foreign relations or economy, shall be sentenced for *espionage* to imprisonment for at least one and at most ten years.
- (2) A person who for the purpose of favouring another state or damaging Finland relays, delivers or discloses to another or publishes information referred to in paragraph (1) shall also be sentenced for espionage.
- (3) An attempt is punishable.
- (4) A person serving in the armed forces of the enemy may be sentenced for espionage only if he/she, concealing that service, stays in Finland or in the theatre of operations of the Finnish armed forces. The person shall not be sentenced for acts of espionage other than that in which he/she was caught.

#### Section 6 — *Aggravated espionage* (578/1995)

- (1) If the espionage
- (1) is committed during a state of emergency;
  - (2) relates to a matter which is especially important to the Finnish defence, national security, foreign relations or economy; or
  - (3) is conducive to causing especially serious damage, as referred to in section 5
- and the espionage is aggravated also when assessed as a whole, the offender shall be sentenced for *aggravated espionage* to imprisonment for at least four years or for life.
- (2) An attempt is punishable.

Section 7 — *Disclosure of a national secret* (578/1995)

(1) A person who unlawfully publishes or relays, delivers or discloses to another or, for such purpose, unlawfully obtains information on a matter that has been classified as secret by statute or by administrative order so as to safeguard the Finnish national security, or that to the knowledge of the offender is conducive to causing serious damage to the Finnish defence, national security, foreign relations or economy, shall be sentenced for *disclosure of a national secret* to imprisonment for at least four months and at most four years.

(2) An attempt is punishable.

Section 8 — *Negligent disclosure of a national secret* (578/1995)

A person who, through gross negligence, unlawfully publishes or relays, delivers or discloses to another information on a matter that has been classified as secret by statute or by administrative order so as to safeguard Finnish national security, shall be sentenced for *negligent disclosure of a national secret* to a fine or to imprisonment for at most two years.

Section 9 — *Unlawful intelligence operations* (578/1995)

(1) A person who for the purpose of damaging a foreign state or favouring another foreign state procures information on the defence or national security of a foreign state or on matters immediately relevant to the same and in this manner causes damage or danger to Finland's foreign relations shall be sentenced for *unlawful intelligence operations* to imprisonment for at least four months and at most six years.

(2) An attempt is punishable.

Section 10 — *Violation of the rules of neutrality* (578/1995)

A person who violates the rules of neutrality, governing the attitude of Finland towards belligerent foreign states, shall be sentenced for *violation of the rules of neutrality* to a fine or to imprisonment for at most one year.

Section 11 — *Treasonable conspiracy* (578/1995)

A person who for the purpose of committing an offence referred to above in this chapter conspires with a foreign state or a representative thereof shall be sentenced for *treasonable conspiracy* to a fine or to imprisonment for at most two years.

- - -



## Appendix 6

### The Penal Code of Finland (39/1889)

#### Chapter 1 — **Scope of application of the criminal law of Finland** (626/1996)

##### Section 1 — *Offence committed in Finland*

Finnish law shall apply to an offence committed in Finland.

##### Section 2 — *Offence connected with a Finnish vessel*

(1) Finnish law shall apply to an offence committed on board a Finnish vessel or aircraft if the offence was committed

- (1) while the vessel was on the high seas or in territory not belonging to any State or while the aircraft was in or over such territory, or
- (2) while the vessel was in the territory of a foreign State or the aircraft was in or over such territory and the offence was committed by the master of the vessel or aircraft, a member of its crew, a passenger or a person who otherwise was on board.

(2) Finnish law shall also apply to an offence committed outside of Finland by the master of a Finnish vessel or aircraft or a member of its crew if, by the offence, the offender has violated his/her special statutory duty as the master of the vessel or aircraft or a member of its crew.

##### Section 3 — *Offence directed at Finland*

(1) Finnish law shall apply to an offence committed outside of Finland that has been directed at Finland.

- (2) An offence is deemed to have been directed at Finland
  - (1) if it is an offence of treason or high treason,
  - (2) if the act has otherwise seriously violated or endangered the national, military or economic rights or interests of Finland, or
  - (3) if it has been directed at a Finnish authority.

##### Section 4 — *Offence in public office and military offence*

(1) Finnish law shall apply to an offence, referred to in chapter 40 of this Code, that has been committed outside of Finland by a person referred to in chapter 2, section 12.

(2) Finnish law shall also apply to an offence, referred to in chapter 45, that has been committed outside of Finland by a person subject to the provisions of that chapter.

### Section 5 — *Offence directed at a Finn*

Finnish law shall apply to an offence committed outside of Finland that has been directed at a Finnish citizen, a Finnish corporation, foundation or other legal entity, or a foreigner permanently resident in Finland if, under Finnish law, the act may be punishable by imprisonment for more than six months.

### Section 6 — *Offence committed by a Finn*

(1) Finnish law shall apply to an offence committed outside of Finland by a Finnish citizen. If the offence was committed in territory not belonging to any State, it is a precondition for punishability that, under Finnish law, the act may be punishable by imprisonment for more than six months.

(2) A person who at the time of the offence was, or at the beginning of the trial is, a Finnish citizen is deemed to be a Finnish citizen.

(3) The following are deemed equivalent to a Finnish citizen:

- (1) a person who at the time of the offence was, or at the beginning of the trial is, permanently resident in Finland, and
- (2) a person who is caught in Finland and who at the beginning of the trial is a citizen of Denmark, Iceland, Norway or Sweden or at that time is permanently resident in one of those countries.

### Section 7 — *International offence*

Finnish law shall apply to an offence committed outside of Finland where the punishability of the act, regardless of the law of the place of commission, is based on an international agreement binding on Finland or on another statute or regulation internationally binding on Finland (*international offence*). Further provisions on the application of this section shall be issued by Decree.

### Section 8 — *Other offence committed outside of Finland*

Finnish law shall apply to an offence committed outside of Finland which, under Finnish law, may be punishable by imprisonment for more than six months, if the State in whose territory the offence was committed has requested that charges be brought in a Finnish court or that the offender be extradited because of the offence, but the extradition request has not been granted.

### Section 9 — *Corporate criminal liability*

If, under this chapter, Finnish law applies to the offence, corporate criminal liability shall also be determined according to Finnish law.



### Section 10 — *Place of commission*

- (1) An offence is deemed to have been committed both where the criminal act was committed and where the consequence contained in the statutory definition of the offence became apparent. An offence of omission is deemed to have been committed both where the offender should have acted and where the consequence contained in the statutory definition of the offence became apparent.
- (2) If the offence is a mere attempt, it is deemed to have been committed also where, had the offence been completed, the consequence contained in the statutory definition of the offence either (i) would probably have become apparent or (ii) would in the opinion of the offender have become apparent.
- (3) An offence by an inciter and abettor is deemed to have been committed both where the act of complicity was committed and where the offence by the offender is deemed to have been committed.
- (4) If there is no certainty of the place of commission, but there is justified reason to believe that the offence was committed in the territory of Finland, it is deemed to have been committed in Finland.

### Section 11 — *Requirement of dual punishability*

- (1) If the offence has been committed in the territory of a foreign State, the application of Finnish law may be based on sections 5, 6 and 8 only if the offence is punishable also under the law of the place of commission and a sentence could have been passed for it also by a court of that foreign State. In this event, a sanction that is more severe than what is provided by the law of the place of commission shall not be imposed in Finland.
- (2) Even if the offence is not punishable under the law of the place of commission, Finnish law shall apply to it if it has been committed by a Finnish citizen or a person referred to in section 6(3)(1), and the penalty for it has been laid down in
  - (1) section 18 or 19 of chapter 17,
  - (2) sections 6—8 of chapter 20 or
  - (3) section 9 of chapter 20, where the act is directed at a person younger than eighteen years of age.
 ( 563 / 1998 )

### Section 12 — *Prosecution order by the Prosecutor-General (205/1997)*

- (1) A criminal case shall not be investigated in Finland without a prosecution order by the Prosecutor-General, where
  - (1) the offence was committed abroad, or
  - (2) a foreigner has committed an offence on board a foreign vessel when the vessel was in Finnish territorial waters or on board a foreign aircraft when the aircraft was in Finnish air space and the offence was not directed at Finland, a Finnish citizen, a foreigner permanently resident in Finland or a Finnish corporation, foundation or other legal entity.

- (2) However, the order by the Prosecutor-General shall not be required, if
- (1) the offence was committed by a Finnish citizen or a person who, under section 6, is equivalent to a Finnish citizen and it was directed at Finland, a Finnish citizen, a foreigner permanently resident in Finland, or a Finnish corporation, foundation or other legal entity,
  - (2) the offence was committed in Denmark, Iceland, Norway or Sweden and the competent public prosecutor of the place of commission has requested that the offence be tried in a Finnish court,
  - (3) the offence was committed aboard a Finnish vessel while on the high seas or in territory not belonging to any State or aboard a Finnish aircraft while it was in or over such territory,
  - (4) the offence was committed aboard a vessel or aircraft while it was in scheduled traffic between points in Finland or between a point in Finland and a point in Denmark, Iceland, Norway or Sweden,
  - (5) the offence is to be tried as a criminal case in accordance with the Military Court Procedure Act (326/1983), or
  - (6) there is a statutory provision to the effect that the President of the Republic or Parliament is to order any charges to be brought.

### Section 13 — *Foreign judgment*

(1) A charge shall not be brought in Finland if a judgment has already been passed and become final in the State where the act was committed or in another member state of the European Union and

- (1) the charge was dismissed,
- (2) the defendant was found guilty but punishment was waived,
- (3) the sentence was enforced or its enforcement is still in progress or
- (4) under the law of the State where the judgment was passed, the sentence has lapsed.

(814/1998)

(2) The provisions of paragraph (1) notwithstanding, the Prosecutor-General may order that the charge be brought in Finland if the judgment passed abroad was not based on a request of a Finnish authority for a judgment or on a request for extradition granted by the Finnish authorities and

- (1) under section 3, the offence is deemed to be directed at Finland,
- (2) the offence is an offence in public office or a military offence referred to in section 4,
- (3) the offence is an international offence referred to in section 7, or
- (4) under section 10, the offence is deemed to have been committed also in Finland.

However, the Prosecutor-General shall not order a charge to be brought for an offence that has been partially committed in the territory of that member state of the European Union where the judgment was passed.

(814/1998)

(3) If a person is sentenced in Finland for an offence for which he/she has already served in full or in part a sanction imposed abroad, a reasonable amount shall be deducted from the sentence. If the sanction that has been imposed has been a custodial sentence, the court shall deduct from the sentence the time corresponding to the loss of liberty. The court may also note that the sanction that has been served is to be deemed a sufficient sanction for the offence.

#### Section 14 — *Reference provision*

Separate provisions shall apply to extradition because of an offence and to other international legal assistance and to the immunity in certain cases of persons participating in a trial or a criminal investigation.

#### Section 15 — *Treaties and international custom binding on Finland*

If an international treaty binding on Finland or another statute or regulation that is internationally binding on Finland in some event restricts the scope of application of the criminal law of Finland, such a restriction shall apply as agreed. The provisions in this chapter notwithstanding, the restrictions on the scope of application of Finnish law based on generally recognised rules of international law shall also apply.

- - -



**Appendix 7 revised 11 september 2001**

**Decree**

**on the application of Chapter 1, section 7 of the Penal Code**

(627/1996 as amended by Decrees 353/1997, 118/1999, 537/2000 and 370/2001)

On presentation by the Minister of Justice, the following is enacted by virtue of Chapter 1, section 1 of the Penal Code as provided for in the Act of 16 August 1996 (626/1996)

**Section 1**

(1) For the purposes of Chapter 1, section 7 of the Penal Code, the following offences shall be considered international crimes:

- 1) Commission or preparation of the crime of counterfeiting currency, or the use of counterfeited currency, referred to in the International convention for the suppression of counterfeiting currency (FTS<sup>6</sup> 47/1936) and counterfeiting in respect of euro referred to in Article 7, paragraph 2 of the Council framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (Official Journal L 140, 14/06/2000 p.0001-0003);
- 2) Such war crime, violation of human rights in a state of emergency, serious war crime or other punishable criminal act which must be considered a grave breach of the Geneva Conventions for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Relative to the Treatment of Prisoners of War, and Relative to the Protection of Civilian Persons in Time of War (FTS 8/1955), as well as the Protocol Additional to the Geneva Conventions, and relating to the protection of victims of international armed conflicts (FTS 82/1980);
- 3) Commission and preparation of the crime of genocide referred to in the Convention on the Prevention and Punishment of the Crime of Genocide (FTS 5/1960);
- 4) Commission, preparation and facilitation of a narcotics offence or aggravated narcotics offence or the commission of an concealment offence as referred to in the Single Convention on Narcotic Drugs of 1961 (FTS 43/1965), the Protocol amending the Single Convention on Narcotic Drugs of 1961 (FTS 42/1975), the Convention on psychotropic substances (FTS 60/1976), and the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (FTS 44/1994);
- 5) Such seizure of aircraft or other punishable act by which the perpetrator unlawfully, by force or threat thereof, seizes or exercises control of an aircraft, and which must be considered an offence referred to in the Convention for the suppression of unlawful seizure of aircraft (FTS 62/1971);

---

<sup>6</sup> FTS - Finnish Treaty Series

- 6) Such criminal traffic mischief or criminal mischief, preparation of endangerment or other punishable act which must be considered an offence referred to in the Convention for the suppression of unlawful acts against the safety of civil aviation (FTS 56/1973);
  - 7) Murder, or attack upon the person or liberty of an internationally protected person, or violent attack upon the official premises, the private accommodation or the means of transport of such a person, or a threat thereof, referred to in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (FTS 63/1978);
  - 8) Hostage-taking or other deprivation of liberty referred to in the International Convention against the Taking of Hostages (FTS 38/1983);
  - 9) Such torture for the purpose of obtaining a confession, and assault or aggravated assault, which must be considered torture within the meaning of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (FTS 60/1989);
  - 10) Such nuclear device offence, endangerment of health, fraudulent use of nuclear energy or other punishable act directed at or committed by using nuclear material which must be considered an offence referred to in the Convention on the Physical Protection of Nuclear Material (FTS 72/1989);
  - 11) Such deprivation of liberty or aggravated deprivation of liberty, kidnapping, criminal mischief, endangerment or other punishable act which must be considered an offence referred to in the European Convention on the Suppression of Terrorism (FTS 16/1990);
  - 12) Such killing, assault, deprivation of liberty or kidnapping inflicted upon a person on board a ship or aircraft, or seizure or theft of or damage caused to property on board a ship or aircraft, that must be considered piracy within the meaning of the United Nations Convention on the Law of the Sea (FTS 50/1996);
  - 13) Violation of the prohibition of chemical weapons referred to in the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (FTS 19/1997);
  - 14) Such unlawful act against the safety of maritime navigation as is referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (FTS 11/1999);
  - 15) Such unlawful act against the safety of fixed platforms located on the Continental Shelf as is referred to in the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (FTS 44/2000).
- (2) A punishable attempt of or participation in any of the offences referred to in paragraph 1 above shall also be considered an international crime.

## Section 2

This Decree shall enter into force on 1 September 1996.