



Received: 06 February 2017
Accepted: 23 February 2017
Published: 23 March 2017

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LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

Towards a more efficient, fair and humane criminal justice system: Developments of criminal policy and criminal sanctions during the last 50 years in Finland

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Abstract: This article provides an overview of the developments of criminal law and criminal sanctions during the last 50 years in Finland. It reflects the author's experience as a criminal scientist and an expert in drafting criminal legislation during this period. The total reform of Penal Code in 1972–2003 was aimed at a more rational penal system, i.e. for efficient, just and humane criminal justice. An ambitious attempt was made to assess in a uniform and systematic way the goals, interests and values which the new Criminal Code should promote and protect. The existence of the criminal justice system was justified using utilitarian arguments. The structure and operation of the penal system cannot, however, be determined solely on the basis of its utility. The criteria of justice and humanness must also be taken into account. The penal system must be both rational as to its goals (utility) and rational as to its values (justice, humaneness). The latest developments since the 1990s are characterized by the influence of the human and basic rights on criminal and procedural law as well as the effects of internationalization and Europeanization of

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PUBLIC INTEREST STATEMENT

The article examines the developments of criminal policy and criminal sanctions in Finland, a small Scandinavian country, during the last 50 years. It describes a Nordic model for dealing with crime and criminal justice issues. The main findings can be summarized into three points. Firstly, a coherent and consistent legislative strategy, which is based on research and rational reasoning, has proved to be successful in striving for a more efficient, fair and humane criminal justice system. Secondly, the development of criminal policy must be assessed in the light of simultaneous structural (social, political and economic) and cultural changes. Thirdly, a strengthened interaction between different criminal policy models in the European and global level is to be recognized when addressing transnational crime. Positive experiences from a sub-regional, Nordic model should be accessible for consideration regionally and globally; therefore, it is advisable that this model would have an influence on the development of European Union's and United Nations' criminal policy.

criminal justice system. Criminal scientists in Finland and elsewhere in Scandinavia should strive more actively to influence European and global criminal policy. It is typical of “Nordic model” that the role of crime prevention is particularly accentuated, specific criteria of rationality such as legitimacy and humaneness are widely applied, and the value of repression in criminal sanctions is relatively low.

Subjects: Law; Criminal Law & Practice; Criminology - Law; Crime Control - Criminology; Criminal Justice - Criminology

Keywords: criminal justice system; criminal policy; criminal sanctions; Penal Code reform; Finland

1. Introduction

The changes in the system of criminal sanctions normally reflect well the more general transition of criminal or penal ideologies and policies. Lahti (1977) illustrated this by providing a survey which covers the development of the Finnish system of criminal sanctions from the latter part of the 19th century up to 1977, the year when the report of the Penal Law Committee was published. The committee had the task of preparing a report on the ideological foundations of the overall reform of the Penal Code (PC) of 1889.

The Finnish Penal Code of 1889 was originally permeated by the spirit and principles of the classical school of penal law wherein punishment was primarily regarded as retribution for the offence, and thereby the penal system was tolerably in harmony with the demands of general deterrence. More weight was given to individual prevention at the beginning of Code drafting. Later the influence of the sociological penal-law school—focusing on the offender and in individualized criminal sanctions—led to partial reforms of the penal system: for example, the introduction of Conditional Sentences Act in 1918, Dangerous Recidivists Act in 1932 and Young Offenders Act in 1940.

The system of criminal sanctions and the theory of criminal liability are the two main areas of the general doctrines of criminal law. The establishment of the Penal Law Committee in 1972 launched the process of the overall reform of criminal law in Finland which lasted until 2003. The preparatory work was done mostly by a task force named “Criminal Code Project” within the Ministry of Justice (1980–1999). The major enactment of the final stage—the reform of the general doctrines—was adopted in 2003 and entered into force at the beginning of 2004.¹

The main focus of the overall reform was on the special part of the Penal Code, i.e. the reassessment of punishable acts on the basis of criminalization principles (“what acts should be punishable and how severely should they be punished?”). The system of criminal sanctions had undergone numerous partial reforms ever since the early 1970s, but no larger enactments in this area had been produced in the context of the overall reform before the final stage in 2003. The 2003 reform (Act 515/2003) contained an important systematic change: it conceptualized criminal sanctions, i.e. the provisions on sentencing and the choice of the type of punishment were unified and collected into one chapter of the Penal Code (Chapter 6 of the PC).

The present article provides an overview of the reform trends in the system of criminal sanctions and its individual amendments from the 1980s to the 2010s as well as an assessment of their impact. In addition, at the end of the article, I will put forward certain critical viewpoints which could be useful in the revision of criminal policy and in the development of the criminal justice systems in countries comparable to Finland, primarily in the Member States of the European Union (EU).²

2. Tendencies and goals of the Finnish criminal policy since the 1960s

To put the issue in context, I refer to the following distinct tendencies in the Finnish criminal policy since the 1960s which are reflected in the changes to the system of criminal sanctions:

- (i) Criticism of the so-called treatment ideology (the 1960s).
- (ii) Emphasis on cost-benefit thinking (the beginning of the 1970s).
- (iii) So-called neo-classicism in criminal law thinking (the end of the 1970s and the beginning of the 1980s).
- (iv) Pragmatic reform work for a new Criminal Code—the overall reform of criminal law—by utilizing modified ideas of the above-mentioned tendencies (since the 1980s until the beginning of the 2000s).
- (v) Influence of the human and basic rights thinking on criminal law and procedural law since the 1990s.
- (vi) Effects of the internationalization and Europeanization of criminal law since the end of the 1990s.

The penal theory adopted in the preparatory works of the comprehensive reform of criminal law is characterized by the demand for a more *rational criminal justice system*, i.e. for *efficient, just (fair) and humane criminal justice*.³ The existence of the criminal justice system is justified on utilitarian grounds. The structure and operation of the penal system cannot, however, be determined solely on the basis of its utility. The criteria of justice and humaneness must also be taken into account. The penal system must be both rational as to its goals (utility) and rational as to its values (justice, humaneness).⁴

To a large extent, it has been held possible to apply the main criteria of rationality of the criminal justice system—effectiveness, justice and humaneness—without this resulting in conflicting conclusions about the development of the system. In order for this to be possible, these principles must be defined in a particular way (Lahti, 1985a, pp. 66–69).

Thus, from all the different mechanisms through which the general preventive effect of the punishment should be reached, deterrence is not the most important; it is the socio-ethical disapproval which affects the sense of morality and justice—general prevention instead of general deterrence—without a need for a severe penal system. The legitimacy of the whole criminal justice system is an important aim, and therefore, such principles of justice as equality and proportionality are central. The emphasis on the non-utilitarian goals of the criminal justice system—fairness and humaneness—must be reconciled with the decrease in the repressive features (punitiveness) of the system, for example through the introduction of alternatives to imprisonment. The significance of individual prevention or incapacitation in the neo-classical penal thinking is regarded as very limited.

3. Individual changes in the system of sanctions as a part of pragmatic-rational criminal policy in the 1980s and 1990s

The individual changes in the system of sanctions in the context of the overall reform of criminal law in the 1980s and 1990s were manifestations of the pragmatic-rational implementation of the criminal policy thinking described in the preceding section, without any principled re-evaluation of the validity of the policy during that time.

The first changes to the system of sanctions prepared by the Criminal Code Project pertained to the *alternatives for custodial sentences*. In addition, the first stage of the overall reform, which concentrated on the special part of the Penal Code (Acts 769–832/1990), was accompanied by reformed provisions on the waiving of penal measures (Acts 300–303/1990) and the provisions on the community service experiment (Act 1105/1990).

The provisions on the *waiving of penal measures* have a number of different objectives: (i) the decreased punitiveness and reasonableness of criminal sanctions; (ii) the enabling of other forms of official control (mainly social welfare measures) instead of prosecution; (iii) the organisation of the

system of penalties along a series of steps from a lenient one to a more punitive; (iv) the appropriate allocation of the resources of the criminal justice system.

Mediation (conciliation) was mentioned in the preparatory works of the legislation pertaining to the waiving of punitive measures as one possible option in case the perpetrator had taken action to remedy his or her crime. Accordingly, a positive attitude was taken towards victim-offender mediation, while refraining from considering it as a noteworthy alternative to the custodial sentence. The practice of mediation—informal and based on the voluntary participation of the parties—was first begun in Vantaa in 1983 in the form of a research project. The legislation enacted in 2005 incorporated conciliation—including both criminal and civil cases—as a regular part of social welfare and restorative justice system.⁵

The introduction of *community service* on an experimental basis was justified on practical grounds: it would promote the achievement of one of the main objectives of the overall reform of the Penal Code, namely the reduction in the use of custodial sentences. The new type of sanction would also promote the rehabilitation of the offender back to the society and emphasise his or her own responsibility in this respect. This way the palette of sanctions available to the court would also be expanded, as there would be a new type of sanction whose severity ranks between that of a suspended sentence of imprisonment and that of a sentence of imprisonment served in custody. Community service, which consists of a number of hours of unpaid, socially beneficial work performed when the offender would otherwise be at leisure, was introduced as a sanction which could be imposed instead of a sentence of imprisonment in custody, of a duration not exceeding eight months.

Legislation enacted in 1996 incorporated community service as an ordinary part of the system of sanctions (Act 1055/1996). Some of the prerequisites for sentencing someone to community service were clarified at the same time. The formal prerequisite concerning the maximum duration of the custodial sentence was supplemented by the requirements of consent and suitability on the part of the offender. The other, substantive precondition gives the Court a discretionary power to deliberate whether the earlier sentences or other important reasons preclude the possibility to impose of a community service.

The legislative reform relating to the *concurrency of offences* entered into force in 1992 (Acts 697–710/1991); this particular reform had been under preparation since the early 1970s. The reform introduced a system of “joint punishments”, the basic premise of which is that only one joint punishment is to be imposed on several offences. At the same time, the court’s discretionary power was increased so that unreasonably long custodial sentences could be avoided. The provisions in Chapter 7 PC on “retroactive concurrency” were again reformed in 1997 (Act 751/1997).

The legislative amendments relating to the special part of the overall reform of the Penal Code, such as the first and second stages of the reform (Acts 769–834/1990 and 578–747/1995), have also had a certain effect on the system of criminal sanctions. One of the most important elements in this respect was the *determination of penalty scales*, the arrangement of criminal offences to proportional order according to their seriousness, as well as the definition of grave and minor forms of given basic offences (aggravated cases and petty cases). The general level of punitiveness was reduced in line with the general aims of the criminal law reform, for example by lowering the penalty scales (and especially the minimum penalties) or, where the application of a provision on an aggravated case has been precluded, by a more precise, or even exhaustive, enumeration of possible grounds of qualification.

The *competence to impose sanctions* has increasingly been transferred out of the courts to other law enforcement authorities. For instance, in addition to the expansion of the scope of application of provisions on the waiving of prosecution, the public prosecutors were entrusted with the judicial power in respect to infractions by enacting a new Act on Penal Order Proceedings (692/1993).⁶ A harsh administrative penalty—the penalty payment for illegal restriction of competition—was

introduced by the Act on Restrictions of Competition (480/1992),⁷ which was modelled in accordance with EU competition rules. A similar type of harsh administrative sanction was introduced by the legislative acts 519–521/2016 for the protection against market abuse as prescribed in the Regulation (EU) 596/2014.

The second stage of the overall reform of the Penal Code included also the introduction of *corporate criminal liability* (Chapter 9 PC, Act 743/1995). Now corporations can, in specified criminal cases, be sanctioned by the imposition of a corporate fine (Tolvanen, 2009).

Individual legislative amendments have been carried out to introduce *juvenile punishment* as a special sanction for acts committed under the age of 18 (Act 1196/2004)⁸ and to reform the provisions on the following penal sanctions: *fine*, *conversion imprisonment and summary penal fee* (550/1999), *conditional sentence of imprisonment* (520/2001), and *forfeiture* (875/2001).

The reform of the general part of the Penal Code (515/2003) had as its objective the achievement of a coherent set of rules concerning the principles and grounds governing the determination of penal sanctions and sentencing, thus facilitating even more the harmonization process of penal practice in Finland. The objective was not to affect the general punitive level of penalties or the proportions between the penalties imposed for various types of offence.

4. Enactments after the Criminal Code Project in the first decade of the 2000s

When the Criminal Code Project finished its work in March 1999, it left behind many unfinished draft proposals for partial reform of the system of sanctions. In the last meeting of the Steering Committee of the Project, the topic of discussion concerned the policies and principles governing the overall reform of the system of criminal sanctions. In a memorandum drafted for that meeting, the present author noted that, as the neo-classicism in criminal law thinking—as formulated originally in the 1970s—had already been modified with the introduction of individualized sanctions such as community service and juvenile punishment, it would be advisable to consider the broader implications which that modification have on the principled assessment of the relations between the various types of sanctions and on the drafting of the substantive provisions within their respective scope of application. My memorandum did not receive any support (cf. Section 6).

The further preparation of the partial reforms concerned custodial sentences of *imprisonment* and their enforcement as well as the conditional release of prisoners on parole. These revision tasks were assigned to specific law drafting bodies of the Ministry of Justice. The reform work led to the new Prison Act (767/2005), which adjusted the prison law to fulfil the requirements of the new Constitution and human rights obligations as well as with the strengthened legal safeguards and transparency of prison administration. This reform also included the enactment of new provisions on the release of prisoners on *parole* (780/2005), and as a novelty, a regular release of prisoners serving a life sentence on parole (781/2005).⁹

The legislation on incarceration concerning *preventive detention* was repealed and replaced by new provisions on prisoners serving their entire sentence in prison due to their dangerousness to the life or health of others as manifested in their criminal activity (780/2005). The application of these provisions presupposes a multidisciplinary risk assessment of the offender and is a manifestation of the aim of incapacitation. *Electronic monitoring* was introduced as a new type of criminal sanction in 2011 (329–330/2011). It is imposed under certain material prerequisites as an alternative to a custodial sentence of imprisonment for at most six months.

5. Assessing the effects of the reforms of the system of criminal sanctions

An important effect of the new criminal and sanction policy can be seen in the *reduced use of custodial sentences* in Finland. Since the mid-1970s, the relative number of offenders sentenced to unconditional imprisonment was on the decrease until 1999: from 118 persons in 1976 to 65 in 1999 per 100,000 inhabitants which was the imprisonment level of the other Nordic countries. At the same

time, the number of reported crimes followed the same trends in all Nordic countries which means that the dramatic cut in the prisoner rate in Finland did not result in a proportional increase in crime rates compared with other Nordic countries where the prisoner rates remained the same. In 2000–2005, the number of incarcerated people increased to 90 in 2005, but in the most recent years, the level seems to be normalized to 60–70 per 100,000 inhabitants (Lappi-Seppälä, 2008, 2011a, 2012).¹⁰

This effect should be assessed against the background of the general objectives and values of the criminal policy which was adopted in Finland. Cost-benefit thinking in policy-making—as it was originally formulated in the late 1960s (Törnudd, 1969)—suggests that we should aim at the reduction and distribution of the suffering and other social costs caused by crime and of the control of crime. In addition to crime prevention, a strong emphasis should be put on justice and humaneness. For instance, the argument of justice requires a just allocation of the social costs of crime and crime control among different parties, such as the society, offenders and victims, and the argument of humaneness speaks in favour of parsimony and leniency of penal sanctions and the respect of human dignity in crime control.

The reduced prisoner rate should be assessed in relation to the preventive effects of the system of criminal sanctions. The above-described Nordic experience, in addition to other criminological data, is an argument against the fear that a cut in the number of inmates will result in a proportional increase in the incidence of crime. Accordingly, the variations in the prisoner rate should not be looked at as a phenomenon separate from other events, nor should the criminal policy changes since the late 1960s be seen merely as a result of some ideological agenda pursued by a group of penal experts.

The Finnish scholar Lappi-Seppälä (2008, 2011a, 2012) has extensively studied the relationship between penal policy and prisoner rate. His conclusions include the following assertions: the penal severity is closely associated with the extent of welfare provision, differences in income equality, trust and political and legal cultures. So the Nordic penal model has its roots in consensual and corporatist political culture, high level of social trust and political legitimacy as well as a strong welfare state. These different factors have both indirect and direct influences on the contents of penal policy.

6. New challenges for the reform of the system of criminal sanctions

As indicated above (Section 2), the Finnish criminal policy has been strongly influenced by two tendencies since the 1990s: human and basic rights thinking as well as the internationalization and Europeanization of criminal law. Therefore, the question arises whether and to what extent the premises of the criminal policy which were based on the ideology of the 1970s and 1980s are in need of reassessment (Lahti, 2012).

In my role as a decision-maker in the Criminal Code Project, I expressed criticism in 1999 about the fact that, at later stages of the overall reform of criminal law, the development of the system of sanctions had not been based on an adequately coherent policy model or penal theory (Section 4). The objectives and values driving the criminal policy as well as the more concrete interests and principles to be taken into account and balanced with each other in policy decisions, should undergo periodic re-evaluations.

When developing a comprehensive theory for the whole criminal justice system, it is necessary to take into account not only the principles and rules of the substantive and procedural criminal law, but also the whole statal machinery (police, prosecution, judiciary and enforcement agency) for implementing those legislative norms. For instance, in the special issue of “Trust in Justice”, the editors suggest on the basis of procedural justice theories that fair, respectful and legal behaviour on the part of justice officials is a prerequisite for effective justice (Hough, Ruuskanen, & Jokinen, 2011).¹¹

The results of Lappi-Seppälä's studies (Section 5) suggest that developments in criminal policy must be assessed in the light of simultaneous structural (social, political and economic) and cultural changes. The criminal policy decisions must be examined with a discerning eye. These decisions should be based on research and rational reasoning. At the same time, structural and cultural circumstances of the society and the increased inter-dependence of states should be taken into account. The strengthened interaction between different criminal policy models (such as the Scandinavian type) in the European and global level is to be recognized. In this respect, it is a challenge to be able to react to, and to influence on, the development of criminal law and criminal policy in the European Union and in other international organisations (especially the United Nations¹²).

7. Sanctions and the EU and Scandinavian criminal policy

The EU communication COM (2011) 573 final, "Towards an EU Criminal Policy", presents a framework for ensuring the effective implementation of EU policies through criminal law and calls for careful consideration of, for example, whether to include types of sanctions other than imprisonment and fines to ensure a maximum level of effectiveness, proportionality and dissuasiveness as well as the need for additional measures, such as confiscation.

It is a positive thing that a more coherent and consistent criminal policy is being drafted in the EU, as the communication indicates. It is also positive to note that, according to the communication, necessity and proportionality should be guiding principles and clear factual evidence is required for policy-making. Nevertheless, the criterion of dissuasiveness can be criticized for its strong connotation with deterrence and high level of punitiveness in contrast to the emphasis on the aspects of socio-ethical disapproval and legitimacy (cf. Section 2).

One task is to outline consistent criteria for the choice of criminal and (punitive) administrative sanctions as many EU Member States including Finland and other Nordic countries are far from a comprehensive system of administrative sanctions.

More generally, "The Manifesto on European Criminal Policy", prepared by 14 university professors (European Criminal Policy Initiative, 2011), includes a cluster of principles and guidelines which are widely accepted for law drafting among the community of criminal scientists. It is promising that the Commission announces in its communication the will to continue the development of the EU criminal policy by resorting to a thorough evaluation of existing EU criminal law measures and to continuous consultation of Member States and independent experts.

For Finland and other Nordic countries, it is challenging to promote a better understanding and inclusion of the goals and values of their welfare societies and their criminal policy in the decision-making bodies of the EU. For instance, Lahti (1992) and Suominen (2011) have with good reason asked—and given their answer to the question—how could the trust in justice as a means of effective cross-border cooperation in penal matters be furthered effectively? Some preliminary considerations can already be read in the communication: a fair balancing between the effective enforcement and a solid protection of fundamental rights; a focus in the needs of EU citizens and the requirements of the EU area of freedom, security and justice, while fully respecting subsidiarity and the last-resort-character (*ultima ratio*) of criminal law.

There is a need for a deeper analysis about the principles of *ultima ratio*, subsidiarity and proportionality from a Pan-European perspective.¹³ From the "Nordic model", where the role of crime prevention is particularly emphasized, we can learn how specific criteria of rationality, such as legitimacy and humaneness, are applied effectively while the level of repression in criminal sanctions is left relatively low.

Funding

The author received no direct funding for this research.

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Citation information

Cite this article as: Towards a more efficient, fair and humane criminal justice system: Developments of criminal policy and criminal sanctions during the last 50 years in Finland, Raimo Lahti, *Cogent Social Sciences* (2017), 3: 1303910.

Notes

1. As to the comprehensive reform of Finnish criminal law, see generally Lahti and Nuotio (1992) and Lahti (1993). An unofficial translation of the Finnish Penal Code, as amended up to 766/2015, is available from the website of the Ministry of Justice: <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>
2. See also more detailed reviews: Lahti (1985a, 1998, 2000, 2012, 2013, 2016). Two comprehensive accounts of the Finnish and Scandinavian criminal justice systems are Tonry and Lappi-Seppälä (2011) and Bondeson (2005). As to the Finnish legal system in particular, see Nuotio, Melander, and Huomo-Kettunen (2012).
3. As to this distinction originally, see Lahti (1985a, pp. 63–69, 1985b, pp. 884–885).
4. See also generally Anttila (2001), *passim*, and Törnudd (1996), *passim*.
5. On mediation in criminal cases in Finland, see Iivari (1992, 2010).
6. The Act is replaced by a new Act on the Determination of Fine and Penal Fee, 754/2010.
7. The Act is replaced by a new Competition Act, 948/2011.
8. At first, the sanction was introduced on an experimental basis, Act 1058/1996. For a general review of youth justice in Finland and other Nordic countries, see Lappi-Seppälä (2011b).
9. In more detail, see Lappi-Seppälä (2010).
10. As to the situation in the Nordic countries, see von Hofer, Lappi-Seppälä, and Westfelt (2012).
11. As to the public's views on punishment in Scandinavia, see Balvig, Gunnlaugsson, Jerre, Tham, and Kinnunen (2015).
12. As to the role of the UN in criminal policy, see especially Redo (2012).
13. In more detail, see Lahti (2016) and, generally, Melander and Suominen (2014) (the special issue of the Effectiveness of EU Criminal Law).

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