CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

INITIAL REPORT OF FINLAND TO THE COMMITTEE AGAINST TORTURE IN 1990

The Initial Report of the Government of Finland in accordance with Article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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A. Introduction

The Government of Finland signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1985 and the Finnish instrument of ratification was deposited on 30 August 1989. The Convention entered into force with respect to Finland on 29 September 1989, as announced in the Finnish Treaty Series no. 60 of 1989.

Upon ratification Finland recognized the competence of the Committee against Torture to receive and consider communications where a state party claims that another State Party is not fulfilling its obligations under the Convention, as well as communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.

This report is submitted in accordance with Article 19 of the Convention and general guidelines regarding the form and contents of initial reports which were adopted by the Committee against Torture at its third session in November 1989.

While preparing this report The Ministry for Foreign Affairs has requested opinions from the following: the Ministry of Justice, the Ministry of Education, the Ministry of Defence, the Ministry of the Interior, the Ministry of Social Affairs and Health, the Ministry of Labour, the National Board of Health, the National Board of Social Welfare, the General Staff of the Armed Forces, the Prison Department, the National Research Institute of Legal Policy, the Church Welfare Service (criminal section), the Conscripts' Association, Amnesty International Finnish Section, the League for Human and Rights and Freedom, the Human Rights Lawyers, and the Parliamentary Ombudsman.

B. General legal framework

The Constitution Act of Finland, being adopted as early as in 1919, does not explicitly prohibit torture or other cruel, inhuman or degrading treatment of punishment. It is, however, provided therein that every Finnish citizen shall by law be guaranteed protection in respect of life, honour, personal freedom and property. This is interpreted to comprise also protection of physical integrity.

Section 93 of the Constitution Act stipulates that whosoever has suffered an infringement of his rights or been injured through the unlawful act or omission by an official or an authority, shall be entitled to demand the official or authority to be punished and obligated to pay damages or brought before a court of justice.

Chapter 21 of the Finnish Penal Code (491/69) includes provisions on offences against life and health (See

Annex I). In most cases the kind of torture referred to in the Convention comprises assault mentioned in Chapter 21 to the Penal Code. The applicable provision would generally be Chapter 21, Section 6, according to which the maximum penalty for aggravated assault and battery is ten years' imprisonment.

Chapter 25 of the Penal Code contains provisons of offences against liberty (See Annex I). Under Section 11 of that Chapter whosoever tortures another person in order to obtain a confession in any matter shall be punished.

The Convention only deals with torture perpetrated by an official or a public authority which, in additon, constitutes an offence in office. Only offences committed by a civil servant of the State of Finland or the employee of a public authority, are defined as offences in office. These are covered under Chapter 40 of the Penal Code (792/1989) (See Annex I). Furthermore, Section 20, paragraph 3 of the Civil Servants Act (755/1986) stipulates that civil servants shall behave in a manner befitting their official position.

The supervision of civil servants and the system of extraordinary appeal on procedural errors help ascertain that officials and authorities comply with the law and do not exceed their powers.

In connection with the ratification of the Convention, the scope of application of the Finnish Penal Code was extended through an amendment of Chapter 1, Section 3 (665/1989), so as to render any offence punishable under the Convention also punishable under the Finnish Penal Code.

C. Other treaty commitments

Finland is party, inter alia, to the International Covenant on Civil and Political Rights and its Optional Protocol, the 1949 Geneva Conventions and the two additional Protocols of 1977, European Convention for the Protection of Human Rights and Fundamental Freedoms and Sixth Additional Protocol to the said Convention concerning the Abolition of Death Penalty. Finland has also signed the Second Optional Protocol to the Covenant as well as European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. A Government Bill (nro 71/1990) concerning acceptance of the matter was given to Parliament in May 1990. The European Convention on Torture and the Second Optional Protocol to the Covenant will be ratified soon.

D. Relationship between the Convention and national legislation

As mentioned above in paragraph B, the convention entered into force in Finland by means of an act. This means that the substantive provisions of the

Convention are in force as internal law. Thus a specific act to bring the Convention into force in respect of Finland has made it an integral part of Finnish legislation to be complied with by the authorities and applied in their practice. The contents of the most important provisions in the Convention have, furthermore, been incorporated in certain other laws.

In its Report No. 1 of 19 May 1989 the Legal Affairs Committee of Parliament "specifically drew attention to the introduction of the Convention as a Bill as having an impact on its international applicability. The Committee emphasized that after the Convention has been incorporated into our legal order, both the judicial and administrative authorities are bound to apply it in accordance with the principle lex posteriori.

E. Judicial authorities

Since the offences referred to in the Convention are punishable under the Finnish Penal Code, the sentences are to be pronounced by the courts of law. The pre-trial investigation is carried out by the police.

The Chancellor of Justice and the Parliamentary Ombudsman are both independent authorities exercising control of the legality of administrative decisions in Finland. According to Section 46 of the Constitution Act of Finland the Chancellor of Justice must ensure that authorities and officials comply with the law and perform their duties, so that no person shall suffer infringement of his rights. The Directive of the Parliamentary Ombudsman (2/1990) defines the modalities of the legality control exercised by the Ombudsman.

A Bill (727/90) has been submitted to parliament with the intent of extending the powers of the Chancellor of Justice and the Parliamentary Ombudsman, so that the highest legality control would unambiguously include the supervision of all public acts and omissions. The purpose of the Bill is to further improve the legal protection of citizens. It is intended to enter into force as soon as possible and contains i.a. a division of tasks between the Chancellor of Justice under the Council of State and the Parlamentary Ombudsman. If the Bill is passed, the supervision of the deprivation of liberty and internment of persons against their will more clearly than under the current procisions fall within the scope of the tasks of the Parliamentary Ombudsman.

F. Remedies

Section 93 of the Constitution Act provides as follows: "Every official is responsible for measures direcly or indirectly taken by him in his capacity of member of a collegiate public office. Whosoever suffers a violation of his right, or injury as a result of an unlawful act or omission by an official, may demand redress and

damages or take legal action against the official in question in accordance with the procedure prescribed in the law." The provision in question also applies to cases where an official is guilty of torture or other cruel, inhuman or degrading treatment or punishment. The victim or his legal successor may in the capacity of injured party initiate legal proceedings even in the event that the public prosecutor decides not to press charges. The injured party may also demand damages to be paid.

The legality control imposed on civil servants together with the administrative appeals system are intended to safeguard the respect of the rights of the individual. Both the Chancellor of Justice and the Parliamentary Ombudsman have the right to initiate legal proceedings at their own initiative in matters falling within the scope of their competence, but in practice the vast majority of cases - totalling an annual of 10 000 to 15 000 - emanate from appeals by individuals. In addition to the two afore-mentioned authorities, such cases are dealt with by ministries, central boards and provincial governments. The administrative branches where appeals are most frequent are the prison and police departments. In 1989 1511 and 1160 denouncements or appeals were made to the Parliamentary Ombudsman and the Chancellor of Justice respectively. Some further statistics is provided on the number of appeals made to the Parliamentary Ombudsman and the Chancellor of Justice between 1985 and 1989:

Statistical data

Number of appeals, denouncements and applications, including petitions in respect of police procedure, treated by the Chancellor of Justice between 1985 and 1989.

	Appeals etc.	Petitions in respect of police procedure
1985	1,553	246
1986	1,462	233
1987	1,450	235
1988	1,239	215
1989	1,160	180

Number of appeals and applications addressed to and treated by or initiatives taken by the Parliamentary Ombudsman, with a separate column for petitions in respect of police procedure for each, between 1985 and 1989.

	Appeals	Petitions in respect of police procedure	Initiatives by Ombudsman	Petitions in respect of police procedure
1985	1,399	173	47	3
1986	1,557	204	44	11
1987	1,704	204	29	3
1988	1,540	239	24	3
1989	1,511	247	24	2

According to Section 1 of the Directive of the Parliamentary Ombudsman (2/1929) the Ombudsman shall take appropriate measures against a judge or other officials guilty of fraud, partiality or gross negligence, or who has violated the legal rights of an individual citizen, or exceeded his powers. The Parliamentary Ombudsman has the right to press charges or authorize someone to do so where he sees that an official has committed an offence.

G. General Conclusions

Torture in the sense referred to in the Convention has not been found to exist in Finland. The Finnish legal system nevertheless provides ample possibilities for the victims of such offences, should they take place, to be investigated.

Under Finnish law cruel, inhuman or degrading treatment or punishment as referred to in article 16 of the Convention are prohibited. If committed by an official, they are punishable at least under Chapter 40 of the Penal Code as offences in office. Persons who claim to be the victims of such offences have the same legal remedies as the victims of torture.

According to the National Research Institute of Legal Policy, Finnish judicial statistics do not contain a separate heading for unlawful acts committed by officials as referred to in the Convention. Court statistics do nonetheless contain data of "confessions under duress" (Penal Code Chapter 25, Section 11; see Annex I). These provisions, however, do not apply solely to acts perpetrated by officials. Statistics of the past few years reveal very few cases of this category, and since the entry into force of the Convention, none at all appear in court statistics.

As judicial statistics do not indicate the occurrence of any unlawful acts of this type, the National Research Institute of Legal Policy has examined the possible occurrence of torture of comparable inhuman treatment in the light of allegations made occurring in newspapers, at trials, and in data complied through criminological research. The institute's impression is that torture and comparable inhuman treatment on the part of officials, if it occurs at all, is extremely rare in Finland.

In addition to actual torture, the Convention covers cruel, inhuman or degrading treatment or punishment by officials as reffered to in article 16. In respect of the occurrence of cruel and inhuman acts the same applies as for torture explained above, whereas what is felt as degradation is almost inevitable to a certain extent in closed institutions or other situations where the authorities have powers over those subjected to their treatment. Misdemeanors/offences including various kinds of humiliating or otherwise improper behaviour have occurred in the training of recruits to the armed force.

In 1989 the Parliamentary Ombudsman took up the issue of televised monitoring of patients in psyciatric hospitals (Niuvanniemi) referring to the prohibition of degrading treatment to be found in international human instruments. The Ombudsman came to the conclusion that such a monitoring was not an unproblematic phenomenon. Consequently, the introduction of televised monitoring should not depend on the decision of the chief physician of the hospital alone, but the principles and acceptability of such monitoring should be discussed on a national level.

The Parliamentary Ombudsman has also drawn particular attention to acts referred to in Article 16 of the Convention. According to the Ombudsman, treatment raising questions under this heading may possibly occur in Finland, too. Even though torture or other cruel or inhuman treatment or punishment by officials is not a current problem in Finland, the Ombudsman points out that it is particularly important that alertness to this aspect be maintained while developing relevant laws and practices.

PART II: INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Article 2

Section B above (general legal framework) dealt with the constitutional provisions and those in the Penal Code prohibiting torture. The present part covers other legislative, administrative and judicial measures to prevent torture in Finland.

Section 24 of the Pre-Trial Investigation Act (449/87) prohibits inappropriate means of interrogation and stipulates that the examinee is to be treated in a calm and objective manner. The examinee shall not be subjected to deliberately fraudulent statements, promises or threats, coercion or exhaustion or other inappropriate means or procedures which impair the faculties of decision, will, memory or judgement in order to obtain confession or lead a statement in a given direction. Interrogations shall not without special reason be held after 21.00 or before 6.00 hours. The examinee must be given sufficient rest and regular meals (see Annex III).

Finnish law does not contain any provisions allowing torture or other treatment referred to in the Convention under special circumstances. According to Section 1 of the State of War Act currently in force (303/30), the President of the Republic may, if defence of the nation or maintenance of legal order so require, declare the nation or part of it to be in state of war. The Act contains a list of rights which in state of war may with special reason be restricted. No provision may be construed to allow torture or any other treatment referred to in the Convention. A Bill for a new Act on State of War ("State of Defence Act (249/89) has been submitted to Parliament with the intention of repealing the afore-mentioned State of War Act. The government proposal accompanying the Bill specifically explains that the aim is to safeguard the basic rights of individual citizens even in circumstances where special powers must be exercised in armed conflicts. This aim means that war-time restrictions shall be as few as possible and remain within the limits set by the Constitution and international agreements concluded by Finland.

An order by a superior or an official cannot be construed, under Finnish legal practice, to justify torture.

According to Section 2 of the Penal Custody Decree (134/86), the Director and certain officials of the institution shall direct and supervise the treatment of prisoners and the activities or other institutions under the Prison Department. Thus they have the duty to ascertain that acts prohibited in the Convention do not occur in these institutions. During the period examined, no torture or other cruel, inhuman or degrading treatment or punishment has occurred.

For the remaining part see under Article 11.

Article 3

According to Article 3 no State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Section 8 of the Aliens Act (400/83) provides grounds for refusal of entry at the frontier. The expression "return" in the Convention includes refusal at the frontier. The provisions of afore-mentioned Section 8 determining when a person can be denied entry at the frontier do not refer to any need of assessing the consequences of the refusal to the person in question. Section 18 of the Aliens Act provides grounds for deportation: according to its subsection 3 a refugee shall not be deported to an area where his life or freedom will be threatened on account of his race, religion, nationality, social class or political opinion. Subsection 4 provides that when considering deportation, all relevant facts and circumstances shall be taken into account as a whole. Such relevancies can be deemed to include the conditions the deportee would be sent to endure. The Aliens Act does not, however, contain any provisions specifially prohibiting deportation to a State where the person in question would be in danger of being subjected to torture.

The Government Bill (47/90) proposing i.a. amendments to the provisions on deportation and refusal at the frontier was submitted to Parliament in June 1990. The Bill proposes the inclusion of the "non-refoulement" principle in article 30 stating that no one shall be returned to a territory where he is likely to be subjected to inhuman treatment or persecution, or when he is likely to be sent to such territory. The new Aliens Act is expected to enter into force earliest in 1991.

As regards the treatment of aliens and in particular the extradition of aliens, it may be noted that this question has been under consideration of the Human Rights Committee established under the International Convenant on Civil and Political Rights (Communication n. 291/1988). The author complained that his extradition was in violation of Article 7 of the Convention since there were reasons to believe that he would be subjected to torture in his home country. The Committee found, however, that the author "had not sufficiently substantiated his fears that he would be subjected to torture in Spain".

Section 7 of the Extradition Act (456/1970) provides that a request for extradition shall not be granted if there is reason to believe that the person whose extradition has been requested will run the risk of persecution of his race, nationality, religion, political opinion or membership of a certain community, or because of political conditions.

In this context, it can also be referred to a case which occurred in summer 1990, when a citizen of the Soviet Union hijacked an aircraft which landed in Helsinki. To justify his action, the hijacker claimed that he was subjected to torture in his home country and therefore requested for asylum in Finland. On the request of the Soviet Union he was later on extradited. Reference was made by Finnish lawyers to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Finnish Government, while extraditing the hijacker, submitted a note to the Soviet Union according to which Finland will follow the further examination of the matter by the authorities in the Soviet Union. It has been agreed upon between the two countries that a Finnish psychiatrist will participate in a medical examination to be made. Moreover, Finnish lawyers are allowed to be present as observers in trials.

Article 4

The Convention provides that each State Party shall ensure that all acts of torture are offences under its criminal law.

As to torture regulated by the Penal Code, reference is made to the information given under heading B dealing with "General legal framework" and Annex I of this report.

Departing from the general rule, inflicting pain may be determined as assault under Chapter 21, Section 5, subsection 2 of the Penal Code, which applies to victims who on account of age, handicap, or comparable grounds, or otherwise defenceless in the circumstances, justifiably fear for their life or health. Although the inclusion in 1975 of subsection in mind, the wording is such that it is deemed to cover those situations.

A person tortured by officials, or with the consent of officials, is clearly defenceless. In such circumstances the victim's life or health are clearly in dan er. The

provisions thus cover a significant number of the acts of torture referred to in article 1 of the Convention.

According to Article 4 of the Convention, attempt, complicity or participation in acts of torture shall be offences under criminal law. Under the Finnish Penal Code instigation to and complicity in a crime are generally punishable, whereas an attempted crime is punishable only where specifically stated. Thus the attempt at aggravated assault is criminal, whereas assault, extracting a confession under duress, unlawful detention, coercion and unlawful threats constitutes crimes only as accomplished acts. In the context of ratifying the Convention, Finland amended Chapter 21, Section 5, of its Penal Code in order to criminalize attempted assault.

A prison official who is found guilty of improper treatment of prisoner, may be punished under Section 60 of the Penal Custody Decree (134/86) according to which disciplinary measures may be taken against a prison official in respect of an offence in office or omission or improper behaviour in or outside office if the matter is not to be taken to a court of justice, or if admonition by the prison direction or prison department is not considered sufficient.

Article 5

According to Article 5 each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences of torture. Chapter 1 of the Penal Code (320/63 and 665/89) includes provisions concerning the territorial application of Finnish criminal law. Finnish law is in all circumstances applicable to crimes committed in Finland. A Finnish national and an alien permanently residing in Finland can also according to Chapter 1, Section 2 or the Penal Code always be sentenced under Finnsh law in respect of offences committed outside Finland. According to Chapter 1, Section 3, subsection 2 (a), the offences referred to in article 4 of the Convention are punishable under Finnish law irrespective of the place of perpetration or the nationality of the perpetrator or the victim. Upon ratification of the Convention, the Finnish Code was amended to ensure compliance with the obligations under article 5 or the Convention.

Chapter 1 of the Penal code contains i.a. the following provisions relating to the applicability of Finnish law.

Section 1

Whosoever has committed an offence in Finland shall be sentenced under Finnish law.

Setion 2

A Finnish citizen and an alien permanently residing in Finland shall be sentenced under Finnish law also for an offence committed outside Finland.

Section 3

Finnish law shall apply in respect of any offence committed by a non-resident alien outside Finland aboard a Finnish ship or aircraft or against Finland, a Finnish national, a Finnish collective body, establishment or foundation or an alien permanently residing in Finland, as well as in respect of any other criminal act committed outside Finland provided that the act is considered criminal under the law of the place of perpetration.

The provisions of sub-paragraph 1 above notwithstanding, Finnish law is applicable even in respect of offences committed by an alien where the offence is not punishable if it constitutes,

1) a war crime or violation of human rights, genocide or conspiracy to commit genocide;

2) procuration;

2 a) assault, aggravated assault or attempt thereof or any other offence which by virtue of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the United Nations on 10 July 1984 is deemed torture;

3) an offence referred to in Chapter 25, Sections 1 (a) or 9 (a);

4) air piracy (hijacking) or illegal assumption of control of an aircraft, sabotage or obstruction of air traffic; or

5) a monetary offence.

Article 6

According to article 6, any State Party in whose territory a person alleged to have commited any offence referred to in article 4 is present, can on certain conditions take this person into custody or take other legal measures to ensure his presence.

As mentioned in connection with article 5, the scope of application of the Finnish Penal Code has been extended, so that the acts referred to in article 4 of the Convention are under all circumstances punishable in Finland. The provisions of the Coercive Criminal Investigations Means Act (450/87) as amended by Act (361/90), are therefore also applicable to such offences. Section 3 of the said Act (See Annex II) stipulates the prerequisites for arresting a person justifiably suspected of an offence. In view of the penalties laid down for the offences referred to in article 4, it is an offence for which Section 3 allows a pre-trial arrest.

The Extradition Act (456/70) applies to persons in respect of whom a request for extradition has been made. According to Section 19 of the said Act, a police officer authorized to make an arrest may take the requested person into custody in order to further the investi ation and secure the surrender.

In respect of the obligations under article 6, paragraph 2, the provisions are the same as those under the Pre-Trial Investigation Act.

Finland is party to the Vienna Convention on Consular Relations. According to article 36 of that Convention, the consular representatives of a state whose national has been provisionally arrested in another state have the right, at the request of the arrested person, to be informed of the arrest and afforded the opportunity to enter freely into contact with the arrested person and safeguard his interests. Finland, furthermore, has concluded bilateral consular agreements with Poland, Romania, the Soviet Union and Hungary. These agreements include the obligation to inform the other party of the arrest of any national of that party.

Article 7

In respect of a person suspected, charged or sentenced for an offence in a foreign state, the primary measure under the Extradition Act is extradition. However, if no request for extradition has been made, or if extradition for legally founded reasons cannot be effected, the person may be put for trial in Finland in respect of an offence which under the provisions of article 5 falls within Finnish jurisdiction.

Finnish legislation and legal practice are in compliance with the provisions of article 7, paragraph 2. Cases are treated under the same criminal and procedural provisions as other offences of similar seriousness.

Article 8

The extradition of offenders from Finland is governed by the Extradition Act (465/70), the Nordic Extradition Act (270/60) and the European Extradition Convention, the Second Additional Protocol to the lastnamed, and bilateral extradition treaties between Finland and several other countries.

Finland has extradition treaties with the following countries: Australia, Belgium, Canada, Ireland, Kenya, New Zealand, Sri Lanca, Uganda, the United Kingdom, and the United States of America.

An act of torture normally corresponds to the definition of an offence of which the maximum penalty is at least the minimum condition for extradition. In contemplating extraditon, the provisions of Article 8 of the Convention which is in force as internal law in Finland, are considered.

According to Section 5 of the Extradition Act, an act deemed to be a military offence is not extraditable. But if the act comprises an extraditable offence, such as torture, extradition can be granted. According to Section 6 of the same Act, political offences are not extraditable. However, if the political offence comprices or is closely connected with a non-political offence, or the act on the whole cannot be re arded as

political, extradition can be granted. Torture can never be deemed a political offence.

Article 8, Paragraph 2, of the Convention is not relevant in Finland, as Finland does not make extradition conditional on the existence of an extradition treaty.

Article 9

Finnish authorities will execute letters rogatory or other measures relating to a criminal matter at the request of the authorities of another State only if an agreement to that effect has been concluded between the government of Finland and the government of the requesting State (Act on Letters Rogatory and the Procuring of Evidence for the Authorities of a Foreign State and on Mutual Assistance in Criminal Matters, 52/25).

Finnish law has no provision on whether the service of writs in criminal matters is to be effected at the request of the authorities of a State which Finland has no agreement on mutual assistance in criminal matters. The Ministry for Foreign Affairs has, in fact, effected service of writs requested by such states, but the juridical status is not clear. It has, for example, been deemed that a request to summon a respondent should generally be refused.

Finland is party to the European Convention on Mutual Assistance in Criminal Matters of 1959, to the Agreement between Denmark, Finland, Iceland, Norway and Sweden on Mutual Assistance in Legal Affairs concerning Service and the Procuring of Evidence as well as to the bilateral treaties with German Democratic Republic, Hungary, Poland and the Soviet Union.

Article 10

According to article 10 each State Party shall ensure that education and information regarding the prohibition of torture are fully included in the training of public officials, civil and military personnel etc.

In Finland the provisions governing the proper treatment of persons, which naturally include the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, are in part included in the legislation and in part in the directive and other rules and regulations governing and distributed to groups referred to in Article 10 of the Convention. Efforts are made to make the dissemination regarding such laws, rules and regulations as effective as possible.

The basic training of policemen contains a wide-ranging section on law during which human rights, fundamental civil and other rights and the police competence with res ect to such ri hts, as well as the entire Penal

Code, of which Chapter 25, Section 11, contains a general prohibition of and sanction relative to torture, are thoroughly discussed. Furthermore, the rules pertaining to preliminary investigations, including the Pre-Trial Investigation Act, Section 24, prohibiting all inappropriate means of interrogation, constitute part of the training.

The training of prison officials includes getting acquainted with the Universal Declaration of Human Rights, the United Nations Standard Minimum Rules for the Treatment of Offenders and the Council of Europe Prison Rules. Both the basic vocational training and the on-job continued education of prison staff stress that prisoners must be treated fairly and with respect for their human dignity.

According to Section 31 of the Penal Custody Decree (134/86), every member of the staff of any prison shall at all times treat the prisoners fairly and with respect for their human dignity, and behave with property and restraint. Section 5 of the Penal Custody Decree stipulates that prisoners shall be treated fairly and with respect for their human dignity. There shall be no differentiations as regards prisoners on account of their race, colour, sex, language, nationality, moral conviction, social position, dangerousness or comparable reason.

Under Section 10 of the Transport of Prisoners Decree (165/54), the transport of prisoners shall be arranged so as not to attract undue public attention. Section 3 of the Prison Transport Directive stipulates that prisoners shall be treated fairly and with respect for their human dignity.

As to means of interrogation, reference is made to the information given under Article 2 of this report.

Article 11

Under Article 11 each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction.

The Prison Department of the Ministry of Justice keeps under review the appropriateness and necessity of any rules and regulations it has issued. For the remainder, the systematic review is carried out by the Police Department and Aliens Centre under the Ministry of the Interior, the Ministry of Defence, the Ministry of Social Affairs and Health, the National Board of Social Welfare and the National Board of Health.

Article 12

Under Article 12 each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any

territory under its jurisdiction.

Under Article 14 of the Police Act (86/66), a policeman shall report any offence brought to his knowledge to his superior for any possible action to be taken. If the offence is a minor violation of individual rights and the victim does not make any claims on account of it, the policeman may omit to report it, or the superior, if it has been brought before him, may omit to take any action against the offender if it manifestly appears that the offence has under the circumstances been committed out of forgivable negligence, thoughtlessness or ignorance, and public interest does not require any measures to be taken. An act of torture can never be considered a minor offence. Furthermore, omitting judicial pursuit presupposes that the involved person makes no claims.

According to Section 1, Subsection 2, of the Police Decree, when the police who has come to know or has reasonable ground to believe that an offence has been committed, he shall proceed to investigate the case and bring charges against the offender. A "complainant offence" shall be investigated only if the complainant presses charges. Offences referred to in Article 16, if manifestly minor, constitute complainant offences.

According to Section 16 of the Pre-Trial Investigation Act, the official in charge of inquiries or any other investigator in the case shall be disqualified if he is in the service of or the superior in service of the complainant or any other person who specifically stands to gain or lose by the settlement of the case. This provision ensures that an impartial investigation takes place notwithstanding that the police may be guilty of an offence referred to in the Convention.

Alleged or suspected acts of torture in prisons are submitted to the police for investigation. During the reporting period no cases or situations have been submitted which would have given rise to measures under Article 12.

In 1989 the Ministry of the Interior established a committee to examine and make recommendations on the investigation of offences involving the alleged wrongful action by the police of possible offence in office committed by a policeman. The committee, whose official name is "the Committee on Police Offences" submitted its report on 8 June 1990.

The Committee proposes the establishment of an independent investigatory body to examine any wrongful action by the police. The investigatory body could be chaired by a jurist, for example a judge, and the members be a barrister, a person chosen by the Police Delegation, and a policeman who would be in charge of investigatory measures requiring special investigatory skills. The proposed arrangement would require certain additions and amendmendments to the Pre-Trial Investigation Act and the Coercive Criminal Investigation Means Act, as well as to some regulations governing the office of the public prosecutor.

In accordance with Section 7 of the Cause of Death Act (459/73), the police shall investigate the cause of death, i.a. when death has resulted from crime. A hy-

sician performing a postmortem medical examination is under obligation to report any indication of crime to the police. The National Board of Health has issued a general directive according to which the cause of death of any person deceased under special circumstances, such as during military service, apprehension, custody on account of intoxication, arrest, imprisonment, involuntary institutionalization, shall generally be reported to the police and established by a forensic postmortem medical examination.

Under Section 27 of the Pre-Trial Investigation Act (49/87) and Chapter 17 of the Code of Judicial Procedure, a physician may be obliged to testify in a trial or a pre-trial investigation on a secret issue without the consent of the patient if maximum penalty for the offence under investigation is no less than six years.

The abuse of office against a subordinate as referred to Section 45 of the Penal Code are military offences and are dealt with under military trials. Such offences shall be reported to the commander of the military unit, the police or the competent prosecutor. According to Section 28 of the Military Disciplinary Procedure Act (1259/88), any offence brought to the knowledge of the military discipline officer or whenever there is otherwise reasonable ground to believe that an offence has been committed, he shall promptly ensure that an investigation is performed. Should the matter so require, it may be submitted to the police or a special investigation commission.

Annually 10-20 alleged abuses of office against subordinates are reported. The cases are investigated in accordance with the afore-mentioned procedure and, if necessary, submitted to the police.

According to Section 1 of the directives of the Parliamentary Ombudsman, the Ombudsman is to ensure that judges and the civil service as a whole apply the law and comply with the instructions and directives issued to authorities. According to Section 7 any written appeal pertaining to an act or omission by a judge or other official, submitted to the Parliamentary Ombudsman and supported with evidence, shall be investigated or pursued before a tribunal by the Ombudsman or a person authorized to that end by the Ombudsman. According to Section 10, moreover, the Ombudsman shall periodically conduct reviews or inspections to familiarize himself with the scope of his official duties. Especially prisons, penitentiaries and comparable institutions as well as accounts of treatment and other matters relative to their inmates are essential in this respect. Similarly, the various units of the defence forces and the treatment of recruits shall be subject to inspection. According to Section 11 of the directive, the Parliamentary Ombudsman has sole decision-making power in all matters subject to his jurisdiction.

Article 13

Under Article 13 of the Convention any individual who alleges that he has been subjected to torture has the right to complain to the competent authority and have his case promptly and impartially examined. The complainant and witnesses shall be protected against ill-treatment or intimidation as a consequence of the complaint or any evidence given.

Under Section 93 of the Constitution Act anyone whose rights have been violated or who has suffered injury resulting from an act or omission by a civil servant shall be entitled demand that the civil servant in question be ordered to pay damages or prosecuted. Anyone who alleges he has been subjected to torture or other cruel or degrading treatment or punishment, or any other form of inappropriate treatment by an official, may address an appeal to the superior of that official, a general appeals authority, the Chancellor of Justice, or the Parliamentary Ombudsman, who will investigate the matter as required, will rule on it, and, if appropriate, order action to be taken against the official. For example, appeals relative to acts or omissions by prison officials are addressed to the prison department of the Ministry of Justice.

Under Section 9 of the Enforcement of Sentences Decree, a prisoner's correspondence may be subject to inspection, but letters may not be read unless necessary for the prevention of an offfence. Any correspondence addressed to the President of the Republic, the Ministry of Justice, the Ministry of the Interior, the Chancellor of Justice, the Parliamentary Ombudsman or the provincial government shall be forwarded unopened.

Under Chapter 17, Section 34, of the Code of Judicial Procedure a witness can be heard in a non-public hearing as provided for in the Public Trials Act (945/1984). If a tribunal deems that a witness in the presence of a party out of fear or for some other reason does not disclose what he knows or the matter, or if the party in question disrupts of misleads the witness when testifying, the witness shall be heard without the presence of the party in question.

Article 14

Under the Damages Act (412/74) and the Victim Compensation Act (935/73) the victim of an act of torture can obtain redress as laid down in Article 14 of the Convention.

Under Chapter 1, Section 1, the Damages Act, whosoever deliberately or through negligence causes damage to another shall provide compensation. Under Chapter 3, section 1, the state, municipality and any other public authority or institution shall be liable for damage caused by an act or omission by its employee or any person acting under its authority in an activity not regarded as exercise of the sovereign power. Under section 2 of the same Chapter, a public authority or other body which by virtue of a law, decree or authorization incorporated in the law, assumes a public office, is liable for damage caused in the exercising of the sovereign power if reasonable requirements in so doing have not been met.

Under Chapter 4, Section 32, a public official is liable for damage caused to a third party through his act or omission on the grounds specified in Section 1 of the same Chapter.

According to Chapter 5, Section 1, damages include compensation for injury to person and property. If the injury has been caused by a punishable act or in the exercise of the public power, or if there are other weighty grounds, the damages shall include compensations for economic loss which is not directly related to the injury.

Damages under the Victim Compensation Act are generally payable only in respect of offences committed in Finland. It is one of the most comprehensive Acts in this field in the world. It covers all personal injury arising from any offence. Persons suffering from such personal injury have the right to compensation for medical expenses and other related expenses, disability, loss of maintenance, and any articles of clothing or, e.g. glasses damaged in connection with the injury. The employer of an injured person has the right to compensation for any wages paid while the victim is disabled.

Property damage caused by an institutionalized person, as well as property damage that imposes exceptional hardship are also covered by the Act.

Indemnification is also payable under the Sickness Insurance Act (364/1963).

Finland is party to several international human rights conventions in pursuance of which supervisory bodies have been estabiched to monitor any violation of their provisions. Any order by such supervisory body to the Finnish state in respect of damages would be regarded as binding on Finland. The obligation to pay damages may also derive from an international agreement.

Article 15

Pursuant to Article 15 each State Party is committed to ensuring that any statement which is established to have been made as a result of torture shall not be invoked as evidence in legal proceedings.

The Finnish system is based on free presentation and consideration of evidence. Provisions on the taking of evidence for legal proceedings are contained in Chapter 17 of the Code of Judicial Procedure.

Under Chapter 17, Section 2, of the Code of Judicial Procedure, the court shall upon minute examination of all evidence and facts decide what shall be deemed the truth.

The Finnish Government has deemed at the time of the signature of the Convention that Article 15 does not require legislative amendments in Finland since the free assessment of evidence, the oral and direct presentation of evidence, and judicial practice fulfil the condition therein. The Government proposal accompanying the Bill to adopt the Convention (36/89) points out that should any statement be claimed as obtained by torture, the

tribunal could nearly without exception promptly verify the matter with the person who has given the contested statement. In such case the person in question could, free of any outside pressure, reveal the truth. Should this for any reason not be possible, the general principles governing the assessment of evidence would in any event prevent the consideration of evidence obtained by torture.

The Pre-Trial Investigation Act contains some provisions which prevent the afore-mentioned type of evidence from arising. According to Section 30 of the Act, at the request of the examinee a reliable witness, who meets the impartiality requirements of Chapter 17, Section 43, of the Code of Judicial Procedure shall be present at any interrogation.The investigator may request the presence of such witness at his own initiative. An interrogation may be held despite the request of the examinee only if a delay of the interrogation would jeopardize the investigation. A person under eighteen years of age shall never be interrogated without the presence of a witness. The examinee shall prior to the interrogation be informed of his right to request the presence of a witness.

Some of the reports received expressed the desirability of an inclusion in the Finnish Code of Judicial Procedure of a clause explicitly prohibiting the admissibility of any statement obtained as a result of torture.

Article 16

The statement given above with respect to Article 10, 11, 12 and 13 are also applicable to other cruel, inhuman or degrading treatment or punishment as referred to in Article 16 of the Convention.

The provisions of the Penal Code also apply to acts referred to in Article 16. Such acts can usually be interpreted to constitute one or more of the following offences: assaults (Chapter 21), offences against liberty (Chapter 25), defamation of character and violation of privacy (Chapter 27). (See Annex I)

Any other cruel, inhuman or degrading treatment or punishment by an official is also punishable as constituting an offence in office referred to in Chapter 40 of the Penal Code.

Persons who claim to be victims of such offences have the same channels of redress as the victims of torture.

Specifically it should be noted that an amendment of the Penal Code entered into force on 1 May 1990 whereby Section 13 of Chapter 2 was repealed, having provided until that date a person condemned to life imprisonment could, for a new offence, be sentenced to solitary confinement for a maximum duration of four years.

According to the Dangerous Recidivists Act (303/71), persons guilty of repeated violent offences such as murder, aggravated assault, robbery or rape with a ravated violence may be sentenced to incarceration

for an indeterminate period. If the offender continues to present an evident and serious danger to the life or health of other persons, the Prison Board can determine that the offender will stay in preventive detention. The Prison Board reviews the case at least once every six months. At the beginning of 1989, thirteen prisoners were being held in preventive detention.

The conditions for solitary confinement were regulated in detail by an amendment of the Enforcement of Sentences Decree in 1987 (Chapter 3, Section 9 (128/87).

A prisoner may, according to this Decree, if necessary, be separated from other prisoners to prevent danger to the life or health of others, an imminent attempt to escape, the continued use of an intoxicant by a prisoner or the continuation of an offence involving an intoxicant or to prevent any similar jeopardizing of prison order if the afore-mentioned acts cannot be prevented by other means. Any decision involving the separation of a prisoner from others shall be taken by the warden in cooperation with the prison physician. The rights of a prisoner thus isolated shall not be restricted in any other manner than what necessarily follows from the isolation. The necessity of isolation shall be reconsidered at regular intervals of no more than one month.

According to the Military Disciplinary Procedure Act (331/83) a conscript may be sanctioned to military confinement (close arrest) in a disciplinary procedure. This is the most severe type of disciplinary punishment and the maximum length of arrest is 15 days and nights.

In Communication n. 265/1987 submitted to the Human Rights Committee by a conscript sanctioned with military confinement the Committee was of the view that the communication dislosed a violation of article 9, paragraph 4 of the International Covenant on Civil and Political Rights, since the author had been unable to challenge his detention before a court.

The Military Disciplinary Procedure Act was amended in 1989 (374/90). According to this amended Act, a conscript shall have the right to have a decision on military confinement examined by court.

The provisions concerning compulsory detention to mental hospitals are found in the Mental Illness Act (187/52), amended 521/77.

The use of compulsory detention in hospital has decreased since the adoption of the 1977 Act. Before the 1877 Act the rate of patients treated involuntarily was as high as 304 per 100,000 inhabitants in a one day census. Since then the number has diminished by 82 per cent till 1986. In 1980, the rate was 124, in 1983 77, in 1984 74, in 1985 67, and in 1986 55 per 100,000 inhabitants.

As early as in the 1970s, the principle has been accepted in Finnish law and practice that the rights of a person who has been deprived of his liberty may be curtailed only to the extent necessary for the fulfilment of the ur ose of the said detention. Force

may be employed against a person admitted involuntarily to a mental hospital only to the extent that it is necessary for the treatment of his illness or for necessary protection of his own security or that of other persons (Mental Illness Act 187/52, Section 37, amended 521/88). The Act on the Special Care of the Mentally Retarded (519/77) contains a similar provision in Section 42.

Some additional information shall be given concerning patients in mental hospitals and the number of cases where a mental patient has been isolated in a single room:

1985	1986	1987
80	84	64

The total amount of patients in mental hospitals:

1985	1986	1987
14,530	13,641	13,009

A Bill for a new Mental Illness Act has been submitted to Parliament. It clarifies the grounds for imposed treatment or involuntary institutionalization and improve the patient's legal position by developing the appeals procedure.

The Welfare for Intoxicant Abusers Act (41/86) is another provision under which imposed treatment or involuntary institutionalization can be considered. The National Board of Health has issued a general directive (No. 1908) and an operational directive (12/86) on the practical application of this Act on health care.

The Contagious Diseases Act (583/86) contains provisions concerning compulsory health measures. In Finland the HIV infection or AIDS has not been classified as a contagious disease dangerous to public health, which would authorize coercive measures.

Annex I

Extract from the Penal Code of Finland

Chapter 21

On Offences Against Life and Health

Section 1
Whosoever intentionally kills another shall be sentenced to imprisonment [in the penitentiary] for a fixed term, at least eight years or, if the circumstances are very mitigating, at least four years.

An attempt shall be punished.

Section 2
If the killing of another occurs after serious premeditation, for personal gain, with exceptional brutality or cruelty, or in a manner causing public danger, or if an official is killed while he is maintaining order or security in the line of duty or he is killed on account of an official function, and the killing in the cases mentioned here or in other cases, with due consideration to the totality of circumstances leading up to and manifested in the offence, is to be regarded as exceptionally aggravated, the offender shall be sentenced for murder to imprisonment [in the penitentiary] for life.

An attempt shall be punished.

Section 5
Whosoever intentionally causes another serious bodily injury or an illness shall be sentenced for assault to imprisonment for at most two years or to a fine.

Whosoever, without causing bodily injury or illness, assaults a person who is defendless due to age, disability or another comparable reason or who is otherwise defenceless in light of the circumstances, and the manner of the assault gives this person firm reason to fear that his life or health is seriously endangered, shall be sentenced as decreed in Subsection 1.

Section 6
If someone through the offence mentioned in Section 5 intentionally causes another serious bodily injury, a serious illness or mortal danger or if the offence is committed in a manner manifesting exceptional brutality or cruelty or if a weapon or another mortally dangerous instrument is used therein, and the assault in the cases mentioned above or in other cases, with due consideration to the totality of circumstances leading to and manifested in the offence, is to be regarded as aggravated, he shall be sentenced for aggravated assault to imprisonment [in the penitentiary] for at most ten years.

Section 7
Whosoever intentionally causes another pain, or otherwise assaults another shall be sentenced, if Sections 5 or 6 do not apply to the act, for petty assault to a fine.

Section 9
Whosoever through carelessness or negligence causes the death of another shall be sentenced for negligent homicide to imprisonment [in the penitentiary] for at most four years.

Section 10
Whosoever through carelessness or negligence causes another bodily injury or an illness that is not slight shall be sentenced for negligent causing of bodily injury or an illness to a fine or to imprisonment for at most two years.

Section 11
Whosoever intentionally leads another into helpless state or leaves a person for whom, he is responsible in such a state shall be sentenced for abandonment to imprisonment [in the penitentiary] for at most eight years or to imprisonment for at least six months.

Section 12
Whosoever intentionally or through gross recklessness or negligence causes a serious danger to the life or health of another shall be sentenced, if there are no other provisions applying to the act, for the negligent causing of danger to imprisonment for at most two years or to a fine.

Section 13
Whosoever, knowing that another is in serious mortal danger, refrains from giving or obtaining help which can be provided without endangering himself or any other shall be sentenced for neglecting an act of rescue to a fine or to imprisonment for at the most six months.

Chapter 25

On Offences Against Liberty

Section 9
Whosoever intentionally and without a lawful right imprisons, shuts inside or otherwise deprives another of his liberty shall be sentenced to imprisonment [in the penitentiary] for at most four years or to imprisonment. If the loss of liberty lasts over thirty days he shall be sentenced to imprisonment [in the penitentiary] for at most six years.

Section 11
Whosoever tortures another in order to force him into a confession in a matter shall be sentenced to imprisonment [in the penitentairy] for at most four years or to imprisonment.

Chapter 40 (792/1989)

Offences in Office

Section 7

Abuse of office

An official who for personal gain, whether it be for his own account or that of another, or seeking to injure or harm another,

(1) fails to comply with the rules and regulations applicable to his office when making or preparing decisions or using the sovereign power in his other duties, or

(2) abuses his power of superior or of giving orders,

shall be sentenced on account of abuse of office to a fine or imprisonment of a maximum of two years.

An official may also be sentenced to dismissal if the offence clearly renders him unsuitable for the office.

Section 8

Aggravated abuse of office

If abuse of office involves

(1) the intent of considerable personal gain,
(2) the intent of particularly serious harm or injury, or
(3) particularly unscrupulous or aforethought intent,

and the abuse of office on the whole is deemed gross, the official shall be sentenced to imprisonment of a minimum of four months and a maximum of four years.

Section 9

The provisions of sections 7 and 8 of this Chapter, with the exception of the clause of dismissal, applu to employees of public corporations who, when participating in decision-making or the preparation thereof as referred to in the provisions of Chapter 2, Section 12, or when using the sovereign power emanating from their office, are guilty of acts referred to under sections 7 and 8.

The acts or omissions of employees of a public corporation shall be assessed against the background of the rules and regulations governing respective jobs rather than those governing official functions.

Section 10

Misconduct in office

An official who deliberately acts in violation of his duties of office in other ways than those referred to in

the previous sections of this Chapter shall, insofar as the act or omission cannot on the whole or in view of the damage or harm caused be deemed negligible, be sentenced for misconduct in office to imprisonment for a maximum of one year.

An official found guilty of an offence referred to in parapragh 1 by repeatedly or significantly acting in violation of his duties or neglecting them and thereby proving himself unsuitable for the office, may be discharged from office.

Section 11

Breach of duty through negligence

An official who through negligence or recklessness in the performance of his duties acts in violation of the rules relative thereto in a manner other than that referred to in Section 5, paragraph 2, and the act or omission cannot on the whole or in view of the damage or harm caused be deemed negligible, he shall be issued a warning or fine for breach of duty for negligence.

Section 12

Military Offences

Offences by officials under military jurisdiction and punishable under the provisions of Chapter 45 shall be deemed official offences.

Chapter 45

Military Offences

The field of application

Section 1
The provisions in this chapter apply to soldiers. Soldiers are:

1) those serving in military offices or functions in the Defence Forces;
2) those serving in the Defence Forces on the basis of an employment contract subject to public law;
3) those serving as armed or unarmed conscripts; and
4) students being trained in the armed forces schools for military offices and functions.

The provisions pertaining to soldiers shal also be applied to those serving in military duties in the border guard and to those in the service referred to in the Finnish Peace-Keaping Forces Act (276/1964) as separately decreed in the said Act.

Section 2
In addition to soldiers, in time of war also the following are subject to the provisions in this chapter:

1) those serving in the Defence Forces in offices and functions other than those referred to in section 1;
2) those serving in forces or institutions organized on a military basis of the Defence Forces on the basis

of a commitment of other than a chance or short-term employment relationship;

3) those serving in public institutions or traffic or communications installations subjected to military command;

4) those who have been ordered into service in the defence forces or in forces or installations organized on a military basis and subjected to military command, when this ordering into service took place as decreed for a general labour duty.

Those serving in duties corresponding to those duties mentioned in subsection 1 to the provisions of this chapter during times of war as decreed separately in law.

Offences by a superior officer

Section 12

If a disciplinary superior officer deliberately sentences an innocent person to disciplinary punishment or correction, he shall be sentenced for punishment of an innocent party to imprisonment for at most two years.

Section 13

If a superior officer, through deliberate misuse of his authority, causes a subordinate suffering or danger to his health that is unnecessary from the point of view of service, or treats a subordinate in a humiliating manner, the superior officer shall be sentenced for misuse of a superior position to imprisonment for at most two years or to disciplinary punishment.

A superior officer who orders a subordinate to perform work which does not form part of service or training, unless this takes place with the concent of the subordinate during the leisure time of said subordinate and for adequate compensation, shall be sentenced as decreed in subsection 1.

Offences in service

Section 15

Whosoever deliberately omits to perform a duty in service or acts in violation of rules or instructions relative to military service or order shall, unless the particular act or omission is specifically provided for in Chapter 40, paragraphs 1-3, Section 5, or elsewhere in the present Chapter, be sentenced for offence in office to disciplinary measures or imprisonment of a maximum duration of one year.

If the offence in service is minor, or if the violation of or neglect to obey a service duty, an order contained in an ordinance or other orders was due to carelessness or incaution, the offender shall be sentenced for a service infraction to disciplinary punishment or imprisonment for at most three months.

ANNEX II

EXTRACT FROM THE COERCIVE CRIMINAL INVESTIGATION MEANS ACT (450/1987as amended by Act 361/1990)

Section 3
The Prerequisites for arrest

A person suspected with probable cause of an offence may be arrested:

1) if the offence is not subject to punishment of less than two years of imprisonment;

2) if the offence is subject to punishment of less than two years of imprisonment, but the most severe punishment stipulated for the offence is in excess of one year of imprisonment and, on the basis of the circumstances of the suspect or on the basis of other factors it is probable that:
a) he will abscond or otherwise avoid the pre-trial investigation, the trial or the enforcement of punishment;
b) he will make it more difficult to clarify the case by destroying, defacing, altering or concealing evidence or by influencing a witness, the injured party, an expert or an accomplice; or
c) he will continue his criminal activity.

3) if his identity is not known and he refuses to divulge his name or address or gives clearly false information on this; or is probable that he will avoid the pre-trial investigation, trial or the enforcement of punishment by leaving the country.

A person suspected by an offence may be arrested without probable cause if the arrest in other respects fulfils the conditions laid down in paragraph 1, and the taking into custody of the suspected person is essential in view of imminent further investigations.

No one may be arrested if this would be unreasonable in view of the type of case or the age or other personal circumstances of the person suspected of the offence.

Section 4
Release of an arrestee

An arrested person shall be released immediately when prerequisites no longer exist for his arrest and, if his remand for trial is not requested, he shall be released at the latest at the end of the period decreed in Section 13 for the presentation of a request for remand for trial.

An official who, according to Section 6, has the right to decide on arrest shall decide on the release of the arrested person. However, when a request for remand for trial is being heard, this decision shall be made by the court.

Section 8
The prerequisites for remanding for trial

A person who is suspected with probable cause of an offence may be remanded for trial in accordance with the prerequisites provided in Section 3, paragraph 1 if this is necessary in order to ensure thre pre-trial investigation or the trial or the enforcement of the sentence or in order to prevent the suspect from continuing his criminal activity.

A person suspected of an offence may be apprehended without probable cause if the apprehension in other respects fulfils the conditions laid down in Section 3, paragraph 1, and the apprehension is essential in view of imminent further investigations.

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Section 13
The time for making a request for the remand of a person arrested

A request that a person under arrest be remanded for trial shall be made to a court without delay and the latest on the third day from the day of apprehension before twelve o'clock.

Pre-Trial Investigation Act
(30 April 1987/449)

Scope of application of the Act

Section 1

The pre-trial investigation of offences shall be carried out in accordance with this Act, subject to stipulations to the contrary in other Acts.

The obligation to carry out a pre-trial investigation

Section 2

The police or other pre-trial investigation authority shall be obliged to carry out a pre-trial investigation when, on the basis of a report made to it or otherwise, there is cause to suspect that an offence has been committed.

Section 3

If the public prosecutor may bring charges for the offence only on the request of an injured party ("complainant offence"), a pre-trial investigation shall only be carried out if an injured party has stated to the pre-trial investigation authority or to the prosecutor that he shall request that the person guilty of the offence be punished. If the injured party withdraws his request for punishment, the investigation shall be terminated.

The pre-trial investigation of a complainant offence may be commenced even if no request for punishment has been made, if the injured party is manifestly unaware of the offence and the investigation cannot be postponed without endangering the clarification of the offence. In this case the injured party shall be notified of the initiation of the investigation without delay. The investigation shall be terminated if the injured party, after having been notified of the offence, does not state that he shall request that the person guilty of the offence be punished.

If, pursuant to the law, the public prosecutor may bring charges for a complainant offence when this is required by the public interest even if the injured party does not request that the guilty person be punished, the pre-trial investigation shall be carried out on the request of the prosecutor.

If, pursuant to the law, the demonstration that an offence has occurred is a prerequisite for the undertaking of a measure or for the retention of a benefit, the pre-trial investigation of a complainant offence shall be carried out on the request of the injured party to the necessary extent even if he does not state that he shall request that the guilty person be punished.

Section 4

If, pursuant to what has been separately stipulated, an authority refrains from undertaking measures for the bringing of charges against a person guilty of an offence, a pre-trial investigation shall be undertaken only for a special reason.

General principles

Section 5

The pre-trial investigation shall clarify the offence, the circumstances in which it was committed, the identity of the parties concerned as well as the other factors necessary for deciding on the bringing of charges and for the criminal proceedings. The pre-trial investigation shall be carried out so that, whenever possible, all of the evidence is available to the court at the time that the court begins to hear the charges.

Section 6

The pre-trial investigation shall be carried out without undue delay.

Section 7

In the pre-trial investigation, factors and evidence indicative both of the guilt and of the innocence of the suspect shall be ascertained and taken into consideration.

In the pre-trial investigation, the suspect shall be assumed innocent.

Section 8

In the pre-trial investigation, the rights of anyone shall not be infringed beyond what is necessary in order to achieve the purpose of the pre-trial investigation.

The pre-trial investigation shall be carried out so that no one is subjected to suspicion without cause and no one is unnecessarily subjected to harm or inconvenience.

Section 9

When measures are undertaken in respect of a person in the pre-trial investigation, said person shall be notified of his position as soon as possible. Should his position in the pre-trial investigation change, he shall also be notified of this.

Section 10

A party shall have the right to counsel in the pre-trial investigation.

A person suspected of an offence and apprehended, arrested or remanded for trial shall have the right to be in contact with his counsel through visits, by letter or by telephone in accordance with the more detailed provisions in sections 12 and 13b of the Remand Imprisonment Act.

Section 11

A party shall have the right to be informed of what has become evident in the pre-trial investigation as soon as this can be done without hampering the clarification of the offence.

Section 12

The questioning and other investigation measures requested by a party shall be undertaken if the party demonstrates that these may influence the case and if they shall not involve expenses that are unreasonable in the light of the type of the case.

The pre-trial investigation authorities

Section 13

The pre-trial investigation shall be carried out by the police unless otherwise stipulated by law. Separate provisions and instructions apply on the police unit responsible for the pre-trial investigation.

Section 14

The pre-trial investigation shall be directed by the head of the investigation. The head of the investigation shall be an official who, under chapter 1, section 6 of the Coercive Criminal Investigation Means Act (450/87) has the power of arrest. For special reasons the head of the investigation in a case being investigated by the police may be a criminal investigation police sergeant or a police sergeant and, in a case being investigated by another authority, an official who has been given this authority pursuant to another Act.

At the time that the Ministry of the Interior, pursuant to section 3, paragraph 2 of the Police Act, grants a specified official the right to conduct a pre-trial investigation it may entitle him to act as head of the investigation.

Section 15

The police shall inform the prosecutor, as stipulated in greater detail by decree, of a criminal case that has come to the police for investigation.

On the request of the prosecutor, the police shall carry out a pre-trial investigation or further investigations in a case where the pre-trial investigation is pending or has already been carried out.

During the pre-trial investigation, the head of the investigation shall decide on the investigation measures, referred to in section 12 above, requested by a party. After the case has been transferred to the prosecutor, he shall decide on such measures.

Disqualification

Section 16

The head of the investigation or an investigator shall disqualify himself in the following cases:

1) he or his near relative is a party to the case;

2) he or his near relative stands to gain particular benefit or suffer particular loss in the case;

3) he or his near relative serves as counsel or represents a party or a person who stands to gain particular benefit or suffer particular loss in the case;

4) he is in the service of, or, in a way connected with the case, is an agent for, a party, or in a similar relation to a person who stands to gain particular benefit or suffer particular loss in the case;

5) he is a member of the board of directors, administrative board or corresponding body of an association or corporation, foundation or institute under public law that is a party or that stands to gain particular benefit or suffer particular loss in the case; or

6) if for another particular reason confidence in his impartiality is endangered.

In paragraph 1, a "near relative" refers to the children, parents, grandparents and siblings of the head of the investigation or the investigator, and the spouse and children of such persons. The following shall be deemed comparable to a near relative: the spouse of the head of the investigation or of the investigator, and a person living with the head of the investigation or the investigator in marriage-like circumstances; their children, parents, grandparents and siblings, the spouse and children thereof, and the fiance(é) of the head of the investigation or of the investigator. A corresponding half-relative shall also be deemed a near relative.

Even if disqualified, the head of the investigation or the investigator may undertake a measure that cannot be delayed without endangering the clarification of the offence.

Presence at the pre-trial investigation

Section 17

Everyone who can be assumed to provide clarification of the offence is obliged, if summoned, to be present at the pre-trial investigation in the police district where he resides or, if the office of the police district is in another district or if the policing of the district is carried out in cooperation with another district, also in the latter district.

The summons referred to above in paragraph 1 shall state the reason for the summons unless this may hamper the clarification of the offence.

Section 18

If a person summoned to a pre-trial investigation fails to respond to the summons without an acceptable reason, he may be brought to the investigation. A suspect may be brought to the pre-trial investigation even without a summons if the offence may lead to imprisonment and it is probable that he shall not respond to the summons or, having received the summons, he shall undertake to hinder the pre-trial investigation by absconding, destroying evidence or other means.

An official who has the power of arrest shall decide whether or not a person shall be brought. A written order shall be issued regarding the bringing of a person.

A policeman may apprehend a person who has been ordered brought.

Separate provisions apply to the transport of a prisoner to a pre-trial investigation.

Section 19

A person found at, or in the immediate vicinity of, the scene of an offence or accident shall, by order of a policeman, remain where he is or come immediately to another place within the area referred to in section 17 of he must be heard immediately in order to clarify the case. If the person thus ordered refuses to obey the order without acceptable cause of if, in view of his behaviour, such refusal is probable, the policeman may prevent him from

leaving the scene or may apprehend him and take him for questioning.

Section 20

The investigation measures for which someone has arrived or been brought to a pre-trial investigation or ordered, under section 19, to remain where he is or taken for questioning, shall be initiated without delay.

Section 21

No one may be held in a pre-trial investigation for longer than necessary.

A person other than the suspect for the offence is obliged to remain present at the pre-trial investigation for not more than six hours at a time. A suspect who has not been arrested or remanded for trial is obliged to remain present at the pre-trial investigation for not more than twelve hours at a time and, if the prerequisites for arrest under chapter 1, section 3 of the Coercive Criminal Investigation Means Act are fulfilled, for not more than twenty-four hours. Chapter 6, section 1 states what measures may be undertaken in order to prevent the suspect from leaving.

A person who has been present at the pre-trial investigation may not be obliged, without a special reason, to be present or be brought within the following twelve hours.

Interrogations

Section 22

A person to be questioned shall be present in person at the interrogation. Before the interrogation, the person being questioned shall be notified of his position in the pre-trial investigation. However, an injured party and, in cases of minor significance, a suspect who does not deny the validity of a report of an offence may give his statement through an agent or by telephone if the investigator deems that this does not cause inconvenience and it does not endanger the credibility of the investigation. Subject to the same prerequisites, a witness may be questioned by telephone at the discretion of the investigator. The records of the investigation shall indicate the extent to which a partial or full statement was given through an agent or by telephone.

Written accounts offered by a party and supplementing his statement shall be accepted. For special reasons, such accounts may also be accepted from a witness when being questioned.

Section 23

An injured party who manifestly does not know anything that would clarify the case under investigation need not be questioned in the pre-trial investigation if, in giving the report of the offence or in another connection, he has given notice of the factors needed for deciding on the charges and for the trial.

Section 24

The person being questioned shall be dealt with in a calm and objective manner. Knowingly false statements, promises or deceptions concerning particular benefits,

exhaustion, threats, coercive means or other improper methods or approaches that influence the freedom of choice, willpower, memory or judgement of the person being questioned shall not be used in order to obtain a confession or a statement tending in a certain direction from said person.

No one may be questioned between 2100 and 0600 without special cause. The person being questioned shall be allowed the opportunity for regular meals and sufficient rest.

Section 25

An injured party and his lawful representative and agent has the obligation to be truthful in clarifying the case under investigation and in responding to the questions presented.

Section 26

A person who may not be heard as a witness should the case be brought to trial may not be heard as a witness in the pre-trial investigation. The head of the investigation shall decide whether or not a person referred to in chapter 17, section 21 of the Code of Judicial Procedure shall be questioned.

Section 27

A witness shall state truthfully and without concealment what he knows about the case being investigated. However, if he would have the right or the obligation in a trial to refrain from serving as a witness, revealing a circumstance or responding to a question if charges were raised for the offence under investigation, he shall have such right or obligation also in the pre-trial investigation.

A person referred to in chapter 17, section 23, paragraph 1 of the Code of Judicial Procedure who, under paragraph 3 of the same section, may be obliged to testify on a circumstance that is to be kept secret, shall be entitled to serve as a witness thereto in the pre-trial investigation if the most severe punishment for the offence under investigation is at least six years of imprisonment. A person referred to in chapter 17, section 24, paragraphs 2 or 3 of the Code of Judicial Procedure who, under paragraph 4 of the same section, may be obliged to respond to the question referred to in paragraph 2, shall be obliged to respond to such question also in the pre-trial investigation if the offence under investigation is such is referred to above in the present paragraph.

Section 28

If a witness manifestly knows of a circumstance that is important for the clarification of guilt and he refuses to reveal this even though he is obliged to do so or, under section 27, paragraph 2 has the right to do so, the court may on the request of the head of the investigation require him to reveal this. In such cases the questioning of the witness may take place in full or in part in court.

The request referred to above in paragraph 1 shall be made to the lower court where it can suitably be heard. The provisions of sections 32 and 35 of this Act shall apply to the right of a party and of his counsel and agent to be present when the request is heard and the witness is questioned. The court shall decide on the right to be present after having heard the head of the investigation. The witness has the right to compensation for financial loss as well as for travel and living expenses according to the grounds stipulated in the Witnesses Fee Act (1972/-666). However, if the court deems that the witness manifestly has no cause for refusal, there shall be no right to compensation. The provisions of chapter 17 of the Code of Judicial Procedure shall apply to the questioning of the witness.

Section 29

Before being questioned the suspect shall be notified of the act of which he is suspected.

The suspect shall also be informed before he is questioned of his right to counsel during the pre-trial investigation.

Before being questioned, the injured party, his lawful representative and agent as well as the witness shall be informed of their obligation to be truthful and of the punishment for perjury. The witness shall be asked about circumstances that, according to the law, provide him with the right or the obligation to refuse to testify. Should there be reason to do so, the witness shall be notified of the contents of sections 27 and 28.

Section 30

On the request of the person being questioned, a credible and competent witness under chapter 17, section 43 of the Code of Judicial Procedure shall be present during the questioning. An investigator shall also summon a witness on his own initiative. If the questioning cannot be delayed without endangering the investigation, it may be done without a witness despite the request of the person being questioned. A suspect who is below the age of eighteen years may not be questioned without a witness.

Before the questioning, the person to be questioned shall be notified of his right to request the presence of a witness to the questioning.

Section 31

The counsel to a party has the right to be present when his client is questioned, unless the head of the investigation prohibits this for important reasons related to the investigation.

Section 32

An investigator may permit a party and his counsel or agent to be present during the questioning of another party or witness, if this cannot hinder the clarification of the offence.

The prosecutor has the right to be present during the questioning.

Separate provisions apply to the right of certain officials to be present during the questioning.

Section 33

If the person being questioned has not yet reached the age of fifteen years, the person responsible for his care and custody, his guardian or other lawful representative shall be provided the opportunity to be present during the questioning.

If the injured party or the suspect being questioned is a minor who has reached the age of fifteen years, the person responsible for his care and custody, his guardian or other lawful representative shall be provided the opportunity to be present during the questioning if, under chapter 12, sections 1 or 2 of the Code of Judicial Procedure, this person would have the right to be heard instead of, or in addition to, the minor in the trial arising from the offence.

However, the minor's representative referred to in paragraphs 1 and 2 need not be provided an opportunity to be present during the questioning if it is necessary to question the minor without delay in order to clarify the offence. In such cases the representative of the person being questioned shall be notified of the questioning as soon as possible.

Section 34

In the questioning, a party and his counsel or agent may, with the permission of the investigator, present questions to the person being questioned in order to clarify the case. The prosecutor may decide the questions shall be presented with him as intermediary. Also the prosecutor may present questions to the person being questioned. Also at other times a party, his counsel and agent as well as the prosecutor has the right to ask the investigator to question the person being questioned about matters necessary for the clarification of the case.

Section 35

An investigator may remove from the interrogations a person whose behaviour interferes with the interrogation or whose presence otherwise hinders the clarification of the case.

Section 36

A party and his counsel or agent who, despite his request, has not been allowed to be present during the questioning or who has been removed from the questioning, shall be provided the opportunity to be informed of what has been revealed during the questioning and to present the necessary questions as soon as this can be done without hampering the clarification of the offence.

Section 37

The pre-trial investigation authority shall make the arrangements for interpretation if the person being questioned cannot speak the language used before the authority under the Language Act or, due to a sensory handicap or a speech defect, cannot make himself understood.

Section 38

The provisions in section 24, paragraph 1 and section 27 shall also apply to preliminary inquiries in order to clarify an offence.

Recording of the material

Section 39

An interrogation record shall be kept of the questioning. Records shall also be kept of other pre-trial investigation measures or a notation shall be made of these in another document.

A statement recorded in the records shall be read out to the person being questioned immediately after the questioning, and he shall be given the records so that he can examine them. The person being questioned shall be asked whether or not his statement has been recorded correctly. A request for correction or addition which does not lead to an amendment of the records shall also be noted in the interrogation record. The records may not be amended after the person being questioned has examined them and the requested corrections and additions have been made.

The statement of the person being questioned may also be recorded on audio tape or it may be filmed. The person who was questioned shall have the right to examine the taped statement as provided in greater detail by decree.

Section 40

At the conclusion of the pre-trial investigation, the material that has been accumulated during the investigation shall be gathered into a record (the investigation record) if this is needed for the further consideration of the case. The investigation record shall include the interrogations records and the reports on investigation measures, and the documents and tapes that can be assumed to be of significance in the case shall be appended.

A notation shall be made in the record of material that has been accumulated during the pre-trial investigation but that has not been included in the investigation record.

Section 41

Separate provisions apply to the publicity of pre-trial investigation documents.

Termination of the pre-trial investigation

Section 42

Before the termination of the pre-trial investigation the parties shall be provided the opportunity to present to the pre-trial investigation authority their statement on the material that has been accumulated during the pre-trial investigation, if this is conducive towards hastening or easing the consideration of the case in court. The statement shall be appended to the investigation record.

Section 43

After the conclusion of the pre-trial investigation, the case shall be submitted to the consideration of the prosecution, unless:

1) it has become evident in the investigation that no offence has been committed or that no one can be charged for the offence; or

2) the pre-trial investigation authority has, under the relevant separate provisions in law, waived the raising of charges against the person guilty of the offence.

When a decision has been made not to submit the case to the consideration of the prosecutor, those who have been heard in the pre-trial investigation in the capacity of injured parties shall be informed thereof without delay, unless this is deemed unnecessary.

Simplified pre-trial investigation

Section 44

A simplified pre-trial investigation may be carried out in simple and clear cases if the offence is not subject to punishment in excess of a fine or imprisonment for at most six months.

A simplified pre-trial investigation shall not have a head of investigations. Only the main contents of the statement of the person being heard shall be noted in the investigation report; these main contents may be noted in a document other than the investigation records.

The provisions of section 29, paragraph 2 and sections 30 and 33 need not be followed when carrying out a simplified pre-trial investigation.

Miscellaneous provisions

Section 45

An advocate, a public legal aide or another person competent to serve as a trial attorney who has a degree in law or who in general serves as an attorney in court may serve as the counsel of a party in a pre-trial investigation.

The following may not serve as counsel in a pre-trial investigation:

1) a person who has served as the counsel of the suspect in a matter related to the offence; or

2) a person who is suspected, charged for or convicted of an offence that is conducive towards detracting from his credibility in service as counsel.

The head of the investigation shall decide whether or not a person is capable of serving as counsel. If a person has been refused the right to serve as counsel in a pre-trial investigation, the party shall be provided the opportunity to obtain the services of counsel who fulfills the requirements. However, the investigation need not be postponed because of this.

Section 46

The head of the investigation has the right to obtain expert statements when necessary. A person who is involved in the case or related to a party in such a manner that his objectivity is endangered may not serve as expert.

Section 47

On the request of the head of the investigation, the prosecutor or a party, the court may accept evidence in-

tended for presentation in a trial to come before court if there is a clear danger that the evidence will be destroyed or lost or that a witness or expert will not be present at the trial.

The receipt of evidence in the cases referred to above in paragraph 1 shall take place in the court where this can suitably be done. The provisions of chapter 17 of the Code of Judicial Procedure shall apply to this where applicable.

Section 48

If circumstances related to the investigation other than those that personally concern a person present in a pre-trial investigation or the client of such a person, and of which he was not previously aware, are revealed to him in the pre-trial investigation, the head of the investigation may prohibit him from revealing these to third parties during the course of the pre-trial investigation. Such a prohibition may be issued only if the revelation of said circumstances during the course of the pre-trial investigation may endanger the clarification of the offence or harm or inconvenience a party or another person. Such a prohibition may be imposed on the agent and counsel of a party even if he was not present at the investigation. The prohibition shall remain in force at most three months at a time.

Whosoever reveals without lawful cause what has been ordered to be kept secret under paragraph 1 shall be sentenced, unless a more severe punishment is provided for the offence elsewhere in law, for violation of the obligation to keep pre-trial investigation information secret, to a fine or to imprisonment for at most six months.

Section 49

Notification of the pre-trial investigation shall be made in a way that does not subject anyone to suspicion without cause and so that no one incurs unnecessary harm and inconvenience.

Separate provisions on how information may be given on a pre-trial investigation shall be issued by decree.

Section 50

Further provisions on the enforcement of this Act shall be issued by Decree.

Section 51

This Act shall enter into force on 1 January 1989.