



MY LAWYER MY RIGHTS COUNTRY REPORT: FINLAND



My Lawyer, My Rights
Enhancing children's rights in criminal proceedings in the EU



Défense des Enfants
DEI-BELGIQUE



CONTENTS

LIST OF ABBREVIATIONS.....	4
KEY DEFINITIONS	5
A. INTRODUCTION.....	6
1 REPORT PURPOSE AND STRUCTURE.....	6
2 ORGANISATION AND TEAM IN CHARGE OF THE RESEARCH.....	6
3 METHODOLOGY	6
4 LIMIT OF THE RESEARCH.....	6
B. LEGAL CONTEXT AT THE INTERNATIONAL AND EU LEVEL.....	7
1 THE INTERNATIONAL FRAMEWORK.....	7
1.1 RATIFIED TREATIES.....	7
A) THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	7
B) THE CONVENTION ON THE RIGHTS OF THE CHILD.....	7
C) THE OPTIONAL PROTOCOL TO THE CRC ON A COMMUNICATIONS PROCEDURE (OP3 CRC).....	7
D) EUROPEAN CONVENTION ON HUMAN AND FUNDAMENTAL RIGHTS (ECHR)	7
E) EUROPEAN SOCIAL CHARTER.....	8
F) EUROPEAN UNION CHARTER OF FUNDAMENTAL RIGHTS	8
1.2 SOFT LAW.....	8
2 EU FRAMEWORK.....	8
2.1 EU DIRECTIVES.....	8
2.2 COMMISSION REGULATIONS	9
2.3 JURISPRUDENCE	9
C. LEGAL CONTEXT AT THE NATIONAL LEVEL.....	12
1 THE NATIONAL LEGAL FRAMEWORK.....	12
1.2 MINIMUM AGE OF CRIMINAL RESPONSIBILITY	13
1.3 THE RIGHT OF ACCESS TO A LAWYER IN FINLAND.....	13
1.4 FINLAND'S LEGAL AID SYSTEM.....	13
D. JUVENILE JUSTICE SPECIALISATION OR SPECIAL STATUS AT THE NATIONAL LEVEL.....	15



E.	CHILD'S ACCESS TO A LAWYER	16
1	INFORMATION AND FACILITATION	16
2	CHILD'S CHOICE OF LAWYER?	16
3	LEGAL AID SYSTEM	16
3.1	LEGAL AID FRAMEWORK	16
3.2	PAYMENT OF A LAWYER	16
3.3	A CHILD'S RIGHT TO LEGAL AID	17
3.4	CHILD'S CHOICE OF LAWYERS WITHIN LEGAL AID SYSTEM	17
3.5	COMPLAINTS AND CONFLICTS OF INTEREST	17
4	INTERPRETATION AND TRANSLATION	18
5	WAIVE OF RIGHT OF ACCESS TO A LAWYER	18
6	ASSISTANCE BY A LAWYER TO A CHILD	19
6.1	GENERAL	19
6.2	INTERPRETATION AND TRANSLATION	19
6.3	DURING PROCEEDINGS	19
6.4	THE RELATIONSHIP BETWEEN A LAWYER AND CHILD	20
6.5	BEST INTERESTS OF THE CHILD	20
F.	SOCIO-LEGAL DEFENCE CENTRES	22



LIST OF ABBREVIATIONS

“CJEU ”	Court of Justice of the European Union
“CoE”	Council of Europe
“CRC”	Convention on the Rights of the Child
“D”	Declaration
“ECHR”	European Convention of Human Rights
“ECtHR”	European Court of Human Rights
“ESC”	European Social Charter
“EU”	European Union
“ICCPR”	International Covenant on Civil and Political Rights
“OP3-CRC”	Optional Protocol to the CRC on a Communications Procedure
“R”	Reservation
“UN”	United Nations
“UNGA”	United Nations General Assembly

KEY DEFINITIONS

Child	An individual under the age of 18.
Best interests of the child	<p>The concept of the child’s best interest is complex and its content must be determined on a case-by-case basis. To read more on this concept, please refer to General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1).</p> <p>Article 3, Paragraph 1 of the Convention on the Rights of the Child states that: ‘In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration’.</p>
Criminal proceedings	<p>Proceedings in court in relation to the prosecution of a person charged or to be charged with the commission of an offence or crime, contemplating the conviction and punishment of the person charged or to be charged. In the framework of this project, we would like you to interpret the term “criminal proceedings” in a broader way that also includes other types of proceedings e.g. proceedings which are specially designed for children and which could lead to protective, corrective or educative measures in cases where the child’s alleged actions would be seen as committing an offence or a crime in the adult criminal system.</p>
Lawyer of the child	Lawyer appointed to represent a child during criminal proceedings.
Socio-Legal Defence Centres (SLDC)	A centre which offers children direct access to justice and social-legal support including information provision, referrals to other service providers and legal advice and representation.
Reservation	When a state makes a reservation in relation to a section of a legal instrument, it is saying that it won’t give effect to this section.
Declaration	A state makes a declaration as to how they will interpret provisions of a treaty.



A. INTRODUCTION

I. REPORT PURPOSE AND STRUCTURE

This report describes the results of the Finland national research that was conducted in the framework of the ‘My Lawyer, My Rights’. Its goal is to present an overview of the applicable law, the role, the mandate and the training of lawyers when they defend minors in conflict with the law in Finland, as well as to describe the procedures that allow these minors to exercise their rights. It also aims at pointing out inspiring practices, or on the contrary, highlighting the obstacles to the actual execution of these rights.

The report is split into six parts. The first being this introduction which provides a background to the report, how it came about and any limitations encountered.

The second part (B) describes the international and regional relevant legal instruments that are binding for Finland (Legal Context at the International and EU Level). It draws a distinction between binding instruments and instruments considered as soft law and studies Finland’s position within these two categories.

In the third part (C), the report will outline Finland’s own national laws and the way the procedural rights of children are implemented.

Part four (D) looks at whether lawyers in Finland are provided with any specialist training in regard to child court proceedings.

Part five (E) sets out the rights children have to a lawyer in Finland and any associated procedures that they have to follow.

Finally, Part six (F) provides information as to whether children in Finland have access to Socio-Legal Defence Centres.

2. ORGANISATION AND TEAM IN CHARGE OF THE RESEARCH

The “My Lawyer, My Rights” is a project which seeks to change the uneven application of the right of a child to legal representation across Europe, as it recognises that measures put in place at the national level are often insufficient and a child’s right to legal representation is

a challenge. The project involves the European Criminal Bar Association and a number of European NGOs primarily lead by Defence for Children International.

The research has been conducted by a team of lawyers from DLA Piper who have conducted the desk based research of this project in order to provide an overview of the right to access to/assistance by a lawyer for children in EU countries. Lauri Rantanen is credited for undertaking this research relating to the child’s rights in Finland.

3. METHODOLOGY

The research was mainly carried out by doing internet searches and examining legal databases (legislation, preparatory works, and case law). Relevant legal commentaries, both online and paper versions, were also examined. In addition, for some parts of the questionnaire, legal aid offices, the Finnish Police Board, the Finnish Bar Association, and private companies offering legal training were contacted by email and phone.

Materials used in order to create this report include Finlex, an online database of up to date legislation and other judicial information. On a more general level the following studies were used: Study on children’s involvement in judicial proceedings; Social Fieldwork Research Child Participation in Justice Report; and Committee on the Rights of the Child. Concluding Observations: Finland¹.

4. LIMITS OF THE RESEARCH

The main difficulty experienced during the research was a general lack of relevant information. The information available on juvenile justice is more often concerned with the victim or other aspects than procedural rights. Academic studies and other research materials usually approach the issue from the point of view of sociology or criminology. In addition, it was difficult to reach and get answers from relevant authorities and organisations. Therefore some questions that concerned procedures and methods on a practical level, could not be fully addressed.

¹ <http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Finland.pdf>; Social Fieldwork Research Child Participation in Justice Report Finland 2012; and <http://formin.finland.fi/public/download.aspx?ID=78467&GUID={FD37A056-428E-4D25-A5B9-176DA70829D4}>



B. LEGAL CONTEXT AT THE INTERNATIONAL AND EU LEVEL

I. THE INTERNATIONAL FRAMEWORK

I.1 Ratified treaties

- a) The International Covenant on Civil and Political Rights

This treaty was signed on the 11 October 1967, ratified on the 23 June 1975 and acceded on the 23 March 1976.

The following reservations and declaration were made:

“With respect to article 10, paragraph 2 (b) and 3, of the Covenant, Finland declares that although juvenile offenders are, as a rule, segregated from adults, it does not deem appropriate to adopt an absolute prohibition not allowing for more flexible arrangements;

With respect to article 14, paragraph 7, of the Covenant, Finland declares that it is going to pursue its present practice, according to which a sentence can be changed to the detriment of the convicted person, if it is established that a member or an official of the court, the prosecutor or the legal counsel have through criminal or fraudulent activities obtained the acquittal of the defendant or a substantially more lenient penalty, or if false evidence has been presented with the same effect, and according to which an aggravated criminal case may be taken up for reconsideration if within a year until then unknown evidence is presented, which would have led to conviction or a substantially more severe penalty;

With respect to article 20, paragraph 1, of the Covenant, Finland declares that it will not apply the provisions of this paragraph, this being compatible with the standpoint Finland already expressed at the 16th United Nations General Assembly by voting against the prohibition of propaganda for war, on the grounds that this might endanger the freedom of expression referred in article 19 of the Covenant.”

“Finland declares, under article 41 of the International Covenant on Civil and Political Rights, that it recognizes the competence of the Human Rights Committee referred to in article 28 of the said Covenant, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Covenant.”

- b) The Convention on the rights of the child

Finland signed this treaty on the 26 January 1990, it was ratified on the 20 June 1991 and then acceded on the 20 July 1991.

- c) The Optional Protocol to the CRC on a Communications Procedure (OP3 CRC)

Finland signed this treaty on 28 February 2012, it was ratified on 12 November 2015 and acceded on the 12 February 2016.

- d) European Convention on Human and Fundamental Rights (ECHR)

Finland signed this treaty on 5 May 1989, it was ratified and acceded on the 10 May 1990.

The following reservation was made in relation to it:

“For the time being, Finland cannot guarantee a right to an oral hearing insofar as the current Finnish laws do not provide such a right. This applies to:

1. proceedings before the Supreme Court in accordance with Chapter 30, Section 20, of the Code of Judicial Procedure and proceedings before the Courts of Appeal as regards the consideration of petition, civil and criminal cases to which Chapter 26 (661/1978), Sections 7 and 8, of the Code of Judicial Procedure are applied if the decision of a District Court has been made before 1 May 1998, when the amendments made to the provisions concerning proceedings before Courts of Appeal entered into force; and the consideration of criminal cases before the Supreme Court and the Courts of



Appeal if the case has been pending before a District Court at the time of entry into force of the Criminal Proceedings Act on 1 October 1997 and to which existing provisions have been applied by the District Court;

2. proceedings, which are held before the Insurance Court as the Court of Final Instance, in accordance with Section 9 of the Insurance Court Act, if they concern an appeal which has become pending before the entry into force of the Act Amending the Insurance Court Act on 1 April 1999;
3. proceedings before the Appellate Board for Social Insurance, in accordance with Section 8 of the Decree on the Appellate Board for Social Insurance, if they concern an appeal which has become pending before the entry into force of the Act Amending the Health Insurance Act on 1 April 1999.

e) European Social Charter

This treaty (the revised chapter) was signed on 3 May 1996, ratified on 21 Jun 2002 and then acceded on 1 August 2002. The following declaration was made in relation to it.

f) European Union Charter of Fundamental Rights

This treaty was acceded by Finland on 1 December 2009.

1.2 Soft Law

The following instruments of soft law are visible in Finland's legal framework:

Riyadh Guidelines – this has one mention in the Parliamentary Ombudsman's press release on physical placement of juveniles in prison²;

General Comment of the Committee on the Right of the Child – referred to on a general level on websites of the Ministry of Foreign Affairs³ and the Ombudsman for Children⁴;

Guidelines on a Child Friendly Justice of the CoE – referred to in preparatory works (government bill) of legislation on witness protection⁵ and the website of the Ministry of Justice⁶. In addition, the Ombudsman for Children has made a press release about the guidelines⁷ and referred to them in his statement about proposed amendments regarding provisions on testimony in administrative procedure⁸.

2 EU FRAMEWORK

2.1 EU Directives

- a) Dir. 2010/64/EU – Right to interpretation and translation in criminal proceedings

For the most part the date of transposition was 27 October 2013 but for the register of translators and interpreters the date of transposition was 1 April 2006.

The Directive was transposed by the following national laws:

- Laki oikeudenkäynnistä rikosasioissa
- Esitutkintalaki
- Pakkokeinolaki
- Laki sakon ja rikesakon määräämisestä
- Laki rangaistusmääräysmenettelystä
- Laki rikesakkomennettelystä
- Laki rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä
- Laki oikeustulkintakirjastoista

² <http://www.oikeusasiamies.fi/Resource.phx/pubman/templates/2.htm?id=692>.

³ <http://formin.finland.fi/public/default.aspx?contentid=68142>.

⁴ <http://lapsiasia.fi/lapsen-oikeudet/komitean-yleiskommentit/>.

⁵ Hallituksen esitys eduskunnalle laiksi todistajansuojeluohjelmasta ja eräksi siihen liittyviksi laeiksi, HE 65/2014, p. 15.

⁶ <http://oikeusministerio.fi/fi/index/toimintajavaihtoiteet/oikeusturva.html>.

⁷ <http://lapsiasia.fi/tata-mielta/tiedotteet/tiedotteet-2014/euroopan-neuvoston-lapsiystavallisen-oikeudenkayton-suuntaviivat-suomeksi/>.

⁸ http://lapsiasia.ssthosting.fi/wp-content/uploads/2015/01/12012015_II.pdf.



a) Dir. 2012/13/EU – Right to information in criminal proceedings

This Directive was transposed on 1 December 2014 by the following national laws:

- Esitutkintalaki
- Laki poliisin säilyttämien henkilöiden kohtelusta
- Tutkintavankeuslaki
- Laki sakon ja rikesakon määräämisestä
- Laki rangaistusmääräysmenettelystä
- Laki rikesakkomenettelystä
- Laki rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä
- Laki viranomaisten toiminnan julkisuudesta

b) Dir. 2013/48/EU – Right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty

This Directive was transposed on 27 November 2016 by the following national laws:

- Esitutkintalaki
- Laki poliisin säilyttämien henkilöiden kohtelusta
- Laki rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä

2.2 Commission Regulations

The Commission has not been informed yet. According to the Ministry of Justice's Unit for General International and EU Affairs the adopted procedure is that the Commission approaches contracting states with a separate reporting request and this has not yet been delivered⁹.

2.3 Jurisprudence

The following cases have been found:

a) Kari-Pekka Pietiläinen v. Finland, no. 13566/06, 22.9.2009¹⁰

The facts:

The applicant was convicted of aggravated fraud and given a conditional twenty-month prison sentence. On appeal he was summoned to attend an oral hearing on specified dates. The summons stated that he was required to appear in person on all the days of the hearing, under penalty of a fine, and that his absence from the main hearing without a valid excuse would result in his appeal being discontinued. The applicant did not attend the first day of the hearing, but was represented by counsel. As a result of the applicant's absence the appeal court discontinued his appeal.

Summary of the legal framework/law:

According to Chapter 26, section 20, subsection 1, of the Code of Judicial Procedure (oikeudenkäymiskaari, 1.1.1734/4) if the appellant is absent from the main hearing, the appeal shall be discontinued. According to Chapter 12, section 29 of the same Code, a party who, in spite of having been ordered to appear in court in person, sends an attorney in his place without a valid excuse, shall be deemed to be absent.

The applicant complained that his right to a fair trial and to defend himself in person or through legal assistance of his own choosing had been violated as his appeal in the Appeal Court had been discontinued due to the fact that he had not attended the hearing but was represented by his counsel. He claimed, referring to the Court's case-law, that the provision on the basis of which his appeal was discontinued, namely Chapter 26, section 20, subsection 1, of the Code of Judicial Procedure, was contrary to the requirements of the Convention.

⁹ This information was provided to us by email by an adviser working at the said unit.

¹⁰ Available at <http://hudoc.echr.coe.int/engi=001-93972>.



Conclusion:

Violation (unanimously).

The appeal court had been under a duty to allow the applicant's counsel to defend him at the hearing, even in his absence. Although the scope of the hearing on the day in question was not entirely clear, it apparently did not concern issues for which the applicant's attendance in person was strictly necessary, as the witnesses were not due to be heard until a later date. Nor had it been indicated in the summons that just one day's absence would be regarded as absence from the entire hearing. Discontinuing the appeal had therefore constituted a particularly rigid and severe sanction, which could not be considered justifiable.

b) KKO:2015:14

The facts:

The applicant was convicted of two aggravated frauds, aggravated false accounting, aggravated disloyalty of the debtor and a falsification of register entry and sentenced to a 20-month imprisonment. On appeal, he was summoned to attend an oral hearing on specified dates. The summons stated that he was required to appear in person on the specific dates of the hearing, under penalty of a fine, and that his absence from the hearings without a valid excuse would result in his appeal being discontinued.

The applicant did not attend the hearings, but was represented by counsel. Because of the applicant's absence, the Appeal Court discontinued his appeal.

Summary of the legal framework/law:

According to Chapter 26, section 20, subsection 1, of the Code of Judicial Procedure (oikeudenkäymiskaari, I.1.1734/4) if the appellant is absent from the main hearing, the appeal shall be discontinued. According to Chapter 12, section 29 of the

same Code, a party who, in spite of having been ordered to appear in court in person, sends an attorney in his place without a valid excuse, shall be deemed to be absent.

The Supreme Court referred to the Supreme Court judgements 2011:30 and 2012:49 as well as the judgement of ECHR in the case Kari-Pekka Pietiläinen v. Suomi.

Conclusion:

The Supreme Court considered that the Appeal Court should not have discontinued the appeal because of the applicant's absence. Discontinuing the appeal on the grounds of chapter 12, section 29 and chapter 26, section 20, subsection 1 of the Code of Judicial Procedure contravenes with the guarantees of judicial relief covered by section 21 of the Constitution of Finland. Said provisions of the Code of Judicial Procedure should not have been applied in this case. Therefore, the Appeal Court's decision was reversed and the Appeal Court shall retry the case.

c) KKO 2012:49

The facts:

The applicant was convicted and sentenced to a 7-month imprisonment. On appeal, he was summoned to attend an oral hearing on a specified date. The summons stated that he was required to appear in person on the specific date to the main hearing, under penalty of a fine, and that his absence from the hearing without a valid excuse would result in his appeal being discontinued.

The applicant did not attend the hearing, but was represented by counsel. The counsel requested that the applicant's appeal would be tried in written proceedings in part of reducing the sentence. However, because of the applicant's absence, the Appeal Court discontinued his appeal.



Summary of the legal framework/law

According to Chapter 26, section 20, subsection 1, of the Code of Judicial Procedure (oikeudenkäymiskaari, 1.1.1734/4) if the appellant is absent from the main hearing, the appeal shall be discontinued.

According to Chapter 12, section 29 of the same Code, a party who, in spite of having been ordered to appear in court in person, sends an attorney in his place without a valid excuse, shall be deemed to be absent.

The Supreme Court referred to the judgement of ECHR in the case Kari-Pekka Pietiläinen v. Suomi as well as the Supreme Court judgement 2004:94.

Conclusion

The Supreme Court considered that the Appeal Court should not have discontinued the appeal because of the applicant's absence. The phrasing of chapter 26, section 20, subsection 1 of the Code of Judicial Procedure does not require that the appeal should always be discontinued in the event that the applicant does not appear in court in person. The appeal could have been tried in written proceeding in part of reducing the sentence and therefore, the Appeal Court should not have discontinued the appeal.

The Appeal Court's decision was reversed in part of reducing the sentence and the Appeal Court shall retry the case.

d) KKO 2011:30

The facts:

The applicant was convicted of disturbance of possession and aggravated embezzlement and sentenced to a conditional 5-month imprisonment. On appeal, he was summoned to attend an oral hearing on a specific date. The summons stated that he was required to appear in person on the specific date to the main hearing, under penalty of a fine, and that his absence from the hearing without a valid excuse would result in his appeal being discontinued.

The applicant did not attend the hearing because he had fallen ill, but was represented by counsel. Because of the applicant's absence, the Appeal Court discontinued his appeal. The Appeal Court notified the applicant that he had the opportunity to get his case retried by notifying the court of a lawful excuse for his absence within 30 days of the decision. The applicant provided the court a medical certificate that stated that he was unable to appear in court. However, he expressed that he would have been able to appear in the main hearing an hour late. The Appeal Court considered that the applicant did not provide a lawful excuse for his absence and did not retry the case.

Summary of the legal framework/law

According to Chapter 26, section 20, subsection 1, of the Code of Judicial Procedure (oikeudenkäymiskaari, 1.1.1734/4) if the appellant is absent from the main hearing, the appeal shall be discontinued. According to Chapter 12, section 29 of the same Code, a party who, in spite of having been ordered to appear in court in person, sends an attorney in his place without a valid excuse, shall be deemed to be absent.

The Supreme Court referred to the Supreme Court judgement 2004:94 as well as the judgement of ECHR in the case Kari-Pekka Pietiläinen v. Suomi.

Conclusion:

The Supreme Court states that according to the European Convention on Human Rights and the established interpretation practice of the EHCR, national codes should be interpreted so that the applicant's right of defence is protected even though he has not appeared in court in person. However, assessing the evidence in this case was based on comparing the oral statements of the parties and the applicant's presence was essential. In addition, the applicant did not provide a lawful reason for his absence and therefore, the Supreme Court did not reverse the Appeal Court's decision.



C. LEGAL CONTEXT AT THE NATIONAL LEVEL

I THE NATIONAL LEGAL FRAMEWORK

The legislation regarding the juvenile justice system in Finland is spread out across several Acts. Together these Acts aim at comprehensive recognition of the special status of children suspected or accused of a crime in criminal proceedings.

The following Acts comprise the core of the Finnish juvenile justice system:

a) Criminal Code of Finland (rikoslaki, 19.12.1889/39).

In addition to general provisions e.g. on prerequisites of criminal liability and characterisations of criminal acts, the Code contains provisions regarding recognition of the age of a minor in determining the sentence, including the special juvenile penalty available for young perpetrators.

b) The Act Concerning Clarification of the Situation of a Young Person Suspected of Crime (laki nuoren rikoksesta epäillyn tilanteen selvittämisestä, 24.6.2010/633)

This Act is applied to clarifying the situation of a juvenile, who is suspected of committing a crime in the age of 15-20 years, for consideration of charges, imposing sanctions and enforcement of the sanctions. The object of clarifying the situation of a juvenile suspect is to assess the social situation of the juvenile and the reasons that affected committing the crime as well as to assess the risk of committing a crime and the prerequisites to support the juvenile to live a crime free life.

c) Criminal Investigation Act (esitutkintalaki, 22.7.2011/805)

The Act sets down the procedures and methods to be followed in carrying out criminal investigations. Contains provisions on how children shall be treated in investigations and how the investigations shall be carried out if the suspect is a minor.

d) Coercive Measures Act (pakkokeinolaki, 22.7.2011/806)

The Act applies to the use of and the prerequisites for the use of coercive measures.

Act on the Treatment of Persons in the Custody of the Police (laki poliisin säilyttämien henkilöiden kohtelusta, 29.9.2006/841).

The Act applies to treatment of individuals who are apprehended, arrested or remanded by the police.

e) Remand Act (tutkintavankeuslaki, 23.9.2005/768)

The Act applies to implementation of pre-trial detention/remand imprisonment. Contains provisions on taking into consideration young age of a detainee.

f) Imprisonment Act (vankeuslaki, 23.9.2005/767)

The Act applies to the enforcement of unconditional imprisonment. Contains provisions on paying attention to the needs arising from the age and stage of development of a juvenile.

g) Criminal Procedure Act (laki oikeudenkäynnistä rikosasioissa, 11.7.1997/689)

The Act concerns the way of carrying out criminal proceedings in court. Contains provisions on appointment and qualifications of legal counsel.

h) Act on the Publicity of Court Proceedings in General Courts (laki oikeudenkäynnin julkisuudesta yleisissä tuomioistuimissa, 30.3.2007/370)

The Act sets out the rules on publicity of court proceedings and trial documents in general courts of law. Also contains provisions on taking into account young age of a party when making decisions on publicity.

i) Act on Conciliation in Criminal and Certain Civil Cases (laki rikosasioiden ja eräiden riita-asioiden sovittelusta, 9.12.2005/1015)



The Act concerns conciliation, a non-chargeable service in which a crime suspect and the victim of that crime are provided the opportunity to meet confidentially through an independent conciliator, to discuss the mental and material harm caused to the victim by the crime and, on their own initiative, to agree on measures to redress the harm. An underage person's participation in conciliation requires that his/her custodian or other legal representatives agree to it.

j) Legal Aid Act (oikeusapulaki, 5.4.2002/257)

The Act sets out the prerequisites for and coverage of legal aid.

k) Child Welfare Act (lastensuojelulaki, 13.4.2007/417)

The objective of the Act is to protect children's rights to a safe growth environment, to balanced and well-rounded development and to special protection. Contains provisions on overseeing compliance with the child's interest in court proceedings.

1.2 Minimum Age of Criminal Responsibility

The minimum age of criminal responsibility in Finland is fifteen (15) years, without exceptions¹¹.

1.3 The Right of Access to a Lawyer in Finland

The right of access to a lawyer is clearly stated in Finnish legislation and there is no clear distinction between the right of access to a lawyer and the right of assistance by a lawyer.

A party has the right in a criminal investigation to retain counsel of his or her own choice. The suspect in an offence shall be notified of said right. Before a party is to be heard, he or she shall be notified in writing of the right, unless the matter is being considered in

a simple criminal investigation. The criminal investigation authority shall also otherwise, with consideration to the offence under investigation and to the circumstances connected with the investigation of the offence and the party himself or herself, ensure that the right of a party to retain counsel is in fact realised when he or she wants this or when the ensuring of due process requires this¹².

This is strengthened by further provisions in the Criminal Procedure Act and the Act on Extradition on the Basis of an Offence between Finland and other Member States of the European Union, whereby each provides for the suspected party to be appointed a public defender and the right to Counsel¹³.

1.4 Finland's Legal Aid System

The legal aid system in Finland is established and governed by the Legal Aid Act¹⁴ which sets out provisions such as the prerequisites for receiving legal aid, applicable procedures, the eligibility of an attorney, and the measures of an attorney covered by legal aid.

Legal aid is granted on the basis of the available means and the assets of the applicant, as provided in detail in the Government Decree on Legal Aid¹⁵. Amounts of payable fees and expenses to a lawyer are set out in more detail in the Government Decree on Legal Aid Fee Criteria¹⁶.

The Act on State Legal Aid and Public Guardianship Districts governs the organization and supervision of the system on the state level¹⁷.

The Legal Aid Act provides that an applicant who is discontent with a legal aid decision issued by a Public Legal Aid Office may request that it

¹¹ Chapter 3, Section 4 of the Criminal Code of Finland (39/1889, 19.12.1889).

¹² Criminal Investigation Act (esitutkintalaki, 22.7.2011/805), Chapter 4, Section 10(1):

¹³ Criminal Procedure Act (laki oikeudenkäynnistä rikosasioissa, 11.7.1997/689), Chapter 2, Section 1; Act on Extradition on the Basis of an Offence Between Finland and Other Member States of the European Union (Laki rikoksen johdosta tapahtuvasta luovuttamisesta Suomen ja muiden Euroopan unionin jäsenvaltioiden välillä, 30.12.2003/1286), Section 20.

¹⁴ oikeusapulaki, 5.4.2002/257.

¹⁵ valtioneuvoston asetus oikeusavusta, 23.5.2002/388.

¹⁶ valtioneuvoston asetus oikeusavun palkkioperusteista, 24.4.2008/290.

¹⁷ laki valtion oikeusapu – ja edunvalvontapiireistä, 17.6.2016/477.



be reviewed by a court of law. The submission leads to the application being reviewed by the court and a decision being issued on it. The decision of the court is subject to appeal both in connection with the principal matter and separately.

One can also file a complaint with either the Parliamentary Ombudsman or the Chancellor of Justice if they feel that a public authority or an official has not observed the law or fulfilled a duty, or if the complainant suspects that fundamental and human rights have not been appropriately implemented. These supreme overseers of legality may:

- bring a prosecution if serious illegality is involved
- issue a reprimand
- inform the authority of her opinion of what would be the legal course of action
- draw the attention of the authority to the requirements of good governance or aspects that promote the implementation of fundamental and human rights

- make a proposal that the authority rectify an error or redress a shortcoming
- draw the attention of the Government to flaws that they have observed in legislative provisions or regulations and make proposals as to how shortcomings should be redressed.

A person receiving legal aid may also make a complaint about his/her lawyer. According to Section 8 of the Legal Aid Act, the attorney providing legal aid shall in his or her task adhere to the rules of proper professional conduct for advocates¹⁸. In this respect, they are subject to the disciplinary powers of the Finnish Bar Association. Anyone who is dissatisfied with their attorney in respect of alleged breaches of the rules of the proper professional conduct may make a complaint to the Bar Association's Disciplinary Board. The sanctions the Board may impose include admonishment, warning, fine or disbarment permanently from the Bar Association¹⁹.

¹⁸ The obligation to observe the rules of proper professional conduct is set out in the Advocates Act (laki asianajajista, 12.12.1958/496). The Bar Association's Code of Conduct is a codification of these standards (available at: https://www.asianajaliitto.fi/en/supervision/code_of_conduct).

¹⁹ Information on the disciplinary procedures can be found at http://www.valvontalautakunta.fi/valvontalautakunta/in_english.



D. JUVENILE JUSTICE SPECIALISATION OR SPECIAL STATUS AT THE NATIONAL LEVEL

Lawyers specialised in representing children are not officially recognised in Finland or is there any special status granted to them by the Finnish Bar Association.

In addition to this there is very little information available on training provided and what our research has shown has been conflicting. For instance, according to “Social Fieldwork Research Child Participation in Justice Report, Finland 2012” there is training available for lawyers at least on conducting child hearings, but the research

implies that training is targeted mainly to the police, judges and other professionals, rather than lawyers that represent children. However, the Secretary of the Head of Education of the Finnish Bar Association, who was contacted during the research, was not aware of any training provided by the Bar Association particularly in this field.



E. CHILD'S ACCESS TO A LAWYER

I INFORMATION AND FACILITATION

Finland's state does not play a prominent role in ensuring information is provided to children regarding their rights to a lawyer. For instance there are no campaigns or training. However, the Ombudsman for Children does have statutory responsibilities for maintaining contacts with children and youth, conveying information received from them to decision-makers and conveying information concerning children to professionals working with children, decision-makers and the public²⁰.

Finland's legal framework does not seem to have any specific legislation with regard to children right to a lawyer but the Criminal Investigations Act does stipulate that when a person suspected of an offence has lost his or her liberty in connection with apprehension, arrest or remand, he or she shall be notified without delay of the right to counsel of his or her choosing, the right to a public defender, and the right to cost-free legal aid and counsel. The notification shall be in writing²¹.

The same applies for circumstances where a child may be in need of an interpreter. Although there are no child specific laws, the law does provide that persons, other than those speaking Finnish, Swedish or Sami have the right in the criminal investigation to use a language that they understand and speak sufficiently, and persons using the sign language have the right to use this. The criminal investigation authority shall ascertain whether or not the party needs interpretation. The criminal authority shall ensure that the party receives the interpretation that he or she needs. Such costs would also be borne by the State²³.

2 CHILD'S CHOICE OF LAWYER?

Nothing specific to children was found from the research conducted. However the Criminal Procedure Act does state that a person appointed as the public defender or trial counsel for the injured party shall be a public legal aid attorney or advocate. If no legal aid attorney or advocate is available, or there is another special

reason, then a licenced legal counsel may be appointed. Moreover if the person suspected/injured has proposed a public defender or trial counsel then that person will be appointed unless there are special reasons to the contrary²⁴.

3 LEGAL AID SYSTEM

3.1 Legal Aid Framework

The legal aid system in Finland is financed by the Ministry of Justice. There are 23 legal aid offices (inclusive of the Legal Aid and Public Guardianship Office of Åland), and they are located usually in the same municipalities as the district courts. In these offices, legal aid is provided by public legal aid attorneys. Moreover, legal aid can be provided by advocates and by other lawyers licensed to assist clients in trials for legal assistance.

Administratively, the legal aid offices function under the legal aid and public guardianship districts. There are six such districts, and each of them is headed by the Director of Legal Aid and Public Guardianship District. The Ministry of Justice manages and oversees the provision of legal aid services²⁵.

3.2 Payment of a Lawyer

Lawyers are paid a reasonable fee for the necessary measures, based on the time spent for taking them, and for the loss of time caused by necessary travelling is determined for a private attorney, as is compensation for his or her expenses²⁶. The fee and the compensation for expenses are paid from state funds, less a varying deductible, which is then payable by the recipient of legal aid.

For the determination of the fee, the attorney must present a detailed account of the measures taken and of the expenses incurred in the

²⁰ More on the Ombudsman's status and responsibilities can be found on the authority's official website <http://lapsiasia.fi/en/ombudsman/>.

²¹ esitutkintalaki, 22.7.2011/805), Chapter 4, Section 17 (17.10.2014/818).

²² Criminal Investigations Act (esitutkintalaki, 22.7.2011/805), Chapter 4, Section 17(3) (17.10.2014/818); 12(4) (770/2013).

²³ Sections 12 and 13 (8.11.2013/770) of the Criminal Investigations Act (esitutkintalaki, 22.7.2011/805).

²⁴ Criminal Procedure Act (laki oikeudenkäynnistä rikosasioissa, 11.7.1997/689), Chapter 2, Section 2 (107/1998).

²⁵ The Act on State Legal Aid and Public Guardianship Districts (laki valtion oikeusapu – ja edunvalvontapiireistä, 17.6.2016/477), Section 6.

²⁶ The Legal Aid Act (oikeusapulaki, 5.4.2002/257) Chapter 3, Section 17.



case, unless presenting such an account is unnecessary. If the account is to be handled in an oral hearing before the court, the attorney must submit an account of the measures taken and expenses incurred up to the hearing to the court and, if necessary, also to the opposing party well before the date of hearing and no later than on the weekday preceding the date of hearing. In criminal matters, the prosecutor shall comment on the requested fee and expenses, if this is necessary in view of the amounts requested or for some other reason. If a person who does not normally pursue cases before the court in question has been appointed as an attorney, the extra travel expenses and the time spent shall be compensated for only if the use of such an attorney can be justified.

Further provisions on the measures for which the fee shall be paid, the amount of the hourly fee, the minimum fee per matter, compensable expenses, and those reasons pertaining to the matter and the attorney that may lead to a raised or reduced fee are put forth in the Government Decree on Legal Aid Fee Criteria²⁷.

The fee and compensation payable to an attorney are determined by the court when the tasks of the attorney before that court are concluded. The decision on the fee and compensation shall be issued separately from the decision in the main matter. The decision shall be given in connection with the decision in the main matter or on the same day²⁸.

3.3 A child's right to legal aid

As far as a young suspect is concerned, the main rule is that a public defender is appointed outside the legal aid system. A (state funded) public defender is to be appointed for a suspect under 18 years of age, unless it is apparent that he or she has no need of a public defender²⁹. If

a public defender is appointed for the suspect, no counsel shall be appointed for him or her on the basis of the Legal Aid Act³⁰. If counsel has been appointed for the suspect on the basis of the Legal Aid Act before the appointment of a public defender, the counsel shall be appointed as public defender.

Otherwise, the same requirements for receiving legal aid apply to minors as to other individuals (economic situation). The Government Decree on Legal Aid provides that if a person under 18 years of age applies for legal aid, the available means of his or her custodians shall not be taken into account³¹.

3.4 Child's choice of lawyers within legal aid system

According to the Legal Aid Act³², legal aid is provided by public legal aid attorneys. However, in matters to be heard by a court of law, also a private attorney who has consented to the task may be appointed as an attorney.

Only an advocate or a licensed attorney referred to in the Licenced Legal Counsel Act³³ may be appointed as a private attorney.

A person (including a child) receiving legal aid may on a reasoned request revoke the appointment of an attorney and appoint a replacement.

3.5 Complaints and Conflicts of Interest

The attorney providing legal aid shall in his or her task adhere to the rules of proper professional conduct for advocates³⁴. In this respect, they are subject to the disciplinary powers of the Finnish Bar Association. Anyone who is dissatisfied with their attorney in respect of alleged breaches of the rules of the proper professional conduct may make a complaint to the Bar Association's Disciplinary Board.

²⁷ valtioneuvoston asetus oikeusavun palkkioperusteista, 24.4.2008/290.

²⁸ Section 18(2) of the Legal Aid Act.

²⁹ Criminal Procedure Act (laki oikeudenkäynnistä rikosasioissa, 11.7.1997/689), Chapter 2, Section 1(3).

³⁰ Criminal Procedure Act (laki oikeudenkäynnistä rikosasioissa, 11.7.1997/689), Chapter 2, Section 2(4).

³¹ (valtioneuvoston asetus oikeusavusta, 23.5.2002/388), Section 3.

³² oikeusapulaki, 257/2002, Section 8.

³³ laki luvan saaneista oikeudenkäyntiavustajista, 17.6.2011/715.

³⁴ The obligation to observe the rules of proper professional conduct is set out in the Advocates Act (laki asianajajista, 12.12.1958/496). The Bar Association's Code of Conduct is a codification of these standards (available at: https://www.asianajaliitto.fi/en/supervision/code_of_conduct).



The sanctions the Board may impose include admonishment, warning, fine or disbarment permanently from the Bar Association³⁵.

In order to avoid conflicts of interest, the court shall appoint a trustee in the criminal investigation for a party under the age of 18 years if there is justified reason to assume that the person having care and custody of the child, the trustee or other legal representative cannot objectively ensure the interests of the party in the matter and the appointment of a trustee is not evidently unnecessary.

The head investigator shall if necessary submit an application to the court for the appointment of a trustee. The application may be submitted also by the public prosecutor, the city administrative court that is acting as the social welfare authority referred to in the Social Welfare Act (422/1999) or the body referred to in section 6, subsection 1 of the Social Welfare Act (710/1982) (social welfare authority). The appointment as trustee is in force until the conclusion of the criminal proceedings following the criminal investigation in respect of which the appointment has been made³⁶.

The costs incurred in the appointment of the trustee and the fee and expenses of the trustee are paid from State funds.

4 INTERPRETATION AND TRANSLATION

In Finland generally, persons other than those speaking Finnish, Swedish or Sami have the right in the criminal investigation to use a language that they understand and speak sufficiently, and persons using sign language have the right to use this. The criminal investigation authority shall ascertain whether or not the party needs interpretation. The criminal authority shall ensure that the party receives the interpretation that he or she needs³⁷.

There are also provisions within Finnish law that allow for the translation of certain documents. In particular a document or a portion thereof that is part of the criminal investigation documentation and that is essential from the point of view of the matter shall be translated in writing within a reasonable period of time into the language of the party, if translation is necessary to ensure the right of the party³⁸. In addition an essential document or a part or summary thereof may be translated verbally for a party, unless legal safeguards for the party require that the document be translated in writing³⁹.

Moreover the criminal investigation authority shall ensure that the party receives sufficient knowledge of his or her right to translation of a document and if necessary shall ascertain whether the party wants the translation of a document. A party need not be provided with a translation of a document if the party waives his or her right to a translation⁴⁰.

The translation is done at the expense of the state, unless the criminal investigation authority itself attends to the translation.

5 WAIVE OF RIGHT OF ACCESS TO A LAWYER

Finnish law stipulates that if a suspect does not wish to use his or her right of access to a lawyer, the criminal investigation authority shall, as appropriate, ensure that the suspect has sufficient information about the crime suspicion, the right to refrain from contributing to solving the crime and the right of access to/assistance of a lawyer in criminal investigations and court proceedings. The suspect must also be notified that he or she has the right to revoke his waiver.

The Government proposal HE 66/2016 refers to the case law of the European Court of Human Rights on the issue and states that the young age of a suspect must be taken into special consideration

³⁵ Information on the disciplinary procedures can be found at http://www.valvontalautakunta.fi/valvontalautakunta/in_english.

³⁶ Criminal Investigations Act (esitutkintalaki, 22.7.2011/805), Chapter 4, Section 8.

³⁷ Criminal Investigations Act (esitutkintalaki, 22.7.2011/805), Chapter 4, Section 12(4).

³⁸ Section 13 (8.11.2013/770).

³⁹ 8.1.2016/10.

⁴⁰ 8.1.2016/1.



6 ASSISTANCE BY A LAWYER TO A CHILD

6.1 General

A public defender is appointed for a suspect when the suspect is under 18 years of age, unless it is apparent that he or she has no need of a public defender⁴¹. Moreover, the head investigator or the public prosecutor will submit a request to the court for the appointment of trial counsel or a support person for the injured person⁴².

The stage at which a lawyer is appointed is when the suspected person is notified that he/she is suspected of an offence, as Finnish law states that when such person is notified that he/she is suspected then he/she *'shall be notified of the right of access to/assistance by a lawyer without delay and at the latest before he or she is heard'*⁴³. In addition Finnish law also provides that the right of a party to retain Counsel is realised⁴⁴. It should also be noted that Finnish law imposes an obligation of proactive approach to the public defender which means that the public defender representing the child/person should as soon as possible confer and assist him/her.

If a lawyer is present at an investigative or evidence gathering act then their presence will be written down on either a record or novation in another document is made⁴⁵. It should also be noted that when investigative measures do occur in relation to a child then that child shall be assigned to investigators particularly trained in this function⁴⁶. If necessary, the criminal investigation authority shall consult with a physician or other expert on whether investigation measures may be directed at a person under the age of 18 years.

The social welfare authority and social services also have a role to play in proceedings as Finnish law stipulates that when a person under the age of 18 years old is suspected of an offence then

the social welfare authority shall be informed of the act and be reserved an opportunity to send its representative to the questioning. A record of the questioning is also provided to the authority without delay⁴⁷. In addition to this the law states that, unless deemed unnecessary, the municipal body responsible for social services must be represented in any pre-trial or court proceedings when a child has been alleged to have committed a crime⁴⁸. However the law is silent on how these social workers may in practice participate in questioning.

If a child has requested a lawyer or the investigator has deemed assistance by a lawyer necessary then the investigative act is postponed.

6.2 Interpretation and Translation

This is the same law as stated above for legal aid. In Finland the right to interpretation extends to all stages of criminal proceedings and gives those, who do not speak Finnish, Swedish or Sami, the right in criminal investigation to use a language they understand and speak and the Court shall ensure that individual receives the interpretation needed. The cost of interpretation for those individual is borne by the State.

Documents which is a part of the criminal investigation and is essential from the point of view of the matter shall be translated in writing within a reasonable period of time. This right also extends to documents being translated verbally and Finnish law also stipulates that the individual receives sufficient knowledge of their right to translation of a document⁴⁹.

6.3 During Proceedings

Although the law in Finland has no specific provisions relating to the rights of children during proceedings in a criminal matter, the law does provide the following general provisions:

⁴¹ Criminal Procedure Act (laki oikeudenkäynnistä rikosasioissa, 11.7.1997/689), Chapter 2, Section 1(3).

⁴² Criminal Investigations Act (esitutkintalaki, 22.7.2011/805), Chapter 4, Section 10(3).

⁴³ Criminal Investigations Act (esitutkintalaki, 22.7.2011/805), Chapter 4, Section 16 (17.10.2014/88).

⁴⁴ Criminal Investigations Act (esitutkintalaki, 22.7.2011/805), Chapter 4, Section 10(1).

⁴⁵ This answer was provided by email by a superintendent of the National Police Board.

⁴⁶ Criminal Investigations Act, Chapter 4, Section 7(2).

⁴⁷ Criminal Investigations Act (esitutkintalaki, 22.7.2011/805), Chapter 7, Section 16.

⁴⁸ Section 24(2) of the Child Welfare Act (lastensuojelulaki, 13.4.2007/417) states.

⁴⁹ Criminal Investigations Act (esitutkintalaki, 22.7.2011/805), Section 13 (8.11.2013/770).



- The party has the right to meet with their lawyer before being questioned by police/law enforcement and before a party is to be heard they should be notified in writing of said matter, unless the matter is considered a simple criminal investigation.

It should also be noted that according to the Superintendent of the National Police Board even though the provision does not explicitly state that the child has the right to meet with a lawyer before questioning, if a child requires such a meeting then it is granted before questioning is begun.

- The individual and his/her counsel may with the permission of the investigator present questions to the person being questioned in order to clarify matters. A party, his or her counsel and attorney also otherwise have the right to request that the investigator presents questions to the person being questioned about aspects necessary in order to clarify the matter. A counsel or attorney may also otherwise take part in the questioning if attending to the client's interest so requires.

Finland also has a government bill⁵⁰ which emphasises the lawyer's active role:

- The lawyer may, amongst other things, make questions, ask for elaborations and give statements during the hearing.
- The lawyer's task is to assert the rights of his principal during the hearing and oversee that the hearing is carried out appropriately;
- The lawyer may make remarks during the hearing if it is necessary to secure protection against self-incrimination or if improper means or procedures are used in the hearing.

- If necessary, the lawyer can remind his client of his right not to contribute to the establishing of his guilt and of his right to decline answering the questions put forth to him.
- However it should be noted that the established interpretation is that the lawyer shall not answer to a question asked from his client nor try to manipulate the report or answers of his client.

6.4 The relationship between a lawyer and child

The child has the right to meet in private with his/her lawyer without undue delay after deprivation of liberty⁵¹. Moreover communication between lawyers and their client is private and confidential as the states that such communication is ensured. The only slight exception is that meetings between lawyers and their clients may be monitored however they cannot be recorded or listened to⁵².

Meetings between the lawyer and child may be conducted face to face, by phone or by correspondence⁵³. However if a child is detained/deprived of liberty then although they may not have access to their own phone they may use the police's phone. Email access to contact their lawyer will be granted only if there is an important reason relating to handling legal matters and it must not cause dangers to the purpose of remand imprisonment, order or safety of the prison or safety of the remand prisoner or some other person and that the sender and receiver of the email can be sufficiently confirmed.

⁵⁰ Hallituksen esitys eduskunnalle laiksi esitutkintalain muuttamisesta ja eräiksi siihen liittyviksi laeiksi, HE 99/2016, p. 29.

⁵¹ Treatment of Persons in the Custody of the Police (laki poliisin säilyttämien henkilöiden kohtelusta, 29.9.2006/841), Chapter 9, Section 4 (10.4.2015/394), and the Remand Act tutkintavankeuslaki, 23.9.2005/768), Chapter 7, Section 1(1) (28.10.2016/893).

⁵² Criminal Investigation Act (esitutkintalaki, 22.7.2011/805), Chapter 4, Section 11(2); Chapters 6-7 of the Act on the Treatment of Persons in the Custody of the Police (laki poliisin säilyttämien henkilöiden kohtelusta, 29.9.2006/841) and Chapters 8-9 of the Remand Act (tutkintavankeuslaki, 23.9.2005/768).

⁵³ Chapter 4, Section 1(2) of the Coercive Measures Act (pakkokeinolaki, 22.7.2011/806).

⁵⁴ Ministry of Foreign Affairs has published a summary of the findings at <http://formin.finland.fi/public/default.aspx?contentid=223505&nodeid=15145&contentlan=2&culture=en-US>. The original publication of the Committee.



6.5 Best Interests of the Child

In 2011, the UN Committee on the Rights of the Child published its concluding observations concerning Finland's fourth periodic report on implementation of the Convention on the Rights of the Child. The Committee found that, apart from the Child Welfare Act, there is no comprehensive reference to the best interest of the child in legislation, and that the principle is not adequately understood or taken into account in decisions affecting children⁵⁴.

It should be noted though that Finnish law does state that social workers responsible for a child's affairs must oversee compliance with the interests of the child and must, by right of office, provide assistance for children or young people in exercising their right to be heard. Also, where necessary, they must direct the child or young person to seek legal aid or ensure that an application is made for a child's guardian if there

is good cause to assume that the custodian is unable to supervise the child's interests in the case without prejudice and designation of a guardian is necessary in order to investigate a case or otherwise to safeguard the interests of the child⁵⁵.

The municipal body responsible for social services must also be represented in any pre-trial investigation of, and court proceedings on, a punishable act alleged to have been committed by a child, unless the municipal body responsible for social services deems such presence to be unnecessary. Finnish law also stipulates that where a child is deprived of their liberty then without undue delay their guardian, unless it is not in the child's best interest, and social services shall be notified⁵⁶.

⁵⁵ Section 24(1) of the Child Welfare Act (lastensuojelulaki, 13.4.2007/417).

⁵⁶ Act on the Treatment of Persons in the Custody of the Police (laki poliisin säilyttämien henkilöiden kohtelusta, 29.9.2006/841).



F. SOCIO-LEGAL DEFENCE CENTRES

Socio-legal defence centres do not generally exist in Finland.

A Finnish civic organization, the Mannerheim League for Child Welfare, has referred to findings on the UN Committee on the Rights of the Child and stated that Finland lacks effective and child-oriented counselling services and legal remedies to ensure materialization of rights of children. Similarly, a group of NGOs have in their report mentioned this impediment: “Finland lacks effective and child-friendly legal safeguards and related advisory services required by the UN Committee on the Rights of the Child. Children and families with children do not have adequate knowledge of the available legal safeguards and access to them, and thus they do not provide effective legal protection.” Also the Ombudsman for Children has come to this conclusion in his statement.

At the moment, there are a number of NGO’s that offer some social-legal support services. Some of these organisations are partly state funded. Employees are usually either salaried or volunteered. Some examples are listed below with links to respective websites:

- Central Union for Child Welfare (Lastensuojelun Keskusliitto) – The mission of the CUCW is to develop child welfare and to promote cooperation between non-governmental organisations, municipalities and state authorities (www.lskl.fi);
- Save the Children (Pelastakaa Lapset) – Save the Children Finland is a politically and religiously independent non-governmental organization founded in 1922, which fights for children’s rights in order to immediately and permanently improve children’s lives in Finland and all over the world (<https://www.pelastakaaalapset.fi/en/frontpage>);
- The Mannerheim League for Child Welfare (Mannerheimin Lastensuojeluliitto – The Mannerheim League for Child Welfare is a civic organization that works to promote children’s right to a good and happy childhood. Today the League’s operations centre on civic activities, influencing society and organizing various kinds of peer support for families with children (<https://www.mll.fi/en/>);
- Victim Support Finland (Rikosuhripäivystys) – Victim Support Finland offers practical advice and support to victims of crime. They also work to improve the social status of crime victims by influencing general attitudes and legislation (<http://www.riku.fi/en/in+english/>).



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