BRIEFING PAPER

UNIVERSAL JURISDICTION LAW AND PRACTICE IN FINLAND

February 2020

OPEN SOCIETY JUSTICE INITIATIVE

TRIAL International

Table of Contents

Introduction

This briefing paper was written by the Open Society Justice Initiative in partnership with TRIAL International. It provides an overview of the Finnish national legal framework on universal jurisdiction, including statutory and case law, and its application in practice.

The briefing paper intends to contribute to a better understanding of domestic justice systems among legal practitioners who operate in the field of universal jurisdiction, to support the development of litigation strategies. It forms part of a series of briefing papers on selected countries.

The content is based on desk research with the support of pro bono lawyers from the relevant jurisdictions. In addition, interviews with national practitioners were conducted by the authors on the practical application of the law. Respondents are not named in order to protect their identity and affiliation with certain institutions or organizations.

Universal jurisdiction in this briefing paper is understood to encompass investigations and prosecutions of crimes committed on foreign territory by persons who are not nationals of the jurisdiction in question. This briefing paper focuses on the international crimes of genocide, war crimes, crimes against humanity, and torture.

The authors would like to thank Valérie Paulet and Taegin Reisman, as well as all experts and practitioners who agreed to be interviewed for their invaluable contribution to this briefing paper.

Crimes that invoke universal jurisdiction

The Finnish Criminal Code (CC) and the Decree on the Application of Chapter 1, Section 7 of the Criminal Code (Decree) deal with the jurisdiction of Finland over offences committed abroad emanating from international conventions ratified by Finland.[1] The Decree includes an exhaustive list of crimes which fall under Finnish jurisdiction if committed outside of Finland by a foreign national (universal jurisdiction).[2]

According to the Decree, Finland can exercise universal jurisdiction over genocide, crimes against humanity, war crimes, and torture as a separate crime. Universal jurisdiction also applies to other crimes that go beyond the scope of this report.[3] Enforced disappearance is not criminalized as a stand-alone crime, i.e. outside of crimes against humanity.[4]

It is noteworthy that Finland has jurisdiction over crimes committed outside of its territory that carry a minimum sentence of more than six months and where the country in which the crime was committed requested the Finland to prosecute or where the suspect cannot be extradited.[5] This report, however, will focus on the core international crimes of genocide, crimes against humanity, war crimes, and torture (as a stand-alone crime).

1. Genocide

Genocide can be prosecuted in Finland when committed abroad according to Chapter 1, Section 7(1) of the CC and Section 1(3) of the Decree.

[1] Chapter 1, Section 7 of the Criminal Code of Finland, 39/1889, amendments up to 766/2015 included, Translation from Finnish by Ministry of Justice, Finland (hereinafter **CC**); *Asetus rikoslain 1 luvun 7 §:n soveltamisesta* (unofficial translation: Decree on the Application of Chapter 1, Section 7 of the Criminal Code), 16.8.1996/627, 1996 (hereinafter **Decree**).

[2] Decree Section 1.

[3] Other crimes that can be prosecuted under universal jurisdiction include: counterfeiting currency,narcotics offence, seizure of aircraft, criminal traffic mischief, murder, assault or deprivation of liberty directed against the person of an internationally protected person, taking of a hostage, nuclear device offence, terrorism, violation of the prohibition of chemical weapons, unlawful acts directed against the safety of maritime navigation, violation of the prohibition of biological weapons, breach of the prohibition against antipersonnel mines, unlawful acts directed against the safety of fixed platforms located on the continental shelf, crimes against the United Nations and associated personnel, offences against a place of public use, state or government facility, a public transportation system or an infrastructure facility, financing of terrorism, wilful killing or causing of serious injury to civilians, and nuclear terrorism.

[4] Finland signed the 2006 Convention for the Protection of All Persons from Enforced Disappearance on 6 February 2007 but it has not been ratified; see UN Treaty Collection, Status of Treaties, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-16&chapter=4&lang=en, last accessed on 7 January 2020.

[5] CC Chapter 1, Section 8.

Genocide was criminalized for the first time in the CC in 1975.[6] In 2008, the definition was amended with the aim of making the Finnish law correspond to the Rome Statute, but the definitions in the CC differs as set out below.[7]

According to CC Chapter 11, Section 1 the definition for genocide is:

"A person who for the purpose of entirely or partially destroying a national, ethnic, racial or religious group or another comparable group
(1) kills members of the group,
(2) inflicts grievous bodily or mental illness or injuries on members of the group,
(3) subjects the group to such living conditions that can cause the physical destruction of the group in whole or in part,
(4) undertakes forcible measures to prevent procreation among the group, or
(5) forcibly moves children from one group to another, shall be sentenced for genocide to imprisonment for at least four years or for life."[8]

The most significant difference with the Rome Statute is that the Finnish law covers not only the four groups (national, ethnic, racial, and religious) but also includes "other comparable groups".

An attempt to commit genocide is also punishable under universal jurisdiction.[9]

In addition, preparation of genocide is a separate crime that can be prosecuted under universal jurisdiction in Finland.[10] According to Chapter 11 Section 2 of the CC, such preparation consists in a person conspiring with another to commit genocide or making a plan for genocide for the purpose of entirely or partially destroying a protected group as listed above.

The first case of prosecution for genocide committed abroad under universal jurisdiction was against Francois Bazaramba. [11] Finnish authorities arrested Rwandan citizen Francois Bazaramba on 6 April 2007. In 2009, his extradition to Rwanda was refused. In May 2009, the public prosecutor charged him primarily with genocide and secondarily with 15 counts of murder in connection with the events of 1994 in Rwanda. The trial began in June 2009.[12] In July 2010, Francois Bazaramba was convicted and sentenced to

[6] Criminal Code of Finland, Act 987/1974, entered into force on 1st March 1975.

[7] Law 212/2008 modifying the Criminal Code, 11 April 2008.

[8] CC Chapter 11, Section 1(1).

[9] CC Chapter 11, Section 1(2).

[10] CC Chapter 1, Section 7 and Decree Section 1(3).

[11] District Court of Itä-Uusimaa, Prosecutor v. François Bazaramba, R09/404, Judgment 10/423, 11 June 2010.

[12] Interview with a Finnish academic on 23 September 2019.

life imprisonment for genocide and murder. The accused appealed the judgment, which was denied.[13]

2. Crimes Against Humanity

Finland has jurisdiction over crimes against humanity and aggravated crimes against humanity committed abroad according to Chapter 1, Section 7 of the CC and Section 1(2) of the Decree.

Since the 2008 revision of the CC,[14] crime against humanity is a separate offence. It is defined in Chapter 11, Section 3 of the CC which follows the definition of the Rome Statute by requiring a "broad or systematic assault on civilian population".

However, the Finnish law differs from the Rome Statute in the following respect:

- On **persecution:** Unlike the Rome Statute, the CC does not require such an act to be linked to other crimes against humanity. [15]
- On **apartheid**: Unlike the Rome Statute,[16] the CC does not list apartheid as a crime against humanity.

Crimes against humanity are considered aggravated with a higher minimum sentence when either of the following conditions are met:[17]

- the offence is directed against a large group of persons;
- the offence is committed in an especially brutal, cruel, or degrading manner;
- the offence is committed in an especially planned or systematic manner; or
- the offence is aggravated when assessed as a whole.

At the time of publishing this report, the provisions on aggravated crimes against humanity have never been applied by Finnish courts.[18] For both crimes against humanity and aggravated crimes against humanity, attempt is punishable.[19]

[13] Helsinki Court of Appeal, R10/2555, Judgement 882, 30 March 2012.

[14] Law 212/2008 modifying the Criminal code, 11 April 2008.

[15] CC Chapter 11, Section 3(5).

[16] Rome Statute Article 7(1)(j).

[17] CC Chapter 11, Section 4(1).

[18] Interview with a Finnish academic on 23 September 2019.

[19] CC Chapter 11, Section 3 and Section 4(2).

3. War Crimes

War Crimes and aggravated war crimes committed abroad can be prosecuted in Finland according to Chapter 1, Section 7 of the CC and Section 1(2) of the Decree.[20]

War crimes are defined in Chapter 11, Section 5 of the CC and, as the Rome Statute, require the existence of an armed conflict and refers to the Geneva Conventions.[21] The war crimes in the CC are divided into two groups. The first consist of war crimes specifically listed in Chapter 11, Section 5(1) of the CC. The second group in Chapter 11, Section 5(2) of the CC does not list any specific war crimes but only makes reference other crimes listed in Article 8 of the Rome Statute or in other international agreements or in established laws and customs of war.

The first group of specifically listed war crimes in Chapter 11, Section 5(1) of the CC apply in international and non-international armed conflicts. Each of them finds its corresponding war crime in Article 8 of the Rome Statute. The only difference lies in the provision of the CC regarding the age of child soldiers, which includes children under 18, while in the Rome Statute the age is under 15.[22]

A war crime is considered aggravated with a higher minimum sentence when the either of the following conditions are met:

- the offence is directed against a large group of persons;
- the offence causes very serious and extensive damage;
- the offence is committed in an especially brutal, cruel, or degrading manner;
- the offence is committed in an especially planned or systematic manner; or
- the offence is aggravated when assessed as a whole.[23]

At the time of publishing this report, the Court of Appeal of Turku is considering a case where the defendants are accused, among other things, of aggravated war crimes.[24]

[20] CC Chapter 11, Section 7 also criminalizes petty war crimes but these do not fall under universal jurisdiction in Finland as they are not listed in the Decree.

[21] 1949 Geneva Conventions on the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, on the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, relative to the Treatment of Prisoners of War, and relative to the Protection of Civilian Persons in Time of War.

[22] CC Chapter 11, Section 5(5).

[23] CC Chapter 11, Section 6.

[24] Interview with a Finnish Academic on 23 September 2019.

4. Torture

Finnish authorities can prosecute torture committed abroad as a separate crime, i.e. when it is not committed as a crime against humanity or as a war crime.[25] According to the Section 1(9) of the Decree and Chapter 11, Section 9a of the CC, the definition of torture under Finnish law corresponds to the 1984 Convention against Torture rather than the Rome Statute.

Modes of liability

1. Direct perpetrator and co-perpetrators

A direct perpetrator is a person who committed or attempted to commit a crime.[26]

If two or more persons have committed an intentional offence together, each is punishable as a perpetrator.[27] To be liable, the co-perpetrators must have participated in the execution of the crime and have a mutual agreement.[28] The mutual agreement requires that each perpetrator is aware of the fact that his/her actions together with actions of other perpetrators fulfil the elements of a crime.

In practice, mutual agreement exists, for instance, if the perpetrators plan the crime together before committing it, but it can also be formed during the commission of the crime.[29] The participation of each co-perpetrator has to be sufficiently significant, otherwise he/she is only punished for aiding.[30]

2. Abetting and instigation

According to Chapter 5, Section 6(1) of the CC, a person who, before or during the commission of an offence, intentionally furthers the commission by another of an intentional act or of its punishable attempt, through advice, action or otherwise, shall be

[25] CC Chapter 1, Section 7 and Decree Section 1(9).

[26] Interview with a Finnish academic on 23 September 2019.

[27] CC Chapter 5, Section 3.

[28] *Hallituksen esitys Eduskunnalle rikosoikeuden yleisiä oppeja koskevan lainsäädännön uudistamiseksi* (unofficial translation: Government proposal to Parliament to Reform Legislation on General Doctrines of Criminal Law), HE 44/2002 vp, p. 152.

[29] Interview with a Finnish academic on 23 September 2019.

[30] Interview with a Finnish Academic on 25 November 2019.

sentenced for abetting on the basis of the same legal provision as the direct perpetrator. Plain passivity is not sufficient.[31]

According to Chapter 5, Section 5 of the CC, a person who intentionally persuades another person to commit an intentional offence or to make a punishable attempt of such an act is punishable for instigation.

3. Commission through an agent

A person is sentenced as a perpetrator if he or she has committed an intentional offence by using, as an agent, another person who cannot be punished for said offence due to the lack of criminal responsibility or intention or due to another reason connected with the prerequisites for criminal liability.[32]

4. Command / superior responsibility

According to Chapter 11, Section 12 of the CC, a military or other superior is criminally liable for genocide, crimes against humanity, and war crimes, including their aggravated forms, in the same way as the direct perpetrator, if:

- his/her subordinates that are factually under his/her command and supervision have been guilty of an act as a consequence of the failure of the superior to properly supervise the actions of the subordinates, and
- the superior knew or on the basis of the circumstances should have known that the subordinates committed or intended to commit the crimes, and
- the superior did not undertake the necessary measures available to him/her and that could have been reasonably expected of him/her to prevent the crimes.

This mode of liability is similar to Article 28 of the Rome Statute, which codifies the responsibility of commanders and other superiors. The difference lies in the fact that the Finnish law does not distinguish between military and non-military superiors. In addition, the failure to report crimes by subordinates under the Finnish law is set out as a separate crime in Chapter 11, Section 13(1) of the CC, whereas the Rome Statue considers such failure to fall under the mode of liability of command/superior responsibility.

5. Corporate liability

Under Finnish law, a corporation, foundation, or other legal entity can be held criminally liable through a corporate fine.[33] Such liability ensues if:

[31] Supreme Court of Finland, Judgment KKO 2014:22, 9 April 2014, (R2013 / 50).

[32] CC Chapter 5, Section 4.

[33] CC Chapter 9, Section 1(1).

(1) "a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence have not been observed in the operations of the cooperation"[34] and
(2) "the perpetrator has acted on the behalf of or for the benefit of the corporation, and belongs to its management or is in a service or employment relationship with it or has acted on assignment by a representative of the corporation."[35]

This applies even if the actual offender cannot be identified or punished.[36]

The court or the prosecutor can waive prosecution for certain reasons listed in the law, e.g. where such punishment is unreasonable.[37]

According to Chapter 1, Section 9 of the CC, if Finland has jurisdiction over a crime committed abroad, this jurisdiction extends to the criminal liability of foreign companies.

Temporal application

1. Beginning of temporal application

Prosecution in Finland is only possible for acts that were criminal offences according to the law in force at the time of their commission.[38]

1.1. Genocide

Genocide can be prosecuted under universal jurisdiction from 1 March 1975 onwards when it was criminalized in the CC for the first time.[39]

[34] CC Chapter 9, Section 2(1).

[35] CC Chapter 9, Section 3(1).

[36] CC Chapter 9, Section 2(2).

[37] CC Chapter 9, Section 4 and 7.

38 Interview with a Finnish academic on 23 September 2019.

[39] Criminal Code of Finland, Act 987/1974, entered into force on 1 March 1975; interview with an academic on 23 September 2019.

1.2. Crimes against humanity

Crimes against humanity can be prosecuted in Finland from 11 April 2008 when it was codified in the CC for the first time.[40]

1.3. War crimes

War crimes can be prosecuted from 1 March 1975 onwards when they were criminalized in the CC for the first time.[41]

1.4. Torture

From 1989 to 1995, the CC had a provision on the separate crime of torture, but the provision was removed in 1995 due to overlapping provisions with assault offence.[42] On 1 January 2010, the separate offence of torture was reintroduced in Chapter 11, Section 9a of the CC.[43] Torture as a separate crime, therefore, can be prosecuted between 1989 and 1995 and then from 1 January 2010 onwards. Between 1995 and 2010, torture can only be prosecuted as assault offence.

2. Statute of limitations

The statute of limitations for a crime is dependent on its maximum sentence.[44] According to the CC, the right to bring charges for an offence with a maximum sentence of life imprisonment does not become time-barred.[45] Genocide,[46]crimes against humanity,[47] and war crimes[48], including their aggravated forms,[49] are not subject to statute of limitations, as the maximum sentence of such crimes is life imprisonment. However, torture falls under a 20-year statute of limitations as its maximum sentence is 12 years.[50]

[40] Law 212/2008 modifying the Criminal code, 11 April 2008.

[41] Criminal Code of Finland, Act 987/1974, entered into force on 1 March 1975; interview with an academic on 23 September 2019.

42 Interview with a Finnish academic on 23 September 2019.

43 Law 990/2009 modifying the Criminal code, 4 December 2009.

[44] CC Chapter 8.

[45] CC Chapter 8, Section 1(1) and (3).

[46] CC Chapter 11, Section 1.

[47] CC Chapter 11, Section 3.

[48] CC Chapter 11, Section 5.

[49] CC Chapter 11, Section 4 and 6.

[50] CC Chapter 8, Section 1(2)(1) and Chapter 11, Section 9a.

Universal jurisdiction requirements

1. Presence/residence of suspects

Investigations and prosecutions in Finland of the above-listed international crimes committed abroad by a foreign national do not require the suspect to be present or a resident in Finnish territory.[51] In practice, however, this is an element taken into consideration by the prosecutor before starting a prosecution.[52]

If the suspect permanently resides in Finland at the time of the offence or at the beginning of the court proceedings, he/she is deemed equivalent to a Finnish citizen, and as a consequence, Finnish authorities have jurisdiction over this foreigner for crimes committed abroad.[53] Finnish authorities will also have jurisdiction over a foreign national apprehended in Finland and who at the beginning of the court proceedings is a citizen of Denmark, Iceland, Norway, or Sweden.[54]

Finland also has jurisdiction if the crime was committed against a Finnish citizen, a Finnish corporation, foundation, or other legal entity, or a foreigner permanently residing in Finland if the crime carries a minimum sentence of six months (passive personality jurisdiction).[55]

These different scenarios entail different requirements with regard to double criminality and the Prosecutor-General's order (see below).

2. Double criminality

According to Chapter 1, Section 11(1) the CC, for crimes committed abroad by a Finn or a person equivalent to a Finn (Section 5), or against a Finnish citizen/entity/resident (Section 6), the offence must also be punishable under the law of the place of commission (double criminality). However, for international crimes discussed in this report, this is not required as Chapter 1, Section 11(1) of the CC explicitly excludes any reference to Chapter 1, Section 7 of the CC that contains the provision on such crimes.

[51] CC Chapter 1, Section 7(1) does not contain any requirement as to the presence of the suspect; interview with a prosecutor from the war crime units on 18 October 2019.

[52] Interview with the NBI on 30 January 2020.

[53] CC Chapter 1, Section 6(3)(1).

[54] CC Chapter 1, Section 6(3)(2).

[55] CC Chapter 1, Section 5.

3. Prosecutorial discretion

Criminal investigations of crimes committed abroad may only be initiated by order of the Prosecutor-General.[56] Investigations may be opened if Finnish law applies (see above Crimes that Invoke Universal Jurisdiction), and if the conduct of the criminal investigation in Finland is appropriate in view of investigative reasons and the determination of criminal liability.[57] In his/her decision on opening investigations, the Prosecutor-General will also consider if international obligations restricting Finland's jurisdiction will be considered.[58] A decision of the Prosecutor-General not to open an investigation may not be challenged due to his/her position as the highest prosecuting authority in Finland.[59]

However, the Prosecutor-General's order is not necessary if the crime was committed abroad by a Finn or a suspect permanently residing in Finland, or against a Finnish citizen/entity/resident.[60]

When the prosecutor decides whether or not to bring a charge for a suspected offence, he/she has to consider whether the suspected offence is punishable according to the law, whether the right for its prosecution is time-barred, and whether probable grounds exist to support the guilt of the suspect.[61] The prosecutor cannot proceed with prosecution if these prerequisites are not met.[62] The prosecutor shall also not prosecute if the injured party (see below Victim's right and participation) has not requested that charges be brought.[63]

Even if the above-mentioned criteria are met, the prosecutor may waive prosecution for alleged crime was committed by a minor or if the expected sentence is only a fine.[64] There are additional grounds to waive prosecution, but for those if an important public or private interest requires prosecution, it is not possible to waive prosecution.[65] A

[56] CC Chapter 1, Section 12(1)(1).

[57] CC Chapter 3, Section 8(1).

[58] Interview with a Finnish academic on 23 September 2019.

[59] Interview with the National Bureau of Investigation (hereinafter **NBI**) on 18 October 2019.

[60] CC Chapter 1, Section 12(2)(1).

[61] Chapter 1, Section 6(1) of the Criminal Procedure Act, 689/1997, amendments up to 733/2015 included, unofficial translation by Ministry of Justice, Finland, (hereinafter **CPA**).

[62] CPA Chapter 1, Section 6(a)(1).

[63] CPA Chapter 1, Section 6a(1)(3).

[64] CPA Chapter 1 Section 6(2), 7 and 8.

[65] CPA Chapter 1, Section 8(1) and (2).

government proposal [66] states that especially in cases involving grave offences, prosecutions cannot be waived. The proposal does not explicitly mention international crimes, however, those crimes are likely to be considered grave offences, and therefore, prosecution could not be waived.[67]
Justification shall be given for the decision to waive charges, indicating the circumstances, evidence, and legal conclusions on which the decision is based.[68]

4. Political approval

It is not necessary for a political body to approve a decision by the prosecution to open an investigation, start prosecution or request an arrest warrant.[69]

5. Subsidiarity

There are no provisions under Finnish law that require Finland to cede its jurisdiction to the country where the crime was committed, a third country, or international tribunals (subsidiarity). However, where another country or international tribunal has jurisdiction, the Prosecutor-General has to make a discretionary assessment on whether or not it is appropriate to handle the case in Finland, taking into account all factors bearing on the matter, which can include the interests of the suspect, interests of the victims, and access to evidence. In practice, the Finnish authorities would try to negotiate with the authorities of the other country that has parallel jurisdiction over the matter in order to decide where the most appropriate place for prosecution is. If it is decided that the other country is more suitable to handle the matter, the Prosecutor-General would not issue a prosecution order to initiate investigations.[70]

6. Pending extradition

In general, if another country requested extradition of the same suspect, the prosecutor and an officer in charge of the investigation will consider if the requested extradition will be postponed or not. If the same investigation is pending in Finland and in the requesting country, the countries' authorities should together decide on the most appropriate venue for the case.[71] If another European Union country requests extradition of the same

[66] *Hallituksen esitys eduskunnalle syyteneuvottelua koskevaksi lainsäädännöksi ja syyttämättä jättämistä koskevien säännösten uudistamiseksi* (unofficial translation: Government proposal to Parliament to Reform Legislation on prosecution and non-prosecution provisions), HE 58/2013 vp.

[67] Interview with the NBI on 30 January 2020.

[68] CPA Chapter 1, Section 6a(2).

[69] Interview with a Finnish academic on 23 September 2019.

[70] Interview with a Swedish academic on 29 November 2019.

[71] Interview with a prosecutor from the war crime units on 18 October 2019.

suspect, this may be refused if the requested person is being prosecuted in Finland for the same act on which the request is based.[72]

Key steps in criminal proceedings

1. Investigation Stage

According to the Criminal Investigation Act the investigations are conducted by the police, which is the general investigating authority.[73] The criminal investigation is directed by the Head Investigator.[74]

Once the Prosecution-General has given his/her order for investigation (see above on Prosecutorial Discretion), the national unit of the Finnish police of the National Bureau of Investigation (NBI), will be in charge of the investigation operations, orders, and decisions. The cooperation with prosecutors continues, but the responsibility for conducting the investigations lies with the police.[75] Prosecutors can request the police to undertake certain investigation measures.[76]

1.1. Initiation of investigations

According to the Criminal Investigation Act, investigations shall commence when, on the basis of a report of an offence or otherwise, the investigation authority has "reasons to suspect that an offence has been committed."[77] Victims can report a crime to the police.[78]

The Homicide/Serious Crimes Unit of the NBI is in charge of investigations of international crimes, including war crimes, and crimes against humanity.[79] The unit is

[72] Section 6(1)(1) of the Act on Extradition On the Basis of an Offence Between Finland and Other Member States of the European Union, 1286/2003, 30 December 2003.

[73] Chapter 2, Section 1(1) of the Criminal Investigation Act, 805/2011, amendments to 736/2015 included, unofficial translation by Ministry of Justice, Finland (hereinafter **CIA**).

[74] CIA Chapter 2, Section 2(1).

[75] Interview with the NBI on 23 September 2019.

[76] CIA Chapter 5, Section 2(1).

[77] CIA Chapter 3, Section 3.

[78] Ministry of Justice, Stages of the criminal procedure, Reporting an offence, https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/rikosasiankasittelynvaiheet.html, last accessed on 7 January 2020.

[79] Interview with a prosecutor from the war crimes unit on 23 September 2019.

composed of seven senior police officers and 25 investigators. They not only work on international crimes but also on homicides and other serious crimes, such as terrorism.[80]

The Prosecutor-General will give the order for criminal investigation of an offence committed abroad if, in accordance with the provisions of Chapter 1, Section 7 of the CC, Finnish law applies to the offence and if the conduct of the criminal investigation in Finland is appropriate in view of investigative considerations and the determination of criminal liability (see above on Prosecutorial Discretion). An investigation is considered appropriate when there are enough reasons and grounds to believe, that a crime has been committed.[81] Proof beyond reasonable doubt is not needed at that stage. The possibilities to get more evidence, to interview witnesses, to cooperate with local authorities and other practical challenges will be taken into consideration to determine whether the investigation can be completed.[82]

Currently, one investigation is ongoing under universal jurisdiction and concerns international crimes committed in Liberia. The NBI has experience in investigating in Liberia, Afghanistan, Iraq and Rwanda. [83]

1.2. Completion of investigations

1.2.1. Possible outcomes

Once the investigations by the authorities are complete,[84] the injured party (see below Victim Rights and Participation), the suspect, and another person whose rights, interests, or obligations may be affected, are entitled to submit a final statement to the authority on the sufficiency of the criminal investigation, the assessment of the evidence, the legal issues, or other circumstances important to the consideration of the matter. [85] The authorities, on receiving the final statements, must consider whether this statement gives cause for additional investigations.[86]

Following the consideration of the final statements, the investigations can be concluded and the case submitted to the prosecutor for consideration of charges.[87] If, however, the investigation has shown that no crime was committed or that nor charges may be brought

[80] Interview with the NBI on 23 September 2019.

[81] Interview with the NBI on 23 September 2019.

[82] Interview with the NBI on 23 September 2019.

[83] Interview with the NBI on 23 September 2019.

[84] See CIA Chapter 1, Section 2(1) for a list of matters to be investigated.

[85] CIA Chapter 10, Section 1(1) and Chapter 1 Section 5(1).

[86] CIA Chapter 10, Section 1(2).

[87] CIA Chapter 10, Section 2(1).

against anyone, the investigations can be concluded without submitting the case to the prosecutor.[88]

If the case is submitted to the prosecutor, he/she decides whether or not to bring a charge and has to consider whether the suspected offence is punishable according to the law, whether the right for its prosecution is time-barred and whether "probable grounds" exist to support the guilt of the suspect.[89] If these conditions are not met, the prosecutor cannot bring charges.[90] Before deciding on charging, the prosecutor may hear the injured party if this promotes the reaching of a decision.[91]

However, even if the conditions for charging are met, the prosecutor can decide to waive prosecution under certain circumstances (see above on Prosecutorial Discretion). The decision to waive prosecution must be communicated to the injured party.[92] In this case, the injured party has the possibility to pursue private prosecution (see below).

If the prosecutor decides to bring charges, he/she delivers a written application for a summons to the registry of the district court.[93] The application for a summons contains the facts, the name of the parties, and evidence, among other information. The summons also indicates the details of the suspected crime[94] and forms the indictment.[95]

At the time of writing this report, the Prosecutor-General has closed a total of three universal jurisdiction cases, all of them on the grounds of lack of evidence to support prosecution.[96]

1.2.2. Possible challenges by victims or NGO

The decisions not to investigate or prosecute may not be challenged by victims or NGOs. However, private prosecution may be possible (see below on Private Prosecution).

1.2.3. Time limits of investigations

According to Chapter 3, Section 11 of the Criminal Investigation Act, investigations must be conducted without undue delay. The case law of the European Court of Human Rights

[88] CIA Chapter 10, Section 2(2).

[89] Chapter 1, Section 6(1) of the Criminal Procedure Act, 689/1997, amendments up to 733/2015 included, unofficial translation by Ministry of Justice, Finland, (hereinafter **CPA**).

[90] CPA Chapter 1, Section 6a(1)(1).

[91] CPA Chapter 1, Section 8a(1).

[92] CPA Chapter 1, Section 9.

[93] CPA Chapter 5, Section 1.

[94] CPA Chapter 5, Section 3.

[95] Interview with the NBI on 23 September 2019.

[96] Interview with the NBI on 18 October 2019.

on Article 6 of the European Convention on Human Rights has to be taken into consideration in assessing undue delay.[97]

1.3. Arrest and pre-trial detention

The Coercive Measures Act deals with arrest and pre-trial detention (referred to as "remand" in the law).[98] Both arrest and pre-trial detention must not be unreasonable in light of the case, age or other personal circumstances of the suspect.[99]

1.3.1. Arrest of suspects

The decision to arrest a suspect can be taken, among other authorities, by the police or by a public prosecutor.[100] An arrest requires in principle that the person is "suspected on probable grounds in an offence."[101] Following the arrest, a request to the court for remand has to be made at the latest on the third day of the arrest.[102]

For crimes subject to a minimum sentence of two years, no additional reasons are necessary for an arrest.[103] This would apply to genocide (minimum sentence of four years),[104] aggravated crimes against humanity (minimum sentence of eight years),[105] aggravated war crimes (minimum sentence of eight years),[106] and torture (minimum sentence of two years).[107]

For crimes with a minimum sentence of one year, it is required that there is reason to suspect that the person will:

(a) abscond or otherwise evade criminal investigation, trial or enforcement of punishment;
(b) hinder the clarification of the matter by destroying, defacing, altering or concealing evidence or influencing a witness, an injured party, an expert or an accomplice; or

[97] Interview with a Finnish academic on 25 November 2019.

[98] Coercive Measures Act, 806/2011, entry into force on 1 January 2014, amendments up to 1146/2013 included, unofficial translation by Ministry of Justice, Finland (hereinafter **CMA**).

[99] Chapter 1, Section 6 and 13.

[100] CMA Chapter 1, Section 1(1)(1) and (4).

[101] CC Chapter 1, Section 5(1).

[102] CMA Chapter 3, Section 4.

[103] CMA Chapter, 1 Section 5(1)(1).

[104] CC Chapter 11, Section 1(1).

[105] CC Chapter 11, Section 4(1).

[106] CC Chapter 11, Section 6(1).

[107] CC Chapter 11, Section 9a(1).

(c) continue his or her criminal activity.[108]

These would be necessary for crimes against humanity[109] and war crimes.[110]

In addition, a person can be arrested for any crime, including international crimes discussed in this report, if

- The identity of the suspect is unknown and he or she refuses to divulge his or her name or address or gives evidently false information regarding this;[111] or
- The suspect does not have a permanent residence in Finland and it is probable that he or she will evade criminal investigation, trial or the enforcement of punishment by leaving the country.[112]

The purpose of an arrest where the suspect is unknown is to identify that person.[113]

1.3.2. Arrest of other persons

Even if there are no probable grounds for suspicion that a person has committed an offence, he or she can be arrested under the above-listed conditions, if the arrest is very important in view of anticipated additional evidence.[114]

1.3.3. Remand

During an investigation, the police or public prosecutor, among other authorities, can request the court to order remand.[115] After the investigations are concluded and the case has been sent for prosecution (see above Completion of Investigations), the prosecutor can request remand.[116]

The court can order remand under the same conditions as an arrest of suspects or other persons (see above).[117]

[108] CC Chapter 1, Section 5(2).

[109] CC Chapter 11, Section 3.

[110] CC Chapter 11, Section 5.

[111] CMA Chapter 1, Section 5(2).

[112] CMA Chapter 1, Section 5(3).

[113] Interview with the NBI on 23 September 2019.

[114] CMA Chapter 1, Section 5(2).

[115] CMA Chapter 3, Section 2(1) and Chapter 1, Section 1(1)(1) and (4).

[116] CMA Chapter 3, Section 2(1).

[117] CMA Chapter 1, Section 11(1) and (2).

1.4. Victim rights and participation at investigation stage

Parties to an investigation include the injured party and other persons whose rights, interests, or obligations may be affected by the offence.[118] When necessary, the Head Investigator can decide whether or not a person is an injured party.[119]

There is no legal definition of an injured party, but this has been developed by case law. An injured party is a person whose interests has directly been injured by an offence (i.e. the victim of the offence) or one who has is entitled to a legal claim (e.g. compensation for damage) directly based on the offence.[120] Thus, an NGO will seldom fulfil this criteria.[121] Relatives can only be considered injured party when the direct victim is dead.[122]

Injured parties have the following rights during investigation:

- **Right to information**: The investigating authority has the duty to inform the injured party on what measures will be undertaken regarding a reported offence and on their right to compensation.[123] After the initiation of the criminal investigation, the injured party has the right to obtain information about the case and on the documentation in the criminal investigation, unless this would impede the investigations or is necessary to secure important public or private interests.[124] These interests include, for example, the interest of a child or confidential information related to national security.[125] The decision to waive prosecution must also be communicated to the injured party.[126] In addition, injured parties have the right to be informed on their rights listed below. When an injured party lives abroad, he/she will be informed of his/her rights with the assistance of the authorities in the other country.[127]
- **Right to legal representation and support person**: The injured party has the right to a lawyer of his/her own choice and a support person.[128] They can be

[118] CIA Chapter 2, Section 5(1)(1) and (3).

[119] CIA Chapter 2, Section 5(3).

[120] Interview with a Finnish academic on 25 November 2019.

[121] Interview with a Finnish academic on 25 November 2019.

[122] CPA Chapter 1, Section 17.

[123] CIA Chapter 11, Section 9(1)(1) and (2).

[124] CIA Chapter 4, Section 15(1),(2),(3).

125 Interview with a prosecutor from the war crime unit on 23 September 2019.

[126] CPA Chapter 1, Section 9.

[127] Interview with the NBI on 23 September 2019.

[128] CIA Chapter 4, Section 10(1); see also CPA Chapter 2, Section 1a.

present during the questioning of the injured party by the investigating authority, unless investigative reasons stand against this.[129]

- **Right to request investigation measures**: The injured party may request questioning and other criminal investigation measures to be conducted by the investigative authorities if it is demonstrated that they may affect the matter and if they do not result in expenses that are unreasonable in view of the nature of the matter.[130] Such requests are decided upon by the Head Investigator or the public prosecutor during investigations and by the latter after charging.[131]
- **Right to attend interviews and present questions**: Injured parties together with their lawyer or support person have the right to attend questionings of witnesses or other parties, unless this hampers the investigation.[132] They also have the right to present questions during such interviews, with the permission of the investigator, [133] or afterwards if they do not attend.[134]
- **Right to request civil claim**: The injured party has also the right to pursue a civil claim in connection with the criminal case by making a request during the investigation stage (see below on Reparation).[135]
- **Right to interpretation and translation**: Injured parties have the right to receive interpretation they need.[136] Essential documents that are necessary to ensure their rights must be translated.[137]
- **Right to pre-recorded statements:** If due to young age or mental disturbance or as victim of sexual offence, the injured party cannot be heard in trial without causing him/her harm, his/her interview during the investigations can be audio/video-recorded to be used as evidence in trial later on.[138]
- **Right to submit final statement on investigations:** Once the investigations by the authorities are complete, the injured party is entitled to submit a final statement to the authority on the sufficiency of the criminal investigation, the assessment of the evidence, the legal issues, or other circumstances important to the consideration of the matter.[139]

[129] CIA Chapter 7, Section 12.

[130] CIA Chapter 3, Section 7(1) and Chapter 2, Section 5(1)(1).

[131] CIA Chapter 3, Section 7(2).

[132] CIA Chapter 7, Section 13(1).

[133] CIA Chapter 7, Section 17.

[134] CIA Chapter 7, Section 19.

[135] CPA Chapter 3, Section 9(1) and (3).

[136] CIA Chapter 4, Section 12(4).

[137] CIA Chapter 4, Section 13(1).

[138] CIA Chapter 9, Section 4(1).

[139] CIA Chapter 10, Section 1(1) and Chapter 1 Section 5(1).

- **Right to receive case file:** The injured party through their appointed legal counsel has the right to receive a copy of the record of the criminal investigation that is prepared upon its conclusion.[140]

2. Trial Stage

Where the prosecutor decides to bring a charge after the conclusion of the investigation, he/she can do so by filing a written application for summons the court.[141] Following a summons of the defendant by the court and a preparatory hearing, the case is transferred to the main hearing.[142]

For offences committee abroad, the competent first instance court is the District Court of:

- the place where the accused lives or resides;
- the place where the accused is found; or
- the place of residence of the injured party.[143]

2.1. Possible outcomes

The court issues a judgment on conviction or acquittal, i.e. the judge shall decide whether the defendant is guilty or not.[144] The court must base its decision on the material provided to court at the main hearing (see below Admissibility of Evidence).[145] A judgment of guilt may be made only on the condition that the defendant's guilt was proven beyond reasonable doubt.[146]

2.2. Possible challenges by victims or NGO

The injured party can appeal the judgment.[147] This right to appeal applies in the case of a conviction or an acquittal, and even if the prosecutor does not appeal, but unlike the prosecutor, the injured party may not appeal in favor of the defendant.[148]

---

[140] CIA Chapter 9, Section 6(5).

[141] CPA Chapter 5, Section 1(1).

[142] CPA Chapter 5, Section 12(1); see Chapter 5, Section 8 and 9 on summons, and Chapter 5 Section 10 to 11 on preparatory hearing.

[143] CPA Chapter 4, Section 2.

[144] CPA Chapter 11, Section 4(1).

[145] CPA Chapter 11, Section 2(1).

[146] CJP Chapter 17, Section 3(2).

[147] CPA Chapter 1, Section 14(3).

[148] *Hallituksen esitys Eduskunnalle rikosasioiden oikeudenkäyntimenettelyn uudistamista alioikeuksissa koskevaksi lainsäädännöksi* (unofficial translation: Government proposal to Parliament on Legislation on the Reform of Criminal Justice Proceedings in First Instance Courts), 82/1995, 15 September 1995, available at: https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_82+1995.pdf, p. 44.

The judgment of the District Court can be appealed to the Court of Appeal.[149] Judgments of the latter can be appealed to the Supreme Court.[150]

2.3. Victim rights and participation at trial stage

Injured parties have the following rights at trial stage:

- **Right to endorse charges**: At the trial stage the injured party has the right to "endorse" charges brought by the prosecutor or another injured party.[151] This allows the injured party to request to adjust the charges brought by the prosecutor provided that the matter as such is not completely changed.[152] This provides the possibility to refer to other provisions or a new fact. In addition, the injured party may present new evidence or claim more severe sentences for the defendant than the prosecutor.[153]
- **Right to present evidence**: If the injured party endorsed the charges, he/she can present new evidence in support of these charges.[154]
- **Right to legal representation**: In cases involving an offence against life, health, or liberty, the court may appoint a trial counsel paid by the State if the injured party has compensation claims in the case.[155] The counsel must be a public legal aid attorney or an advocate.[156] In general, the injured party can chose the counsel to be appointed.[157]
- **Right to support person**: Under the same conditions as the appointment of a counsel for the injured party, he/she has the right to an adequately qualified support person if he/she is heard in person in the proceedings.[158]
- **Right to attend trial**: The injured party has the right, and most often, obligation to be present during the trial.[159] If the injured party is not in the country, he/she

[149] Chapter 25 of the Code of Judicial Procedure, 4/1734, amendments up to 732/2015 included, unofficial translation by Ministry of Justice, Finland (hereinafter **CJP**).

[150] CJP Chapter 30.

[151] CPA, Chapter 1, Section 14(3).

[152] *Hallituksen esitys Eduskunnalle rikosasioiden oikeudenkäyntimenettelyn uudistamista alioikeuksissa koskevaksi lainsäädännöksi* (unofficial translation: Government proposal to Parliament on Legislation on the Reform of Criminal Justice Proceedings in First Instance Courts), 82/1995, 15 September 1995, available at: https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_82+1995.pdf, p. 44.

[153] Ibid.

[154] CPA, Chapter 1, Section 14(3).

[155] CPA Chapter 2, Section 1a(3) and Section 10(1).

[156] CPA Chapter 2, Section 2(1).

[157] CPA Chapter 2, Section 2(2).

[158] CPA Chapter 2, Section3.

[159] CPA Chapter 8, Section 8(1) and Section 1(2).

can be represented by counsel in Finland, but if he/she is to be heard in person, he/she must be present in person.[160]

- **Right to pursue civil claim**: The injured party has also the right to pursue a civil claim in connection with the criminal case through the prosecutor or through a direct request to the court (see below on Reparation).[161]
- **Right to make statements at trial**: The injured party has the right to make statements on their claims and positions during the main trial hearing.[162]
- **Right to interpretation and translation**: Injured parties have the right to receive cost-free interpretation.[163] The judgment and court orders, which are necessary to ensure their rights, must be translated.[164]

Third-party interventions are not possible under Finnish law.[165]

3. Private prosecution

In principle, the prosecution of criminal cases is the responsibility of the prosecutor.[166] However, if the prosecutor has decided to waive prosecution or to withdraw charges, to interrupt or close investigations, or not to investigate, an injured party may bring a charge for an offence (private prosecution).[167]

Private prosecution is also possible if, on the decision of the head investigator, the performance of criminal investigation measures have been postponed.[168] Criminal investigation measures may be postponed if it is necessary for the clarification of the offence, and if it does not endanger the life, health, or liberty of a person or considerable danger to the environment, property, or assets.[169] For example, this can be used in cases where some clarification to the case is expected to be obtained later.[170]

[160] Interview with a Finnish Academic on 25 November 2019.

[161] CPA Chapter 3, Section 9(1) and Section 10(1).

[162] CPA Chapter 6, Section 7(1).

[163] CPA Chapter 6a, Section 2(3).

[164] CPA Chapter 6a, Section 3(1).

[165] Interview with a Finnish Academic on 23 September 2019.

[166] CPA Chapter 1, Section 2.

[167] CPA Chapter 1, Section 14(1).

[168] CPA Chapter 1, Section 14(1) and Section 15(1).

[169] CIA Chapter 3, Section 12.

[170] Interview with a prosecutor from the war crime unit on 23 September 2019.

The injured party can bring charges by delivering a written application for a summons to the District Court.[171] The application for a summons shall indicate, among other elements, the defendant, details about the act charged, the offence, and the evidence.[172] If the injured party assumes the prosecution of the charge, he/she shall notify the court in writing within 30 days after receiving the notice of the charge withdrawal.[173]

The court can dismiss the application if it is manifestly without basis or incomplete.[174] Otherwise, the court can proceed to trial in the same manner as with charges of the prosecutor (see above Trial Stage).[175] The injured party takes on the role of the prosecutor throughout the trial.[176] The court may also hear the State prosecutor on the case.[177]

If the injured party has died, the spouse, children, or, secondarily, parents or siblings have the right to private prosecution.[178]

Rules of evidence

1. At investigation stage

1.1. Necessary information for a complaint

To launch an investigation, the police need a detailed description of what happened and who the persons involved are.[179] The information required includes the following:

- A description of what happened and how;
- The precise time and place of the incident;
- The offender's name, if the offender was identified;
- Description of the offender (age, height, build, facial features, eye colour, teeth, speech, hands, way of walking, clothing);

[171] CPA Chapter 7, Section 1(1).

[172] CPA Chapter 7, Sections 2 and 3.

[173] CPA Chapter 1, Section 15(1) and (2).

[174] CPA Chapter 7, Section 5.

[175] CPA Chapter 7, Section 6 to 22.

[176] See CPA Chapter 7, Section 22.

[177] CPA Chapter 7, Section 24.

[178] CPA Chapter 1, Section 17.

[179] Police of Finland, Report of an offence, https://www.poliisi.fi/crimes/report_of_an_offence, last accessed on 9 January 2020.

- If the offender is dangerous (armed, state of mind, threats, substance abuse etc.).[180]

The complaint should contain all evidence available in the case.[181]

1.2. Necessary evidence to open an investigation and for indictment

The threshold to open an investigation in Finland is the existence of "a reason to suspect that an offence has been committed." [182] Reasonable grounds can be based on information from police intelligence actions, from NGOs, cooperation with the Intelligence Service of Finland and/or other law enforcement actors, accusations of asylum seekers or immigrants, or social media.[183] There are no restrictions on the type of evidence that can be used. [184]

The threshold to issue an indictment is the existence of "probable grounds to support the guilt of the suspect."[185]

2. At trial stage

2.1. Admissibility of evidence

2.1.1. General principles

In Finland, the principle of freedom of evidence applies: "The court shall consider the probative value of the evidence and the other circumstances thoroughly and objectively on the basis of free consideration of the evidence, unless provided otherwise by law."[186] However, the court can reject evidence that is irrelevant to the case or otherwise unnecessary, that can be replaced with evidence that is less costly or difficult to obtain or more credible, or that cannot be obtained and the decision in the case can no longer be delayed.[187]

Pre-recorded statements can only be used in court if provided by law or if the person who gave the statement cannot be heard at trial or has not been contacted, and the decision in

[180] Ibid.

[181] Interview with the NBI on 23 September 2019.

[182] CIA, Chapter 3, Section 3(1).

[183] Interview with the NBI on 23 September 2019.

[184] Interview with the NBI on 23 September 2019.

[185] CPA, Chapter 1, Section 6(1)(3).

[186] CJP Chapter 17, Section 1(2).

[187] CJP Chapter 17, Section 8.

the case may not be delayed further.[188] However, pre-recorded audio-video recordings of statements can be used in cases of vulnerable persons, e.g. victims of sexual offences, if the defendant had an opportunity to ask questions.[189]

In addition, the law imposes limitations on certain testimonies:[190]

- no testimony shall be given that could impede the clarification of the case[191] or if a very important public or private interest must be secured;[192]
- police personnel and public officials are submitted to a non-disclosure obligation regarding the identity of their informants when it could endanger her or his safety;[193]
- certain professions, e.g. lawyers, doctors, priests, mediators, public officials, are exempt from testifying due to their confidentiality obligations towards clients;[194]
- no one may testify regarding information that is confidential for the purposes of national security or relations with other state or international organization;[195]

2.1.2. Unlawfully obtained materials

Evidence that has been obtained through torture may not be used.[196] The same applies to evidence obtained through the threat of coercive measures or otherwise against the suspect's will and contrary to the right to remain silent.[197]

In other cases, the court may use evidence that has been unlawfully obtained, unless such use would endanger the conduct of a fair trial, taking into consideration the nature of the case, the seriousness of the violation of law involved in the obtaining of the evidence, the significance of the method with which the evidence was obtained in relation to its credibility, the significance of the evidence in respect of the decision in the case, and other circumstances.[198] For example, if a wiretapping regarding a specific crime is ordered, and during the wiretapping the prosecutors get information about a different

[188] CJP Chapter 17, Section 24(2).

[189] CJP Chapter 17, Section 24(3).

190 Interview with the NBI on 23 September 2019.

[191] CJP Chapter 17, Section 12(2) and CIA Chapter 4, Section 15(2).

[192] CJP Chapter 17, Section 12 (2) and CIA Chapter 4 section 15(3).

[193] Chapter 7, Sections 1 and 2 of the Police Act, 872/2011, amendments up to 1168/2013 included, Translation from Finnish, Ministry of Interior, Finland.

[194] CJP Chapter 17, Section 11, 12(1), 13(1), 14, 16(1).

[195] CJP Chapter 17, Section 10.

[196] CJP Chapter 17, Section 25(1).

[197] CJP Chapter 17, Section 25(2).

[198] CJP Chapter 17, Section 25(3).

crime, the prosecutor can use this wiretapping even though the court permission did not include the crime it was ordered for.[199]

2.1.3. Open source materials

According to the principle of freedom of evidence, within the limits set above, open source materials are admissible.

Social media content has been used as main evidence in two cases.[200] In the *Jebber Salman Ammar* case, the accused was convicted for war crimes and was given a 16-month suspended sentence after he posted three images of himself on his public Facebook profile, without restricted access for the public, with the decapitated head of an Islamic State group fighter.[201] The pictures posted on Facebook were used as evidence of his crime.

In the *Hadi Habeeb Hilal* case, the accused was found guilty of a war crime and was given a 13-month suspended sentence for posting an image of himself on his public Facebook profile, without restricted access for the public, with the decapitated head of an Islamic State fighter.[202]

The NBI widely uses YouTube videos and Facebook content, such as pages, photos, and written content. For example, the NBI has used photos from the battlefield or of arrested prisoners of war.[203]

2.2. Introduction of evidence

As a main rule, the prosecutor must present his/her evidence in the application for summons or without delay after bringing the charges.[204] If the court considers the investigation to be incomplete, it can order the prosecutor to supplement the evidence.[205]

Before the main hearing, the court itself can order that new evidence be produced, such as expert testimony, documents or written evidence.[206] If a party wishes to introduce

[199] Interview with a prosecutor from the war crimes unit on 11 October 2018.

[200] Interview with a Finnish academic on 23 September 2019.

[201] Pirkanmaa District Court, Judgement 16/112431, Case No. R 16/1304, 18 March 2016, available at: http://www.eurojust.europa.eu/doclibrary/genocide-network/Pages/national-jurisprudence.aspx.

[202] Kanta-Häme District Court, Judgement 16/112863, Case No. R 16/214, 22 March 2016, available at: http://www.eurojust.europa.eu/doclibrary/genocide-network/Pages/national-jurisprudence.aspx.

[203] Interview with the NBI on 23 September 2019.

[204] CPA Chapter 5, Section 4.

[205] CPA Chapter 5, Section 7.

[206] CPA Chapter 5, Section 16.

evidence at trial that was not previously introduced, he/she must notify the court before the main hearing and indicate what he/she wishes to prove with that evidence.[207]

Witness and victim protection

1. In-court protection

The court can order various protective measures during a trial hearing.

On the written application of the prosecutor, the suspect, or the injured party, the court may decide to hear a witness without revealing the identity or contact information, if the crime has a minimum sentence of eight years or if the procedure is necessary to protect him/her or his/her relatives from a serious threat to life or health.[208] The former would apply to aggravated crimes against humanity or war crimes.[209] The parties have an opportunity to ask questions to the witness, even if their identity is not revealed.[210]

If necessary in order to protect the identity of a witness, the court may:

- order that this person be heard behind a screen or without the presence of the defendant or, without being present in person, through the use of a telephone or video contact or other suitable means of communication.[211]
- order that the voice of the witness may also be altered so that the person cannot be recognized by his or her voice.[212]
- order that the person be heard without the presence of the public to protect his or her identity.[213]

Any person testifying as witness, including injured parties, may be examined in the main hearing behind a screen or without the presence of a party or other person, if the court deems that this is appropriate and that such a procedure is necessary in order to protect him/her or his/her relatives from a threat against life or health, or to ensure that the person being heard can speak freely, or to avoid disturbance of the testimony.[214]

[207] CPA Chapter 5, Section 16.

[208] CPA Chapter 5, Section 11a(1).

[209] CC Chapter 11, Section 4 and 6.

[210] CJP, Chapter 17, Section 53.

[211] CJP, Chapter 17, Section 53.

[212] CJP, Chapter 17, Section 53.

[213] CJP, Chapter 17, Section 53.

[214] CJP Chapter 17, Section 51.

In addition, they may be heard in the main hearing without being present in person, through the use of video conference or other suitable technical means of communication by which the persons participating in the hearing have audio and video contact with one another, if the court deems this appropriate and if the procedure is necessary in order to protect him/her or his/her relatives from a threat against life or health.[215]

2. Witness protection programme

If a person or his/her relatives face a serious threat to life or health in a criminal case and the threat cannot be effectively prevented by other measures, the person of his/her relatives can be included in the witness protection programme. This includes measures such a relocation and assigning of a new identity.[216]

Inclusion in the programme requires that the person:

- has been informed of the main content of the programme and of the conditions for the termination of the programme;
- has given his/her written consent to the implementation of the programme and the measures contained therein;
- has provided a statement of his/her personal circumstances and legal obligations affecting the implementation of the witness protection programme; and
- has been assessed to be suitable for the programme.[217]

The Head of the NBI decides on the initiation and termination of a person's inclusion in the witness protection programme.[218]

3. Other protection measures

During the criminal investigation, protection measures can be applied if they do not significantly delay the procedure or cause any other harm, e.g. by conduct questionings in separate facilities designed for that purpose or allowing victims to choose the gender of the interviewer.[219]

[215] CJP Chapter 17, Section 52 (1).

[216] *Laki todistajansuojeluohjelmasta* (unofficial translation: Act on Witness Protection Programme), 6.2.2015/88 (hereinafter **AWPP**), Section 2.

[217] AWPP, Section 2.

[218] AWPP, Section 2.

[219] Ministry of Justice, Victim Protection, Protection Measures, https://oikeus.fi/en/index/esitteet/josjoudutrikoksenuhriksi/victimprotection.html, last accessed on 9 January 2020.

Reparation for victims in criminal proceedings

1. Civil claim against the perpetrator

When a charge is brought for an offence, a civil claim arising from the offence may be heard in connection with the charge.[220] Victims can claim monetary compensation, as well as restitution to a certain situation, for instance restitution of property.[221]

On the request of the injured party, the prosecutor is to pursue the civil claim of the injured party in the criminal proceedings. [222] This must be possible without essential inconvenience and the claim should not be obviously unfounded.[223] The injured party shall make the request during the criminal investigation or to the prosecutor and state the circumstances on which the claim is founded.[224]

If the prosecutor declines to pursue the civil claim of the injured party, he/she is to notify the injured party thereof.[225] The injured party can directly submit his/her claim to the court, if s/he has given notice of the claim to the prosecutor during the investigations or if the prosecutor refuses to pursue the claim.[226]

Where the charges are dismissed or withdrawn, or where the prosecution resulted in an acquittal, the court may order that the civil claim is still heard.[227] The judgment in the case should include the ruling on the civil claim.[228] The prosecutor can appeal this ruling together with the appeal against the judgment.[229]

At the time of publishing this report, there have been no universal jurisdiction cases in Finland where the injured party has put forward a civil claim.[230]

---

[220] CPA Chapter 3, Section 1.

[221] Interview with an academic on 8 February 2020.

[222] CPA Chapter 3, Section 9(1).

[223] CPA Chapter 3, Section 9(1).

[224] CPA Chapter 3, Section 9(2).

[225] CPA Chapter 3, Section 9(1).

[226] CPA Chapter 3, Section 10(1).

[227] CPA Chapter 3, Sections 6(1) and 8.

[228] CPA Chapter 11, Section 10(1).

[229] CPA Chapter 3, Section 9(3).

230 Interview with a Finnish academic on 27 November 2019.

2. Compensation by the State

The Act on Compensation for Crime Damage allows for compensation to be paid by a State fund for personal injuries and property damage caused by a crime.[231] The person sustaining these injuries or damages is entitled to such compensation.[232]

For crimes committed outside of Finland, the compensation is limited to personal injury, including for instance medical costs, loss of income, and pain and suffering.[233] In addition, it is a prerequisite that the victim was a permanent resident of Finland at the time of the offence and that his/her stay abroad was because of work, study, or a comparable reason.[234] However, discretionary compensation may be allowed in such cases, if the payment of the compensation is to be deemed justified, especially in view of the connection to Finland, the nature of the injury, the relationship between the victim and perpetrator, and the victim's access to other sources of compensation.[235]

Immunities

Finland has ratified the Vienna Convention on Diplomatic Relations[236] and Vienna Convention on Consular Relations,[237] which set out the rules on privileges and immunities of foreign diplomatic missions and consular posts.[238] Diplomats enjoy comprehensive immunity, whereas other mission staff enjoy immunity only for acts performed in the course of their official duty.[239]

The same immunities apply to members of delegations and their family members attending intergovernmental conferences or participating in special missions in Finland.[240] In addition, the head of a foreign state, the head of the government, the

[231] Section 1(1) of the Act on Compensation for Crime Damage, 935/1973, unofficial translation by Ministry of Justice, Finland (hereinafter **Compensation Act**).

[232] Compensation Act Section 1a.

[233] Compensation Act Section 2a(1) and Section 5.

[234] Compensation Act, Section 2a(1).

[235] Compensation Act Section 2a(2).

[236] Finnish Treaty Series 4/1970.

[237] Finnish Treaty Series 50/1980.

[238] Ministry of Foreign Affairs of Finland, Diplomatic privileges and immunities in Finland, June 2018 (hereinafter **MofA Handbook**).

[239] MofA Handbook, Chapter 2.2.

[240] Section 1 and 10(1) of the Act on the Privileges and Immunities of International Conference and Special Missions, 572/1972, amendments up to 1649/ 1991 included, unofficial translation by Ministry for Foreign Affairs, Finland (hereinafter **Special Missions Act**).

Minister for Foreign Affairs and other persons of high rank, in the capacity of head or member of a delegation or special mission enjoy all immunities accorded to them under international law and custom.[241]

Outside of these specific laws, the CC does not contain provisions regarding immunity for foreign officials. However, Finnish authorities are bound by any restrictions to the application of criminal law as dictated by international treaty and customary law.[242]

In practice, this provision is understood to prohibit the arrest or interrogation of a suspect who enjoys immunity under international law.[243] When a person entitled to immunity status is a suspect, investigation measures will be undertaken but the suspect will not be interrogated. The Ministry of Foreign Affairs is informed as soon as possible if such a person is a suspect of a crime.[244] This may help the investigating authorities in avoid any dispute between the countries involved. The Ministry of Foreign Affairs can request the other State to waive immunity.[245]

At the time of writing this report, immunities have not been invoked in universal jurisdiction cases.[246]

***

[241] Special Missions Act Section 5.

[242] CC Chapter 1, Section 15.

[243] Interview with the NBI on 18 October 2019.

[244] Interview with the NBI on 18 October 2019.

[245] Interview with the NBI on 18 October 2019.

[246] Interview with the NBI on 18 October 2019.

The **Open Society Justice Initiative**, part of the Open Society Foundations, uses strategic litigation and other kinds of legal advocacy to defend and promote the rule of law, and to advance human rights. We pursue accountability for international crimes, support criminal justice reforms, strengthen human rights institutions, combat discrimination and statelessness, challenge abuses related to national security and counterterrorism, defend civic space, foster freedom of information and expression, confront corruption and promote economic justice. In this work, we collaborate with a community of dedicated and skilful human rights advocates across the globe, and form part of a dynamic and progressive justice movement that reflects the diversity of the world.

TRIAL International is a non-governmental organization fighting impunity for international crimes and supporting victims in their quest for justice. TRIAL International takes an innovative approach to the law, paving the way to justice for survivors of unspeakable sufferings. The organization provides legal assistance, litigates cases, develops local capacity and pushes the human rights agenda forward. TRIAL International believes in a world where impunity for international crimes is no longer tolerated. Only when victims are heard and perpetrators held accountable can the rule of law prevail.

TRIAL International

Rue de Lyon 95
1203 Geneva
Switzerland

+41 22 321 61 10
info@trialinternational.org

www.trialinternational.org

OPEN SOCIETY
JUSTICE INITIATIVE

Open Society Foundations
224 West 57th Street,
New York, 10019, USA

+1 212 548 0600
info@justiceinitiative.org

opensocietyfoundations.org

This publication was co-funded by the European Union. Its contents are the sole responsibility of TRIAL International and OSJI and do not necessarily reflect the views of the European Union.