LAW SOCIETY

EU AGIS 06 PROJECT: FINLAND'S RESPONSE[1]

1. Introduction

The two most important laws on legal procedures are the Code of Judicial Procedure ("CJP"), which mainly applies to civil procedures but also includes, among other things, provisions for the production of evidence, and the law provided on legal proceedings concerning criminal cases ("CC").

In criminal procedure, the provisions on the production of evidence provided in CJP 17 are obeyed. The burden of proof lies with the prosecutor (and the complainant) in a criminal case: the plaintiff has to prove the facts his claims are based on. The burden of proof means that the respondent does not have to prove his/her innocence. The obligation to supply evidence lies with the prosecutor's side and the prerequisite for a conviction is so-called "full evidence". In accordance with what is generally accepted, a conviction nowadays requires for the guilt of the defendant to have been proved with such certainty that it is beyond reasonable doubt.

The prosecutor primarily has to aim at reaching a righteous or justified conclusion and has to take into account the facts that support the respondent's report and the evidence against his/her guilt. On the other hand, in a trial where the respondent has legal counsel, the prosecutor does not have to focus on highlighting the facts in a good light for the defendant when presenting the case. In a criminal investigation, the starting point is that the police have a presumption of innocence and that the prosecutor is under an obligation to ensure that all the material favouring the respondent's case has been compiled in the pre-trial investigation for the consideration of charges. The prosecutor is not a party in a criminal investigation, nor is the respondent his/her adverse party.

The evidence presented by the prosecutor thus forms the basis of the trial in a criminal procedure. However, in practice, a defendant of a criminal case generally has to produce evidence to support his/her innocence.

[1] The Task Force Report from Finland represents the views of the Finnish Task Force and may not represent the views of the Law Society of Enlgand and Wales.

In trial, the prosecutor has to supply evidence to substantiate his/her charges, i.e. provide evidentiary support, and the starting point for the defence is to prove that there is insufficient evidence to pass judgement. Proceeding to pass sentence on somebody presumes that no presentation of evidence is missing from any claim or relevant legal fact and that the presentation of evidence has been deemed sufficiently reliable and certain for every relevant subject.

In Finland, the right of interested parties to present evidence in court is not limited to specific ways of presenting evidence, nor have any criteria binding the court been fixed for the reliability of such evidence. It is, however, up to a court to decide to what extent, if any, certain evidence can be taken into account by the court when reaching its decision (the so-called principle of free evaluation of evidence). Illegal procedure cannot be justified or authorized on the basis of the principle of free evaluation of evidence. Furthermore, the prohibition of benefiting from illegally obtained evidence is included in this principle. Even though there are no particular provisions in the Finnish legislation on this matter, the main principle is: the more serious the breach of a fundamental right, the more obvious/likely it is that the use of illegally obtained evidence shall be prohibited i.e. cannot be presented in court. The court considers on a case-to-case basis whether a piece of evidence can be used or not.

In the Finnish law on procedure, the principle of a so-called “free” evaluation of evidence prevails (CJP 17:2.1): having carefully evaluated all the facts that have been presented (strength of evidence), the court shall decide what is to be regarded as the truth in the case at hand. The court can, within evaluation of the evidence, also consider the reliability of said evidence. The court is always held to justify the end result of its evaluation of the evidence using objective factors.

Even though the evaluation of the evidence is “free” in Finland, in light of what is referred to as “the threshold for condemning” (i.e. there being “no reasonable doubt”) that is applied there, the evidence against an accused has to be of a sufficiently high quality.

If the court still has any fundamental open questions, after the production of evidence, the reasonable doubt has not been eliminated.

CJP 24:3 obliges the court to state reasons for its decisions. Judgment shall not be based on a circumstance that has not been referred to by one of the parties in support of their claim. An acquittal in criminal procedure can be based on facts that are not referred to. Even the constitution guarantees a justified "statement of reason" in each case. The main purpose of the statement of reason is to make the decision/sentence of the court understandable. In a well justified statement of reason, the evidence presented to the court is weighed and it is openly stated why the court ended up considering the evidence to be sufficient or insufficient or why a certain piece of evidence was found to be more reliable than another. Neglecting the obligation to state reasons is a procedural error and a higher court may, on appeal or ex officio, take the error into account and return the case to the court for reconsideration. The decision can also be cancelled by means of an extraordinary appeal on the basis of a procedural fault, even if it were legally valid.

2. Election of an expert and his/her qualifications

CJP (17:44) prescribes: "If, in the consideration of a question which must be ascertained on the basis of specialist professional knowledge, it is deemed necessary to use an expert witness, the court shall obtain a statement on this question from an agency, a public official or another person in the field or entrust the making of such a statement to one or more experts in the field who are known to be honest and competent."

The provisions on expert witnesses are found in CJP Chapter 17 Section 44-55 § (*Enclosure 1*). To be more specific, these provisions only apply to expert witnesses *appointed by the court*. When *the interested parties* nominate a so-called expert to be heard (”an expert witness”), the hearing shall take place in accordance with the normal provisions on hearing of witnesses (CJP section 17). Hearing a witness is based on the order of the court or an assignment given to an expert by an interested party. The interested party may also ask the court to appoint an expert.

In practice, most experts are *nominated by the interested parties* and the provisions on witnesses shall apply to them. Also, the provisions of CJP 17:50 and 17:51.2, which deal with making a statement in writing and allowing an expert to make the statement orally, shall be applied to witnesses nominated by an interested party. Witnesses of the interested

parties are generally called “expert witnesses,” even though this term is not used in the legislation. An expert witness refers to a person who describes facts which he/she has specialist knowledge of. Even though the difference between an expert witness and an expert is not always clear, the provisions set out for a witness are applied to an expert witness.

A witness describes what has happened, whereas an expert witness describes, on the basis of his/her expertise, the facts he/she has observed. An expert witness can have the role of an expert at the same time, if he/she also establishes so-called “abstract empirical rules.” If it is a person’s task during a trial or prior to a trial, to observe an object/person (in order to give a doctor’s certificate to the court, for example) and make a statement of his/her observations on the basis of his/her expertise, the person in question may act as an expert.

There are no particular qualifications for *an expert appointed by the court* but the consideration of his/her qualifications shall be with the court. In practice, experts or expert witnesses are people who have a vocational degree in a certain field. A person appointed as an expert may also have a special professional qualification of his/her own trade organization which increases the appreciation of his/her vocational proficiency. This is prevailing practice in the field of auditing. The qualification criteria for a person to be appointed as an expert state that the person who is to provide the required statement has to be honest and competent in the field in question. Authorities to be heard as experts are regarded as persons who meet these criteria but the qualifications are considered individually for private persons. An expert has to be objective because the court has to be able to trust the expert’s statement. A person is incapable of acting as an expert, if he/she has a relationship with the interested parties and therefore his/her reliability has to be regarded as diminished. Reasons for disqualification of an expert are thus more extensive than those of a witness and resemble the disqualification of a judge in their scope.

Before appointing an expert, the court has to hear the parties involved concerning this matter. The starting point is that the court should use an expert whom the interested parties have agreed on, if he/she is considered to be suitable. The expert in question also has to give his/her consent to the assignment.

The court can appoint an expert to make a statement on a certain issue. An expert who has made a statement in writing only has to be heard orally in court if the interested party demands this and on the provision that the hearing/testimony is obviously not insignificant or if the court regards the testimony as necessary for some other reason. A written statement makes it easier for the court to get thoroughly acquainted with the scientific details and justifications of the statement. A written statement is presented in the course of the trial, during which it has to be read aloud - completely or partly - unless the court decides otherwise for some particular reason. The expert statement thus becomes trial material that has to be taken into account in the court's decision.

An expert who is heard in person in court has to swear an expert's oath or give a corresponding affirmation. He/she promises under oath to fulfil the assignment given to him/her to the best of his/her understanding or capabilities. The provisions regarding witnesses apply to the coercive measures available against expert witnesses and the compensation of the costs incurred by the parties. However, a non-compliant expert witness shall not be brought to court nor compelled to serve by means of imprisonment. An expert is not obliged to reveal any business or professional secrets, unless such is required by compelling circumstances.

With regard to *an expert nominated by an interested party*, the legislation relating to witnesses is applied. They are heard as witnesses and they shall make their statements orally. In addition to this, they often make a written statement in the pre-trial investigation phase, which is included in the pre-trial investigation material. As for the jurisprudential expert statements, these statements are usually only taken in writing.

An expert nominated by an interested party swears a witness's oath or gives an affirmation and he/she has the same kind of duty as a witness, to testify and tell the truth. The oath obliges him/her to keep to the truth and the sanction for perjury is imprisonment. The significance of an expert's oath is questionable, for it may be impossible to prove part or all of an expert's accounting on the basis of empirical/general rules that his/her views are (not) true. An expert's value judgments and scientific conclusions do not belong to the sphere of his/her duty to tell the truth.

According to the principle of "free" evaluation of evidence, a court can freely consider the strength of each piece of evidence as proof and is obliged to. The interested party can thus freely elect the expert of his/her choice within the provisions on qualifications. Any other person except an interested party can be heard as a witness. According to the Code of Judicial Procedure it is not allowed to examine a person as a witness, if he/she is on trial for the same offence or an offence which has an immediate coherence with the offence that forms the basis of the charge at hand, nor can a person be summoned to testify if he/she is the subject of a summary penal judgment or fixed penalty for the offence referred to above.

The law on pre-trial investigation Article 46 includes a particular provision on the use of an expert during the pre-trial investigation. The person in charge of inquiries has the right to obtain statements from experts, if necessary. The expert has to be impartial with regard to the case and the parties. The person in charge of inquiries also has to take into account the requests of the parties concerning the use of experts. The law prescribes that hearings and other investigation measures requested by either/any of the parties have to be performed, if said party proves that they may be factors influencing the decision in the matter and the costs incurred by them are not unreasonable with regard to the resolution of the case. Use of an expert in the pre-trial investigation is allowed only if required and the person in charge of inquiries makes the final decision on the requirement. A record of the pre-trial investigation is drawn up and the parties have the possibility to give their opinions with regard to the record.

3. Presentation of evidence by experts

Regular expert witnesses

In Finland it is extremely rare to use an expert *appointed by the court* in criminal cases. The court can *ex officio* decide on the use of experts and on the number of experts. If the court deems that the clarification of (a rule of) experience related to a specific matter requires expertise, it can request a professional statement on the matter in question from an office or civil servant who is specialized in the field or one or more private individuals who have expertise in the field in question. Appointing an expert requires the consent of

the person in question unless he/she is obliged to act as an expert due to the public office they hold or their position according to a special provision.

Requesting an expert's statement is almost only of relevance in situations whereby the court orders the respondent to undergo a psychiatric examination/evaluation in order to find out his/her responsibility or irresponsibility. In practice, such a statement is most often requested in situations whereby the act that has been committed constitutes an offence against life. The statement is in that case requested from the National Board of Medico-Legal Affairs (TEO). The actual psychiatric examination is carried out at a mental hospital assigned by the National Board of Medico-Legal Affairs. Once the psychiatric examination has been carried out, the National Board of Medico-Legal Affairs will draw up its statement for the court. The statement does not bind the court but the court usually does not depart from it. The courts can request other kinds of expert statements too but, in practice, they do not.

Expert witnesses nominated by the parties

The parties and in particular the prosecutor, who has to provide evidentiary support to substantiate his/her charge/claim, often present different kinds of statements as written proof, e.g. statements from the Crime Laboratory of the National Bureau of Investigation. In general both parties will obtain an expert statement if an issue in the case is unclear. In some instances the highest court may have requested an expert medical statement on the influence or danger of a drug.

The prosecutor usually presents documents characterized as expert statements as written evidence. Such documents are e.g. statements on drug examinations, statements on the authenticity of a document and medical certificates of the bodily injuries of an assault. It is extremely rare for any of the parties to contest the content of such statements. In certain statements an expert's assessment of the probability of a circumstance is presented (for instance, how probable it is that a document has to be regarded as authentic). In the case of such statements, the parties aim to highlight facts supporting their own opinions. It may be necessary to hear the writer of the statement in person too (in court) in these situations, and this sometimes occurs. The final consideration of the significance of the

statement remains with the court. It is also possible to hear a person's evidence/statement via the telephone or by means of a video connection.

The basic principle in Finland is that the writer of statements of this kind is not called to court to be heard orally. However, in situations whereby the content of a statement is contested, the prosecutor should call the writer as a witness in the case. He/she would consequently be heard in person in court and the regular provisions on hearing a witness would apply.

The nature of statements relating to economic offences such as reports on tax inspections and special auditor's reports is such that the principle or content of the report is contested. That is why the prosecutor usually presents such a statement as written evidence and, at the same time, calls the writer as a witness.

Oral hearing/Testimony

In Finland it is common for the prosecutor to call a tax inspector and/or an expert in bookkeeping and auditing to be heard as an expert. There are also situations in case law where the respondent appoints another expert in bookkeeping and auditing to present counterevidence. In situations like this the role of witnesses may be problematic. For example, a tax inspector makes a statement with regard to his/her own inspection report and the observations he/she has made thereto. The tax inspector is not only a witness reporting empirical experience but he/she also reports facts of the case. The same applies to an expert in bookkeeping and auditing, who became conversant with the case doing the auditor's special report. *For the defence*, their own expert evidence is greatly binding for the facts of an individual case. For instance in tax crimes, a tax inspector or liquidator appointed by the prosecutor is a representative of an interested party from the point of view of the defence. From the point of view of the defence, the impartiality of the witness may then be questionable. The defence usually does not have a "competitive" expert witness in a case like this. Instead, the defence may appoint expert witnesses to report e.g. on registration methods (bookkeeping crime, tax crime), development of markets and exchange rates and on what you should have observed or concluded (communication crime, abuse of internal information) or known about market value method (debtor crimes) at a certain point of time.

The same kind of situations can occur e.g. in offences in office, e.g. negligent manslaughter where a doctor is a respondent. Several doctors may be heard as witnesses. At worst you end up in a situation, whereby the court is unable to obtain an impartial statement it requires from the group with the expertise but gets a slanted view of how the issue is generally examined by "experts" nominated by both parties. It is a part of the nature of medicine that experts can, for example, disagree on the seriousness and influence of symptoms, injuries or illnesses, on the origin of injuries and illnesses, cause of death, etc. The same problem is typical in economic offences and the evidence given by experts in economics, where assessment questions are common. Thus it is ultimately up to the court to evaluate which expert should be regarded as more competent. The basic principles for the evaluation are the rules on the burden of proof on the one hand and, on the other hand, the free evaluation of evidence.

As expert witnesses in crime technical matters the court can use e.g. venue inspectors and evidence analysts. It is possible for the defence to obtain its own expert opinions and/or expert witnesses. However, this is rare in practice and would only occur in court cases of great interest, in which a competitive expert statement might possibly be a source of new evidence or a new interpretation. The more it is a question of a fact related to purely technical matters, the less frequent a statement is to be contested. Most of the statements are given by the Crime Laboratory of the National Bureau of Investigation, whose expertise and statements are commonly trusted.

The position of *a jurisprudential expert statement or a jurisprudential expert witness* is generally problematic. The juridical assessment, application or interpretation of the law may in some cases be so problematic that a decision on the case would require the hearing/testimony of a jurisprudential expert. However, courts must have qualified grounds to use juridical expert witnesses; for the court should by default know the law and that should be the starting point. However, in individual cases it is allowed to hear a jurisprudential expert and use an expert statement. The practice is variable and the use of jurisprudential expert evidence is not prescribed by law, so the situation is unclear.

The Finnish criminal procedure enables holding a preparation session before the trial of a criminal case. In practice, preparation sessions are only held in connection with extensive

or convoluted cases. In a preparation session you chart the evidence to be presented based on what is disputed in the matter according to the views of the parties. In this connection it would be possible to aim to appoint only one expert in bookkeeping and auditing, whom both parties would be able to accept. In practice, you do not spend a lot of time on reaching this kind of end result. What makes it problematic on the one hand is that even in a pre-trial investigation it would be more sensible to use a witness with sufficient knowledge on the matter and, on the other hand, that it is not possible to limit the respondent's right to defend himself/herself without valid reasons. The end result may thus be that both parties nominate their own expert witnesses.

4. Quality control

In Finland there are no registers or catalogues of experts but experts have to be elected separately for each specific trial. A separate system for controlling the quality of expert statements does not exist either. Quality control is therefore carried out by means of internal measures in each office. In practice, it often happens that the expertise of a tax inspector whom the prosecutor has appointed as an expert witness is questioned by the defendant. The court then has to assess the value of the witness's evidence.

The law prescribes specifically on the rules of performing a mental examination and the statements related to that. The National Board on Medico-Legal Affairs decides where the mental examination shall be performed.

The possibilities of the parties to influence the quality assessment of an expert statement will only be realized by means of counterevidence. The impartiality and credibility of the experts chosen by the parties may well be questioned but contesting their position is difficult.

In practice, any expert statements made by authorities are, by default, regarded as reliable. Particularly the statements made by the Crime Laboratory of the National Bureau of Investigation on crime technical investigations and the statements made by the National Board of Medico-Legal Affairs on mental examinations, investigations into the cause of death and other medical issues are always regarded as reliable in practice. Other doctors'

statements and experts' statements containing pure technical information are also in general regarded as reliable.

Any statements on matters that cannot be empirically or scientifically proved and measured are harder to judge when it comes to their reliability. Typical examples relate to bookkeeping procedures, a certain company's financial standing or the justification of a specific business measure. These are statements including valuations and whether or how convincingly and in an individualized manner the expert can state the criteria and justifications that have led to his/her statement, should essentially influence the value of his/her testifying.

Unfortunately, the value given to expert evidence in the justification of the ruling of a court is not necessarily assessed in much detail. This makes it difficult for the parties to assess the significance of an expert statement in the matter.

Expert statements relating to jurisprudential issues are the most contested ones with regard to their position. A jurisprudential expert is rather regarded as a jurisprudential assistant or advisor of a party than as an expert referred to in CJP 17.

In a recent court case, however, the court considered that a professor of law could be heard as an expert witness. The prosecutor considered that the court knows the law and no evidence of the contents of the law or its application in the criminal sanction in question could be presented with the help of the witness. In the justification for its decision, the court stated that clarification of the law in the juridical matter in question and its legislative history was available. The lower court considered that making an expert statement is not forbidden by law and that the respondent had to have the right for sufficient defence even with regard to juridical questions. The prosecutor regarded this as a procedural error and complained about the decision to the court of appeal. The court of appeal did not take a stand regarding the juridical issue but dismissed it without prejudice. The court of appeal justified its decision by stating that a cancellation of a lower court's decision cannot be justified by a complaint on the basis of a grave procedural error, because the issue of hearing a witness had not been ultimately solved by the decision, so it could not be compared to a legally valid judgment. The hearing of the principal claim was not finished at the lower court and it was only possible to apply for a change in the matter

related to the hearing of a witness when complaining about the decision on the principal claim.

If the statement of the expert witness is not clear or if it is deficient or contradictory and the defect cannot be remedied by an oral hearing, the court may require a new study or a new statement from him/her or from another expert witness. A new investigation or statement can be requested even from another expert than the one used before. If the statement has been given by the holder of a public office or function, the court may request a new statement from a superior authority.

The assessment of an expert or expert witness's obligation to tell the truth is difficult in practice, because it is not generally possible to distinguish facts and valuations from each other. If an expert statement is strongly based on circumstances based on assessments, his/her position approximates the role of an assistant of the party. In legal practice, only those giving a jurisprudential expert statement have been compared with an assistant of a party. On the other hand, in legal literature even this division has been contested and it has been stated that the parties should be allowed to present evidence even on jurisprudential issues with evidence being given in person.

In the oral hearing or testimony of an expert, there are advantages and disadvantages with regard to quality control. During the oral hearing, the opposing party is offered an opportunity to contest the testimony and test the real specialist knowledge of the expert. On the other hand, the expert may feel obliged to defend his/her written expert statement with arguments including strong valuations. The evidence of an expert may then increasingly be deemed to be fighting the case of the party who appointed him/her.

Quality control for the part of scientific and technological expertise

Expertise and its quality are naturally basic guarantees for the fact that the information that is produced is reliable and thus available without problems in the decision-making of the legal system needing that information. The NIS 46-standard related to the British Crime Laboratory concerning the definition[2] of impartial investigation can be regarded as the basic principle of assessing expertise. According to NIS 46

[2] Anon*:* Accreditation for Forensic Analysis and Examination. National Measurement Accreditation Service (NAMAS), standard NIS 46.

Impartial investigation is such an investigation which is documented, validated and manageable so that every duly trained person can be proved to reach the same result within defined limits.

Thus the target of an expert job can be considered as a result or conclusion that is verifiable independent of the writer.

The requirement for a result like this is that the expert has suitable training and experience for his/her job and that he/she has such working conditions that, with the methods and accessories he/she uses, an optimal result can be reached. It is easier to assess the results of the investigations and the reliability of the conclusions if the results were produced in an institution where the quality assurance was a highly organized operation. This requires a quality system of some kind. In Finland public research institutes produce expert services for the judicial system (for instance the Crime Laboratory of the National Bureau of Investigation and the Section of Forensic Chemistry of the Department of Forensic Medicine at the University of Helsinki) and most companies producing scientific-technological investigation services in the private sector try to obtain this kind of expertise and expert working environment by means of standard quality systems. The most common of the standards used is known by its abbreviation ISO/IEC 17025,[3] and is used when describing, in short, the contents of the quality systems.

The standard ISO/IEC 17025 includes all the requirements that a research institute has to meet in order to prove the existence of a quality system, their own technical competence and the ability of its experts to produce results that are technically reliable.

The application field of the standard is the definition of general requirements for competent testing and/or calibrations, including sampling. In fact, it covers all kind of testing and calibration methods, standardized as well as non standardized and those developed by the laboratory itself.

The standard is divided into two main divisions, those related to the management and technical requirements. The extensive and detailed requirements included in these two divisions reflect the basic thought that the authenticity of the results of a research

[3] ISO/IEC 17025: Competence of testing and calibration laboratories. General requirements.

institution doing assignment research or the technical quality of a laboratory can be secured by only securing the expertise, but it is a remarkably more extensive question.

In the demands related to the management, an institution is supposed to be juridically responsible, i.e. sufficiently independent with regard to its decision-making mechanisms so that the decisions related to the reliability of the research results are made with expertise related to the field. The management and technical staff have to possess sufficient authorization and the technical management has to have an overall responsibility for the technical measures. The institution has to be able to prove that its operations are organized in such a way that the influence of internal and external pressures on the quality of the work is prevented. The responsibilities and interpersonal relations have to be defined for all those who lead, carry out or substantiate the work influencing the quality of the testing.

The institution has to have a suitable quality system for its operation, whereby the operation is sufficiently extensively documented. This documentation has to be available to the personnel in question and all members of staff have to understand it. Various instructions on the methods etc. are particularly noteworthy. Procedures for the maintenance and control of the documents have to be included in the quality control system. A person specifically authorized to this assignment approves the documents belonging to the quality system before they are published.

If a problem in the quality system or technical operations is observed, a quality system that is in accordance with the standard requires that the reasons for the problem are noted and corrected and the effects of the corrections are monitored. Similarly, the laboratory has to aim to minimize the probability of different departures from practice with so-called preventive measures.

The so-called internal auditing procedure is a central procedure in the control of the reliability of testing operations. It is an internal auditing procedure whereby the operations are extensively examined. The audit is performed by professionally competent people, who are specifically trained for an auditor's position, who belong to the laboratory staff and are independent of the operations they examine, if possible. Similarly, the lab's

management is supposed to perform so-called regular management inspections whereby they, report on the status of the laboratory's quality system and testing.

With regard to the technical requirements, the standard emphasizes the fact that both human and purely technical factors contribute to the reliability of the testing done by the institution. The competence of every member of staff in his/her own task has to be secured. The members of staff have to be initiated and trained systematically in their tasks and aim at acquiring further qualifications: targets have to be set for training, initiation and expertise.

The premises and environmental circumstances in general have to be appropriate for correct testing and environmental factors not to distort the results. Access to the laboratories has to be controlled and tidiness of the premises has to be taken care of. Preventing any so-called cross contamination has to be a priority.

The institute should always use methods suitable for the purpose and use methods that meet the client’s needs and that are preferably derived from standards or scientific publications. The suitability of a method (for its purpose) is established by a so-called validation or verification procedure, using various methods to establish that the method meets the requirements of its purpose of use.

The institution has to maintain an equipment register and/or an equipment diary, in which all the data of the equipment itself, its location, accordance with specifications, calibrations, service, etc. is saved. All equipment used in the testing and monitoring of environmental circumstances has to be regularly calibrated. If the institution itself participates in the sampling, it has to draft a sampling plan and sampling procedures. Furthermore, procedures of transportation, reception, handling, protection, storing and elimination of the samples have to be drafted. The laboratory has to have a system in place for recognizing the samples during the entire assignment.

The institute has to have quality assurance procedures for monitoring the correctness of the research results.

The research report has to be accurate, clear, unambiguous and impartial. The report has to include all the information required by the client, the necessary information for the interpretation of the results and the necessary information on the method used. There can also be opinions and interpretations in the report, but their justifications have to be documented. This is, of course, especially noteworthy for an institution providing expert services for the judicial system.

Note that the ISO/IEC 17025 standard is a general standard and that it is suitable as a basis for any quality system of any institution providing research services, not only for the institutions used by the judicial/legal system.

Accreditation

Accreditation means that an external expert quarter states or confirms the competence but it does not mean that an accredited institution would be particularly accepted to perform certain assignments. With an accreditation, different testing and calibrating laboratories have the possibility to prove that they meet the requirements included in international standards and they can thus prove that their operation is reliable and the research reports they provide are reliable. Applying for an accreditation is always voluntary and the reasons for applying may vary. It is often the case that, by applying for an accreditation, the laboratory wants to secure that its quality system really corresponds to the requirements of a standard. Also, an accreditation is generally regarded as the best formal way of proving the competence of the laboratory in its own field.

The accreditation bodies are national institutions that operate mainly in their own country (for instance UKAS (United Kingdom Accreditation Service) in the United Kingdom, similarly FINAS in Finland). The accreditation bodies' own or so-called "primary" appraisers and the external experts trained to work as appraisers, the so-called technical appraisers, estimate an institution's competence on the basis of written material and observations made during a special evaluation visit. The evaluation includes both an evaluation of the operational (i.e. quality system) and technical level of the organization.

During the evaluation visit, both the field competence presented in the application of the institution and operations related to that, and the competence of the technical operations

presented in the application are evaluated. The primary appraiser evaluates the quality system and ensures that the matters mentioned in the standard are described in the quality handbook and that they are also implemented in practice. A technical appraiser states whether the calibrations or tests are implemented in accordance with the requirements of the accreditation and the internal instructions of the institution.

The prerequisite for the accreditation is that the applicant has proved that he/she fulfils the conditions for working in accordance with the requirements. The tests or operations covered by the accreditation are registered in the decision and its contents can be modified either on account of circumstances observed during an evaluation visit or on the basis of a written notification from the institution.

Operation as an accredited institution requires that the institution continuously meets all the accreditation requirements and other conditions for the accreditation. Additionally, the institute has to cooperate continuously with the accrediting body and its representatives so that the compliance with the demands of the accreditation can be assessed without a hitch and state that the institution meets all the other requirements of the accreditation.

5. Obtaining information

There are two important points in the matter of obtaining information: what information an expert is given and what information e.g. the defence or court obtains from the expert's account or investigation. For instance, it is very important when asking for a written expert statement that the expert is given correct information about the facts. Otherwise the end result is incorrect and unreliable.

It is part of the requirements of a fair trial that all parties involved have the material, findings and observations made in the crime-technical investigation presented to them in the investigation. The basic principle is that the parties have the right to have access to all the material gathered during the investigation for their use.

The expert appointed by the court has to be delivered sufficient information on the question relating to the statement that he/she should reply to. When requesting a mental

examination, the court has to send the related documents to the National Board of Medico-Legal Affairs. In practice, all the material that has been gathered shall be delivered to the author of the statement. Problems may arise in those situations when the expert or expert witness is nominated by one of the parties. It is then that party's responsibility to deliver the material and there is a danger that the material will be *chosen* in a prejudiced manner. However, when an expert witness is being heard orally, it is possible to correct some of these shortcomings with the help of a cross examination.

Before the court appoints an expert, the parties will meet to discuss the matter and the information to be given to the expert is decided at that time. Requesting an expert statement is ultimately a part of the judge's duties in the conduct of the proceedings and it is therefore the judge who decides, on the basis of the conversation with parties, what the expert will be asked and what information he will be given. The success of using an expert is based on the questions being relevant and sufficiently limited. In practice, the expert has to be given sufficient information to make a statement. An expert may demand all the information affecting the issue, even though he has no right to receive any confidential information that has to be kept secret from the public unless it is necessary for the making of the statement. If some confidential information that has to be kept secret from the public were to be given to an expert, it shall be forbidden for him/her to take advantage of said information.

The interested party provides *the expert he/she has appointed* with the information and evidence he/she regards as necessary. Therefore, an expert's right to receive information may be as extensive as that of the party. The party for his/her part has the right to get all the material related to the case.

The problem is that the parties may present the information and evidence in a positive light from their own point of view, which influences the contents of the statement made by the expert. The party may also, on purpose, limit the material given to the expert so that the limitation aims to influence the end result of the statement. The expert does not necessarily have such information with regard to the object of the process that he would be able, even if he wanted to, to demand all the significant information relating to the case in question. So inspecting the comprehensiveness of the basic information received by the expert is left to the court. In court the inspection of the comprehensiveness and accuracy

of the preliminary information depends mostly on the opposing party's actions, because courts seldom actively and spontaneously test what information an expert appointed by a party has actually received.

As for the defence, one of their problems is preparation of criminal cases. Defence counsel often becomes involved in the case at a very late stage, when the consideration of charges has been finished and the time or date of the main hearing has been decided. Especially in big cases, the material of which is extensive, it is most important for the defence to have the defence attorney become involved in the pre-trial investigation phase, when the defence attorney has a possibility to make a concluding statement before the consideration of charges. Appointing their own expert witnesses requires that the defence attorney has time to get acquainted with the pre-trial investigation material and the possible external material outside the pre-trial investigation material, to evaluate the possibly suitable expert witnesses, to negotiate with the witnesses and to invite witnesses or demand that the court invite witnesses to arrive at court as needed. In order for the prosecutor to have an opportunity to prepare for the cross examination of an expert witness, it is in practice necessary that the police hear the expert witness in an extra investigation and/or that an expert witness makes a statement in writing which is to be included in the trial material. If the defence attorney has received the material after the consideration of charges, it is often impossible for him to appoint any expert witnesses and he has to content himself/herself with the cross examination of the witnesses appointed by the prosecutor.

The extensiveness of the pre-trial investigation material may also in practice depend on what the police officer who investigated the crime has included in the pre-trial investigation record. For instance in surveillance cases, a part of the conversations recorded has been transcribed in written form as an attachment to the pre-trial investigation record, but the defence does not know what conversations have been left out from the pre-trial investigation record and what could possibly arise in these conversations. The defence has in any case had an opportunity to get acquainted with this kind of material, if there is any.

6. Financing

The expert witness *appointed by the court* shall be entitled to a reasonable fee for his/her work and time spent as well as compensation for his/her necessary expenses. The court will ultimately assess what is to be considered a fair reimbursement. If the statement has been given by an authority or the holder of a public office or function or by a person who has been appointed to give statements in the field in question, a fee and compensation shall be paid only if specifically provided.

An expert nominated by the party himself/herself will be paid a reimbursement according to the provisions on witnesses, i.e. he/she is only entitled to receive a witness fee, the provisions on which do not include a fee for expert work. If the party who nominated the witness has received juridical assistance, the witness fees will be paid by the state. If the respondent has not had any juridical assistance, he/she is obliged to pay the fee himself/herself.

In the pre-trial investigation phase the expert fees are not tied to certain compensation tariffs. It is in the parties', and in particular the respondent's interest to have most of the experts heard during the pre-trial investigation phase. Not only will this make the preparation for the forthcoming trial easier but it will also reduce the costs incurred by the trial.

A senior expert in a certain field may require a substantial reimbursement for his task. With regard to experts appointed by the parties, this may be problematic from the point of view of citizen equality and the principle of "equality of arms." The authorities possess greater resources than the public and companies have more resources than private individuals. Substantial reimbursements may also endanger the expert's reliability with regard to his impartiality and independence.

Therefore, the Finnish Task Force paid attention to the fact that the courts should make more use of their option to appoint expert witnesses in a trial: if an expert is appointed by the court, we would not be tied to low witness fees. The procedure would be more righteous or justified with regard to financing and it would be more transparent for the process itself.

Juridical assistance paid by the State

A respondent may have a *defence attorney* appointed on request, if it is a serious crime (minimum sentence 4 months' imprisonment) or if the respondent has been arrested or imprisoned. A defence attorney *ex officio* may be appointed for instance in a situation in which the respondent is not able to defend himself/herself or he/she is under 18 years of age. If a defence attorney is appointed for a respondent, the State will pay for his/her legal expenses regardless of the respondent's income or property.

If the above-mentioned requirements of appointing a defence attorney are not met, a respondent of limited means may be granted judicial assistance and *an assistant* may be appointed on the basis of the provisions of the law on juridical assistance. In that case the respondent's income is not allowed to exceed a specific level determined by decree.

Most of the criminal cases fall within the scope of the juridical assistance of the State of Finland, either by the defence attorney's order or on the basis of the juridical assistance. In these cases even the witness fees are paid from public funds, within the rates set by the State. In practice, the witness fees paid from public funds are reimbursements of costs & expenses and are so modest that experts with specialist knowledge of the facts will in fact suffer loss of income when testifying in court during their working hours. As such testimony is a civil duty, a witness may not refuse to testify without justification as prescribed by law.

With regard to witness fees, a respondent who is allowed to have juridical assistance is in practice in a better position than a respondent who is able to pay for his/her defence and pay a current witness fee. The situation is especially difficult if an expert witness were to draft an expert statement to serve as written evidence or as part of the trial material. There are no clear provisions on reimbursement of expert statements. In individual cases an expert statement may have been agreed upon with the court to be completely or partially included in the court expenses to be paid from public funds but there is no single clear-cut position on this matter at the moment. The problem is accentuated if you take into account that a witness fee usually has to be paid in advance, in which case the suspect or his/her defence attorney is liable to pay it.

A lawyer has a so-called “negative obligation to tell the truth” (Professional ethics among lawyers 42 §): a lawyer must not give the court any incorrect notification or contest any fact that he/she knows to be true. However, a lawyer is not obliged to present any evidence or other proof that is harmful to his/her principal as long as he/she does not break his/her obligation to tell the truth. This leads to a problem when obtaining expert statements, in case the lawyer’s principal is included in the scope of juridical assistance. If the result of the obtained expert statement is negative for the respondent, the defence has the right and in fact the duty not to present the statement as written evidence. In this case it would be practically impossible for the costs to be reimbursed (even partly) from public funds.

7 International cooperation in conveying expert statements

For Finland the most important agreements relating to mutual legal assistance, the provisions of which also concern expert testimony, are listed in *Enclosure 2.* If there is no agreement on legal assistance between the states, the Act on International Legal Assistance in criminal Matters shall be applied (later law on mutual legal assistance). Finland provides legal assistance on a wider or easier base than what is required by the international agreements because it can also give legal assistance for the authorities outside the scope of the agreements. In that case it is the Ministry of Justice who acts as a central authority on legal assistance matters and who conveys a competent authority's request to the Ministry for Foreign Affairs through diplomatic channels.

Competent authorities and communication order

A request for legal assistance in order to obtain an expert statement may be made by the Ministry of Justice, a court of justice, a prosecuting authority and a pre-trial investigation authority (police, customs or Border Guard Service when performing a pre-trial investigation). According to this information, the defence does not have the possibility to directly use an official channel for requesting legal assistance. However, according to the pre-trial investigation act, the defence may have an opportunity to request a competent authority to send a request for legal assistance. In pre-trial investigation, you have to consider and take into account both the evidence and circumstances against the suspect and beneficial to the suspect. The defence has an opportunity to request but cannot oblige

the person in charge of inquiries to make a request for legal assistance. The defence may also, within the limits of its own resources, freely obtain the expert statements it regards as necessary from a foreign country. It is then *an expert nominated by the party*, and the provisions applicable to witnesses shall apply to him/her.

A request made to a Finnish authority has to be made by a competent authority in order for it to be acceptable and lead to positive results.

Request for legal assistance and its execution

Requests for legal assistance may be made either in writing, as an e-mail, as a technical recording, orally, by phone or using some other appropriate method. Especially if you wish to receive evidence, the request should be sent in writing. In practice, you have to consider before you send a request for legal assistance, whether such a request is necessary and reasonable. Other alternatives to reach the same end result have to be taken into account. When the requests have to be translated, you have to ascertain that it is not translated in vain and ensure whether it may be sent in the original language.

A request for legal assistance to a foreign state may be sent either to the Ministry of Justice or made directly to the authority whose authority it is to fulfil the request. In practice, the execution is taken care of by a local authority, regardless of whom originally received the request. Among EU Member States the principal rule is nowadays that the competent authorities have direct communication channels between them. The content and form of a request for legal assistance to be sent to Finland are both prescribed by the Act on International Legal Assistance in Criminal Matters and the competent authorities in Finland have drafted instructions on the execution of requests for legal assistance and making a request for legal assistance.

The main rule is that the procedural provisions of the state which shall execute the request are followed i.e. the state which is being requested legal assistance. In Finland a procedure in accordance with the Finnish law is followed. If the sender of the request wishes that a special form or procedure should be used, the request has to be fulfilled unless it is against the basic principle of the Finnish legislation or unless otherwise provided by statute. If the request cannot be fulfilled following the procedure asked for in

the request, a notification has to be sent immediately regarding this circumstance and at the same time indicate on what conditions the request may be executed.

A request for legal assistance has to be executed without delay and the deadlines presented in the request have to be met in the execution of the request, when possible. When Finland requests legal assistance from a foreign state not only the Finnish law will be observed but also the conditions of the intergovernmental agreements between Finland and the foreign state are adhered to with regard to the publicity/confidentiality of documents, obligation to observe secrecy etc. The conditions set by the state giving legal assistance for e.g. maintenance of secrecy, use of the information requested or returning or destroying the material delivered also have to be obeyed.

A general court of first instance is responsible for giving legal assistance, when it applies to the testimony of witnesses or experts, presenting documents, executing an inspection or obtaining other evidence or hearing the parties, if proceedings have been instituted in court concerning the criminal case at hand or if the receipt of evidence or hearing/testifying of the parties is requested to be executed in court. For instance when a lower court hears a witness testimony on the basis of a request for legal assistance, the prosecutor has to be present at the hearing if the court considers his presence necessary. The provisions to be followed in criminal procedure are applied during proceedings.

In other cases, a competent pre-trial investigation authority is in charge of obtaining evidence and other accounts, hearing parties and other persons concerned. The provisions to be followed in pre-trial investigation are applied in the procedure.

The competent authority of the state making the request, the interested parties and anybody concerned have the right to be present when witnesses, experts or the interested parties are being heard or some other appropriate steps are undertaken. The pre-trial investigation authority or court gives permission to ask questions.

Refusing legal assistance

The grounds for refusing to execute requests sent to Finland are prescribed by law. The decision to refuse to give legal assistance is generally made by the instance whose authority it is to fulfil the request. If giving legal assistance offended the sovereignty of

Finland or endangered the security of Finland or eliminated some of the nation's other relevant advantages, the legal assistance should absolutely be refused and this decision would be submitted to the Ministry of Justice.

Refusing legal assistance is extremely rare in practice. For instance, if a request is deemed deficient, the assistance is not refused but primarily a foreign state will be asked for further clarification or addition to the request. In general it is always possible to give legal assistance, if a similar action would be taken nationally in the same situation.

It is possible to refuse to give legal assistance but not obligatory (discretionary refusal grounds), if the grounds for requesting are a political or military offence, the act is time-barred according to Finnish law, the matter is already being investigated or heard in court, the pre-trial investigation of the action which is the object of the request has been finished or the prosecutor has decided to waive prosecution, the matter has already been decided in Finland or it would be unreasonably troublesome to execute the request. It is also possible to adjourn the execution of a request for legal assistance if it might harm or postpone a pre-trial investigation or trial in Finland.

Language and costs of a request for legal assistance

A foreign state has to make a request for legal assistance to Finland in Finnish or Swedish or a translation into either of these languages has to be attached to the request. However, a decree states that a request for legal assistance and the documents attached thereto or the translations thereof may also be in Norwegian, Danish, English, French or German. The documents have to be translated if it is necessary due to the fact that the authority responsible for fulfilling the request does not sufficiently understand the language used in the request.

The costs incurred by legal assistance given on request of a foreign state are not usually collected from the foreign state which requested the assistance. Therefore, also the costs incurred by translations of the requests are paid by Finland.

An expert's right of refusal

A person who is heard/testifies as a witness on the basis of a request for legal assistance issued by a foreign state authority or as an expert in a Finnish court or who appears to testify in a pre-trial investigation has the right to refuse to testify or make a statement, if he/she has the right to do so or a duty to do so according to the Finnish law or the law of the state which has issued the request. The law of a foreign state is taken into account if the right or duty to refuse to testify has been stated in the request for legal assistance made by a foreign state or if the authority who made the request confirms this on the request of a Finnish authority or if the grounds for refusal are otherwise known to the court or the authority executing the pre-trial investigation.

An expert's immunity

A witness or expert who is summoned on the judicial authority of the party who made the request must not, regardless of his/her citizenship, be accused of an offence or imprisoned in the territory of said party or in any way limited in his/her personal freedom due to an offence which has been committed before he/she left the territory of the party who received the request or on the basis of a judgment rendered against him/her for such a crime.

The immunity of a witness or expert will expire in 15 days from the day the authorities no longer deemed his/her attendance necessary, if he/she had an opportunity to leave the territory or country of the party who made the request but stayed there in spite of this or returned there after previously having left.

Mutual assistance (MA)

Finnish legal terminology does not make a clear difference between international mutual assistance (MLA) and other mutual assistance (MA). However, the latter is understood to mean the economic or expert assistance received by a private citizen or sometimes even a legal person from his/her own state for his/her own trial. This kind of legal aid is sometimes even provided for foreign trials, so it may sometimes be international. International legal assistance is the only way of mutual assistance with regard to expert statements in Finland. International executive assistance is another way of cooperation between the police authorities but it is not possible in connection with expert witnesses.

Production of expert evidence obtained by legal assistance

Material obtained by legal assistance becomes a part of the judicial proceeding material, so its publicity is prescribed by Finnish legislation. An expert statement obtained from a foreign state has the same validity as a Finnish expert statement. Both are judicial proceeding material and therefore a court's evaluation of the evidence applies to them. The importance of a statement is defined by the expertise of the expert who made it and its content.

Besides the international legal assistance *a court* may obtain an expert statement it regards as necessary within its normal authority. There is no legal reason for obtaining an expert statement from another authority than the foreign state authority in question or in another manner than this. Obtaining an expert statement directly from a foreign state (both as part of the procedure of international legal assistance and outside this scope) is a faster way to obtain a statement than by a request made through a central authority. Direct contact should make it easier to communicate in future, too, for instance in situations where a court wishes to obtain further clarification from the expert who made the statement.

8. Conclusions and recommendations

The Finnish Task Force paid attention to the following facts related to the production of expert evidence in the Finnish criminal procedure:

- as there is no regulation on the proficiency of experts in Finland, more attention should be paid to inspecting and confirming the quality of their proficiency.

- the expertise of the expert should be established in the pre-trial investigation phase. It is advisable to hear the testimony of experts during the pre-trial investigation phase.

- with regard to the experts, the preparation phase should include: going through all the expert witness (statements) with all parties concerned to avoid overlapping witnesses/experts.

- the use of experts appointed by the court should be increased, for this would increase the equality and the transparency of the trial. This could even influence the quality assurance of the experts and would mean more attention would be paid to quality.

The Finnish Task Force has asked if lawyers, judges, prosecutors or experts have anything to add to this report. The result was that the report describes the situation in Finland well and they can approve the recommendations mentioned above. Finally they have found that the expert evidence system in criminal proceedings works well in Finland.

Enclosures

Enclosure 1 The Code of Judicial Procedure, Chapter 17 Sections 44-55

Enclosure 2 The most important international agreements on legal assistance binding Finland and international legislation

Enclosure 1

The Code of Judicial Procedure 1.1.1734/4

Experts

44 §

“If, in the consideration of a question that must be ascertained on the basis of specialist professional knowledge, it is deemed necessary to use an expert witness, the court shall obtain a statement on this matter from an agency, a public official or another person in the field or shall entrust the making of such a statement to one or more experts in the field who are known to be honest and competent.

If the law requires the use of expert witnesses in a specific case, the individual provisions on this matter apply.

45 §

The court may order that the mental state of the person charged with an offence be examined, if:

1) The court has - in its interim judgement of a trial, in accordance with the Penal Code Chapter 11 Section 5 a - stated that the respondent committed a punishable act described in the prosecution;

2) An examination of the respondent’s state of mind is justifiable and

3) The respondent consents to a mental examination or he/she is in detention or unless the offence is punishable by imprisonment for more than one year.

The court may order - on the basis of a statement of the prosecutor, suspect of the crime or his/her trustee, on the conditions prescribed in Chapter 1 Articles 2 and 3 - that the mental state of the suspect has to be examined even during the pre-trial investigation or before the main hearing, if the suspect of the crime has admitted that he is responsible for the action which is punishable by law or if the need for a mental examination is in any other way clear. The law on coercive means Chapter 1 Section 9 Paragraph 2 outlines the decision referred to in this paragraph on the presence of a quorum and the holding of a hearing.

Before making the decision that the defendant is to serve the whole sentence in prison referred to in the Penal Code Chapter 2 c Section 11, the defendant's mental state has to be examined. At the same time, the court has to request a statement to establish whether the defendant is to be considered very dangerous to other people's life, health or freedom.

At a new hearing related to the subject of serving the whole sentence in prison which is referred to in the Penal Code Chapter 12, the Court of Appeal in Helsinki has to request a new statement be drawn up to establish whether the person serving the sentence is still to be regarded as dangerous for other people's life, health or freedom.

It is not possible to appeal against a judgment related to the examination of a person's mental state. The person ordered to have his/her mental state assessed may formally complain about the decision. There is no deadline for the complaint. The complaint has to be dealt with as an emergency procedure.

Specific provisions apply to the examination of a person's mental state and his/her admission to a mental hospital for this purpose.

46 §

Before an expert witness is appointed, the parties shall be heard on the matter. If the parties agree on an expert witness, that person shall be used if he/she is deemed to be suitable and there is no impediment. In addition, the court may appoint one expert witness.

No one shall be appointed an expert witness against his/her will, unless he/she is under the obligation to serve as an expert witness by virtue of public office or function or on the basis of a special provision.

47 §

A person shall not serve as an expert witness, if his/her connection to the case or relationship with either party is such that his/her credibility can be deemed reduced because of it.

48 §

An expert witness shall not be under the obligation to disclose a business or professional secret, unless very important reasons require otherwise.

The provisions on witnesses apply to the coercive measures available against an expert witness and the compensation of the costs incurred by the parties. However, a non-compliant expert witness shall not be brought to court nor compelled to serve by means of imprisonment.

48 a §

A party or another person may be heard and other information may be admitted before the main hearing, if this is necessary in order to clarify a circumstance on which an expert witness is going to be heard. If evidence is admitted at this time, the provisions on the admission of evidence outside of the main hearing apply, insofar as appropriate.

49 §

An expert witness who is going to be testifying in a court shall, at his/her own choice, either take an expert's oath or give a corresponding affirmation. An expert witness who is not affiliated to any religious community shall, however, always give the affirmation.

The wording of the oath shall be as follows:

"I, <insert name>, do promise and swear by almighty and all-knowing God that I shall fulfil the task given to me to the best of my understanding.

The wording of the affirmation shall follow that of the oath, *mutatis mutandis.*

The expert witness shall take the oath or give the affirmation before being heard in the court. If he/she has delivered a written statement in advance, the wording of the oath or affirmation shall be modified accordingly. A person serving as an expert witness by virtue of an official position, function or duty need not take an oath or give an affirmation.

50 §

An expert shall give a detailed account on the findings of his/her investigation and, on the basis of the account, a substantiated statement on the question put to him/her. The statement shall be compiled in writing, unless the court deems there to be reason to allow for its being given orally. When a person is appointed as an expert witness *not* on the basis of his/her official position or function, the court shall determine the time within which the statement is to be given.

An expert who has made a statement in writing only has to testify in court if the interested party demands this and on the provision that the hearing is of a significant nature or if the court regards the hearing as necessary for some other reason. If there are several experts, one or several of them may be called to testify.

51 §

What is prescribed in Articles 26 a, 31, 33, 34, 34 a and 41, applies to experts, *mutatis mutandis*.

If the expert witness has given a written statement, this shall be read out in full or in part unless the court, for a special reason, orders otherwise.

52 §

If the statement of the expert witness is not clear or if it is deficient or contradictory and the defect cannot be remedied by an oral hearing, the court may require a new study or a new statement from him/her or from another expert witness. If the statement has been given by the holder of a public office or function, the court may request a new statement from a superior authority.

53 §

The expert witness shall be entitled to a reasonable fee for his/her work and time as well as compensation for his/her necessary expenses. If the statement has been given by an authority or the holder of a public office or a function or by a person who has been appointed to give statements in the field in question, a fee and compensation shall be paid only if specifically so provided.

In a civil case between private parties payment of the compensation shall be the joint and several liability of the parties or, if the expert has been appointed on the request of one party only, by this party alone. The same applies to the injured party and the defendant when the injured party prosecutes or makes another claim in a criminal case concerning an offence not punishable otherwise or more severely than by a fine or imprisonment for at most four years. In other cases, the compensation shall be paid from State funds.

If there is reason, the court may order that the compensation or a part thereof is to be paid to the expert witness in advance. The advance payment shall be made by the party who under paragraph (2) is to pay compensation to the expert. However, in a case where the action has been brought by a

private party and the court has ordered the expert witness to assist the court without the request of said party, and unless said party makes the advance payment, the court may order that the advance payment to the expert witness be made from State funds.

Chapter 13, section 21 applies to the reimbursement to the State of compensations paid from State funds.

54 §

An order for the enforceability of a threat of a fine imposed on an expert witness or for his/her liability for compensation, or relating to the fee and compensation payable to the expert witness, shall be open to appeal.

The provisions in section 17(3) apply to the effect of the appeal on the enforcement of the order.

55 §

If a party relies on an expert witness who has not been appointed by the court, the provisions on witnesses apply. However, the provisions in section 50 and section 51(2) may be applied.

Enclosure 2

The most important international agreements on legal assistance binding Finland and international legislation

CONTRACT

Council of Europe

European Convention on Mutual Assistance in Criminal Matters
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
Criminal Law Convention on Corruption
Convention on Cybercrime

The European Union

Treaty on Mutual Assistance in Criminal Matters between the member states of the European Union
Protocol to the Convention on Mutual Assistance in Criminal Matters between the member states of the European Union
The Schengen Agreement
A general agreement on cooperation and mutual assistance of customs administrations (Naples II Convention)
Law on the execution in the European Union of orders freezing property or evidence
Act on joint investigation teams

Prüm Convention between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping-up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration

Framework decision of the Council of the European Union on the (legal) position of a victim in criminal proceedings (= transfer of a report of an offence)

The United Nations

United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances
United Nations Convention against Transnational Organized Crime

Protocol against smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organized Crime
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
United Nations Convention against Corruption

Bilateral agreements

An agreement with Latvia on cooperation in prevention of crime
An agreement with Lithuania on cooperation in the prevention of crime
An agreement with Estonia on cooperation in the prevention of crime
An agreement with Russia on cooperation in the prevention of crime
An agreement with Poland on co-operation in prevention of and combating against organised crime and other crimes
An agreement with Hungary on co-operation in prevention of and combating crime, in particular organised crime
An agreement between Finland and Turkey on co-operation in prevention of and combating against organised crime and other crimes
An agreement with Australia on mutual assistance in criminal matters
An agreement with Poland on legal protection and legal assistance in civil, family and criminal matters
An agreement with Hungary on legal protection and legal assistance in civil, family and criminal matters
An agreement with Russia on legal protection and legal assistance in civil, family and criminal matters (also Ukraine)

Agreements between the Nordic countries

An agreement with the Nordic police authorities on police cooperation (2002)
Law on the duty to appear in court in another Nordic country in certain cases

Agreements on extradition

European Convention on Extradition
Act on Extradition on the Basis of an Offence Between Finland and Other Member States of the European Union (European Arrest Warrant)
Extradition Treaty with United States of America

Extradition Treaty with Australia

Extradition Treaty with Canada

Agreement on the Extradition of Criminals with Kenya

Agreement on the Extradition of Criminals with Uganda

Treaty between Finland and Great Britain and Ireland on the Extradition of Criminals, extension of the application of the Treaty to New Zealand and resumption of the operation of the Treaty

Act on Extradition between Finland and other Nordic countries

Act on Extradition between the Nordic countries (the Nordic Arrest Warrant)

Without a contract

The Act on International Legal Assistance in Criminal Matters

Extradition Act

Request for legal aid without a contract (through the Ministry of Justice)