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Litigation 2022

Finland: Law & Practice
and
Finland: Trends & Developments

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FINLAND

Law and Practice

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1. GENERAL

1.1 General Characteristics of the Legal System

The Finnish legal system is based on civil law and, broadly speaking, resembles the other Nordic legal systems. The main sources of law are Acts passed by parliament, which are complemented by, for example, decrees, preparatory works, case law, and legal literature. However, some areas of law, such as contract law and the law of property, are also based on more general principles as set out in, for example, legal literature and case law, without separate codification.

The approach to litigation is adversarial, and in civil cases, the court is bound by the claims, grounds, and evidence presented by the parties. Both written submissions and oral argument are essential to civil procedure, and the scope of purely written proceedings is very narrow.

1.2 Court System

The Finnish court system consists of the general courts, the administrative courts, and certain specialised courts.

General Courts

The general courts consist of 20 District Courts, five Courts of Appeal, and the Supreme Court. The general courts have jurisdiction to hear all civil, petitionary, and criminal cases, with the exception of cases belonging to the jurisdiction of the special courts (see below). However, certain specific cases may only be heard by certain District Courts. These include corporate restructurings, maritime cases, military cases, and summary civil cases.

The District Courts are the lowest courts and handle the large majority of cases. Jurisdiction between them is divided on a geographic basis. Appeal to the Courts of Appeal requires leave for continued consideration, and further appeal to the Supreme Court requires leave to appeal.

Administrative and Special Courts

The administrative court system is two-tiered and consists of six administrative courts and the Supreme Administrative Court. Furthermore, the autonomous region of the Åland Islands has a separate administrative court. The administrative courts hear administrative cases (eg, appeals to decisions of public authorities).

The special courts are the Market Court, the Labour Court, the Insurance Court, and the High Court of Impeachment. The Market Court hears cases relating to competition law, IP law, and public procurement. The Labour Court hears disputes arising out of collective bargaining agreements. The Insurance Court, despite its name, does not hear all insurance disputes, but mainly administrative matters relating to income security (eg, pensions, unemployment benefits, industrial accident compensation, housing allowance, disability benefits, and health insurance). The High Court of Impeachment deals with charges brought against a member of the government or certain other high-ranking officials.

The rules of procedure are different for the general courts and the administrative courts; the general courts use a more adversarial procedure and the administrative courts a more inquisitorial one. Broadly speaking, the specialist courts use either rules of general procedure or administrative procedure. This chapter discusses only litigation in the general courts, unless otherwise mentioned.

1.3 Court Filings and Proceedings

The starting point is that court proceedings are fully public. This applies to written submissions, oral hearings, and court decisions. Members of the public can request copies of filings and judg-

ments and attend hearings without giving any particular reasons.

However, there are detailed exceptions to this prima facie publicity. Firstly, the courts must keep secret certain information and documents by virtue of law (eg, information relating to national security, sensitive information relating to individuals' private lives and health, and information relating to deliberations of the court).

Secondly, the court can order certain documents to be kept secret at the request of a party, or of its own accord on certain detailed grounds provided for in law. Many of these grounds relate to issues of security and safety, or to information that typically – by its nature – must be kept secret. In civil litigation, the most prominent grounds for requesting secrecy of a document are that the document contains trade secrets. Such documents can be ordered to be kept secret if publicity would cause a loss to the owner of the trade secrets and the document does not concern information relating to the protection of health and safety of consumers or the environment.

Thirdly, criminal cases become public only when the matter is presented before the courts for the first time, usually on the first hearing day.

The rules regarding secrecy of documents also apply to oral hearings. Where secret information or documents are dealt with, the court will conduct either the hearing wholly behind closed doors or only those segments which concern the secret information or documents.

Court rulings are public, but again, the court may order certain parts of the judgment to be kept secret.

1.4 Legal Representation in Court

In the general courts, parties may always represent themselves, with the exception of certain rights of extraordinary appeal. A legal person is represented by its legal representatives.

If a party is represented by counsel, such counsel must be:

- an attorney at law (ie, a member of the Bar);
- a licensed legal representative (a lower qualification which can be obtained by a person with a law degree and certain minimum qualifications); or
- a legal aid attorney (a lawyer working for a public legal aid office).

There are certain exceptions to the above main rule:

- a legal person can be represented by a lawyer in the employment of said legal person (ie, in-house counsel);
- in employment disputes, an employee can be represented by a lawyer working for a trade union;
- public bodies can be represented by certain public employees; and
- a non-lawyer can represent parties in undisputed collection proceedings, undisputed petitionary matters, and Land Court matters.

A person registered as an attorney in another European Economic Area jurisdiction (or another jurisdiction with which Finland has agreed on mutual recognition of the qualification of attorneys) may represent their client with the same rights as a Finnish attorney. However, pleadings in court are held in the official languages of Finland (ie, Finnish and Swedish), limiting the ability of foreign counsel to represent clients in the Finnish courts.

2. LITIGATION FUNDING

2.1 Third-Party Litigation Funding

There are no provisions on third-party funding in Finnish law. Therefore, third-party funding is, as such, allowed.

Third-party funding is still relatively new in the Finnish market and has focused mainly on arbitration cases as well as pooled claims. Therefore, courts do not have experience with third-party funding and there is also no case law on the subject.

2.2 Third-Party Funding: Lawsuits

There are no provisions on third-party funding in Finnish law and therefore no restrictions on the types of lawsuits available for funding.

2.3 Third-Party Funding for Plaintiff and Defendant

Third-party funding is, as such, available for both plaintiffs and defendants but the few cases funded in Finland have all been for the funding of a claimant.

2.4 Minimum and Maximum Amounts of Third-Party Funding

There are no limits on minimum or maximum amounts of third-party funding. Given the scarcity of cases, there is also no observable market practice as of yet.

2.5 Types of Costs Considered under Third-Party Funding

Given the scarcity of cases, there is no observable market practice as of yet on the types of costs considered under third-party funding.

2.6 Contingency Fees

Finnish procedural law does not prohibit contingency fees. However, the legal provisions regarding costs of litigation and liability for costs are based on the assumption of more traditional fee structures.

The rules of the Finnish Bar Association allow for contingency fees where there is "particular reason" for such arrangement. The rules also require that such an agreement be made with the client in advance and in writing. The Bar Association rules only bind attorneys-at-law, but a majority of legal counsel are attorneys-at-law.

In practice, contingency fees are used in Finland only very rarely.

2.7 Time Limit for Obtaining Third-Party Funding

There are no rules on third-party funding in Finnish law, and therefore also no time limits on obtaining third-party funding.

3. INITIATING A LAWSUIT

3.1 Rules on Pre-action Conduct

The courts do not impose any rules on the parties' pre-action conduct. However, a party will generally demand voluntary payment before initiating litigation. If it fails to do so, it may be liable to compensate the counterparty's legal costs where it has commenced an unnecessary litigation.

Furthermore, the rules of the Finnish Bar Association provide that an attorney-at-law may not take legal action without first informing the counterparty of the client's claims and allowing a reasonable time for consideration and an opportunity to amicably settle the case. The same rule applies to licensed legal counsel. In practice, this will typically consist of contacting the counterparty by letter and requesting payment (or other performance of obligations) and a possible back-and-forth exchange of arguments, followed by the claimant filing suit. If

the respondent remains passive, this is not an obstacle to initiating litigation.

3.2 Statutes of Limitations

Limitation Periods

The general limitation periods are provided in the Act on Limitations. In Finland, rules regarding limitation periods are considered to be a question of substantive, not procedural, law. The Act provides for limitation under substantive law. There are few limitation periods applicable to bringing a claim in the competent court (ie, time limits by which suit must be raised). These limits exist in certain special legislation, such as actions for unfounded dismissal of an employee and certain company law actions. Interruption of the general limitation period does not typically require filing suit or any other measure involving authorities or other formalities.

The general limitation period is three years. This applies to most civil law obligations. If the limitation period is not interrupted, the obligation is extinguished. The commencement of the limitation period depends on the type of obligation (eg, for a claim based on breach of contract, the limitation period begins when the party has – or should have – detected the breach of contract).

For many types of obligations, there is also a secondary ten-year limitation period. If limitation is not interrupted within ten years from the commencement of the obligation, the obligation becomes extinguished even if the three-year limitation period would not have begun. For example, for a contractual breach the ten-year limitation period begins to run from the contractual breach, as opposed to the three-year period which begins to run from the counterparty's knowledge of the breach.

Interruption of Limitation

The limitation period is interrupted when:

- the parties agree on changes to the obligation;
- the debtor recognises the obligation through, for example, performance; or
- the creditor demands performance or otherwise reminds the debtor of the obligation.

Valid interruption requires identification of the obligation. There are no form requirements for interruption. However, the creditor generally has the burden of proof regarding interruption and is therefore well advised to perform interruption in writing.

3.3 Jurisdictional Requirements for a Defendant

Any legal or natural person can be subject to jurisdiction in Finland if the applicable laws provide for the jurisdiction of Finnish courts in a particular case. Jurisdiction is determined by:

- the EU rules on private international law (for litigants situated in EU member states);
- other international instruments; or
- the Finnish Code of Judicial Procedure (for international cases not governed by separate instruments as well as purely domestic cases).

Pursuant to the Brussels I Regulation (Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)), which concerns jurisdiction in civil and commercial matters, jurisdiction can be established in Finland on various bases. The main rule is that the Finnish courts have jurisdiction if the defendant is domiciled in Finland. Finnish courts may also have jurisdiction where, for example, the dispute has a close link to Finland as set out

in more detail in the Regulation or, in the case of certain weaker-party contracts, where the claimant or its claim relates to Finland.

Pursuant to the national laws of jurisdiction, which are applicable to parties from non-EU states, defendants can be subject to suit in Finland if the dispute has a link to Finland, as set out in more detail in the applicable provisions.

3.4 Initial Complaint

A lawsuit is initiated by the claimant with an application for summons, which must state:

- the relief sought by the claimant (including a possible claim for legal costs);
- the grounds of the claim;
- insofar as possible, the evidence the claimant invokes as well as what the claimant intends to prove with each piece of evidence; and
- the grounds for the court's jurisdiction.

The application for summons must also identify the parties, their counsel and their contact details.

If the application for summons does not include the required information, the court will direct the claimant to supplement the application accordingly.

The claimant is allowed to amend its claim and the grounds thereof during the proceedings insofar as this does not change the nature of the case. The claimant may also be requested to submit additional briefs regarding specific issues. Amendment is possible during the preparatory phase (ie, during the written phase until the court concludes the preparatory phase). The court may also set a cut-off date after which such amendments are no longer possible.

3.5 Rules of Service

Domestic Service

Service of the application for summons is the responsibility of the court, though the claimant can request the right to carry out the service itself.

The court will typically try service by post first. This is done by (i) mailing the summons (a court document requesting the defendant to respond to the lawsuit) and the application for summons to the defendant, and (ii) requesting the defendant to confirm receipt by mailing back a signed certificate of service.

If postal service is unsuccessful or is deemed unlikely to succeed, a process server will carry out service. In such case, the process server will serve the summons and the application for summons personally. If service is unsuccessful, service can in – certain cases – be done to a substitute or by announcement in the official gazette.

International Service

Where the defendant does not reside or is not incorporated in Finland, service will be carried out using the applicable international instruments (the EU Service Regulation, a separate Nordic convention, or the Hague Service Convention). Where there are no applicable instruments, service will be carried out through diplomatic channels.

Similarly, Finland carries out service of documents from abroad under the same instruments.

3.6 Failure to Respond

In the summons, the court will report a deadline by which the defendant must respond to the lawsuit. If the defendant does not respond within the deadline, the court issues a so-called judgment in default. This means that the court accepts the claimant's claims without review of their merits

(unless a claim is manifestly unfounded). The judgment in default is immediately enforceable.

However, the defendant can apply for retrial of the judgment in default. This means that the case continues from where it left off and ends in an actual judgment, unless the defendant again fails to respond or does not arrive at the court hearing.

3.7 Representative or Collective Actions

Finland does not allow for collective actions, and the concept is not known in Finnish law, with one minor exception. The Consumer Ombudsman may pursue a collective action on behalf of consumers who have similar claims against an individual business. Consumers must opt in to participate in the action.

However, this possibility has never been used by the Ombudsman in the thirteen years that the collective action has been possible under Finnish law. Recently, a case which potentially would have been the first was settled before suit was raised.

Finland has, however, seen joint claims by hundreds of claimants in the same case. In practice, the claimants were represented by the same counsel and their submissions were identical. Logistically such large filings are, however, a massive procedural challenge for the courts.

3.8 Requirements for Cost Estimate

The Bar Association rules require an attorney-at-law to provide a cost estimate upon request and, if such estimate will be exceeded, to notify the client thereof. The estimate is given based on the information at the attorney's disposal at that time. As noted in **1.4 Legal Representation in Court**, not all counsel are attorneys-at-law.

4. PRE-TRIAL PROCEEDINGS

4.1 Interim Applications/Motions

Finnish law does not generally allow for interim applications or motions. However, parties can request precautionary measures during the proceedings or even before commencement of the proceedings (see **6. Injunctive Relief**). They may also apply for:

- production of documents (see **5.1 Discovery and Civil Cases**);
- various procedural decisions, such as confidentiality (see **1.3 Court Filings and Proceedings**);
- extensions of time; and
- partial or interlocutory judgments on certain issues (see **4.2 Early Judgment Applications**).

4.2 Early Judgment Applications

Parties cannot apply for early judgment on issues or for striking out of the opposite party's case before substantive hearing of the claim. However, where a claimant's claim is manifestly unfounded, it can be dismissed by the court on its own motion before the lawsuit is served on the defendant. Correspondingly, if the defendant does not respond and the court would issue a judgment in default, it must instead issue an actual judgment where the claim is manifestly justified.

However, a court can give an interlocutory judgment on a separate issue, on which other matters in dispute are dependent (eg, whether a contract has been breached or whether the claim is time-barred). A court can also give a separate judgment on a separate claim. However, both the interlocutory judgment and the separate judgment are given after full examination of the claim on its merits and are not early judgment applications as such.

4.3 Dispositive Motions

The most common dispositive motion is that the court lacks jurisdiction, either because the dispute is governed by an arbitration clause or because the applicable rules of private international law require hearing the suit in another country.

In Finland, rules regarding limitation periods are considered to be a question of substantive, not procedural, law. Invoking a limitation period is therefore not a dispositive motion.

Other possible dispositive motions include:

- that the suit should be heard in another court (either geographically or in a special court);
- that the claimant lacks capacity to act in its own name in legal proceedings;
- motions regarding the court's composition or disqualification of the judge; and
- motions regarding lis pendens or res judicata.

4.4 Requirements for Interested Parties to Join a Lawsuit

Joinder of interested parties is possible, but very rarely used. Typically, in multi-party disputes any additional parties are already named in the application for summons. The rules regarding consolidation of lawsuits are quite flexible.

Joinder of an interested party to a lawsuit requires that the interested party submits a petition to the court and demonstrates that the lawsuit concerns the interested party's rights. The other parties are heard before the court decides on joinder.

4.5 Applications for Security for Defendant's Costs

Finnish law does not allow for applications for security for costs for either party.

4.6 Costs of Interim Applications/ Motions

Costs of various procedural applications or motions are decided in connection with the judgment on the actual claims. However, where a lawsuit is dismissed due to lack of jurisdiction, the claimant may be ordered to compensate the defendant's legal costs.

4.7 Application/Motion Timeframe

Procedural motions must be raised in the first reply to the court. Petitions for a precautionary measure must always be handled on an urgent basis.

5. DISCOVERY

5.1 Discovery and Civil Cases

Finnish law does not allow for discovery of documents in the common law meaning of the term (ie, the pre-trial obligation to provide broad categories of documents upon request). However, Finnish law does allow for production requests of individual, identified documents.

Upon the request of a party, a court can order the counterparty to submit a document or documents as evidence. The requirements are that the document is identified, is in the possession of the counterparty, and that it can have relevance as evidence in the matter.

The identification requirement has traditionally been interpreted relatively strictly, but recent case law has provided for a more expansive interpretation. It is enough to identify the type of document and relevant identifying details. For example, "agreements and e-mails with party X regarding subject Y" has been considered sufficient identification by the Supreme Court, but "all agreements with all customers" too broad.

5.2 Discovery and Third Parties

The document production requests discussed in **5.1 Discovery and Civil Cases** can be directed against third parties who are not claimants or defendants. This requires submission of a written petition and granting the third party the opportunity to be heard. The third party can also be summoned to the court to be heard orally.

5.3 Discovery in this Jurisdiction

Please see **5.1 Discovery and Civil Cases**.

5.4 Alternatives to Discovery Mechanisms

The main rule is that the parties provide the evidence they intend to rely upon. This is supplemented by the use of document production requests, as described in **5.1 Discovery and Civil Cases**. Document production requests are not exceptional, but they are used in a minority of cases.

5.5 Legal Privilege

Finland recognises the concept of legal privilege (ie, the confidentiality of attorney-client communication). Counsel may not, without permission, testify about information received:

- in connection with legal proceedings;
- when advising a client in police investigations or otherwise before legal proceedings; or
- when advising a client on the commencement or avoidance of legal proceedings.

Legal privilege may be set aside by the court where the defendant is charged with a crime for which the maximum sentence is at least six years of imprisonment. However, even in this case, the privilege of the defendant's counsel is protected.

Furthermore, an attorney, a licensed legal counsel, or a public aid attorney may not, without permission, testify about confidential information received in situations other than in connection with legal proceedings. This legal privilege may also be set aside where the defendant is charged with a crime for which the maximum sentence is at least six years of imprisonment, but also where especially important reasons so require.

In-House Counsel

The above rules apply to external counsel. In-house counsel do not fall within the scope of legal privilege.

5.6 Rules Disallowing Disclosure of a Document

There are also other situations where a person may either choose, or be obliged, to not testify. These include restrictions on the testimony of, for example, mediators, doctors, certain public officials, priests, family members, and the media, though confidentiality can be set aside in certain cases. Refusal on the basis of self-incrimination is allowed. Furthermore, testimony regarding business secrets can be refused, unless particularly important reasons require testimony.

These rules are applicable also to document production (ie, production of documents may be refused where the person could also refuse to testify). Typically, a party will also resist a document production request by arguing that the requested document(s) is not in its possession, does not exist, has not been identified in a sufficient manner, or does not have relevance as evidence.

6. INJUNCTIVE RELIEF

6.1 Circumstances of Injunctive Relief

Finland has a robust system of precautionary measures (ie, measures which can be sought from the court before suit is raised or during the proceedings). Precautionary measures can also be granted ex parte.

Precautionary measures can be sought, inter alia, to freeze assets, issue injunctions, or order the defendant to do something under threat of fine. The requirements are that:

- the claimant has a right which could be enforced by means of a judgment;
- the defendant may hinder said right; and
- the precautionary measure does not cause undue harm in comparison to the protected right.

Types of Injunctive Relief

For freezing assets, the only requirements are that the claimant demonstrates that it is probable that the claimant has an enforceable receivable from the defendant and there is a danger that the defendant may hide or dispose of its assets to hinder the claimant's claim.

Anti-suit injunctions to prevent parallel proceedings in another jurisdiction are not available in Finland.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

Courts are open between 8am and 4.15pm. Precautionary measures are not heard out-of-hours. However, there is generally a judge on call for urgent measures, which include precautionary measures. In the best case, a petition for an ex parte precautionary measure can be approved within 24 hours of filing. However, where the defendant is allowed to respond to the petition, a decision can take weeks or up to several months.

After the issuing of the precautionary measure, its enforcement with the enforcement office generally takes up to 24 hours if the claimant is well prepared. Swift enforcement typically requires notifying the bailiff in advance and obtaining sufficient security in the form of a bank guarantee acceptable to the bailiff.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Precautionary measures can be granted ex parte (ie, without notice to the respondent) if the purpose of the precautionary measure would be endangered by giving the respondent the opportunity to be heard. Ex parte hearing of the petition is usually accepted where the claimant is able to provide justification for this requirement.

6.4 Liability for Damages for the Applicant

The rather claimant-friendly Finnish regime of precautionary measures is counterbalanced by the claimant's strict liability and requirement to post security.

The claimant is liable for the defendant's loss where it has unnecessarily sought the precautionary measure. The liability is strict (ie, the respondent is not required to show the claimant was at fault).

The claimant is required to provide sufficient security to cover its possible liability before enforcement of the precautionary measure. The amount of security is determined by the bailiff. The security is typically in the form of a bank guarantee.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Freezing orders do not specify which assets are frozen. Hence, a precautionary measure can also freeze assets in jurisdictions which recognise and enforce Finnish precautionary measures.

Parties can also apply in Finland for a European account preservation order under EU Regulation 655/2014. The competent court is the District Court of Helsinki.

6.6 Third Parties and Injunctive Relief

Precautionary measures can be obtained against any party insofar as the requirements for granting precautionary measures (see section **6.1 Circumstances of Injunctive Relief**) are met. However, the claimant must file suit within 30 days of the final decision on granting the precautionary measure. This, in effect, limits the scope of injunctive relief against third parties.

6.7 Consequences of a Respondent's Non-compliance

Precautionary measures requiring or forbidding the defendant to do something are typically enforced by way of a fine set by the bailiff.

7. TRIALS AND HEARINGS

7.1 Trial Proceedings

Broadly speaking, court proceedings consist of two parts: preparation and the main hearing. Preparation consists of written preparation (ie, exchange of briefs) and a preparatory hearing. The main hearing is the actual hearing, whereas the purpose of preparation is to prepare the case for the main hearing.

Written preparation consists of submission of the claimant's application for summons, the defendant's written response, and possible additional briefs.

The preparatory hearing is an informal case management hearing (see **7.2 Case Management Hearings**).

The main hearing is the actual trial. The parties first give their opening statements. All evidence is heard, first by reviewing the written evidence and then by examination of witnesses and experts. Finally, the parties give their closing statements.

7.2 Case Management Hearings

The preparatory hearing is a type of case management hearing. A preparatory hearing is held in all cases, though in small cases it may be held immediately before the main hearing. There may be several preparatory hearings where the case is complex or otherwise requires it.

In the preparatory hearing, the case is reviewed on a general level with the aim of:

- clarifying the parties' grounds and the evidence the parties will present;
- determining which facts are undisputed;
- discussing possible preliminary legal questions;
- deciding on the date of the main hearing; and
- agreeing on procedural issues relating to the main hearing.

When hearing motions for precautionary measures or production of evidence, the court may, in theory, arrange a separate hearing regarding such questions. However, this is very rare.

7.3 Jury Trials in Civil Cases

Juries are not used in Finland. However, lay members of court (ie, non-lawyer judges) may be used in criminal cases, in which case the court consists of one judge and two lay members.

7.4 Rules that Govern Admission of Evidence

The main rule of evidence is the principle of free consideration of evidence. This means that all evidence is, in principle, admissible, and there are no formal rules on what constitutes sufficient evidence. However, this does not give full discretion to the court, which must give consideration to all evidence and assess the evidence objectively. Especially in criminal cases, Supreme Court case law also has some weight on, for example, what constitutes reasonable doubt.

Evidence is inadmissible where it has been obtained through torture or through breach of the right against self-incrimination. Otherwise, illegally obtained evidence is, as a starting point, admissible, unless its use would violate the right to a fair trial taking into consideration:

- the nature of the matter;
- the severity of the illegality;
- the effect on the reliability of the evidence;
- the relevance of the evidence; and
- other circumstances.

7.5 Expert Testimony

Expert testimony is permitted. Experts can be appointed by either the court or the parties, though appointment by the parties is far more common.

Experts must be knowledgeable in their field and independent of the parties. The starting point is that expert testimony is given in the form of a written report. At the request of the court or a party, an expert can also be heard in person.

7.6 Extent to Which Hearings Are Open to the Public

Hearings are fully open to the public to the extent that they do not concern matters which the law provides are to be kept secret. Please see **1.3 Court Filings and Proceedings** for more detail.

To the extent that the hearings concern non-public matters, the usual procedure is that members of the public are asked to leave for those parts of the hearing where non-public issues are discussed. In particularly sensitive matters, the hearing will be held fully behind closed doors.

7.7 Level of Intervention by a Judge

The Finnish system is adversarial, meaning that the level of intervention by the judge is fairly limited. Of course, it can vary depending on the individual judge.

In the preparatory phase, the judge must ensure that the claims and their grounds presented by the parties are sufficiently clarified and identify which facts are undisputed. In the preparatory hearing, this means asking questions and preparing a written summary of the parties' dispute.

In the main hearing, the parties present their arguments quite independently and are also charged with examining and cross-examining the witnesses. The judge's role is fairly limited, but the judge leads the proceedings and may ask clarifying questions from witnesses.

In civil matters, judgments are almost always given only some time after the hearing. Only very simple matters will typically be decided immediately after the hearing.

7.8 General Timeframes for Proceedings

There are no deadlines set in law. The timeframe for proceedings varies quite broadly between courts depending on their workload, with the largest courts typically the most overburdened.

Roughly speaking, processing of an average claim in the district courts will take one to two years, sometimes even less than one year. The largest cases can take up to three to four years. Processing of an appeal in the Court of Appeal (assuming that the appeal is heard) takes approximately one additional year.

The cancellations of hearings in the spring of 2020 and other disruptions caused by COVID-19 have further increased the already substantial caseload of courts.

8. SETTLEMENT

8.1 Court Approval

Where court proceedings have already been initiated, parties can settle either in court or out of court.

If the parties settle in court, the court affirms the settlement agreement as a binding decision. To be affirmed, the settlement may not be contrary to law, clearly unreasonable, or violate the rights of a third party.

If the parties settle out of court, the parties will usually sign a settlement agreement, after which the claimant withdraws its claim and the defendant withdraws its claim for legal costs. Court approval is not needed for this, and the court does not review the settlement in any way.

8.2 Settlement of Lawsuits and Confidentiality

If the parties settle out of court, they can agree that the settlement remains confidential.

If the parties settle in court, they can request that the court orders the settlement agreement to be kept secret (eg, where trade secrets are involved). However, there must be grounds set in law for such secrecy. The starting point is that all court documents are public.

8.3 Enforcement of Settlement Agreements

As noted in **8.1 Court Approval**, if the parties settle in court, the court affirms the settlement agreement as a binding decision. The settlement agreement is then directly enforceable with the enforcement authority (eg, assets may be seized on the basis of the sums agreed to be paid in the settlement if the party does not pay).

If the parties settle out of court, the settlement agreement has the same effect as a new agreement. If one party breaches the settlement agreement, the other party must then file a new suit with the competent court. Out-of-court settlement agreements are typically constructed in such a way that first the defendant pays and only then does the claimant withdraw its claim.

8.4 Setting Aside Settlement Agreements

Settlement agreements are governed by the general rules of contract law. Typically, parties will agree in the settlement agreement on the grounds for termination or cancellation should one party breach the agreement.

9. DAMAGES AND JUDGMENT

9.1 Awards Available to the Successful Litigant

Finnish law does not, as such, limit the forms of award available. A party can request, inter alia, specific performance, an injunction, or damages. Specific performance cannot be awarded in all circumstances (eg, where the performance sought is of a personal nature). A party can also request a declaratory judgment confirming a legal question or relationship.

9.2 Rules Regarding Damages

The starting point of Finnish law is that damages are paid in the actual amount of the damage or loss. Finnish law does not recognise the concept of punitive damages but is quite permissive towards liquidated damages. The actual damages awarded depend on the substantive law applicable (eg, whether the dispute is under contract or in tort) and whether any special legislation is applicable.

Contractual limitation of liability is possible but can be set aside where damage or loss has been caused with intent or gross negligence.

9.3 Pre- and Post-Judgment Interest

The default rules on interest are set out in the Interest Act, which can generally be derogated from. Delay interest under the interest act is payable after the date of payment, which can be, depending on the type of debt, for example, the agreed due date or 30 days after payment was claimed from the debtor.

The statutory rate of delay interest is seven percentage points higher than the statutory reference rate, which is the reference rate used by the European Central Bank, as published biannually by the Bank of Finland.

In its judgment, the court will order the debtor to pay the principal amount together with delay interest from the date that delay interest begins to run. Interest can also accrue and be collected by the enforcing party after the date of the judgment; for example, interest for legal costs only begins to accrue one month after the date of the judgment.

Interest is collected upon enforcement of the judgment with the enforcement office. Funds obtained in enforcement are first used for the payment of interest and only then for amortising the principal amount.

9.4 Enforcement Mechanisms of a Domestic Judgment

Enforcement of judgments is carried out through the local enforcement office. The enforcement office can distrain both monetary and physical assets to satisfy the claim. Future salaries or business income can also be distrained. Where assets are distrained, there are specific but fairly flexible rules on the sale of such assets. The proceeds are, after deducting costs of sale, distributed to the debtor(s).

9.5 Enforcement of a Judgment from a Foreign Country

Enforcement of a foreign judgment requires a separate legal basis (convention or other legal instrument) to do so (eg, the Brussels I Regulation, the Lugano Convention, or the Hague Choice of Court Convention). If there is no legal basis for enforcement, the judgment will not be enforced and must be retried in Finland.

Where a foreign judgment is enforceable, the procedure depends on the legal instrument which forms the basis of enforcement. Exequatur (ie, recognition by a local court) may be required by the instrument before instrument. By contrast, under the recast Brussels I Regulation, foreign judgments are directly enforceable.

After any formalities, enforcement of a foreign judgment is similar to enforcement of a domestic judgment (see **9.4 Enforcement Mechanisms of a Domestic Judgment**), though translations will generally be required.

10. APPEAL

10.1 Levels of Appeal or Review to a Litigation

The general court system is three-tiered. After the District Court's judgment, parties may appeal to the competent Court of Appeal and thereafter to the Supreme Court.

Parties can appeal to the Court of Appeal on questions of both law and fact. Courts of Appeal select the cases which they hear (see **10.5 Court-Imposed Conditions on Granting an Appeal**).

Parties can appeal to the Supreme Court after the Court of Appeal judgment. The parties can also appeal to the Supreme Court directly if both parties so agree. The Supreme Court hears only

a very limited number of cases with precedent-setting value.

There are also narrow possibilities for additional appeal. Firstly, a complaint may be filed in cases of grave procedural error. Secondly, a judgment may be revoked where:

- a party's or judge's criminal activity has affected the judgment;
- the judgment is based on a forged document or perjury;
- new decisive issues of fact have come to light, which were not known at the time of the judgment; or
- the judgment is based on manifestly wrongful application of the law.

10.2 Rules Concerning Appeals of Judgments

Parties can appeal to the court of appeal regarding the District Court's judgment on questions of both law and fact. Procedural decisions can typically be appealed only in connection with the appeal on the ultimate judgment. However, decisions on precautionary measures can be separately appealed.

10.3 Procedure for Taking an Appeal

Appeal consists of two parts. Firstly, a party must submit a declaration of intent to appeal within seven days. Secondly, the party must file an actual appeal within thirty days.

The declaration of intent to appeal is a notification that the party intends to appeal. It requires no justifications. The deadline of seven days cannot be extended. Filing the declaration does not oblige a party to appeal, but if neither party files a declaration, the judgment becomes final and binding after the seven-day deadline.

The actual appeal may only be filed if the declaration of intent to appeal has been filed. It must be filed within thirty days, though this deadline can be extended upon request. The appeal must state, among other requirements:

- which points are being appealed (the entire judgment or part thereof);
- the changes requested in the judgment;
- the grounds for such changes; and
- identification of how the District Court's reasoning is incorrect.

The grounds of appeal can concern incorrect determination of questions of fact and/or incorrectly application of the law.

10.4 Issues Considered by the Appeal Court at an Appeal

The court of appeal considers those issues which have been appealed. However, given that the losing party typically appeals the entire judgment and in partial wins, both parties typically appeal, the court of appeal hearing more resembles a re-hearing than a review of the District Court's decision.

In civil matters, new points may not, as a rule, be explored and new evidence may not be submitted where it was not the subject of the District Court's judgment. The court may grant an exception where the appellant shows that it could not invoke facts or evidence in the District Court or that it had a valid reason for not doing so.

In criminal matters, new evidence may be brought also on appeal.

10.5 Court-Imposed Conditions on Granting an Appeal

Hearing of the appeal requires that the Court of Appeal grants leave for continued consideration. The only exceptions to this are severe criminal cases.

Leave for continued consideration can be granted on four alternative bases:

- there is reason to doubt the validity of the District Court's decision;
- the validity cannot be examined without continued consideration;
- the matter has precedential value; or
- there is another important reason.

In practice, the court will review the judgment and appeal and, if it deems that the appeal does not give reason to doubt the judgment, it will not grant leave for continued consideration.

10.6 Powers of the Appellate Court after an Appeal Hearing

Within the scope of the parties' claims, the Court of Appeal can amend the district court judgment. Where the decision reached on appeal leads to an examination of questions which have not yet been reviewed in the court of first instance, the Court of Appeal may return the matter to the District Court.

The Court of Appeal cannot decide on issues which have not been the subject of appeal, nor can it grant relief not claimed by the parties on appeal.

11. COSTS

11.1 Responsibility for Paying the Costs of Litigation

The main rule is that the losing party is required to compensate the winning party's legal costs. Legal costs include court fees, attorneys' fees, and party costs and expenses.

The decision on costs forms part of the judgment and can be challenged on appeal as other parts of the judgment (see **10. Appeal**). The decision on costs can be also be challenged on appeal on its own (eg, where the party has won the case but has not received full compensation for costs).

11.2 Factors Considered when Awarding Costs

Where the amount of the counterparty's costs is disputed by the losing party, that party's responsibility for costs is limited to reasonable costs arising out of necessary measures. In practice, courts are quite strict in what they consider to constitute reasonable costs. Where the amount is not disputed, costs will be awarded in full.

There are exceptions to the main rule of the losing party being responsible for costs. The main exceptions are unnecessarily prolonging the trial, partial wins, unnecessary litigations, legally unclear disputes, and manifestly unreasonable circumstances. In such cases, the costs may be adjusted, or the parties may be obliged to bear their own costs.

11.3 Interest Awarded on Costs

Statutory delay interest is awarded on costs if claimed by a party. The statutory rate of delay interest is seven percentage points higher than the statutory reference rate, which is the reference rate published biannually by the Bank of Finland (see **9.3 Pre- and Post-Judgment Interest**).

Interest begins to run from the date when one month has passed from the date of the judgment.

12. ALTERNATIVE DISPUTE RESOLUTION (ADR)

12.1 Views of ADR within the Country

Mediation is recognised as an ADR method, though not very widely used, especially in commercial matters. However, it is increasingly

promoted as an efficient method of solving disputes. See **12.2 ADR within the Legal System** regarding its role in the court system.

Finland has a long history of different adjudicatory boards for the resolution of disputes, most of which issue non-binding recommendations or decisions for specific types of dispute. These include the Consumer Disputes Board, the Insurance Complaints Board, the Banking Complaints Board, and the Traffic Accidents Board.

Expert determination clauses are also increasingly found in, for example, M&A agreements.

12.2 ADR within the Legal System

Court-led mediation is frequently offered to parties and is based on a separate Act on Mediation of Criminal and Certain Civil Matters. Mediation requires the consent of both parties and is carried out in parallel to the actual proceedings; typically, in its request for response the court may inquire whether the defendant is amenable to mediation. Parties may also request mediation of their own accord.

Mediation is not compulsory, and there are no sanctions for refusing mediation.

If the parties reach a settlement by mediation, the court can affirm the settlement as a binding decision (see **8. Settlement**).

Arbitration is a popular form of dispute resolution but not typically considered ADR. See **13. Arbitration** for more detail.

12.3 ADR Institutions

Courts are increasingly suggesting mediation to parties already in the early stages of a dispute, both for commercial and non-commercial disputes.

Various institutions such as the Bar Association and the Arbitration Institute of the Finland Chamber of Commerce are also promoting mediation by offering, for example, training for mediators and providing institutional rules of mediation.

13. ARBITRATION

13.1 Laws Regarding the Conduct of Arbitration

Finland is a party to the New York Convention and is generally recognised as an arbitration-friendly jurisdiction.

Finland's Arbitration Act governs both domestic and international arbitration seated in Finland and the enforcement of domestic and foreign arbitral awards. The Finnish Arbitration Act is partly based on, but not fully in line with, the UNCITRAL Model Law. The Ministry of Justice is currently investigating the possibility of modernising the Act, which dates from 1992.

The Finland Arbitration Institute is the most prominent arbitral institution in Finland. Its rules, which were revised in 2020, are generally well-considered and widely used in Finland.

13.2 Subject Matters Not Referred to Arbitration

Commercial and civil disputes are arbitrable insofar as they are capable of settlement by agreement between the parties and do not belong to the sole jurisdiction of national courts. The need to apply mandatory laws such as competition law does not exclude a dispute's arbitrability. However, certain specific matters (eg, disputes concerning the validity of IP rights) are not arbitrable.

Furthermore, there are some legal relationships where the parties may not validly submit to arbitration beforehand, the most prominent of which

are consumer law matters. However, arbitration can be agreed upon after the dispute has risen.

Unless otherwise provided in specific legislation, there is no categorical obstacle to arbitration of weaker party relationships such as employment disputes. However, an arbitration clause may be set aside on the basis of general rules of contract law where the clause is considered unreasonable.

13.3 Circumstances to Challenge an Arbitral Award

Grounds for Challenge

As in most arbitration-friendly jurisdictions, the grounds for challenging an arbitral award are narrow and the threshold for setting aside or annulment is high.

An arbitral award is null and void:

- where the arbitrators have decided an issue that is not arbitrable under Finnish law;
- to the extent that recognition is contrary to public policy;
- if the award is so obscure or incomplete that it does not indicate how the dispute has been decided; or
- if the award has not been made in writing or signed by the arbitrators.

An award may be set aside:

- where the arbitrators have exceeded their authority;
- if an arbitrator has not been properly appointed;
- where a challenge to an arbitrator has not been accepted, or the party became aware of the grounds for a challenge so late that it was not able to challenge the arbitrator before the award; or
- where the arbitrators have not given a party sufficient opportunity to present its case.

Challenge Procedure

The first three grounds for setting aside may be waived by a party in the arbitration.

An action for setting aside the award must be brought within three months from the date that the party received a copy of the award. There are no time limits for bringing an action for annulment.

The competent court to hear a challenge is the District Court of the seat of arbitration.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

To enforce an award, a party must submit a petition for enforcement with the local District Court together with the arbitration agreement and arbitral award as originals or certified copies as well as a translation thereof. The court can also waive the translation requirement. The court will grant the counterparty the opportunity to be heard unless there is an obstacle to doing so.

Once the court issues a decision on enforceability of the award, the award can be enforced like a judgment. Enforcement is carried out through the local enforcement authority.

14. OUTLOOK AND COVID-19

14.1 Proposals for Dispute Resolution Reform

There are no legislative proposals for dispute resolution reform. However, as noted in **13.1 Laws Regarding the Conduct of Arbitration**, the Ministry of Justice is currently investigating the possibility of modernising the Finnish Arbitration Act.

14.2 Impact of COVID-19

During the first outbreak of the COVID-19 pandemic in the spring of 2020, many courts cancelled non-urgent hearings of their own accord. This has led to already considerable caseloads rising and longer waiting times for trial dates.

After the spring of 2020, courts have continued to operate as before.

During the COVID-19 pandemic, the Finnish government passed legislative changes concerning insolvency laws, debt collection, and enforcement of judgments to alleviate the effects of the pandemic on certain debtors. However, these have had not had a substantive effect on litigation or the operation of courts.

No changes have been passed to limitation periods. As noted in **3.2 Statutes of Limitations**, the interruption of limitation periods generally does not require court action.

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HANNES SNELLMAN

Trends and Developments

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Litigation, Arbitration and Mediation

The dispute resolution market in Finland has been stable despite the pandemic. While the courts initially cancelled hearings, which affected already-agreed timetables, cases are currently proceeding as they were before the pandemic, with courts hearing cases primarily in person and, in some instances, virtually.

Arbitration has adjusted to the changes imposed by the pandemic more swiftly. Arbitral tribunals and parties have moved cases into a hybrid or virtual formats where necessary, organising both procedural and main hearings virtually or in hybrid format, in accordance with what was permitted on the basis of travel restrictions. While most arbitral tribunals have taken account of virtual hearing protocols, no local market standard has been created thus far. With technological adaptation, virtual and hybrid hearings are likely here to stay, at least for all procedural hearings.

At least partly due to these trends, arbitration has continued to increase in popularity, with cases heard under the auspices of the premier institute in Finland, the Arbitration Institute of the Finland Chamber of Commerce (FAI), reaching a record number in 2020. Statistics for 2021 are yet to be published, but this firm's experience would suggest a high number of arbitrations also for 2021.

The Finnish Bar Association has chosen mediation as one of its dispute resolution themes in the past year, increasing the visibility of – and training in – mediation. While used by companies more frequently, the significance of mediation remains more limited than that of litigation and arbitration.

Key Dispute Resolution Markets

As in many other European countries, formal insolvency proceedings are exceptionally low despite COVID-19. Similarly, Finland has yet to see any increase in insolvency-related litigation. However, insolvency-related questions arise in an increasing number of disputes, and certain major insolvency proceedings have also spurred follow-on litigation.

As a result of the move to clean energy, the energy market is in transition, resulting in a number of transactions and development projects. These developments carry over to the dispute resolution side. There has been a significant increase in disputes related to energy projects and this development is likely to continue. As large energy and infrastructure projects are often multi-party and multi-contract projects, the resulting disputes tend to be complex and lengthy. The majority of energy and infrastructure disputes are handled in arbitration.

There has also continued to be a strong demand for dispute resolution services in the field of construction. Due to the robust growth within the construction market in recent years, the pandemic and a shortage of both personnel and materials, the number of disputes in the construction field is likely to continue to rise. Global issues around the availability and price of raw materials have also been felt strongly in the construction sector. However, these issues have not yet led into actual disputes.

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With an active IPO market, Finland has also seen an increase in share redemption cases and related arbitrations.

Another notable trend is the development in the interface between investigations and litigation. The increasing compliance obligations placed on companies have resulted in further investigations and subsequent litigation. This trend is particularly observable in the securities field, competition law, compliance, environmental law, etc. It is expected to continue considering, for example, the implementation of the Whistleblowing Directive.

M&A continues to be a significant cause of disputes in the Finnish market. Again in line with global trends, M&A activity remains at an exceptionally high level. These trends are likely to translate into an increased number of M&A disputes as well. This firm's experience also suggest that expert determination proceedings, which are still somewhat rare in the Finnish market, are slowly becoming more common.

There has continued to be an increase in cases related to white-collar crime, often including elements of a regulatory nature. The Finnish Supreme Court issued a precedent in 2020, holding a company liable for money laundering in a case where the actual person having committed the crime was not identified. There has also been an increase in sanctions-related disputes, cybercrime and related issues.

In 2020, courts in many European countries have issued decisions holding governments or companies liable for lack of action, or for failing to abide by their commitments, in relation to CO2 reductions. We are closely following the climate change litigation trend in Europe to see when the first related case will be launched in Finland.

The current Climate Change Act is subject to revision in Finland. The new proposal will grant certain interested parties more extensive procedural rights to pursue claims on the basis of the Climate Act.

The Rise of Litigation Finance

Litigation finance is becoming more readily available in Finland, especially in the cases whose values range between EUR1–10 million, which form the bulk of the litigation work in Finland. While litigation finance has so far only been used by a few companies, the increased number of funders in the Nordics makes litigation finance more readily available.

Developments in the Finnish Courts and Arbitration System

The FAI appointed a new Secretary General in the summer of 2021. The FAI is expected to further modernise its operations and to strengthen its role as the predominant dispute resolution institute used by commercial parties in Finland as a result of the change at the helm of the arbitration institute. For example, the FAI has already announced that it will develop a new technological solution for internal case management, following broader market trends.

Major developments in the court system include a government proposal aiming to shorten the length of appeal proceedings by allowing for witness evidence to be heard in the appeals phase on the basis of video recordings taken in the first instance. The proposal is currently subject to comments by interested parties. With regard to arbitration, a project has been initiated to update the Finnish Arbitration Act. The project is unlikely to advance during the term of the current government. The background proposal aims, however, at turning Finland into a UNCITRAL Model Law country.

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